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

DEPARTMENT OF ENERGY

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Availability of Final Report on Regulatory Review Under Executive Order 13783

AGENCY: Office of the Secretary, Department of Energy.

ACTION: Notification of final report on regulatory review.

SUMMARY: Through this document, the Department of Energy (DOE) announces the availability of its report issued under Executive Order 13783, ''*Promoting Energy Independence and Economic Growth*''.

DATES: The Secretary signed the final report on October 24, 2017.

ADDRESSES: Copies of the report are available for public inspection at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. Public inspection can be conducted between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. This report is being published in its entirety and can also be accessed online at *https://www.energy.gov/downloads/final-report-regulatory-review-under-executive-order-13783.*

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–5000. Email: *Regulatory.Review@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) announces the availability of its report issued under Executive Order 13783, ''*Promoting Energy Independence and Economic Growth*''. The report provides the recommendations of DOE's Regulatory Reform Task Force to reduce regulatory burdens on domestic energy resources, and is published as an appendix to this document and available at *https://www.energy.gov/downloads/final-report-regulatory-review-under-executive-order-13783.*

Issued in Washington, DC, on October 26, 2017.

Shena A. Kennerly,

Acting Director, Office of the Executive Secretariat, Department of Energy.

Appendix

Department of Energy

Final Report on Regulatory Review Under Executive Order 13783

On March 28, 2017, the President signed Executive Order (EO) 13783, entitled ''Promoting Energy Independence and Economic Growth.'' Among other things, EO 13783 requires the heads of agencies to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, ''agency actions'') that potentially burden [1] the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Such review does not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth elsewhere in that order.

On May 18, 2017, I submitted to the Director of the Office of Management and Budget (OMB) the Department of Energy's (DOE) plan to review its agency actions under EO 13783. The plan was also sent to the Vice President, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chair of the Council on Environmental Quality (CEQ). In the plan, I stated that DOE's Regulatory Reform Task Force (Task Force) would conduct the review of agency actions subject to review under EO 13783.

On May 30, 2017, DOE published in the **Federal Register** a Request for Information (RFI), seeking input and other assistance from entities significantly affected by regulations of the DOE, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and manufacturers and their trade associations.[2]

DOE's goal in publishing the RFI was to ''create a systematic method for identifying those existing DOE rules that are obsolete, unnecessary, unjustified, or simply no longer make sense.'' DOE decided to solicit views on: (a) How DOE could best conduct its analysis of existing agency actions, and (b) insights on specific rules or Department-imposed obligations that should be altered or eliminated.

The comment period on the RFI closed on July 14, 2017. DOE received 132 separate public comments from decision-makers, stakeholders, and the public on rules promulgated by DOE and the burdens some of those rules have imposed. The Task Force has evaluated these comments to achieve meaningful regulatory reform in a manner consistent with our commitment to public participation in the rulemaking process.

DOE sought views on the specific rules or Department-imposed obligations that should be altered or eliminated, because knowledge about the full effects of a rule is widely dispersed in society, and members of the public are likely to have useful information and perspectives on the benefits and burdens of existing requirements and how regulatory obligations may be updated, streamlined, revised, or repealed to better achieve regulatory objectives, while minimizing regulatory burdens, consistent with applicable law. Interested parties may also be well-positioned to identify those rules that are most in need of reform, and, thus, assist the Department in prioritizing and properly tailoring its review process.

Beyond the RFI, the Task Force reviewed DOE Directives, Orders, Manuals, and Policies designed to ensure the effective management and operation of the National Laboratories, which contribute to American economic growth and energy security. Also, with the help of the Office of Management and staff for the Under Secretary of Energy, we reviewed DOE's Directives, Orders, Manuals, and Policies specifically for burdens on domestic energy production.

In addition to the work conducted to comply with EO 13783, DOE will continue to review all agency actions to assure that DOE does not burden domestic energy production. For example, as discussed below, we will review agency actions concerning fossil fuel consumption in Federal buildings, impact of building codes, and nuclear export licensing. DOE is committed to reducing regulatory burdens on the American people to unleash domestic energy production and promote job creation and economic growth.

Recommendations To Reduce Regulatory Burdens on Domestic Energy Resources

Based on a review of the comments received in response to the RFI, coupled with the work of the Task Force to identify both internal and external agency actions that inhibit domestic energy development and use, DOE's Task Force offers the following recommendations:

[1] Executive Order 13783 defined burden for purposes of the review of existing regulations to mean to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.

[2] 82 FR 24582 (May 30, 2017).

(1) Streamline Natural Gas Exports;
(2) Review National Laboratory Policies;
(3) Review National Environmental Policy Act (NEPA) Regulations; and
(4) Review the DOE Appliance Standards Program.

DOE Task Force Recommendations

(1) Streamline Natural Gas Exports

Several commenters encouraged DOE to expedite exports of Liquefied Natural Gas (LNG).

On September 1, 2017, DOE announced a proposed rule to provide faster approval of small-scale natural gas exports, including LNG. This measure will expedite the review and approval of applications to export small amounts of natural gas in the emerging small-scale LNG export market. Under the Natural Gas Act, DOE has jurisdiction over imports and exports of natural gas. For applications to export natural gas to countries without a qualifying free trade agreement (non-free trade agreement countries), DOE must conduct a public interest review before authorizing an export. This proposed rule provides that DOE, upon receipt of any complete application to export natural gas (including LNG) to non-free trade agreement countries, will grant the application if the application meets two criteria: The application proposes to export no more than 0.14 billion cubic feet per day (bcf/d), and the proposed export qualifies for a categorical exclusion under DOE's NEPA regulations.

For applications meeting these criteria, the exports are considered ''small-scale natural gas exports'' and are deemed in the public interest under the Natural Gas Act. Exports of natural gas to free trade agreement countries are already deemed in the public interest under the Act.

The Task Force will also consider whether future rulemakings can allow for expedited processing of larger-scale exports of natural gas as consistent with applicable law and DOE's statutory authority.

(2) Review National Laboratory Policies

DOE manages several National Laboratories that support the Department's energy, science, and nuclear non-proliferation missions. As part of our review, the Task Force conducted a comprehensive review of operations and procedures at the National Labs. The National Labs conduct research and development of innovative technologies that have the potential to enable future energy production. The Task Force identified several areas for reform that would permit the National Laboratories to operate more efficiently, focusing more time and resources on their mission-critical work: Conducting early-stage research and development of innovative energy technologies that advance American economic growth and energy security.

(3) Review DOE's National Environmental Policy Act (NEPA) Regulations and Implementation

DOE received comments on the RFI concerning streamlining and simplifying the agency's external regulations (10 CFR 1021) and internal operations to improve effectiveness and efficiency of NEPA document approval processes. The Task Force is comprehensively reviewing NEPA and offers several specific recommendations to reform DOE's NEPA processes to optimize and ensure compliance with existing statutes, CEQ regulations (40 CFR 1500–1508), and EO.

Specific NEPA recommendations include:

- Reform the NEPA process for permitting and export applications, including LNG and infrastructure.
- Review existing NEPA policies to assess whether DOE should grant more categorical exclusions. Further, enable DOE's adoption of categorical exclusions already approved by other Federal agencies, and foster interagency collaboration, such as working with the Bureau of Land Management to consider categorical exclusions for geothermal energy on Federal lands.
- Remove language in DOE Regulations (10 CFR 1021) that is not consistent with overarching CEQ regulations (40 CFR 1500–1508).

(4) Review DOE Appliance Standards Program

Pursuant to the Energy Policy and Conservation Act of 1975 (EPCA), DOE implements minimum energy conservation standards and separate test procedures for more than 60 categories of appliances. DOE's energy conservation standards apply to this EO because they impact U.S. energy consumption, the vast majority of which comes from oil, natural gas, coal, and nuclear resources.

Below is a summary of the various public comments and proposals that DOE has received and is considering:

- *Review the Process Rule.* Many commenters have asked DOE to follow and review the 1996 Process Rule (10 CFR Appendix A to Subpart C). The Process Rule describes the procedures, interpretations, and policies that guide DOE in establishing new or revised energy-efficiency standards for consumer products. Given our commitment to transparency and regulatory certainty, DOE will consider issuing a RFI to gather additional feedback from stakeholders on how to amend or improve the Process Rule.
- *Reduce the Burden of Serial Rule-making.* Many stakeholders, including manufacturers and small businesses, regard as overly burdensome and unnecessary the statutory requirement to reconsider standards at least once every six years.
  - ○ Commenters offered similar feedback in response to the Department of Commerce's RFI pursuant to the Presidential Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing.
  - ○ Commenters of both DOE's and Commerce's RFI suggest extending the time period between consideration of standards to give regulated industries more time to comply. This would require statutory changes, which are outside the scope of EO 13783.

However, DOE will consider other agency actions to reduce regulatory burdens on American families and businesses. As stated below, such reforms would give DOE more time to determine, before considering amending standards for a product, whether costs were accurately estimated and expected energy savings were realized.

The current 6-year review process may not provide adequate time for such a retrospective analysis, which is critical to determine whether energy conservation standards are working as intended and the underlying assumptions are sound.

- ○ In lieu of statutory changes to the 6-year review period, DOE should consider ''no amended standards'' determinations when supported by data and when small energy savings require significant upfront cost to achieve.
- ○ Consider voluntary, non-regulatory, and market-based alternatives to standards-setting. For example, when appropriate and consistent with the law, consider using established industry test procedures as the DOE test procedures.
- ○ Consider establishing a baseline for energy savings that qualify as not significant and thus not economically justified.
- ○ Refrain from enacting standards through a direct final rule because of the economic burden it may impose on households and the lack of consumer voice in the rulemaking process.
- *Improve Cost-Benefit Analysis.* EPCA requires DOE to promulgate rules that are economically justified, but this definition is subject to interpretation. Setting clear definitions that evaluate the comprehensive range of costs and benefits is crucial to ensure that DOE's conservation standards save energy while minimizing economic burdens. Some topics for consideration include:
  - ○ Establish internal DOE standards for how to regulate when large portions of the public would bear net costs (costs exceed benefits). Adopting a standard for determining a level at which the net cost is too large would preserve resources and mitigate burdens on consumers.
  - ○ Conduct a retrospective review of previous standards to assess the validity of DOE's analysis before it is used in new rules. This would give DOE enough time to collect information on consumer preferences and behavior, including surveys of consumers.
- *Reconsider standards and test procedures for particular products.* Commenters identified numerous standards and test procedures for reconsideration, citing excessive regulatory burdens. DOE is evaluating these comments, examples of which include:
  - ○ Review standards for natural gas products to consider whether the standards are inconsistent with the intent of EO 13783 to minimize regulatory burdens on domestic energy resources.
  - ○ Reconsider, or refrain from establishing, certain standards, including commercial packaged boilers, commercial and industrial fans and blowers, the refrigerated beverage vending machine standards rule published in 2016; the commercial refrigeration equipment standards rule published in 2014; the residential furnace fan rule published in 2014; and the residential water heaters standards published in 2010. Other commenters recommend maintaining many of these standards.

○ Repeal or reconsider several test procedures, including for compressors, residential central air conditioners and heat pumps, and consumer and commercial water heaters. Other commenters recommend maintaining current test procedures.

• Follow the requirements of EO 13783 when analyzing climate impacts. EO 13783 withdraws certain documents concerning the development of the Social Cost of Carbon (SCC) and requires agencies to follow the requirements of OMB Circular A–4 in climate analyses. DOE will follow these requirements in our regulations. Also, some commenters encouraged DOE not to use SCC to calculate the climate impacts of regulations.

In addition to the recommendations listed above, DOE is committed to enhancing engagement with stakeholders in an open and transparent process. Building on the listening session held on October 2, 2017, DOE is preparing to send a letter to each of the Department's Federal Advisory Committees requesting them to include regulatory reform on the agenda for their next meeting. DOE will also consider holding additional listening sessions on a semi-regular basis to gather feedback and hold the Department accountable to the public.

Furthermore, DOE will continue to consider other areas where it may be possible to relieve burdens on domestic energy production. For example, DOE will consider, consistent with Federal law, possible flexibility for regulations relating to fossil fuel consumption in Federal buildings, buildings codes, nuclear export licensing, and DOE's proposed nuclear damage contingent cost allocation rule. In short, we will remain committed to reducing burdens on all kinds of domestic energy production.

Section 2(d) of EO 13783

These recommendations comprise DOE's final report, which will be submitted to the Vice President, the OMB Director, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chair of the Council on Environmental Quality, as required by section 2(d) of EO 13783.

If implemented, these recommendations would alleviate or eliminate aspects of agency actions that burden domestic energy development, production, and use.

October 24, 2017

Rick Perry,
Secretary of Energy

[FR Doc. 2017–23713 Filed 10–31–17; 8:45 am]

BILLING CODE 6450–01–P

POSTAL REGULATORY COMMISSION

5 CFR Part 5601

[Docket No. RM2017–4; Order No. 4177]

Supplemental Standards of Ethical Conduct

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a set of rules that amend existing rules related to supplemental standards of ethical conduct for Postal Regulatory Commission employees. The rules revise the existing rules in order to better conform to Office of Government Ethics standards and accurately reflect the Commission's regulatory role under the Postal Accountability and Enhancement Act.

DATES: *Effective* December 1, 2017.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On May 24, 2017, the Postal Regulatory Commission (Commission) issued a notice of proposed rulemaking to revise its supplemental standards of ethical conduct, 5 CFR part 5601.[1] On the same day, the Commission also issued a notice of proposed rulemaking to revise the ethics rules applicable to Commission employees, 39 CFR subpart A of part 3000.[2]

Executive branch employees are subject to multiple federal ethics laws, regulations issued by the Office of Government Ethics (OGE), and executive orders. The supplemental standards of ethical conduct at issue in this Order are additional restrictions applicable only to Commission employees. These supplemental standards of ethical conduct concern prohibited financial interests, prohibited outside employment, disqualification when seeking non-federal employment, and prior approval to engage in outside employment. For the reasons discussed below, the Commission adopts the proposed rules without alteration. OGE concurs with the Commission's proposed revisions to 5 CFR part 5601.

II. Background

In 1991, Executive Order 12674, as amended by Executive Order 12731, authorized OGE to establish a single, comprehensive, and clear set of executive branch standards of ethical conduct.[3] On August 7, 1992, OGE published a final rule titled Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards).[4] The OGE Standards, codified at 5 CFR part 2635, became effective February 3, 1993, and established uniform standards of ethical conduct applicable to all executive branch personnel. On August 12, 1993, the Postal Rate Commission collaborated with OGE to publish existing 5 CFR part 5601 as an interim rule. 58 FR 42839 (Aug. 12, 1993).

In 2006, the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006) changed the agency's name from the Postal Rate Commission to the Postal Regulatory Commission and made several changes to the Commission's regulatory role. Order No. 3906 at 2–3. The supplemental standards of ethical conduct, existing 5 CFR part 5601, have never been amended or finalized since their 1993 adoption and remain attributed to the Postal Rate Commission. The PAEA's changes to the Commission's responsibilities drive the need to modernize the Commission's supplemental standards of ethical conduct. Moreover, experience has informed the Commission's view regarding linguistic and organizational revisions to clarify the supplemental standards of ethical conduct.

III. Comments

The Commission received two sets of comments pertaining to the proposed revisions to the supplemental standards of ethical conduct and the Commission's ethics rules.

Sum Comments. The Commission received the following comment through the *www.federalregister.gov* Web site: ''Any deletion of ethical conduct would not be in the best interest of the American people due to transparency.'' [5]

PR Comments. The Public Representative supports the proposed revisions.[6] He deems it ''critical that the

[1] 82 FR 23758 (May 24, 2017). The Commission posted this document on its Web site on May 19, 2017. Notice of Proposed Rulemaking on Amendments to Supplemental Standards of Ethical Conduct for Employees of the Postal Regulatory Commission, May 19, 2017 (Order No. 3906).

[2] 82 FR 23766 (May 24, 2017). The Commission posted this document on its Web site on May 19, 2017. Order No. 3907, Notice of Proposed Rulemaking on Amendments to Ethics Rules, May 19, 2017.

[3] *See* Executive Order No. 12674, 54 FR 15159 (Apr. 12, 1989); Executive Order No. 12731, 55 FR 42547 (Oct. 17, 1990).

[4] *See* 57 FR 35006–35067, as corrected at 57 FR 48557 (Oct. 27, 1992), 57 FR 52583 (Nov. 4, 1992), and 60 FR 66857–66858 (Dec. 27, 1995).

[5] Comment Received from Beth Sum, June 19, 2017 (Sum Comments). For transparency, this comment was posted to the Commission's Web site and associated with this docket.

[6] Public Representative Comments on Notices of Proposed Rulemaking on Amendments to Ethics Rules and Amendments to Supplemental Standards of Ethical Conduct for Employees of the Postal Regulatory Commission, June 26, 2017 (PR Comments). The Public Representative also filed a motion for late acceptance of his comments. Motion

Continued

Commission's ethics rules accurately reflect its role as a regulator and are reflective of the agency's procedures.'' PR Comments at 2. He concludes that the proposed revisions serve the public interest, reinforce public perception of the Commission's integrity, and increase accessibility and transparency. *Id.* He states that the proposed revisions ''ensure that financial holdings and outside employment do not result in the appearance of or in actual conflicts of interest.'' *Id.* at 3. He observes that the proposed deletions are primarily editorial revisions made to delete duplicative and outdated sections. *Id.* He notes that the proposed deletions will not limit the ethical obligations of Commission employees. *Id.*

IV. Commission Analysis

Neither commenter suggested changes to the proposed rules. The Public Representative supports the proposed rules. *Id.* at 2–3. In response to the concern expressed in the Sum Comments, the Commission reiterates its commitment to upholding the highest ethical standards. As executive branch employees, Commission employees remain subject to several statutes governing conflicts of interests (*see, e.g.,* 18 U.S.C. 201–219); the standards of ethical conduct appearing in Executive Order 12674, as amended by Executive Order 12731; and regulations promulgated by OGE relating to several issues including financial disclosure, the standards of ethical conduct, and post-employment conflicts of interest (*see, e.g.,* 5 CFR parts 2634, 2635, and 2641). Commission employees are also subject to the Commission's ethics rules, 39 CFR subpart A of part 3000, which are also being revised to reflect the Commission's modern regulatory role under the PAEA and to remove duplicative and outdated provisions.[7] The regulations at issue in this Order, the supplemental standards of ethical conduct applicable to Commission employees only, concern restrictions imposed upon Commission employees in addition to these laws and standards. The proposed revisions remain consistent with these laws and do not abrogate their application in any way. Streamlining the Commission's supplemental standards of ethical conduct supports OGE's mission to establish a single, comprehensive, and clear set of executive branch standards of ethical conduct in accordance with Executive Order 12731. The proposed revisions will not lead to any reduction in the ethical obligations of Commission employees. Ultimately, the proposed revisions will enhance the Commission's adherence to ethical conduct by more accurately reflecting the Commission's modern regulatory role under the PAEA.

The proposed rules clarify the bounds of ethical conduct in several ways, including linguistic and organizational revisions to delete duplicative and outdated language as well as to improve the specificity of the provisions. For instance, the definition of ''affected persons'' used in existing § 5601.101(b) is being incorporated into proposed § 5601.102. Existing § 5601.101(b)'s non-exhaustive list of categories of prohibited financial interest are being restructured to form specific categories upon which the Commission will develop a prohibited securities list (PSL) applicable to Commission staff (and their spouses and dependent children). Based on years of experience with the existing rules, the Commission believes that developing the PSL will assist employees to identify financial holdings that may pose (or appear to pose) a financial conflict of interest. Having the PSL available to employees as a reference before purchasing securities will improve transparency and adherence to ethical standards. The six categories underlying the PSL properly reflect the Commission's modern regulatory role under the PAEA and are consistent with the laws prohibiting actual or apparent financial conflicts of interests. *See* Order No. 3906 at 7–12.

The proposed revisions also improve the procedures related to the supplemental standards of ethical conduct. Proposed §§ 5601.101 and 5601.102 define additional terms and provide specific procedures related to exceptions, newly prohibited securities, new employees, acquisition of prohibited securities without specific intent, divestiture, and waiver. Proposed §§ 5601.103 and 5601.104 improve the procedures concerning employees that are seeking employment or prior approval for outside employment to better ensure any disqualification is prompt and appropriate. Therefore, the proposed revisions improve transparency and the ability of Commission employees to adhere to the highest ethical standards.

For these reasons and those reasons detailed in Order No. 3906, the Commission adopts the proposed rules without changes.

V. Ordering Paragraphs

It is ordered:

1. Part 5601 of title 5, Code of Federal Regulations, is amended as set forth below the signatures of this Order effective 30 days after the date of publication of this Order in the **Federal Register**.

2. The Secretary shall arrange for publication of this Order in the **Federal Register**.

List of Subjects in 5 CFR Part 5601

Conflicts of interests.

By the Commission.

Stacy L. Ruble,

Secretary.

By the Office of Government Ethics.

David J. Apol,

Acting Director and General Counsel, Office of Government Ethics.

■ For the reasons discussed in the preamble, the Commission amends chapter XLVI of title 5 of the Code of Federal Regulations by revising part 5601 to read as follows:

PART 5601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE POSTAL REGULATORY COMMISSION

Sec.
5601.101 General.
5601.102 Prohibited financial interests.
5601.103 Notice of disqualification when seeking employment.
5601.104 Prohibited outside employment.
5601.105 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 39 U.S.C. 503; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

§ 5601.101 General.

(a) *Purpose.* In accordance with § 2635.105 of this title, the regulations in this part apply to employees, including Commissioners, of the Postal Regulatory Commission (Commission) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in part 2635 of this title. In addition, the executive branch financial disclosure regulations contained in part 2634 of this title, additional regulations on responsibilities and conduct at part 735 of this title, and Commission-specific provisions contained in 39 CFR part 3000 apply to Commission employees.

(b) *Definitions.* For the purposes of this part:

(1) The term *securities* includes an interest in debt or equity instruments.

of Public Representative for Late Acceptance of Comments, June 26, 2017 (Motion). The Motion is granted.

[7] Order No. 4178, Order Amending Ethics Rules, October 25, 2017.

The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets, and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(2) The term *parent* means a company that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an entity identified in § 5601.102 (b)(1)(i) through (v).

(3) The term *person* means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

(4) The term *entity* means person.

(5) The term *DAEO* means the Designated Agency Ethics Official, or his delegate under § 2638.601 of this title.

(6) The term *employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee. Employment does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization unless such activities involve the practice of a profession within the meaning of § 2636.305(b)(1) of this title, including the giving of professional advice, or are for compensation, other than reimbursement of expenses.

(7) The term *publicly held corporation* means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.

(8) The term *dependent child* means when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who:

(i) Is unmarried, under age 21, and living in the household of the reporting individual; or

(ii) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986, 26 U.S.C. 152.

§ 5601.102 Prohibited financial interests.

(a) *General prohibition.* No employee, and no spouse or dependent child of an employee, shall acquire or hold any securities issued by an entity on the prohibited securities list described in paragraph (b) of this section.

(b) *Prohibited securities list.* At least once a year, the Commission will publish and distribute to employees a list of entities whose securities an employee or the spouse or dependent child of an employee may not own.

(1) The list shall include:

(i) An entity participating in a proceeding before the Commission in the last 4 years, *e.g.,* complainants, appellants, intervenors, and entities filing comments on the record in Commission proceedings;

(ii) A party to a proceeding to which the Commission is a party, *e.g.,* appellate proceedings, administrative proceedings, or civil actions;

(iii) An entity primarily engaged in the business of delivering packages, merchandise, or written communications, *i.e.,* an entity whose primary business competes with the Postal Service;

(iv) An entity providing services or products to the Postal Service that can be expected to produce annual revenue:

(A) to a publicly held corporation exceeding $1,000,000, *and* if the entity reports its gross revenue publicly, exceeding 10 percent of its annual gross revenue; or

(B) to any other entity exceeding $100,000, *and* if the entity reports its gross revenue publicly, exceeding 5 percent of the entity's annual gross revenue;

(v) Any other entities not listed above for which a Commission employee holding a security may raise an actual or apparent loss of impartiality affecting the integrity of the Commission's programs and operations, *e.g.,* entities primarily engaged in the business of publishing or distributing publications such as periodicals or sending advertising, promotional, or other material on behalf of itself or another entity through the mails; and

(vi) The parent corporation of any subsidiary described in paragraphs (b)(1)(i) through (v) of this section.

(2) The list shall not include an entity whose use of the mail is merely an incidental or minor factor in the general conduct of its business.

(c) *Exception.* Nothing in this section prohibits an employee, or the spouse or dependent child of an employee, from acquiring or holding an interest in a publicly traded or publicly available mutual fund or other collective investment fund, or in a widely held pension or mutual fund, provided that the fund's prospectus or practice does not indicate the stated objective of concentrating its investments in entities identified in paragraphs (b)(1)(i) through (vi) of this section.

(d) *Newly prohibited securities or new employees.* Within 30 days after the Commission disseminates the prohibited securities list to an employee, an employee who owns, or whose spouse or dependent child owns, prohibited securities shall report that ownership to the DAEO. The employee's report must be in writing and include the name of the prohibited security and the date of acquisition. Except as provided in paragraph (g) of this section, the employee, or the spouse or dependent child of the employee, shall divest prohibited securities within 90 days after dissemination of the prohibited securities list.

(e) *Securities acquired without specific intent.* Within 30 days after an employee, or the spouse or dependent child of an employee, acquires securities of an entity on the prohibited securities list as a result of marriage, inheritance, gift or otherwise without specific intent to acquire the securities, the employee shall report the acquisition to the DAEO. The employee's report must be in writing and include the name of the prohibited security, the date of acquisition, and the method of acquisition. Except as provided in paragraph (g) of this section, an employee, or the spouse or dependent child of an employee, shall divest prohibited securities within 90 days after the date of acquisition.

(f) *Divestiture*—(1) *Procedure for accomplishing divestiture.* To alleviate an actual or apparent conflict of interest, an employee divesting prohibited securities shall obtain written confirmation from the DAEO that divesture has been accomplished. A request for such confirmation shall be submitted in writing with sufficient proof to enable the DAEO to confirm that the employee has divested the

prohibited security. The employee shall continue to be recused until the date of the DAEO's written confirmation that divesture has been accomplished.

(2) *Extension of period to divest.* Upon a showing of undue hardship, the DAEO may extend the 90 day period for divestiture specified in paragraphs (e) through (f) of this section.

(3) *Disqualification pending divestiture.* Pending divestiture of prohibited securities, an employee must disqualify himself or herself, in accordance with § 2635.402 of this title, from participation in particular matters which, as a result of continued ownership of the prohibited securities, would affect the financial interests of the employee, or those of the spouse or dependent child of the employee.

(g) *Waivers.* The DAEO may grant a written waiver from this section based on a determination that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of an employee's misuse of position or loss of impartiality, or to otherwise ensure confidence in the impartiality and objectivity with which the Commission's programs are administered, or in the case of a special Government employee, divestiture would result in substantial financial hardship. A waiver under this paragraph must be in writing and may impose conditions, such as requiring execution of a written disqualification.

§ 5601.103 Notice of disqualification when seeking employment.

(a) An employee who has been assigned to or is supervising work on a particular matter that affects the financial interests of a prospective employer and who is required, in accordance with § 2635.604(a) of this title, to disqualify himself or herself from participation in that matter shall provide written notice of disqualification to the DAEO within 3 business days. The DAEO shall inform the employee's supervisor that the employee is disqualified from the matter. Public filers must comply with the notification requirement set forth in § 2635.607 of this title even when not required to disqualify from participation in a particular matter. Employees who file a notification statement in compliance with § 2635.607 of this title are not required to file a separate notice under this section.

(b) An employee may withdraw written notice under paragraph (a) of this section upon determining that disqualification from participation in the matter is no longer required. A withdrawal of disqualification shall be in writing and shall be provided to the DAEO. The DAEO shall inform the employee's supervisor that the employee is no longer disqualified from the matter.

§ 5601.104 Prohibited outside employment.

An employee shall not engage in outside employment, either on a paid or unpaid basis, with or for an entity on the prohibited securities list described in § 5601.102(b)(1)(i) through (vi).

§ 5601.105 Prior approval for outside employment.

(a) *Prior approval for outside employment.* An employee who wishes to engage in outside employment, either on a paid or unpaid basis, shall obtain the prior written approval of the DAEO. A request for such approval shall be submitted in writing with sufficient description of the employment to enable the DAEO to give approval based on an informed determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including paragraph (a) of this section and part 2635 of this title. The DAEO shall provide a copy of any written approvals for outside employment to the employee's supervisor.

(b) *Scope of approval.* An employee must submit a new request for approval upon either a significant change in the nature or scope of the outside employment or a change in the employee's Commission position or assigned responsibilities.

[FR Doc. 2017–23764 Filed 10–31–17; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0717; Special Conditions No. 25–704–SC]

Special Conditions: The Boeing Company Model 777–8 and 777–9 Airplanes; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for The Boeing Company (Boeing) Model 777–8 and 777–9 airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. These design features include systems that, directly or as a result of failure or malfunction, affect airplane structural performance. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Boeing on November 1, 2017. We must receive your comments by December 18, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0717 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Mark Freisthler, FAA, Airframe and

Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1119; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds it unnecessary to delay the effective date and that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

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

Background

On April 19, 2017 (for the Model 777–8 airplane), and May 12, 2015 (for the 777–9 airplane), Boeing applied for an amendment to Type Certificate (TC) No. T00001SE to include the new Model 777–8 and 777–9 airplanes. These airplanes are derivatives of the Model 777–300ER airplane currently approved under TC No. T00001SE. The Model 777–9 airplane is a stretched-fuselage, large, twin-engine airplane with seating for 408 passengers and a maximum takeoff weight of 775,000 pounds.

The Model 777–8 airplane, a shortened-body derivative of the Model 777–9 airplane, is a large, twin-engine airplane with seating for 359 passengers and a maximum takeoff weight of 775,000 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777–8 and 777–9 airplanes meet the applicable provisions of the regulations listed in TC No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 777–8 and 777–9 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Model 777–8 and 777–9 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Model 777–8 and 777–9 airplanes will incorporate the following novel or unusual design features:

These Boeing airplanes have full-time, digital, electronic flight-control systems (EFCS) affecting the pitch, yaw, and roll axes of the airplanes. In addition, the airplanes are equipped with on-ground load-alleviation systems to reduce braking loads. The current regulations are inadequate for considering the effects of these systems and their effects upon structural performance. These special conditions define the criteria to be used in the assessment of the effects of these systems on structures.

The general approach of accounting for the effect of system failures on structural performance would be extended to include any partial or complete system failure, alone or in combination with other partial or complete system failures, as would affect structural performance.

Discussion

Active flight-control systems are capable of providing automatic responses to external inputs from sources other than pilots. These systems have been expanded in function, effectiveness, and reliability such that fly-by-wire flight controls, without a manual backup system in the event of system failures, are becoming standard equipment on larger transport-category airplanes. As a result of these advancements in flight-control technology, the current safety standards contained in part 25 do not provide an adequate basis to address an acceptable level of safety for airplanes equipped with these advanced systems. Instead, certification of these systems has been achieved by issuance of special conditions under the provisions of § 21.16.

For example, stability-augmentation systems (SAS), and to a lesser extent load-alleviation systems (LAS), have been used on transport-category airplanes for many years. Past approvals of these systems were based on both special conditions and individual findings of equivalent level of safety with existing rules.

Although autopilots are also considered active control systems, typically their control authority has been limited such that the consequences of system failures could be readily counteracted by the pilot. Now, autopilot functions are integrated into the primary flight controls and are given sufficient control authority to maneuver the airplane to its structural design limits. This advanced technology, with its expanded authority, requires a new approach to account for the interaction of control systems and structures.

The usual deterministic approach to defining the loads envelope contained in part 25 does not fully account for system effectiveness and system reliability. These automatic systems may be inoperative or may operate in a degraded mode with less than full system authority. Therefore, it is necessary to determine the structural factors of safety and operating margins such that the joint probability of structural failures, due to application of loads during system malfunctions, is not greater than that found in airplanes equipped with earlier-technology control systems. To achieve this objective, it is necessary to define the failure conditions, with their associated frequency of occurrence, to determine the structural factors of safety and operating margins that will ensure an acceptable level of safety.

Earlier automatic control systems usually provided two states: Either fully functioning, or a total loss of function. Flightcrew readily detected these conditions. The new, active, flight-control systems have failure modes that allow the system to function in the degraded mode without full authority. This degraded mode is not readily detectable by the flightcrew. Therefore, monitoring systems are required on these new systems to provide an annunciation of a condition of degraded system capability.

In these special conditions, and in the current standards and regulations, the term ''any'' requires the applicant to address all items covered by the term, rather than addressing only a portion of the items.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777–8 and 777–9 airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–8 and 777–9 airplanes.

Interaction of Systems and Structures

For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of part 25, subparts C and D.

For airplanes equipped with flight-control systems, autopilots, stability-augmentation systems, load-alleviation systems, fuel-management systems, and other systems that either directly, or as a result of failure or malfunction, affect structural performance, the following criteria must be used for showing compliance. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

1. The criteria defined herein only address the direct structural consequences of the system responses and performance. They cannot be considered in isolation, but should be included in the overall safety evaluation of the airplane. These criteria may, in some instances, duplicate standards already established for this evaluation. These criteria are only applicable to structure the failure of which could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements, when operating in the system-degraded or inoperative mode, are not provided in these special conditions.

2. Depending upon the specific characteristics of the airplane, additional studies that go beyond the criteria provided in these special conditions may be required to demonstrate the airplane's capability to meet other realistic conditions, such as alternative gust or maneuver descriptions for an airplane equipped with a load-alleviation system.

3. The following definitions are applicable to these special conditions.

a. *Structural performance:* Capability of the airplane to meet the structural requirements of part 25.

b. *Flight limitations:* Limitations that can be applied to the airplane flight conditions following an in-flight occurrence, and that are included in the airplane flight manual (*e.g.,* speed limitations, avoidance of severe weather conditions, etc.).

c. *Operational limitations:* Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (*e.g.,* fuel, payload and master minimum-equipment list limitations).

d. *Probabilistic terms:* Terms such as probable, improbable, and extremely improbable, as used in these special conditions, are the same as those used in § 25.1309.

e. *Failure condition:* This term is the same as that used in § 25.1309. However, these special conditions apply only to system-failure conditions that affect the structural performance of the airplane (*e.g.,* system-failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

Effects of Systems on Structures

1. General. The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

2. System fully operative. With the system fully operative, the following apply:

a. Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in part 25, subpart C (or defined by special conditions or findings of equivalent level of safety in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

b. The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure that the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

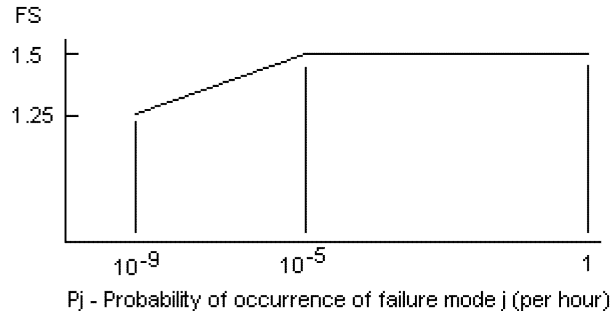
c. The airplane must meet the aeroelastic stability requirements of § 25.629.

3. System in the failure condition. For any system-failure condition not shown to be extremely improbable, the following apply:

a. At the time of occurrence. Starting from 1g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after the failure.

i. For static-strength substantiation, these loads, multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure, are ultimate loads to be considered for design. The factor of safety is defined in Figure 1, below.

Figure 1: Factor of safety (FS) at the time of occurrence



ii. For residual-strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in special condition 3.a.i. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

iii. Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speeds beyond V_C/M_C, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

iv. Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

b. For the continuation of the flight. For the airplane in the system-failed state, and considering any appropriate reconfiguration and flight limitations, the following apply:

i. The loads derived from the following conditions (or defined by special conditions or findings of equivalent level of safety in lieu of the following conditions) at speeds up to V_C/M_C (or the speed limitation prescribed for the remainder of the flight) must be determined:

1. the limit symmetrical maneuvering conditions specified in §§ 25.331 and 25.345.

2. the limit gust and turbulence conditions specified in §§ 25.341 and 25.345.

3. the limit rolling conditions specified in § 25.349, and the limit unsymmetrical conditions specified in §§ 25.367, and 25.427(b) and (c).

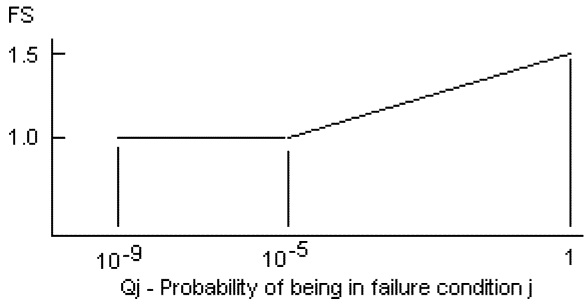
4. the limit yaw-maneuvering conditions specified in § 25.351.

5. the limit ground-loading conditions specified in §§ 25.473, 25.491, 25.493(d), and 25.503.

ii. For static-strength substantiation, each part of the structure must be able to withstand the loads in special condition 3.b.i., multiplied by a factor of safety depending on the probability of being in this failure state.

The factor of safety is defined in Figure 2, below.

Figure 2: Factor of safety (FS) for continuation of flight



$Q_j = (T_j)(P_j)$

Where:

T_j = Average time spent in failure mode j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

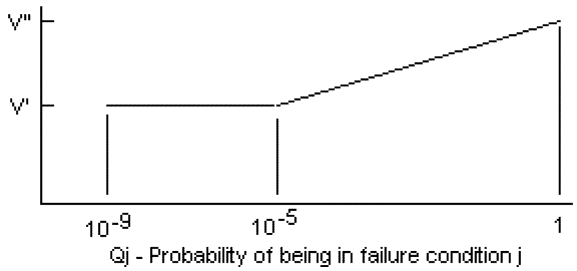
Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in part 25, subpart C.

iii. For residual-strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in paragraph 3.b.ii. of these special conditions. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

iv. If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

v. Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3, below. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3: Clearance speed



V′ = Clearance speed as defined by § 25.629(b)(2).
V″ = Clearance speed as defined by § 25.629(b)(1).
$Q_j = (T_j)(P_j)$

Where:

T_j = Average time spent in failure mode j (in hours)
P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

vi. Freedom from aeroelastic instability must also be shown up to V′ in Figure 3, above, for any probable system-failure condition, combined with any damage required or selected for investigation by § 25.571(b).

c. Consideration of certain failure conditions may be required by other sections of part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9} per flight hour, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

4. Failure indications. For system-failure detection and indication, the following apply:

a. The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25, or that significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of detection and indication systems, to achieve the objective of this requirement. These certification-maintenance requirements must be limited to components that are not readily detectable by normal detection-and-indication systems, and where service history shows that inspections will provide an adequate level of safety.

b. The existence of any failure condition, not extremely improbable, during flight, that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of part 25, subpart C below 1.25, or flutter margins below V″, must be signaled to the crew during flight.

5. Dispatch with known failure conditions. If the airplane is to be dispatched in a known system-failure condition that affects structural performance, or that affects the reliability of the remaining system to maintain structural performance, then the provisions of these special conditions must be met, including the provisions of special condition 2 for the dispatched condition, and special condition 3 for subsequent failures.

a. Expected operational limitations may be taken into account in establishing Pj as the probability of failure occurrence for determining the safety margin in Figure 1.

b. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition, and the subsequent failure condition, for the safety margins in Figures 2 and 3.

c. These limitations must be such that the probability of being in this combined failure state, and then subsequently encountering limit load conditions, is extremely improbable. No reduction in these safety margins is allowed if the subsequent system-failure rate is greater than 10^{-3} per flight hour.

Issued in Renton, Washington, on October 23, 2017.

Victor Wicklund,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2017–23699 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0718; Special Conditions No. 25–705–SC]

Special Conditions: The Boeing Company Model 777–8 and 777–9 Airplanes; Design Roll Maneuver for Electronic Flight Controls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for The Boeing Company (Boeing) Model 777–8 and 777–9 airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an electronic flight-control system (EFCS) that provides control of the airplane through pilot inputs to the flight computer. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Boeing on November 1, 2017. We must receive your comments by December 18, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0718 using any of the following methods:

• *Federal eRegulations Portal:* Go to *http://www.regulations.gov/*and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Mark Freisthler, FAA, Airframe and Cabin Safety Branch, AIR–675, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–1119; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA finds it is unnecessary to delay the effective date and finds that good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

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

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

Background

On April 19, 2017 (for the Model 777–8 airplane), and May 12, 2015 (for the 777–9 airplane), Boeing applied for an amendment to Type Certificate (TC) No. T00001SE to include the new Model 777–8 and 777–9 airplanes. These airplanes are derivatives of the Model 777–300ER airplane currently approved under TC No. T00001SE. The Model 777–9 is a stretched-fuselage, large, twin-engine airplane with seating for 408 passengers and a maximum takeoff weight of 775,000 pounds.

The Model 777–8, a shortened-body derivative of the 777–9, is a large, twin-engine airplane with seating for 359 passengers and a maximum takeoff weight of 775,000 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777–8 and 777–9 airplanes meet the applicable provisions of the regulations listed in TC No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 777–8 and 777–9 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Model 777–8 and 777–9 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Model 777–8 and 777–9 airplanes will incorporate the following novel or unusual design feature:

An electronic flight-control system that provides control of the airplane through pilot inputs to the flight computer. Current part 25 airworthiness regulations account for control laws where aileron deflection is proportional to control-stick deflection. The regulations do not address nonlinearities, such as situations where output does not change in the same proportion as input, or other effects on aileron actuation that may be caused by electronic flight controls.

Discussion

These special conditions differ from current regulatory requirements in that they require that the roll maneuver results from defined movements of the cockpit roll control, as opposed to defined aileron deflections. These special conditions also require an additional load condition at design maneuvering speed (V_A), in which the cockpit roll control is returned to neutral following the initial roll input.

These special conditions differ from similar special conditions previously issued on this topic. These special conditions are limited to the roll axis only, whereas other special conditions also included pitch and yaw axes. Special conditions are not required for the pitch or yaw axes, because § 25.331 at Amendment 25–141, and § 25.351 at Amendment 25–91, take into account the effects of an electronic flight-control system.

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

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777–8 and 777–9 airplanes.

Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–8 and 777–9 airplanes.

In lieu of compliance to 14 CFR 25.349(a), the Model 777–8 and 777–9 airplanes must comply with the following:

The following conditions, speeds, and cockpit roll control motions (except as the motions may be limited by pilot effort) must be considered in combination with an airplane load factor of zero, and of two-thirds of the positive maneuvering factor used in design. In determining the resulting control-surface deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b).

1. Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated for airplanes with engines or other weight concentrations outboard of the fuselage. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

2. At V_A, sudden movement of the cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

3. At V_C, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than that obtained in condition 2, above.

4. At V_D, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than one third of that obtained in condition 2, above.

Issued in Renton, Washington, on October 25, 2017.

Victor Wicklund,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2017–23701 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2016–9403; Special Conditions No. 25–643–SC]

Special Conditions: Embraer, S.A., Model ERJ 190–300 Airplane; Dive-Speed Definition With High-Speed-Protection System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; correction.

SUMMARY: This document corrects an error that appeared in Docket No. FAA–2016–9403, Special Conditions No. 25–643–SC, which was published in the **Federal Register** on March 17, 2017 (82 FR 14117). The error is an incorrect citation of a section in a cited advisory circular.

DATES: The effective date of this correction is November 1, 2017.

FOR FURTHER INFORMATION CONTACT: Greg Schneider, FAA, Airframe and Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2116; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 2017, the **Federal Register** published a document designated as Docket No. FAA–2016–9403, Final Special Conditions No. 25–643–SC (82 FR 14117). The document issued special conditions pertaining to dive-speed definition with a high-speed-protection system. As published, the document contained an error in a citation to an advisory circular section.

Correction

In the final special conditions document (FR Doc. 2017–05329), published on March 17, 2017 (82 FR 14117), make the following correction.

On page 14119, second column, correct the last sentence in special condition no. 2 to read:

The upset maneuvers described in Advisory Circular 25–7C, ''Flight Test Guide for Certification of Transport Category Airplanes,'' Chapter 2, section 8, paragraph 32, sub-paragraphs c(3)(a) and (c), may be used to comply with this requirement.

Issued in Renton, Washington, on October 25, 2017.

Victor Wicklund,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2017–23697 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0219; Airspace Docket No. 17–AWP–5]

Amendment of Class E Airspace; Lemoore NAS, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment, correction.

SUMMARY: This action corrects a final rule, technical amendment published in **Federal Register** on September 21, 2017, that removes the Notice to Airmen (NOTAM) part-time status information contained in the legal description of Class E airspace designated as an extension at Lemoore NAS (Reeves Field), Lemoore, CA. The airspace description contained the following wording in error: ''. . . within a 5.2-mile radius of Lemoore NAS (Reeves Field), and . . . .'' This wording is removed. This action does not affect the charted boundaries or operating requirements of the airspace.

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

FOR FURTHER INFORMATION CONTACT: Robert LaPlante, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4566.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule, technical amendment in the **Federal Register** (82 FR 44060, September 21, 2017) Docket No. FAA–2017–0219, amending Class E Airspace designated as an extension, and removing the Notice to Airmen (NOTAM) part-time status at Lemoore NAS, Lemoore, CA. Subsequent to publication, the FAA found the legal description was incorrect and is now corrected to eliminate ''within a 5.2-mile radius of Lemoore NAS (Reeves Field), and'' from the description.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of September 21, 2017 (82 FR 44060) FR Doc. 2017–20043, Amendment of Class E Airspace; Lemoore NAS (Reeves Field), CA is corrected as follows:

§ 71.1 [Corrected]

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

■ On page 44061, column 2, lines 26–28, the words ''That airspace extending upward from the surface within a 5.2-mile radius of Lemoore NAS (Reeves Field), and'' are corrected to read ''That airspace extending upward from the surface within 1.8 miles each side''.

Issued in Seattle, Washington, on October 25, 2017.

B.G. Chew,

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

[FR Doc. 2017–23675 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0143; Airspace Docket No. 17–AGL–5]

Amendment of Class E Airspace, for Stevens Point, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Stevens Point Municipal Airport, Stevens Point, WI. Airspace reconfiguration is necessary due to the decommissioning of the Stevens Point co-located VHF omnidirectional range tactical air navigation system (VORTAC) and cancellation of the VOR approaches. This action enhances the safety and management of standard instrument approach procedures for instrument flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, February 1, 2018. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, 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: Walter Tweedy, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E to support standard instrument approach procedures for IFR operations at the airport.

History

The FAA published in the **Federal Register** a notice of proposed rulemaking (82 FR 32151, July 12, 2017) Docket No. FAA–2017–0143 to modify Class E airspace extending upward from 700 feet above the surface at Stevens Point Municipal Airport, Stevens Point, WI. The Stevens Point VORTAC has been out of service since 2012 due to extreme fluctuations and out-of-tolerance structure. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 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.

Availability and Summary of Documents for Incorporation by Reference

This document amends 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 Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface within a 6.6-mile (from a 6.5-mile) radius of Stevens Point Municipal Airport, Stevens Point, WI. The segments that extended 1.8 miles each side of the Stevens Point VORTAC extending from the 6.5-mile radius to 7 miles northeast, east, and southwest of the VORTAC, would be removed due to the decommissioning of the VORTAC and cancellation of the VOR approaches.

This action enhances the safety and management of the standard instrument approach procedures for IFR operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a

''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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.

* * * * *

AGL WI E5 Stevens Point, WI [Amended]

Stevens Point Municipal Airport, WI
(Lat. 44°32′43″ N., long. 89°31′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Stevens Point Municipal Airport.

Issued in Fort Worth, Texas on October 20, 2017.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2017–23434 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0557; Airspace Docket No. 17–ASO–15]

Amendment of Class E Airspace; Scottsboro, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Scottsboro, AL, by updating the heliport name to Highland Medical Center Heliport, (formerly Jackson County Hospital), and updating the geographic coordinates of the heliport to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, February 1, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line 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: 1–800–647–8927, or (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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Highland Medical Center Heliport, Scottsboro, AL, by bringing the airport name and coordinates in line with the FAA's aeronautical database.

History

On August 16, 2017, the FAA published in the **Federal Register** (82 FR 38856) Docket No. FAA–2017–0557, a notice of proposed rulemaking to amend Class E airspace extending upward from 700 feet above the surface at Highland Medical Center Heliport, Scottsboro, AL. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, 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 Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within a 6-mile radius of Highland

Medical Center Heliport, Scottsboro, AL, by recognizing the heliport's name change, (formerly Jackson County Hospital), and adjusting the geographic coordinates of the heliport to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, 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.

* * * * *

ASO AL E5 Scottsboro, AL [Amended]

Scottsboro Municipal—Word Field Airport, AL
(Lat. 34°41′19″ N., long. 86°00′21″ W.)
Highland Medical Center Heliport, Points in Space Coordinates
(Lat. 34°39′45″ N., long. 86°02′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Scottsboro Municipal—Word Field Airport, and within 4 miles each side of the 037° bearing from Scottsboro Municipal—Word Field Airport extending from the 6.5-mile radius to 10.9 miles northeast of the airport, and within 4 miles each side of the 218° bearing from Scottsboro Municipal—Word Field Airport extending from the 6.5-mile radius to 11 miles southwest of the airport; and that airspace within a 6-mile radius of the points in space (lat. 34°39′45'' N., long. 86°02′48'' W.) serving Highland Medical Center Heliport.

Issued in College Park, Georgia, on October 18, 2017.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2017–23248 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0616; Airspace Docket No. 17–ANM–26]

Amendment of Class E Airspace; Prineville, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface, and removes Class E airspace extending upward from 1,200 feet above the surface, at Prineville Airport, Prineville, OR, to accommodate airspace redesign for the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Effective 0901 UTC February 1, 2018. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, 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 this material 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: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class E airspace extending upward from 700 feet and removes Class E airspace upward from 1,200 feet above the surface at Prineville Airport, Prineville, OR, to support IFR operations under standard instrument approach procedures.

History

On July 5, 2017, the FAA published in the **Federal Register** (82 FR 31033) Docket FAA–2017–0616 a notice of proposed rulemaking (NPRM) to modify Class E airspace extending upward from 700 feet above the surface and remove Class E airspace upward from 1,200 feet above the surface at Prineville Airport, Prineville, OR. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, 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 Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface at Prineville Airport, Prineville, OR. Class E airspace extending upward from 700 feet above the surface is modified to within an 8-mile radius (from a 6.9-mile radius) of Prineville airport, with a 4.2-mile (from 10 miles) wide segment extending to 11.4 miles (from 12.3 miles) west of the airport. Additionally, the Class E airspace extending upward from 1,200 feet above the surface designated to Prineville Airport would be removed since this airspace area duplicates the larger Bend Class E en route airspace area. This airspace redesign is necessary for the safety and management of aircraft operations at the airport.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, 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.

* * * * *

ANM OR E5 Prineville, OR [Amended]

Prineville Airport, OR
(Lat. 44°17′16″ N., long. 120°54′19″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Prineville Airport, and within 2.1 miles each side of a 288° bearing extending from the airport to 11.4 miles west of the airport.

Issued in Seattle, Washington, on October 25, 2017.

B.G. Chew,

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

[FR Doc. 2017–23674 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9499; Airspace Docket No. 16–ASO–19]

Amendment of Class D and Class E Airspace; Fort Knox, KY, and Louisville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace designated as an extension to Class D airspace by removing the Notice to Airmen (NOTAM) part-time status at Godman Army Airfield (AAF) Fort Knox, KY; and Bowman Field Airport, Louisville, KY. This action also updates and corrects the geographic coordinates of these airports, and Louisville International Airport-Standiford Field (formerly Louisville Standiford Field) in the associated Class D and E airspace descriptions. This action enhances the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, February 1, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on-line 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: (800) 647–8927, or (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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and E airspace in the Fort Knox, KY, and Louisville, KY areas, to support IFR operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (82 FR 24269, May 26, 2017) Docket No. FAA–2016–9499 proposing to remove NOTAM part-time information from Class E airspace designated as an extension to Class D airspace at Godman Army Airfield, Fort Knox, KY, and Bowman Field Airport, Louisville, KY. Also, the NPRM proposed to update the geographic coordinates of these airports, and Louisville International Airport-Standiford Field. Subsequent to publication, the FAA found that some of the geographic coordinates were incorrect and makes the correction in this rule. Also, this action recognizes the name change of Louisville International Airport-Standiford Field, (formerly Louisville Standiford Field).

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraphs 5000, 6002, 6004, and 6005 of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, 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 Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 removes the NOTAM part-time status of the Class E airspace designated as an extension to a Class D surface area at Godman Army Airfield (AAF) Fort Knox, KY; and Bowman Field Airport, Louisville, KY.

Also, the geographic coordinates are amended and corrected at these airports and Louisville International-Standiford Field Airport, KY, in Class D airspace, Class E surface airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace areas extending upward from 700 feet or more above the surface to be in concert with the FAA's aeronautical database. Also, the name change of Louisville International Airport-Standiford Field, (formerly Louisville Standiford Field) is recognized.

These changes are necessary for continued safety and management of IFR operations at these airports.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO KY D Fort Knox, KY [Amended]

Godman AAF, KY
(Lat. 37°54′26″ N., long. 85°58′18″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 3.9-mile radius of Godman AAF. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Chart Supplement (previously called Airport/Facility Directory).

ASO KY D Louisville Bowman Field, KY [Amended]

Bowman Field Airport, KY
(Lat. 38°13′41″ N., long. 85°39′49″ W.)

That airspace extending upward from the surface to but not including 2,200 feet MSL within a 3.9-mile radius of Bowman Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement (previously called Airport/Facility Directory).

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ASO KY E2 Fort Knox, KY [Amended]

Godman AAF, KY
(Lat. 37°54′26″ N., long. 85°58′18″ W.)

Within a 3.9-mile radius of Godman AAF. This Class E airspace area is effective during the specific dates and times established in

advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement (previously called Airport/Facility Directory).

* * * * *

ASO KY E2 Louisville Bowman Field, KY [Amended]

Bowman Field Airport, KY
(Lat. 38°13′41″ N., long. 85°39′49″ W.)

Within a 3.9-mile radius of Bowman Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement (previously called Airport/Facility Directory).

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

* * * * *

ASO KY E4 Fort Knox, KY [Amended]

Godman AAF, KY
(Lat. 37°54′26″ N., long. 85°58′18″ W.)
Godman NDB
(Lat. 37°57′31″ N., long. 85°58′36″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the 354° bearing from Godman NDB, extending from the 3.9-mile radius of Godman AAF to 7 miles north of the NDB.

ASO KY E4 Louisville Bowman Field, KY [Amended]

Bowman Field Airport, KY
(Lat. 38°13′41″ N., long. 85°39′49″ W.)
Bowman VOR/DME
(Lat. 38°13′49″ N., long. 85°39′53″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the Bowman VOR/DME 067° radial, extending from the 3.9-mile radius of Bowman Field Airport to 7 miles east of the Bowman VOR/DME.

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

* * * * *

ASO KY E5 Fort Knox, KY [Amended]

Godman AAF, KY
(Lat. 37°54′26″ N., long. 85°58′18″ W.)
Godman NDB
(Lat. 37°57′31″ N., long. 85°58′36″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Godman AAF and within 2.4 miles each side of the 354° bearing from Godman NDB, extending from the 6.3-mile radius to 7 miles north of the NDB.

ASO KY E5 Louisville, KY [Amended]

Louisville International-Standiford Field Airport, KY
(Lat. 38°10′27″ N., long. 85°44′11″ W.)
Bowman Field Airport, KY
(Lat. 38°13′41″ N., long. 85°39′49″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Louisville International-Standiford Field and within 2.4 miles each side of the ILS localizer east course, extending from the 10-mile radius to 7 miles east of the LOM and within a 10-mile radius of Bowman Field Airport.

Issued in College Park, Georgia, on October 18, 2017.

Ryan W. Almasy,

Manager, Operation Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2017–23254 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–2891; Airspace Docket No. 15–ANE–1]

Establishment of Class E Airspace; Deblois, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface in Deblois, ME, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving Deblois Flight Strip. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, February 1, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, 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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

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 establishes Class E airspace at Deblois Flight Strip, Deblois, ME, to ensure the efficient use of airspace within the National Airspace System.

History

The FAA published a notice of proposed rulemaking (NPRM in the **Federal Register** (82 FR 39065, August 16, 2017) Docket No. FAA–2015–2891 to establish Class E airspace extending upward from 700 feet or more above the surface within a 7-mile radius of Deblois Flight Strip, Deblois, ME, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at the airport. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document 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 Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet or more above the surface within a 7-mile radius of Deblois Flight Strip, Deblois, ME, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at the airport.

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, 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.

* * * * *

ANE ME E5 Deblois Flight Strip, Deblois, ME [New]

Deblois Flight Strip, ME
(Lat. 44°43′35″ N., long. 67°59′27″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Deblois Flight Strip, and within 1-mile either side of a 135° bearing from the airport, extending from the 7-mile radius to 10.5 miles southeast of the airport.

Issued in College Park, Georgia, on October 18, 2017.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2017–23255 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0391; Airspace Docket No. 17–ANM–13]

Amendment of Class E Airspace; Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward From 700 feet above the surface at Bend Municipal Airport, Bend, OR to accommodate airspace redesign for the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Effective 0901 UTC, February 1, 2018. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, 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 this material 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: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class E airspace extending upward from 700 feet above the surface at Bend Municipal Airport, Bend, OR, to support IFR operations under standard instrument approach procedures.

History

On July 5, 2017, the FAA published in the **Federal Register** (82 FR 31030) Docket FAA–2017–0391 a notice of proposed rulemaking to modify Class E airspace extending upward from 700 feet above the surface at Bend Municipal Airport, Bend, OR. Interested parties were invited to participate in this rulemaking effort by submitting

written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, 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 Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface at Bend Municipal Airport, Bend, OR. The airspace remains within the 4.3-mile radius of Bend Municipal Airport, with the segments extending northwest and south of the airport enlarged to 7 miles wide (from 5.2 miles) extending to 8.5 miles northwest (from 6.5 miles), and 5.8 miles wide (from 2.9 miles) extending to 8.8 miles south of the airport (from 9.3 miles south of the airport). This airspace redesign is necessary for the safety and management of aircraft operations at the airport.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, 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.

* * * * *

ANM OR E5 Bend, OR [Amended]

Bend Municipal Airport, OR
(Lat. 44°05′40″ N., long. 121°12′01″ W.)

That airspace upward from 700 feet above the surface within a 4.3-mile radius of Bend Municipal Airport, and within the area bounded by a line starting at the point where a 300° bearing from the airport intersects the 4.3-mile radius from the airport to lat. 44°11′07″ N., long. 121°20′35″ W., to lat. 44°15′41″ N., long. 121°12′11″ W., to the point where a 054° bearing from the airport intersects the 4.3-mile radius from the airport, thence counter clockwise along the airport 4.3-mile radius to the point of beginning, and within 3.1 miles west and 2.8 miles east of the 167° bearing from the airport extending to 8.8 miles south of the airport.

Issued in Seattle, Washington, on October 25, 2017.

B.G. Chew,

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

[FR Doc. 2017–23673 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0296; Airspace Docket No. 17–ACE–7]

Amendment of Class E Airspace; Oskaloosa, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** of August 28, 2017 that modifies E airspace extending upward from 700 feet above the surface at Oskaloosa Municipal Airport, Oskaloosa, IA, to accommodate new standard instrument approach procedures for instrument flight rules (IFR) operations at the airport. The FAA identified that the reference to the Ottumwa, IA Class E airspace was not removed from the legal description as it should have been.

DATES: Effective 0901 UTC, December 7, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Walter Tweedy, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX, 76177; telephone (817) 222–5900.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (82 FR 40692, August 28, 2017) Docket No. FAA–2017–0296; corrected (82 FR 47098, October 11, 2017), Docket No. FAA–2017–0315, modifying Class E airspace extending upward from 700 feet above the surface at Oskaloosa Municipal Airport, Oskaloosa, IA.

Subsequent to publication, The FAA found that reference to the Ottumwa, IA Class E airspace was inadvertently left in the airspace description. This action removes the wording from the legal description.

Class E airspace designations are published in paragraph 6005, respectively, of FAA Order 7400.11B, dated August 2, 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.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of August 3, 2017 (82 FR 40692) FR Doc. 2017–18107, Amendment of Class E Airspace; Oskaloosa, IA, is corrected as follows:

§ 71.1 [Amended]

ACE IA E5 Oskaloosa, IA [Corrected]

■ On page 40694 column 1, on lines 11 and 12, remove the following text: ''excluding that airspace within the Ottumwa, IA Class E airspace area.''

Issued in Fort Worth, Texas on October 17, 2017.

Christopher L. Southerland,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2017–23247 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 740

[Docket No. 160303181–6181–01]

RIN 0694–AG80

Clarifications to the Export Administration Regulations for the Use of License Exceptions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule makes clarifications to the Export Administration Regulations (EAR) to provide guidance based on existing agency understanding and practice on the use of two license exceptions. Specifically, this final rule makes three clarifications to License Exception Governments, International Organizations, International Inspections under the Chemical Weapons Convention, and the International Space Station (GOV) and adds five notes, along with making other minor clarifications, to License Exception Strategic Trade Authorization (STA). These revisions respond to questions BIS has received about the use of these two EAR license exceptions and provide the general public answers to frequently asked questions based on existing agency interpretive practice. Therefore, the clarifications in this final rule do not change the EAR requirements for the use of the license exceptions but are intended to assist exporters new to the EAR.

DATES: This rule is effective November 1, 2017.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–2440, Fax: (202) 482–3355, Email: *rpd2@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule revises part 740 of the Export Administration Regulations (EAR) by clarifying two license exceptions based on existing agency understanding and practice. To provide the general public with guidance on using these license exceptions, this final rule makes three clarifications to License Exception Governments, International Organizations, International Inspections under the Chemical Weapons Convention, and the International Space Station (GOV) and adds five notes, along with making other minor clarifications, to License Exception Strategic Trade Authorization (STA). These changes are described below under sections: (A) Clarifications for License Exception GOV and (B) Clarifications for License Exception STA.

With these revisions, BIS is not changing the EAR requirements for the use of these license exceptions. Instead, the agency seeks to provide sufficient guidance within the EAR to answer questions the agency frequently receives from the public as to the application of the two license exceptions. These clarifications should be particularly helpful to exporters who are new to the EAR, including exporters of items that have recently moved to the EAR from the International Traffic in Arms Regulations (ITAR) as a result of the United States Munitions List to the Commerce Control List review process.

(A) Clarifications for License Exception GOV

This final rule revises License Exception GOV, § 740.11, to make three clarifications. Specifically, this final rule revises paragraph (b)(2)(ii); adds a new note to paragraph (b)(2)(iii)(C); and adds a new note to paragraph (c)(1). These clarifications do not change the applicability or any other requirements of License Exception GOV and are limited to providing guidance on how BIS interprets these paragraphs of License Exception GOV in response to questions from the public.

Paragraph (b)(2)(ii). The final rule revises paragraph (b)(2)(ii) of License Exception GOV to add two sentences to clarify the applicability of the term 'contractor support personnel,' which is defined in paragraph (b)(2)(ii) of License Exception GOV. BIS has received questions regarding the locations where 'contractor support personnel' must work and the level of U.S. Government supervision needed for personnel to be considered 'contractor support personnel.' The first sentence that this final rule adds to paragraph (b)(2)(ii) clarifies that 'contractor support personnel' is limited to those individuals who are providing such support within a U.S. Government owned or operated facility or under the direct supervision of a U.S. government employee. This final rule adds a parenthetical phrase to clarify that a U.S. government employee is an individual directly employed by the U.S. Government.

As an example of persons directly employed who would meet the 'contractor support personnel' definition, BIS provides the following: A U.S. Government agency plans to conduct a study of soy bean cultivation in Malaysia and the U.S. Government agency team will include three 'contractor support personnel' providing scientific support to the U.S. Government agency's study. These three 'contractor support personnel' will work at the U.S. Embassy in Malaysia to process and analyze agricultural field data being gathered by U.S. Government personnel as part of a study. These individuals meet the definition of contractor support personnel in paragraph (b)(2)(ii) because they will be working within a U.S. Government-owned and operated facility (a U.S embassy) and providing a form of support (scientific support) that is identified in the term's definition.

For an example of persons not directly employed who would be outside the scope of the 'contractor support personnel' definition, BIS provides the following: A U.S. Government agency is evaluating the possibility of providing a grant to a company in Kenya that seeks financing for building three windmills. To evaluate the feasibility of providing a grant, this U.S. Government agency has entered into a contract with a U.S. company that provides feasibility analysis for windmill locations. To conduct the feasibility analysis study,

the contractor will need to have certain items exported to it in Kenya. Under this example, the contractor, including personnel of the contractor, would not constitute 'contractor support personnel' because it does not meet the definition of 'contractor support personnel.' Although it is providing scientific analysis for this U.S. Government agency under a contract, the analysis is not being conducted at a U.S. Government facility or being conducted under the direct supervision of an individual directly employed by the U.S. Government agency.

The second sentence this final rule adds to paragraph (b)(2)(ii) clarifies that private security contractors are not 'contractor support personnel' for purposes of paragraph (b)(2)(ii). This new sentence clarifies that although in certain cases private security contractors may work within a U.S. Government owned or operated facility, such contractors do not provide administrative, managerial, scientific or technical support under contract to the U.S. Government, as required under the definition of 'contractor support personnel.'

Note 1 to paragraph (b)(2)(iii)(C). Paragraph (b)(2)(iii)(C) of License Exception GOV authorizes the temporary export, reexport, or transfer (in-country) of an item in support of any foreign assistance or sales program authorized by law and subject to the control of the President by other means, when the criteria specified in this paragraph are met. This final rule adds a new note to paragraph (b)(2)(iii)(C) of License Exception GOV to clarify how BIS interprets the meaning of the term 'temporary' for purposes of this paragraph. The new note clarifies that within the context of the authorization available in paragraph (b)(2)(iii)(C), 'temporary' means that within no more than four years from the date of an item's initial export, reexport, or transfer (in-country), it must be returned to the exporter, reexporter or transferor or its disposition otherwise authorized (*e.g.,* pursuant to a license or another license exception) in accordance with the EAR. As a conforming change to this new note to paragraph (b)(2)(iii)(C), this final rule revises the introductory text of paragraph (b)(2)(iii)(C) to add single quotes around the term 'temporary.'

Note 1 to paragraph (c)(1). Paragraph (c) of License Exception GOV authorizes certain exports, reexports, and transfers (in-country) to agencies of cooperating governments or agencies of the North Atlantic Treaty Organization (NATO). Paragraph (c)(1) defines 'Agency of a cooperating government' for purposes of this paragraph of License Exception GOV. This final rule adds a new note to paragraph (c)(1) of License Exception GOV to clarify that civil intergovernmental organizations in which the membership is limited to national governments that are 'cooperating governments' are also considered 'cooperating governments' for purposes of paragraph (c)(1). The new note provides an example of a civil intergovernmental organization, the European Space Agency (ESA), which BIS has determined to fall within the scope of the definition of 'cooperating governments.' ESA (and other civil intergovernmental organizations) are considered 'cooperating governments' because their membership is limited to 'cooperating governments'—meaning that if an export was made directly to any of organization's national government members, License Exception GOV would be available. On this basis, BIS does not exclude exports, reexports and transfers (in-country) made to ESA (and any other civil intergovernmental organization whose members are 'cooperating governments') from License Exception GOV. The purpose of this paragraph (c)(1) is to clarify that the fact that two or more 'cooperating governments' are working together does not change the policy rationale for why the United States Government intends to authorize such exports, reexports, and transfers (in-country). However, this final rule adds a second sentence to the note to paragraph (c)(1) to clarify that if the membership of the civil intergovernmental organization involves any national governments or other organizations that are not 'cooperating governments,' such civil intergovernmental organizations are not considered cooperating governments for purposes of paragraph (c)(1), and a third sentence to provide three illustrative examples of civil intergovernmental organizations that are excluded based on this criteria. This third sentence also clarifies that this exclusion applies even when some or all of the 'cooperating governments' are members of the civil intergovernmental organization. This final rule provides the European Aviation Safety Agency (EASA), the United Nations, and the World Bank as three examples of civil intergovernmental organizations that include members that are 'cooperating governments' along with members that are not 'cooperating governments,' with the inclusion of the latter group meaning that these civil intergovernmental organizations are not within the scope of paragraph (c)(1).

(B) Clarifications for License Exception STA

This final rule revises License Exception STA, § 740.20, to add five new clarification notes, along with making other minor clarifications. Specifically, this final rule adds the following notes to License Exception STA: Note 1 to paragraph (a) for applicability of transfers (in-country) under STA; Note 1 to paragraphs (b)(2) and (b)(3) for staying within the scope of the original authorization; Note 1 to paragraph (d)(2) for multiple consignees on a single prior consignee statement and minor clarifications to the text of paragraph (d)(2); and Note 2 to paragraph (d)(2) for exclusion for government consignees from prior consignee statement; and Note 1 to paragraph (d)(3) for exclusion for intangible exports, reexports or transfers (in-country). These new notes, along with the other minor clarifications, do not change the applicability or any other requirements of License Exception STA and simply provide guidance on how BIS interprets these provisions of License Exception STA. These new notes are consistent with the agency's responses to questions at numerous outreach events and in the Frequently Asked Questions (FAQs) available on the agency's Web site.

Note 1 to paragraph (a) for applicability of transfers (in-country) under STA. This final rule adds a new note to paragraph (a) to License Exception STA. This new note provides guidance on when License Exception STA may be used to authorize transfers (in-country) in response to questions from the public about its applicability. The purpose of this note to paragraph (a) is to explain why transfers (in-country) are included in License Exception STA and describe how this term is applied in the context of this license exception. Under the EAR, outside of prohibited end uses and end users and ''knowing'' violations, the transactions where most transferors will need an EAR authorization is when the original export, reexport, or transfer (in-country) was authorized under a BIS license and the consignee will make a transfer (in-country) that goes outside the scope of the license. License Exception STA would be available to authorize such transfers (in-country), provided all the applicable requirements of License Exception STA were met, such as obtaining a prior consignee statement from the consignee in-country. If the transfer (in-country) did not require an authorization, such as for exports received under License Exception STA, an authorization is not

required for subsequent transfers (in-country), provided no prohibited end uses, end-users or ''knowing'' violations were involved in the transfer (in-country). These nuances on the application of transfers (in-country) are sometimes not well understood because some people incorrectly assume that the way to determine license requirements for exports and reexports is the same way to determine license requirements for transfers (in-country). The note to paragraph (a) also specifies that when a transfer (in-country) is not being made under STA, then the STA requirements do not apply. The note to paragraph (a) includes a parenthetical phrase with a reference to see the note to paragraphs (b)(2) and (b)(3) of License Exception STA for requirements specific to staying within the scope of the original License Exception STA authorization, which is described in more detail below.

Note 1 to paragraphs (b)(2) and (b)(3). This final rule adds a new Note 1 to paragraphs (b)(2) and (b)(3) to License Exception STA. This new note to paragraphs (b)(2) and (b)(3) clarifies that for ''600 series'' items authorized under License Exception STA, the items must be provided to an eligible ultimate end user, such as a Country Group A:5 military, to stay in compliance with the original authorization. The new note refers to this concept as 'completing the chain,' which means that regardless of how many times the ''600 series'' item is transferred (in-country) or whether the ''600 series'' item is incorporated into higher level assemblies or other items or not, the ''600 series'' item must ultimately be provided to an eligible ultimate end user or be otherwise authorized under the EAR. Lastly, the new note to paragraphs (b)(2) and (b)(3) clarifies that because the other items eligible for authorization under License Exception STA (*i.e.,* 9x515 and other non-600 series ECCNs) do not include the ''600 series'' requirements specific to ultimate end user, the 'completing the chain' concept does not apply to 9x515 and other non-600 series Export Control Classification Numbers (ECCNs) authorized under License Exception STA. However, the original export, reexport, or transfer (in-country) must be completed within the terms and conditions of the original License Exception STA authorization. As noted above, this clarification is specific to existing EAR requirements; the new note to paragraphs (b)(2) and (b)(3) does not change any License Exception STA requirements but rather provides guidance on how these existing EAR requirements are applied in the context of License Exception STA, in particular as it relates to the ''600 series.''

Adding greater specificity to paragraph (d)(1). This final rule revises paragraph (d)(1) (Requirement to furnish Export Control Classification Number) of License Exception STA to remove the undefined terms ''shipment'' in four places and ''shipped'' in two places and add in their place the defined terms ''export'' in paragraph (d)(1)(i) and ''reexport or transfer (in-country)'' in paragraph (d)(1)(ii). In the context of paragraph (d)(1), the requirement to furnish the ECCN is intended to apply to all exports, reexports, or transfers (in-country) under License Exception STA, and is consistent with how the agency has interpreted this paragraph. This final rule clarifies the intent of this paragraph (d)(1) by removing the undefined term ''shipment'' and adding in its place defined terms that provide greater specificity on the intended scope of this paragraph (d)(1). This final rule makes similar clarifications as described below to paragraphs (d)(2) and (d)(3) to improve the clarity of these paragraphs.

Paragraph (d)(2) for multiple consignees on a single prior consignee statement. This final rule revises paragraph (d)(2) (Prior Consignee Statement) of License Exception STA to make four clarifications to paragraph (d)(2): Adding greater specificity to the introductory text as it relates to the undefined term ''shipment;'' adding two new notes to paragraph (d)(2); clarifying the term 'description'' in paragraph (d)(2)(i); and making certain terms plural in the text. Because of past issues with the incorporation of revisions to paragraph (d)(2), in particular some of the undesignated text included in that paragraph, in this final rule BIS is revising the entire paragraph to ensure the intended revisions are incorporated correctly. The clarifications to paragraph (d)(2) are described in the next four paragraphs.

Similar to the changes described above for paragraph (d)(1), this final rule revises the introductory text of paragraph (d)(2) to remove the undefined term ''shipment'' in one place and the undefined term ''shipping'' in another, and add in their place the defined terms ''exports, reexports, or transfers (in-country).'' This final rule does not remove the undefined term ''shipment'' in the two additional instances where the term is used in the introductory text of paragraph (d)(2), which specifies the requirement to maintain a log or other record. This is because the requirement to maintain a log or other record is not intended to apply to intangible (*i.e.,* electronic or in an otherwise intangible form) exports, reexports, or transfers (in-country). BIS adds a sentence clarifying this for purposes of License Exception STA in this final rule. BIS has based this existing agency practice and interpretation on the use of the term ''shipment'' when referring to a log or other record to mean that the original intent of this License Exception STA requirement was not to apply the requirement to intangible exports, reexports, or transfers (in-country). Because of the frequency at which intangible exports, reexports, or transfers (in-country) often occur, it would have been impractical to impose a log or other record requirement for such exports, reexports or transfers (in-country). For example, for a technical work team located at a U.S. parent company that is collaborating with a technical work team in the United Kingdom (a Country Group A:5 Country), there may be dozens or hundreds of intangible exports that occur during a teleconference or telephone call that are authorized under License Exception STA. Although the party making the intangible export, reexport, or transfer (in-country) and the party receiving the technology or software are responsible for complying with the other requirements of License Exception STA, which are suitable for keeping an intangible export, reexport, or transfer (in-country) within the scope of License Exception STA, the party making the intangible export, reexport, or transfer (in-country) is not burdened with trying to keep a log or other record, the requirement for which was appropriate and intended for a tangible shipment but was not intended for intangible exports, reexports, or transfers (in-country). The changes included in this rule will make this interpretation clearer to the public. This new sentence also specifies that an exporter, reexporter, or transferor is required, prior to making any export, reexport or transfer (in-country), including those that are intangible, to ensure that a prior consignee statement has been obtained pursuant to the requirements of paragraph (d)(2). This final rule also adds a parenthetical phrase to include a cross reference to Note 1 to paragraph (d)(3), which provides additional guidance on intangible exports, reexports and transfers (in-country) under License Exception STA. BIS also has posted on the BIS Web site best practices for managing intangible exports, reexports, and transfers (in-country) under the EAR. BIS encourages any party involved in intangible exports, reexports, or

transfers (in-country) to review this guidance.

This final rule adds a new Note 1 to paragraph (d)(2) to clarify an existing BIS policy that allows for multiple consignees to be listed on a single prior consignee statement, provided certain requirements are met. This new Note 1 to paragraph (d)(2) addresses scenarios when multiple consignees who form a network engaged in a production process (or other type of collaborative activity, such as joint development) will be receiving items under License Exception STA. In such cases, it is existing BIS policy to allow the use of a single consignee statement identifying multiple consignees, provided all the applicable requirements of License Exception STA are met, including those specified in paragraph (d)(2).

This final rule revises paragraph (d)(2)(i) by adding the term ''GENERAL'' before the term ''DESCRIPTION'' and adding the parenthetical phrase, ''aircraft parts and components classified under ECCN 9A610,'' to provide an example of the level of specificity that BIS intends for the description on the prior consignee statement. BIS has received questions from the public asking whether the term ''description'' used in paragraph (d)(2)(i) is intended to mean that the prior consignee must include the make and model number of each part or component that the consignee would receive under License Exception STA. The term ''DESCRIPTION,'' as used in paragraph (d)(2)(i), does not require that level of specificity, as clarified by the changes in this final rule.

Lastly, specific to the clarifications to paragraph (d)(2), this final rule adds an ''(s)'' to the end of the term ''CONSIGNEE'' in the introductory text of paragraph (d)(2) and adds an ''(S)'' to the end of the terms ''TITLE,'' ''NAME,'' and ''PERSON'' in the undesignated text at the end of paragraph (d)(2)(viii). These changes, along with the new Note 1 to paragraph (d)(2), make explicit that it is permissible to list multiple consignees on a single consignee statement.

Note 2 to paragraph (d)(2) for exclusion for government consignees from prior consignee statement. This final rule adds Note 2 to paragraph (d)(2) to exclude Country Group A:5 and A:6 government consignees from the requirement to sign or provide a prior consignee statement to an exporter, reexporter, or transferor under License Exception STA. In particular, for ''600 series'' items authorized under License Exception STA for Country Group A:5 governments, requiring government end users to provide a prior consignee statement makes little sense, given that the goal of License Exception STA is to get these ''600 series'' items to Country Group A:5 governments for their ultimate end use (one of the three permissible ultimate end uses for ''600 series'' items authorized under License Exception STA). In addition, this existing interpretation of agency practice takes into account that under the other likely license exception under which such governments may receive items, License Exception GOV, such a signature on a prior consignee statement is not required. This is an existing interpretation of agency practice that BIS is making explicit in the regulatory text. BIS has provided similar guidance to the public, including to Country Group A:5 and A:6 governments.

Note 1 to paragraph (d)(3) for exclusion for intangible exports, reexports or transfers (in-country). This final rule adds a new Note 1 to paragraph (d)(3) to specify that intangible exports, reexports, and transfers (in-country) made under License Exception STA are not subject to the notification requirements of paragraph (d)(3). The new note to paragraph (d)(3) also specifies that the requirements of paragraph (d)(1) and (d)(2) still apply, including to intangible exports, reexports, or transfers (in-country) made under License Exception STA. The specification in the new note to paragraph (d)(3) is consistent with the requirement discussed above for the new Note 1 to paragraphs (b)(2) and (b)(3) that any export, reexport or transfer (in-country) made under STA must stay within the scope of the authorization. As noted above in the explanation of the changes to paragraph (d)(2), BIS has posted on the BIS Web site best practices for managing intangible exports, reexports, and transfers (in-country) under the EAR. BIS encourages any party involved in intangible exports, reexports, or transfers (in-country) to review this guidance.

Export Administration Act of 1979

Although the Export Administration Act of 1979 expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 15, 2017, 82 FR 39005 (August 16, 2017), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act of 1979, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

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

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

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are either unnecessary or contrary to the public interest. BIS is making the changes to its regulations described above to provide guidance on existing interpretations of

current EAR provisions, and thus prior notice and the opportunity for public comment is contrary to the public interest. The guidance included in this final rule has been provided to many members of the public in the past (*e.g.,* those persons that have attended BIS outreach events, asked these types of application questions to BIS by phone, email or in writing, or read certain FAQs posted on the BIS Web site dealing with these EAR provisions). Importantly, this is also the same guidance that would be provided to any other member of the public that asked the same questions to BIS dealing these EAR provisions. BIS's purpose with publishing this final rule is not to change the application of these provisions but to more efficiently communicate the existing agency guidance and interpretation of these provisions by clarifying the regulations. This will benefit members of the public because they will be able to more easily understand and apply these provisions, which are consistent with past agency guidance and interpretations provided to other members of the public. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3). This rule does not change the requirements or obligations of persons under the EAR, so a 30-day delay in effectiveness is not needed. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for these amendments by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

List of Subjects in 15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, part 740 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

■ 2. Section 740.11 is amended:
■ a. By revising paragraph (b)(2)(ii);
■ b. By revising the introductory text of paragraph (b)(2)(iii)(C);
■ c. By adding Note 1 to paragraph (b)(2)(iii)(C); and
■ d. By adding Note 1 to paragraph (c)(1) to read as follows:

§ 740.11 Governments, International Organizations, International Inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

* * * * *

(b) * * *

(2) * * *

(ii) *Exports, reexports, and transfers (in-country) made by or consigned to a department or agency of the U.S. Government.* This paragraph authorizes exports, reexports, and transfers of items when made by or consigned to a department or agency of the U.S. Government solely for its official use or for carrying out any U.S. Government program with foreign governments or international organizations that is authorized by law and subject to control by the President by other means. This paragraph does not authorize a department or agency of the U.S. Government to make any export, reexport, or transfer that is otherwise prohibited by other administrative provisions or by statute. Contractor support personnel of a department or agency of the U.S. Government are eligible for this authorization when in the performance of their duties pursuant to the applicable contract or other official duties. 'Contractor support personnel' for the purpose of this provision means those persons who provide administrative, managerial, scientific or technical support under contract to a U.S. Government department or agency (*e.g.,* contractor employees of Federally Funded Research Facilities or Systems Engineering and Technical Assistance contractors). The term 'contractor support personnel' for purposes of this paragraph (b)(2)(ii) is limited to those individuals who are providing such support within a U.S. Government owned or operated facility or under the direct supervision of a U.S. government employee (*i.e.,* an individual directly employed by the U.S. Government). Private security contractors are not 'contractor support personnel' for purposes of this paragraph (b)(2)(ii) because although they may work within a U.S. Government owned or operated facility, such contractors do not provide administrative, managerial, scientific or technical support under contract to the U.S. Government. This authorization is not available when a department or agency of the U.S. Government acts as a transmittal agent on behalf of a non-U.S. Government person, either as a convenience or in satisfaction of security requirements.

(iii) * * *

(C) This paragraph authorizes the 'temporary' export, reexport, or transfer (in-country) of an item in support of any foreign assistance or sales program authorized by law and subject to the control of the President by other means, when:

* * * * *

Note 1 to paragraph (b)(2)(iii)(C): 'Temporary,' for purposes of paragraph (b)(2)(iii)(C) of this section, means that four years from the date of an item's initial export, reexport, or transfer (in-country), it must be returned to the exporter, reexporter, or transferor or its disposition otherwise authorized (e.g., pursuant to a license or another license exception) in accordance with the EAR.

* * * * *

(c) * * *

(1) * * *

Note 1 to paragraph (c)(1): Civil intergovernmental organizations (such as the European Space Agency (ESA)) where the membership is limited to national governments that are 'cooperating governments' are also considered 'cooperating governments' for purposes of paragraph (c)(1) of this section. If the membership of the civil intergovernmental organization includes any national governments or other organizations that are not 'cooperating governments,' such civil intergovernmental organizations are not considered 'cooperating governments' for purposes of paragraph (c)(1) of this section. For example, civil intergovernmental organizations such as the European Aviation Safety Agency (EASA), the United Nations, and the World Bank do not fall within paragraph (c)(1) of this section because their membership includes governments that are not 'cooperating governments.'

* * * * *

■ 3. Section 740.20 is amended:
■ a. By adding Note 1 to paragraph (a);
■ b. By adding Note 1 to paragraphs (b)(2) and (b)(3) at the end of paragraph (b)(3);
■ c. By revising paragraphs (d)(1)(i) and (d)(1)(ii);
■ d. By revising paragraph (d)(2); and
■ e. By adding Note 1 to paragraph (d)(3) to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(a) * * *

Note 1 to paragraph (a): License Exception STA authorizes transfers (in-country) but is only needed to authorize a transfer (in-country) when an EAR authorization is required. If a transfer (in-country) is not being made under STA, the requirements specified in this section do not apply (see Note 1 to paragraphs (b)(2) and (b)(3) of this section for requirements specific to staying within the scope of the original License Exception STA authorization and the concept of 'completing the chain' for purposes of ''600 series'' items originally authorized under License Exception STA).

(b) * * *

(3) * * *

Note 1 to paragraphs (b)(2) and (b)(3): Any export, reexport, or transfer (in-country) originally authorized under License Exception STA must stay within the scope of the original authorization. For example, for ''600 series'' items authorized under License Exception STA, such items must be provided to an eligible ultimate end user, such as a Country Group A:5 military, to stay in compliance with the original authorization. This requirement for the ''600 series'' is referred to as 'completing the chain,' meaning regardless of how many times the ''600 series'' item is transferred (in-country) or whether the ''600 series'' item is incorporated into higher level assemblies or other items, the ''600 series'' item must ultimately be provided to an eligible ultimate end user, or be otherwise authorized under the EAR. This applies regardless of whether the ''600 series'' item has been incorporated into a foreign-made item that may no longer be ''subject to the EAR.'' Because the other items eligible for authorization under License Exception STA (9x515 and other non-600 series ECCNs) do not include the ''600 series'' requirements specific to ultimate end user, this 'completing the chain' concept does not apply to 9x515 and other non-600 series ECCNs authorized under License Exception STA. However, the original export, reexport, or transfer (in-country) made under License Exception STA for 9x515 and other non-600 series ECCNs still must comply with the original authorization—meaning the terms and conditions of License Exception STA.

* * * * *

(d) *Conditions*—(1) *Requirement to furnish Export Control Classification Number.* (i) The exporter must furnish to the consignee the ECCN of each item to be exported pursuant to this section. Once furnished to a particular consignee, the ECCN that applies to any item need not be refurnished to that consignee at the time the same exporter makes an additional export of the same item, if the information remains accurate at the time of the additional export.

(ii) A reexporter or transferor must furnish to subsequent consignees the ECCN, provided by the exporter or a prior reexporter or transferor, of each item to be reexported or transferred (in-country) pursuant to this section. Once furnished to a particular consignee, the ECCN that applies to any item need not be refurnished to that consignee at the time the same reexporter or transferor makes an additional reexport or transfer (in-country) of the same item, if the information remains accurate at the time of the additional reexport or transfer (in-country).

* * * * *

(2) *Prior Consignee Statement.* The requirements in this paragraph (d)(2) apply to each party using License Exception STA to export, reexport, or transfer (in-country), including reexporters and transferors of items previously received under License Exception STA. The exporter, reexporter, or transferor must obtain the following statement in writing from its consignee(s) prior to exporting, reexporting, or transferring (in-country) the item and must retain the statement in accordance with part 762 of the EAR. One statement may be used for multiple exports, reexports, or transfers (in-country) of the same items between the same parties so long as the party names, the description(s) of the item(s) and the ECCNs are correct. The exporter, reexporter, or transferor must maintain a log or other record (such as documents created in the ordinary course of business) that identifies each shipment made pursuant to this section and the specific consignee statement that is associated with each shipment. For purposes of this paragraph (d)(2), a log or other record is not required for intangible (*i.e.,* electronic or in an otherwise intangible form) exports, reexports, or transfers (in-country) made under License Exception STA, but an exporter, reexporter, or transferor is required, prior to making any export, reexport, or transfer (in-country), to ensure that a prior consignee statement has been obtained pursuant to the requirements of this paragraph (d)(2). (*See* Note 1 to paragraph (d)(3) of this section for additional guidance on intangible exports, reexports, and transfers (in-country), including best practices). Paragraphs (d)(2)(i) through (vi) of this section are required for all transactions. In addition, paragraph (d)(2)(vii) is required for all transactions in ''600 series'' items and paragraph (viii) of this section is required for transactions in ''600 series'' items if the consignee is not the government of a country listed in Country Group A:5 (See supplement no. 1 to part 740 of the EAR). Paragraph (d)(2)(viii) is also required for transactions including 9x515 items.

[INSERT NAME(S) OF CONSIGNEE(S)]:

(i) Is aware that [INSERT GENERAL DESCRIPTION AND APPLICABLE ECCN(S) OF ITEMS TO BE SHIPPED (*e.g.,* aircraft parts and components classified under ECCN 9A610)] will be shipped pursuant to License Exception Strategic Trade Authorization (STA) in § 740.20 of the United States Export Administration Regulations (15 CFR 740.20);

(ii) Has been informed of the ECCN(s) noted above by [INSERT NAME OF EXPORTER, REEXPORTER OR TRANSFEROR];

(iii) Understands that items shipped pursuant to License Exception STA may not subsequently be reexported pursuant to paragraphs (a) or (b) of License Exception APR (15 CFR 740.16(a) or (b));

(iv) Agrees to obtain a prior consignee statement when using License Exception STA for any reexport or transfer (in-country) of items previously received under License Exception STA;

(v) Agrees not to export, reexport, or transfer these items to any destination, use or user prohibited by the United States' Export Administration Regulations;

(vi) Agrees to provide copies of this document and all other export, reexport, or transfer records (*i.e.,* the documents described in 15 CFR part 762) relevant to the items referenced in this statement to the U.S. Government as set forth in 15 CFR 762.7;

(vii) Understands that License Exception STA may be used to export, reexport, and transfer (in-country) ''600 series'' items to persons, whether non-governmental or governmental, only if they are in and, for natural persons, nationals of a country listed in Country Group A:5 (See supplement no. 1 to part 740 of the EAR) or the United States and if:

(A) The *ultimate* end user for such items is the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5 or the United States Government;

(B) For the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of an item in one of the countries listed in Country Group A:5 or the United States that will be for one, or more, of the following purposes:

(1) Ultimately to be used by any such government agencies in one of the countries listed in Country Group A:5 or the United States Government; or

(2) Sent to a person in the United States and not for subsequent export under § 740.9(b)(1) (License Exception TMP for items moving in transit through the United States); or

(C) The United States Government has otherwise authorized the ultimate end use, the license or other authorization is in effect, and the consignee verifies in writing that such authorization exists and has provided the license or other approval identifier to the exporter, reexporter or transferor (as applicable).

(viii) Agrees to permit a U.S. Government end-use check with respect to the items.

[INSERT NAME(S) AND TITLE(S) OF PERSON(S) SIGNING THIS

DOCUMENT, AND DATE(S) DOCUMENT IS SIGNED].

Note 1 to paragraph (d)(2): When multiple consignees who form a network engaged in a production process (or other type of collaborative activity, such as joint development) will be receiving items under License Exception STA, a single prior consignee statement for multiple consignees may be used for any item eligible for export, reexport, or transfer (in-country) under License Exception STA, provided all of the applicable requirements of License Exception STA are met, including those specified in paragraph (d)(2).

Note 2 to paragraph (d)(2): Country Group A:5 and A:6 government consignees are not required to sign or provide a prior consignee statement.

(3) * * *

Note 1 to paragraph (d)(3): While the exporter, reexporter, and transferor must furnish the applicable ECCN and obtain a consignee statement prior to export, reexport or transfer (in-country) made under License Exception STA in accordance with the requirements of paragraphs (d)(1) and (d)(2) of this section, intangible (i.e., electronic or in an otherwise intangible form) exports, reexports, and transfers (in-country) made under License Exception STA are not subject to the notification requirements of paragraph (d)(3) of this section. However, any export, reexport, or transfer (in-country) made under STA must stay within the scope of the original authorization.

* * * * *

Dated: October 26, 2017.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2017–23712 Filed 10–31–17; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

Final Report: Review of Federal Energy Regulatory Commission Agency Actions Pursuant to Executive Order 13783, Promoting Energy Independence and Economic Growth

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Availability of Final Report.

SUMMARY: This Final Report on the Review of Federal Energy Regulatory Commission Agency Actions is provided pursuant to Executive Order 13783, Promoting Energy Independence and Economic Growth.

DATES: November 1, 2017.

ADDRESSES: Report available through *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

FEDERAL ENERGY REGULATORY COMMISSION

Final Report

Review of Federal Energy Regulatory Commission Agency Actions Pursuant to Executive Order 13783, Promoting Energy Independence and Economic Growth

I. Executive Summary

On March 28, 2017, the President signed Executive Order 13783, titled Promoting Energy Independence and Economic Growth (Executive Order).[1] Pursuant to section 2(c) of the Executive Order, on May 12, 2017, the Federal Energy Regulatory Commission (FERC, or the Commission) submitted to the Office of Management and Budget (OMB) its plan (Plan) for reviewing its existing regulations, orders, guidance documents, policies, and any other similar agency action (agency actions) that potentially burden the development or use of domestically produced energy resources. On July 26, 2017, pursuant to section 2(d) of the Executive Order, the head of the Commission submitted a draft final report detailing the review undertaken and the results of the review. Given the Commission's status as an independent regulatory agency, this final report is being submitted on a voluntary basis.[2]

Of the agency actions reviewed, this final report identifies nine agency actions that potentially materially burden the development or use of domestic energy resources as contemplated by the Executive Order and clarified by OMB's May 8, 2017 Guidance Memo.[3] In addition, these identified agency actions may be addressed in conjunction with the Commission's ongoing efforts pursuant to Executive Order 13777.

II. Background

Section 2 of the Executive Order requires the heads of federal agencies to immediately ''review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Such review shall not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth in section 1 of this order.''

On May 8, 2017, OMB issued a Guidance Memo providing additional information regarding compliance with the Executive Order, in particular section 2. The Guidance Memo noted that the Executive Order does not apply to independent agencies as defined in 44 U.S.C. 3502(5), but encouraged independent regulatory agencies, especially those that directly regulate the development or use of domestically produced energy resources, to provide the plan and report that are called for in section 2 of the Executive Order. The Guidance Memo further encourages agencies to coordinate their compliance with Section 2 of Executive Order 13783 with their compliance with Executive Order 13777, which directs agencies to establish Regulatory Reform Task Forces to evaluate existing regulations generally and make recommendations to the agency head regarding their repeal, replacement and modification, consistent with applicable law.

In the Plan, the Commission explained that it intended to review agency actions it has taken pursuant to legislative authority under: (1) the Natural Gas Act (NGA), 15 U.S.C. 717, *et seq.*; (2) the Federal Power Act (FPA), 16 U.S.C. 791a, *et seq.*; (3) the Interstate Commerce Act, 49 App. U.S.C. 1 *et seq.*; (4) the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601 *et seq.*, and (5) other statutes for which the Commission's actions on LNG, natural gas pipeline, and hydropower projects

[1] Executive Order 13783, *Promoting Energy Independence and Economic Growth,* 82 Fed. Reg. 16093 (Mar. 28, 2017).

[2] The Commission is a multi-member, independent regulatory agency that must follow applicable federal laws to change its rules, regulations and orders. Because the Commission must ultimately decide what action, if any, to take in response to the Executive Order, this report is a Commission staff analysis of the issues identified for review in the Executive Order and does not specifically recommend actions nor indicate the timing of any potential action.

[3] Memo from Dominic J. Mancini, Acting Administrator, Office of Information and Regulatory Affairs to Regulatory Reform Officers and Regulatory Policy Officers at Executive Departments and Agencies regarding Guidance for Section 2 of Executive Order 13783, titled ''Promoting Energy Independence and Economic Growth.''

often require compliance, such as the National Environmental Policy Act, the Endangered Species Act, the Coastal Zone Management Act, and the Clean Water Act.

III. Commission Review of Agency Actions Pursuant to Section 2

A. Scope of Review

Domestic Energy Sources: Section 2 of the Executive Order states that the review should place particular attention on oil, natural gas, coal, and nuclear energy resources. In addition, section 1 of the Executive Order and the Guidance Memo list renewable sources, including flowing water, as domestic energy sources. Therefore, this final report considers agency actions that potentially affect not only oil, natural gas, coal, and nuclear energy resources, but also hydropower and other renewable generation resources.

Potentially Material Burdens: Section 2(b) of the Executive Order states that ''burden'' means ''to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.'' Based on the Executive Order's definition of ''burden,'' as informed by the Guidance Memo which highlights agency actions that ''materially'' affect domestic energy production, this final report considers an agency action ''material'' if it could: (1) directly affect the development or use of domestic energy resources; or (2) have a primary indirect effect on the development or use of domestic energy resources.[4] Given the Commission's limited jurisdiction, none of the Commission's agency actions would materially affect the design and/or location of drilling or mining of energy production resources.

Agency Actions: This final report considers the following types of binding Commission agency actions in existence as of March 28, 2017 (*i.e.*, the date of issuance of Executive Order 13783): codified regulations published by the Commission (*i.e.*, 18 CFR); final rules; public policy statements and guidance documents; and case-specific orders and opinions that establish policies that are broadly applied and not otherwise codified by the Commission.[5]

B. Methodology

This final report identifies and classifies the potentially relevant agency actions based on: (1) the type of action undertaken; (2) the energy source potentially affected by that action; and (3) whether the potential effects of the action are direct or indirect.

This final report focuses on agency actions in four jurisdictional areas: (1) hydropower licensing; (2) LNG facility, and natural gas pipeline and storage facility siting; (3) centralized electric capacity market policies in PJM Interconnection, L.L.C. (PJM), ISO New England, Inc. (ISO–NE), and New York Independent System Operator, Inc. (NYISO); and (4) electric generator interconnection policies.

Commission actions in these four jurisdictional areas have the greatest potential to materially burden domestic energy resources as contemplated under the Executive Order. In particular, the Commission's hydropower licensing program has the potential to directly affect the design, location, and development of hydropower resources. In addition, the Commission's jurisdiction over the siting of LNG terminals and natural gas pipelines may affect the delivery to market of natural gas, and have a primary indirect effect on the use of that domestically produced energy resource.

Agency actions related to electric capacity market policies and generator interconnection policies may have a primary indirect effect on the development, retention, or retirement of domestic energy resources. As the Commission has recently recognized in its ongoing efforts concerning the interplay of wholesale electric markets and state policy, the centralized electric capacity markets in PJM, ISO–NE, and NYISO are intended to ensure long-term resource adequacy by sending accurate price signals for investment in electric capacity resources, when and where needed. By signaling the value of capacity, including the potential need for new generation resources, these markets serve a function in those regions that would otherwise typically be performed through integrated resource planning, often before a state public service commission. As a result, Commission actions related to electric capacity market policies could have a primary indirect effect on the development and use of generation resources.

Finally, agency actions involving generator interconnection policies could have a primary indirect effect on the development of domestic energy resources. For example, a wind or solar generator at utility scale typically must interconnect to the transmission grid in order to deliver the electricity produced by those domestic energy resources to the wholesale purchaser. If Commission policies or actions lead to a delay in interconnection or otherwise affect the generator's ability to interconnect, then the project developer may not develop that energy resource, which would impact the development or use of domestic energy resources.

This final report does not review agency actions involving oil and natural gas pipeline rates; electric energy and ancillary service rates and market policies;[6] electric transmission rates, including return on equity issues; demand response resources; mergers; enforcement; reliability; backstop transmission siting authority; and the Public Utilities Regulatory Policies Act. Commission action in these areas may indirectly impact the design, location, development, or use of domestic energy resources, but would not have a primary indirect effect, as discussed above.

Pursuant to the Guidance Memo's recommendation, this effort with respect to Executive Order 13783, to the extent appropriate, was coordinated with the Commission's Regulatory Reform Task Force created pursuant to Executive Order 13777.[7]

This final report discusses those agency actions that rose to the level of a potential material burden as contemplated by the Executive Order and clarified by the Guidance Memo. For hydropower licensing and the LNG

[4] The Guidance Memo indicates that agencies should review actions that both directly and indirectly affect domestic energy sources. This final report uses the term ''primary indirect effect'' to define the scope of indirect effects that will be considered for review. A primary indirect effect is an effect that is only one step removed from a direct effect. In other words, a primary indirect effect occurs when an agency action affects a factor that, in turn, affects a domestic energy source.

[5] This report does not consider the issue of grants to third parties to perform agency actions because the Commission does not issue such grants. Commission staff's analysis included consideration of information collections, including those subject to the Paperwork Reduction Act, to the extent that such collections are within the scope of the agency actions reviewed under the Executive Order.

[6] Commission actions on energy and ancillary service market rules are less directly related to the development and use of domestic energy resources than Commission actions on centralized capacity market rules. While energy and ancillary service markets have an effect on the economic viability and day-to-day use of generation resources, the market rules established by the Commission are intended to ensure recovery of variable costs (*e.g.*, fuel costs) for marginal units, rather than to be the primary source of fixed cost recovery for new generation resources. That is, in regions that do not have capacity markets, there is an additional mechanism to address fixed cost recovery typically administered by the relevant state regulatory commission, in the case of investor-owned public utilities, or the management of public power utilities.

[7] As with Executive Order 13783, independent regulatory agencies like the Commission are not subject to Executive Order 13777, but are encouraged to comply.

and natural gas transportation facilities siting programs, the Executive Order review process revealed potentially burdensome agency actions related to regulations promulgated by the Commission. For electric capacity markets and generator interconnection, the Executive Order review process revealed potentially burdensome agency actions related to Commission rulemaking orders and case-specific orders, which typically did not result in the promulgation of regulations. This final report identifies steps the Commission may consider, to the extent permitted by law, to alleviate or eliminate the aspects of the agency actions that may burden the development or use of domestically produced energy resources.

C. Discussion

1. Hydropower Licensing

Under Part I of the FPA, the Commission has the exclusive authority to issue licenses, small capacity exemptions (up to 10 megawatts (MW)), and conduit exemptions for non-federal hydropower projects. The Commission currently regulates over 1,600 licensed or exempted hydroelectric projects, representing about 56,000 MW of authorized installed capacity, which is more than half of all developed hydropower in the United States.

The Commission is responsible for coordinating and managing the processing of hydropower project license and exemption applications, as well as applications for preliminary permits (under which permittees study proposed projects). This includes determining the effects of constructing, operating, and maintaining hydropower projects on environmental resources, and the need for the project's power. Pursuant to the FPA, issues considered during the review of license applications include power production; fish, wildlife, recreation, and other environmental issues; flood control; irrigation; and other water uses. Various statutory requirements also give other agencies a significant role in project development, and several state and federal agencies have mandatory authorities that limit the Commission's control of the cost and time required for licensing.

Following the issuance of a license or exemption, the Commission oversees compliance with the terms and conditions of the license/exemption for the duration of the license. This includes processing the filing of plans, reports, and license amendments. Additionally, the Commission must determine if it has jurisdiction over proposed or unlicensed operating projects; determine and assess headwater benefit charges; approve transfers of licensed projects; resolve complaints alleging noncompliance with license and exemption conditions; and act on applications for license surrenders.

The Commission also is responsible for ensuring that the water-retaining features of hydropower projects are designed, constructed, operated, and maintained using current engineering standards and federal guidelines for dam safety. Commission staff inspects projects to investigate potential dam safety problems and, every five years, a Commission-approved independent consulting engineer must inspect and evaluate projects with dams higher than 32.8 feet or with a total storage capacity of more than 2,000 acre-feet. The Commission also requires licensees to prepare emergency action plans and conducts training sessions on how to develop and test these plans.

The vast majority of agency actions relating to the Commission's hydropower program do not present a material burden to hydropower resources. Specifically, most agency actions: (1) are necessary to administer the Commission's hydropower program and process hydropower license applications in an orderly manner; and/or (2) do not negatively affect the development of hydropower resources. As outlined below, however, this final report identifies three areas where potential material burdens may exist: licensing processes; exemption processes; and determinations on deficient applications.

a. Licensing Processes

i. ILP Default Regulation

The Commission's regulations include three hydropower licensing processes for applicants: the Integrated Licensing Process (ILP), the Traditional Licensing Process (TLP), and the Alternative Licensing Process (ALP). The Commission's regulations assign the ILP as the default process for all license requests, and an applicant must specifically request and justify the use of either the TLP or ALP. Assigning the ILP as the default process could be materially burdensome due to: (1) the time and costs associated with obtaining the Commission's approval to use the TLP or ALP; and (2) in the event the Commission denies the request to use the TLP/ALP, there may be additional time and costs associated with the ILP, due to the structured nature of the process. The level of burden caused by the ILP default regulation is largely project-specific, and may be negligible/non-existent for complex proceedings that could benefit from a more structured process such as the ILP. However, any material burden could be alleviated by making the ILP optional, and removing the requirement to seek Commission authorization to use the TLP and ALP (see 18 CFR 4.30, 5.1, 5.3, 5.8, 16.1).

ii. Pre-Filing Application Requirement

In the final stages of the Commission's pre-filing process for hydropower projects, the Commission's regulations require a potential applicant to submit a draft license application or preliminary licensing proposal before submitting a final license application (18 CFR 4.38(c)(4) and 5.16, respectively). The Commission's regulations include minimum filing requirements for these documents (*e.g.*, study results, analyses, and environmental measures), and a stakeholder review process. The requirement to file the draft application and preliminary licensing proposal may be materially burdensome in terms of the cost and delay associated with the preparation of the documents and the stakeholder review process. To eliminate material burdens, the Commission could consider revising its regulations to make this aspect of the pre-filing process optional for license applicants.

iii. Pre-Filing Schedule

The ILP contains comment and filing deadlines throughout the pre- and post-filing application process to ensure a structured approach to hydropower licensing. The ILP, however, may be materially burdensome in terms of the schedule established for the pre-filing process (3–3.5 years total). To alleviate this burden, the Commission could consider certain comment and filing deadline reductions to allow for an overall time savings of three months: (1) reduce the time that an applicant has to file a proposed study plan, and the Commission has to issue a second scoping document, from 45 days to 30 days after receiving comments (18 CFR 5.10 and 5.11); (2) reduce the time for entities to file comments on the proposed study plan, from 90 days to 60 days (18 CFR 5.12); (3) reduce the time an applicant has to file a revised study plan, from 30 days to 15 days (18 CFR 5.13); and (4) reduce the time for filing comments on an applicant's preliminary licensing proposal, from 90 days to 60 days (18 CFR 5.16).

iv. License Term Policy

Section 6 of the FPA provides that hydropower licenses shall be issued for a term not to exceed 50 years. There is no minimum license term for original licenses (16 U.S.C. 799). Section 15(e) of the FPA provides that any new license for an existing project (i.e., relicense) shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years (16 U.S.C. 808(e)). Current Commission policy is to set a 30-year license term where there is little or no authorized redevelopment, new construction, or environmental mitigation and enhancement; a 40-year license term for a license involving a moderate amount of these activities; and a 50-year license term where there is an extensive amount of such activity.[8] On November 17, 2016, the Commission issued a notice of inquiry in FERC Docket No. RM17–4–000 inviting comments on what changes, if any, should be made to the license term policy. The license terms provide operational certainty and govern the frequency of the license renewal process, which influences the overall cost of development. In turn, shorter license terms could burden development by increasing the cost of development. The Commission currently is considering comments on the license term policy, which it could use to further evaluate the need for any future changes to the license term policy.

v. Minimum Filing Requirements

The Commission's regulations contain minimum filing requirements depending on the size of a project, and whether construction or modification of a dam is needed for project operation. Part 4 of the Commission's regulations includes three subparts corresponding to these factors: (1) Subpart E—Application for License for Major Unconstructed Project and Major Modified Project (18 CFR 4.40); (2) Subpart F—Application for License for Major Project—Existing Dam (18 CFR 4.50); and (3) Subpart G—Application for License for Minor Water Power Projects and Major Water Power Projects 5 MW or Less (18 CFR 4.60). Subparts E and F apply to projects greater than 5 MW, and include more onerous filing requirements than Subpart G, which applies to projects less than or equal to 5 MW. The 5 MW threshold is based on section 405 of PURPA, which mandated a simplified and expeditious licensing procedure for small hydroelectric power projects with an installed capacity of 5 MW or less (*see* 46 FR 55,944 at 55,947 (1981); 16 U.S.C. § 2705). The Hydropower Regulatory Efficiency Act of 2013 has since amended PURPA by increasing the size of a small hydroelectric power project from 5 to 10 MW. Therefore, the 5 MW threshold in 18 CFR 4.40, 4.50, and 4.60 is materially burdensome to projects between 5 and 10 MW, in terms of the cost and time associated with the more onerous filing requirements of Subparts E and F. To eliminate the material burden, the Commission could consider revising its regulations to increase the threshold from 5 MW.

b. Exemption Processes

i. Increased Capacity Requirement

To qualify for a license exemption under section 405 of PURPA, an applicant must propose to install/increase the total capacity of a project to not more than 10 MW (18 CFR 4.30(b)(31), 4.31(c), and 4.103(a)). The regulatory requirement to add new capacity at the project is not specifically required by section 405 of PURPA, and it materially burdens existing licensees that would otherwise be eligible to seek an exemption at the end of the existing license term. To eliminate this burden, the Commission could consider revising the regulations to remove the requirement to install or increase the capacity of the facility to qualify for an exemption.

ii. Small Hydropower Conversion Restrictions

In the event that the Commission rejects an exemption application, the Commission's regulations do not explicitly provide an applicant with the ability to convert a small hydropower exemption application to a license application (18 CFR 4.105). The Commission's Handbook for Hydroelectric Project Licensing and 5 MW Exemptions from Licensing, issued April 2004, explicitly states at section 6.3.2:

If the exemption application is dismissed, the process is terminated. There is no opportunity to convert the exemption application to an application for license.[9]

In comparison, the Commission has established a process for converting a small conduit exemption application to a license application (18 CFR 4.93). The process for small conduits allows the applicant to submit additional information necessary to conform the conduit exemption application to the relevant regulations for a license application, and then be accepted for filing as of the date the exemption application was accepted for filing. The inability of an applicant of a small hydropower exemption to convert its application to a license application is materially burdensome because the applicant must initiate an entirely new license process after its exemption is rejected, thereby causing delay to the development of the resource. To eliminate this burden, the Commission could consider amending its regulations to explicitly provide the small hydropower exemption applicant with the ability to convert its exemption application to a license application if the exemption application is rejected.

c. Prohibition on Refiling Subsequent License Applications

Pursuant to the authority provided in section 10(i) of the FPA (16 U.S.C. 803), the Commission routinely waives certain sections of Part I of the FPA when it issues a minor license. As relevant, the Commission routinely waives section 15 of the FPA, which governs the Commission's procedures for issuing a new license to an existing licensee (i.e., a relicense) (16 U.S.C. and 808). Yet, the Commission's regulations require the licensee to file an application for relicense at least 24 months before the expiration of the existing license (18 CFR 16.20(c)). Moreover, if the Commission rejects the application, it cannot be refiled (18 CFR 16.9(b)(4)). Rejecting a relicense application, and not providing the applicant with the opportunity to refile, is materially burdensome to the use of hydropower resources. To eliminate this burden, the Commission could consider revising its regulations at 18 CFR 16.20 to provide the applicant with the option of resubmitting the application if the deficiencies are corrected.

2. LNG Facility and Natural Gas Pipeline and Storage Facility Siting

Under section 7 of the NGA, 15 U.S.C. 717f, the Commission authorizes the construction, operation, or abandonment of interstate natural gas pipeline and storage projects, as well as certain types of LNG facilities (*e.g.*, LNG plants engaged in the storage of interstate natural gas volumes). Similarly, under section 3 of the NGA, 15 U.S.C. 717b(e)(1), the Commission authorizes the siting, construction and operation of LNG terminals through which the commodity passes for export or import. As part of these responsibilities, the Commission conducts both a non-environmental and

[8] *See City of Danville, Virginia,* 58 FERC ¶ 61,318 (1992); and *Consumers Power Co.,* 68 FERC ¶ 61,077, (1994).

[9] *See www.ferc.gov/industries/hydropower/gen-info/handbooks/licensing_handbook.pdf.*

an environmental review of the proposed facilities. The non-environmental review focuses on the engineering design, rate, and tariff considerations. The Commission carries out the environmental review with the cooperation of numerous federal, state, and local agencies, and with the input of other interested parties. Under the NGA, the Commission also is the lead federal agency for coordinating all applicable federal authorizations *(e.g.*, required permits under the Clean Water Act, Clean Air Act, and Coastal Zone Management Act, among others) and preparing environmental analyses required under the National Environmental Policy Act (NEPA) for all interstate natural gas infrastructure and LNG import/export proposals.

There are several distinct phases to the review process for interstate natural gas and LNG facilities under the Commission's jurisdiction: pre-filing review (if applicable); application review; and post-authorization compliance. During the pre-filing review, Commission staff begins work on the environmental review and engages with stakeholders with the goal of resolving issues before the filing of an application. Throughout the pre-filing process, Commission staff meets with stakeholders, visits the project site, and confers with federal, state, and local agencies.

Once a project sponsor files an application with the Commission under NGA section 3 for LNG import/export terminals or under NGA section 7 for interstate pipeline and storage facilities, Commission staff analyzes both environmental and non-environmental aspects for a proposed project, including for LNG terminals safety and engineering. An Environmental Assessment or Environmental Impact Statement typically is issued for public comment, and ultimately, the Commission will issue an order on an application after considering both environmental and non-environmental issues.

During the post-authorization compliance period, Commission staff monitors the project sponsor's compliance with the conditions directed by the Commission. Ultimately, Commission approval is required before the facility can begin operation and provide service.

Pursuant to Executive Order 13783, the review encompassed the Commission's regulations, guidance documents, and policies related to the certification of interstate natural gas transportation facilities, authorization of LNG import and export facilities, authorization of certain transportation by interstate and intrastate pipelines, and environmental review under NEPA.

The majority of agency actions relating to the siting and construction of interstate natural gas transportation and LNG facilities do not materially burden the transportation or delivery of domestically produced natural gas. Specifically, most of the Commission's actions: (1) Are necessary for the Commission to review and process NGA section 3 and 7 project applications; and/or (2) do not negatively affect the siting or construction of natural gas pipeline and storage facilities or LNG import/export facilities in a manner that has a direct or primary indirect effect on the development or use of domestic energy production.

However, the Commission's regulations require a prospective applicant for authorization under section 3 of the NGA to site and construct LNG terminals and related jurisdictional natural gas facilities to engage in the Commission's pre-filing process. (18 CFR 157.21(a)). The Commission's pre-filing regulations require applicants to use the pre-filing process for a minimum of 180 days before the filing of an application for any project that is required to engage in pre-filing. (18 CFR 157.21(a)(2)(1) and 153.6(c)). While, in general, the pre-filing process is designed to expedite the processing of applications, the mandatory imposition of the pre-filing process on LNG terminals and related pipeline projects for at least 180 days before an application can be filed may be materially burdensome for some projects in terms of the potential delay and costs associated with the process. Although the 180 day pre-filing process is required by statute for LNG terminals, 15 U.S.C. 717b–1(a), the statute did not mandate that the Commission also require ''related jurisdictional natural gas facilities'' to engage in pre-filing. However, related jurisdictional natural gas pipeline facilities need to be evaluated concurrent with a proposed LNG terminal to avoid segmentation under the National Environmental Policy Act. Further, the pre-filing process allows stakeholders to become involved in the overall Project at an early stage, and applicants can benefit from stakeholder's early identification and resolution of issues that may overlap with the LNG terminal. Without using the pre-filing process for related jurisdictional natural gas facilities, delays could occur during the application review, when issues are first identified and need resolution. Thus, although this regulation may result in delays or additional costs to the applicant early on in a project's development, its overall result is a more timely application review by considering all issues regarding a project concurrently. As such, there is no need for the Commission to consider any revision to this regulation.

3. Centralized Electric Capacity Market Policies

Three of the Regional Transmission Operator/Independent System Operator (RTO/ISO) markets in the eastern U.S. have adopted centralized capacity markets to help address resource adequacy concerns.[10] In particular, PJM, ISO–NE, and NYISO have implemented centralized capacity markets that were designed, in part, to ensure long-term resource adequacy by sending accurate price signals for investment in capacity resources, when and where needed.[11] As a result, agency actions related to capacity market policies could have a primary indirect effect on the development and use of generation resources, including renewables, natural gas, and nuclear facilities.[12]

The centralized capacity markets require load-serving entities to secure, either through self-supply[13] or participation in the capacity auction, sufficient resources to meet their capacity obligation at a future time. All three centralized capacity markets allow participation by any resource that is technically qualified to provide the capacity product being procured and each market generally models locational constraints. Each conducts a capacity auction where eligible offers to sell capacity are compared to the demand for capacity resources, which is established through an administratively-

[10] The Commission has defined resource adequacy as ''the availability of an adequate supply of generation or demand responsive resources to support safe and reliable operation of the grid.'' *Cal. Indep. Sys. Operator Corp.,* 122 FERC ¶ 61,017, at P 3 (2008).

[11] ''Capacity is not actual electricity. It is a commitment to produce electricity or forgo consumption of electricity when required.'' *Advanced Energy Mgmt. All.* v. *FERC,* No. 16–1234, 2017 WL 2636455, at *1 (D.C. Cir. Jun. 20, 2017); *see Conn. Dep't of Pub. Util. Control* v. *FERC,* 569 F.3d 477, 482 (D.C. Cir. 2009) (explaining that capacity ''amounts to a kind of call option that electricity transmitters purchase from parties—generally, generators—who can either produce more or consumer less when required'').

[12] It is important to note that the Commission has not required RTOs/ISOs to implement centralized capacity markets; rather, the determination to include such markets has been a voluntary decision by the stakeholders in each particular RTO/ISO. However, once an RTO/ISO decides to implement such a capacity market, the Commission must ensure that the tariff provisions establishing the capacity market rules are just and reasonable and not unduly discriminatory or preferential.

[13] While the specific rules vary by RTO/ISO, load-serving entities can own or construct resources or contract bilaterally for capacity from resources owned by other entities.

determined demand curve. Generally speaking, the market clears based on the intersection between the supply and demand curves. All cleared resources receive the market clearing price for capacity regardless of resource type.

The Commission has issued multiple agency actions (i.e., Commission orders addressing the capacity market designs of the relevant organized markets) that govern the rules and design of the centralized capacity markets. Agency actions related to electric capacity markets were reviewed to determine if they impose a material burden on the development and use of domestic energy resources. In general, agency actions regarding centralized electricity capacity market design do not impose a material burden on the development and use of domestic energy resources because they generally seek to ensure adequate resources, and thereby facilitate the development of domestic energy resources, rather than create material burdens to the development and use of these resources. However, this final report discusses Commission actions regarding one aspect of centralized electricity capacity markets, buyer-side market power mitigation rules, due to the potentially material burdens Commission actions may have on the development of domestic energy resources.

All three eastern RTOs/ISOs use some form of a minimum offer price rule (MOPR) as approved by Commission order. MOPRs as currently designed establish offer floors for certain new resources to protect against subsidized new entry that has the potential to artificially suppress capacity market prices. New resources that trigger this rule are required to submit offers into the capacity market auction at or above the floor. If the resource's mitigated offer price is too high to clear in the market, then the resource would not receive a capacity obligation and the associated market payments. Depending on the terms of any out-of-market contracts, the resource also may not be eligible to receive out-of-market payments if it does not clear in the capacity market auction. Without such compensation, the developer may conclude it is not economic to develop the resource. In this way, Commission actions on the MOPR arguably impose a burden on certain new resources.

However, Commission actions on the MOPR do not rise to the level of a material burden, as the term is defined in the Executive Order and Guidance Memo. While application of the MOPR to a generator's bid may conceivably result in the developer deciding not to develop its generation resource, an individual generation developer's decision not to develop as a result of being subject to a MOPR would not in and of itself materially affect the use or development of oil, natural gas, coal, nuclear energy, or other domestic energy resources in the U.S. Therefore, Commission actions on MOPRs do not negatively affect the development and use of domestic energy resources by the electricity sector, despite the potential burden on those individual resources that are mitigated. Furthermore, from the perspective of other resources in the market, the MOPR can help preserve the integrity of the market price signals and revenue streams, thereby facilitating development and retention of other resources that might use domestic energy resources.

4. Generator Interconnection Policies

Electric generators use domestic energy resources to produce electricity. Electric generators at utility scale must interconnect to the transmission system to deliver the electricity they produce to customers and receive benefits from the wholesale electric markets. The interconnection process is designed to ensure a new resource can safely and reliably deliver its output to end-users and to assign the costs to the party causing the costs of any system upgrades required to maintain safety and reliability. If a generator is not able to interconnect to the transmission system, or if it is too difficult or expensive to do so, the developer may decide not to pursue investment in the electric generation resource. Therefore, the ability of an electric generator to interconnect to a transmission system could affect the development or use of domestic energy resources.

The Commission has issued multiple agency actions that govern and facilitate the interconnection of electric generators to public utility transmission systems. They include:

Order No. 2003: In Order No. 2003, the Commission created standard large generator interconnection procedures and adopted a standard large generator interconnection agreement for the interconnection of electric generators larger than 20 MW, regardless of resource type.[14]

Order No. 2006: In Order No. 2006, the Commission created standard small generator interconnection procedures and a standard small generator interconnection agreement for the interconnection of electric generators no larger than 20 MW.[15]

Order No. 661: In Order No. 661, the Commission required public utilities to add standard procedures and technical requirements for the interconnection of large wind generation resources to their standard large generator interconnection procedures and large generator interconnection agreements in their open access transmission tariffs.[16]

Order No. 827: In Order No. 827, the Commission revised the interconnection agreements for both large and small non-synchronous generators to eliminate exemptions for wind generators from providing reactive power.[17]

Order No. 828: In Order No. 828, the Commission modified the small generator interconnection agreement as set forth in Order Nos. 2006 and 792 to require newly interconnecting small generating facilities to ride through abnormal frequency and voltage events and not disconnect during such events.[18]

Order No. 792: In Order No. 792, the Commission revised the standard small generator interconnection procedures and standard small generator interconnection agreement for the interconnection of electric generators no larger than 20 MW.[19]

None of these orders materially burden the development or use of domestic energy resources. The Commission's generator interconnection orders establish an orderly, uniform process for all types of generators to interconnect to the grid safely and reliably, facilitating their development by providing them with the means to deliver the electricity they produce to the purchaser. As such, these requirements will not unnecessarily obstruct, delay, curtail or otherwise

[14] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g,* Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g,* Order No. 2003–B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g,* Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC,* 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied,* 552 U.S. 1230 (2008).

[15] *Standardization of Small Generator Interconnection Agreements and Procedures,* Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g,* Order No. 2006–A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification,* Order No. 2006–B, FERC Stats. & Regs. ¶ 31,221 (2006).

[16] *Interconnection for Wind Energy,* Order No. 661, FERC Stats. & Regs. ¶ 31,186, *order on reh'g,* Order No. 661–A, FERC Stats. & Regs. ¶ 31,198 (2005).

[17] *Reactive Power Requirements for Non-Synchronous Generators,* Order No. 827, FERC Stats. & Regs. ¶ 31,385, *order on reh'g,* 157 FERC ¶ 61,003 (2016).

[18] *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities,* Order No. 828, 156 FERC ¶ 61,062 (2016).

[19] *Small Generator Interconnection Agreements and Procedures,* Order No. 792, 145 FERC ¶ 61,159 (2013), *clarifying,* Order No. 792–A, 146 FERC ¶ 61,214 (2014).

impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources and therefore they will not materially burden the production or use of domestic energy resources.

Dated: October 25, 2017.

Kimberly D. Bose,

Secretary.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 24 and 111

[USCBP–2017–0025; CBP Dec. 17–16]

RIN 1515–AE25

Procedures To Adjust Customs COBRA User Fees To Reflect Inflation

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, the amendments proposed to the U.S. Customs and Border Protection (CBP) regulations to reflect that customs user fees and limitations established by the Consolidated Omnibus Budget Reconciliation Act (COBRA) will be adjusted for inflation in accordance with the Fixing America's Surface Transportation Act (FAST Act).

DATES: Effective November 1, 2017.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Director—Revenue Division, 317–298–1107, *bruce.ingalls@cbp.dhs.gov;* or Tina Ghiladi, Director—Fee Strategy, Communications, and Integration, 202–344–3722, *tina.ghiladi@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2015, the Fixing America's Surface Transportation Act (FAST Act, Pub. L. 114–94) was signed into law. Section 32201 of the FAST Act amends section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by requiring certain customs COBRA user fees and corresponding limitations to be adjusted by the Secretary of the Treasury (Secretary) to reflect certain increases in inflation. The specific fees and corresponding limitations to be adjusted for inflation are set forth in Appendix A and Appendix B of part 24 in this final rule and include the commercial vessel arrival fees, commercial truck arrival fees, railroad car arrival fees, private vessel arrival fees, private aircraft arrival fees, commercial aircraft and vessel passenger arrival fees, dutiable mail fees, customs broker permit user fees, barges and other bulk carriers arrival fees, and merchandise processing fees as well as the corresponding limitations. (19 U.S.C. 58c(a) and (b)). Further, the FAST Act includes a particular measure of inflation for these purposes and special rules when considering adjustments.

According to the FAST Act, the customs COBRA user fees and limitations were to be adjusted on April 1, 2016, and at the beginning of each fiscal year to reflect the percent increase (if any) in the Consumer Price Index (CPI) for the preceding 12-month period compared to the CPI for fiscal year 2014. The statute permits the Secretary to ignore any CPI increase of less than one (1) percent from the time of the previous adjustment. As a result, if the increase in the CPI since the previous adjustment is less than one (1) percent, the Secretary has discretion to determine whether the fees should be adjusted.

On June 15, 2016, CBP published a notice in the *Customs Bulletin* announcing the April 2016 determination that no adjustment to the customs COBRA user fees and limitations was necessary based on the FAST Act provision as the increase of the CPI was less than one (1) percent. (*Customs Bulletin,* Vol. 50, No. 24, p. 13). CBP published a second notice in the *Customs Bulletin* on December 7, 2016, announcing that, based on a less than one (1) percent increase in inflation, no adjustment was necessary for fiscal year 2017. (*Customs Bulletin* Vol. 50, No. 49, p. 4).

Proposed Rule

On July 17, 2017, CBP published a notice of proposed rulemaking (NPRM) in the **Federal Register** (82 FR 32661) proposing to amend title 19 of the Code of Federal Regulations (19 CFR) to set forth the methodology for determining the required adjustments. The FAST Act specifies that the customs COBRA user fees and corresponding limitations should be adjusted to reflect the percentage of the increase (if any) in the average of the CPI for the preceding 12-month period compared to the CPI for fiscal year 2014. CBP determined that the 12-month period for comparison will be June through May. This timeframe was proposed to allow for sufficient notice to the public of any adjustments prior to any changes becoming effective for each fiscal year.

The FAST Act further requires the Secretary to round the amount of any increase in the CPI to the nearest dollar. The rounding requirement applies to the difference in the CPI from the comparison year to the current year when determining whether an adjustment is necessary. As written, the rounding requirement does not apply to the fee amount resulting from any adjustment. As noted above, if the difference in the CPI since the last adjustment is less than one (1) percent, the Secretary may elect not to adjust the fees and limitations. The statute requires CBP to use the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI–U) which can be found on the U.S. Department of Labor, Bureau of Labor Statistics Web site: *www.bls.gov/cpi/.* The proposed rule provided that CBP's Office of Finance will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations will be published in the **Federal Register** for each fiscal year at least 30 days prior to the effective date of the new fees and limitations.

Technical Corrections

In addition, CBP proposed technical updates to paragraph (g) of 19 CFR 24.22 to reflect the elimination of the user fee exemption for passengers arriving from Canada, Mexico or one of the adjacent islands pursuant to the United States—Colombia Trade Promotion Agreement Implementation Act. (Colombia TPA, Pub. L. 112–42, October 21, 2011). Section 601 of the Colombia TPA amended 19 U.S.C. 58c(b)(1)(A)(i) to limit the fee exemption exclusively to passengers whose journey originated in a territory or possession of the United States, or originated in the United States and was limited to the territories and possessions of the United States. (19 U.S.C. 58c(b)(1)(A)(i)). Since the law became effective on November 5, 2011,CBP has been collecting only the non-exempt user fees. In accordance with the statute, CBP is removing the exemption for passengers arriving from Canada, Mexico, or one of the adjacent islands, from the regulations found in paragraphs (g)(1)(i), (g)(1)(i)(A), (g)(1)(i)(B), (g)(1)(ii), (g)(1)(iii), (g)(2)(i), the chart in paragraph (g)(2)(iv), and the collection procedures in paragraphs (g)(4)(ii)(A), (g)(4)(ii)(B), (g)(4)(ii)(C), (g)(4)(iii)(A), (g)(4)(iii)(B), and (g)(4)(iii)(C). (19 CFR 24.22(g)). CBP is also removing the definition of ''adjacent islands'' from paragraph

(g)(1)(iii) as references to adjacent islands have been removed from paragraph (g). (19 CFR 24.22(g)). Additionally, CBP is amending paragraph (g)(2)(iii) to clarify that journeys between ports in the United States are not subject to the fee. (19 CFR 24.22(g)(2)(iii)).

Upon further review, CBP determined that certain technical corrections that were proposed needed further clarification.

Specifically, CBP has determined that paragraph (g)(1)(i) needs to be revised to more clearly identify when a fee is charged based on the arrival of a passenger aboard a commercial vessel or aircraft from one of the territories or possessions of the United States. Paragraph (g)(1)(i) is re-organized for clarity to provide for the three exceptions to the general rule stated in paragraph (g)(1)(i).

In paragraph (g)(1)(ii), CBP has determined that its proposed wording was incorrect. Instead, CBP is retaining current paragraph (g)(1)(ii) with revisions to remove the references to Canada, Mexico and the adjacent islands and adding the phrase that the fee amount is subject to adjustment by the terms of paragraph (k) of this section.

Further, the user fee chart in paragraph (g)(2) is intended as a tool to assist readers understand the application of the fee structure laid out in 19 U.S.C. 58c and 19 CFR 24.22(g)(1). The chart as proposed in the NPRM contained two errors and did not accurately reflect the existing statutory and regulatory rules. The chart is being amended to reflect ''No fee'' for aircraft arriving from a specified location regardless of where the journey originates. Additionally, the chart found in paragraph (g)(2) is corrected as the fees for vessels arriving from a specified location with a journey either originating in a place other than a specified location or the United States, or originating in the United States including travel to at least one place other than a Specified Location, were mistakenly changed from $1.93 to $5.50. These two fees will remain at $1.93 but will include the amendments adding the reference to paragraph (k).

In paragraph (g)(4)(ii)(A), the words ''in and arrives'' are no longer being removed because they are necessary to prevent charging for passengers whose journey may not have originated from a territory or possession of the United States but who are arriving from a territory or possession. Paragraph (g)(4)(ii)(B) is amended for greater clarity and accuracy by replacing the phrase at the end of the proposed text, ''outside the United States'' with ''other than the territories and possessions of the United States.'' This also makes the language consistent with that found in the following paragraph (g)(4)(ii)(C). Paragraph (g)(4)(ii)(C) is also amended for clarity by replacing the proposed phrase ''outside the United States, unless that passenger's journey originated'' with ''other than one of the territories or possessions of the United States, is processed by CBP, and the journey does not originate.''

In paragraph (g)(4)(iii)(A), the word ''from'' after the words ''the customs territory of the United States'' is retained and the proposed new phrase ''that originated in'' will not be included. This retains the existing regulatory text while removing the references to Canada, Mexico and the adjacent islands. Similar changes are made to paragraph (g)(4)(iii)(B), so that the existing regulatory text is retained and only the references to Canada, Mexico and the adjacent islands are removed.

In paragraph (g)(4)(iii)(C), CBP will not adopt the proposed new text reading, ''a place outside the United States and that passenger's journey originated in'' and will instead retain the existing regulatory text while removing the references to Canada and Mexico or adjacent islands.

Finally, in the chart found in new Appendix A to Part 24, the description of the Commercial Vessel Passenger Arrival Fee is amended by removing the references to Canada and Mexico or adjacent islands from the parenthetical.

The notice of proposed rulemaking requested public comments. The public comment period closed on August 16, 2017, and five comments were received.

Discussion of Comments

Five comments were received in response to the notice of proposed rulemaking.

Comment: Two commenters requested additional notice time beyond the 30 days proposed stating that 30 days notice would be insufficient to make the necessary internal operational adjustments.

CBP Response: In response to the commenters' concern over the amount of time necessary to operationally prepare for adjusted fees, CBP will increase the notice time from 30 days to 60 days in the final rule.

Comment: One commenter questioned a step in CBP's methodology for calculating the inflation adjustment, specifically, that the agency proposed to round the difference between the CPI for the current year and the CPI for the comparison year. The commenter disagrees with CBP's methodology because 19 U.S.C. 58c(l)(2)(A) directs the Secretary to ''round the amount of any increase in the Consumer Price Index to the nearest dollar[.]'' According to the commenter, CBP's methodology is incorrect because the CPI is not expressed in dollars. As a result, the commenter concludes that Congress must have intended for the actual fee and limitation amounts to be rounded to the nearest dollar instead.

CBP Response: CBP disagrees. Congress makes its intent known through the statutory text and here expressly instructed the Secretary to round the amount of any increase in the *Consumer Price Index* to the nearest dollar. *See* 19 U.S.C. 58c(l)(2)(A). Moreover, the statute clearly states that the Secretary may ignore any *such increase* of less than 1 percent. *See* 19 U.S.C. 58c(l)(2)(B). ''Such increase'' plainly refers to the increase in the CPI referenced in the sentence above. There is nothing in the statute that explicitly states that Congress intended for the actual fee and limitation amounts to be rounded. More broadly, throughout the statute, the terms ''fees and limitations'' and ''CPI'' are used in different locations, which ordinarily means that they are to be given distinct meanings and are not interchangeable terms.

In addition, the overarching intent of this statutory provision was to keep the COBRA fee and limitation amounts consistent with inflation. Rounding the fees and limitations to the nearest whole dollar amount would in some cases result in fee and limitation amounts that would far exceed the pace of inflation.

Lastly, while CBP acknowledges that the CPI is typically expressed as an index number rather than a dollar amount, as the CPI measures changes in prices, it is closely related to dollars and the Bureau of Labor Statistics has published materials explaining how to interpret the CPI in dollars. *See, e.g.,* United States Department of Labor, Bureau of Labor Statistics, BLS Handbook of Methods, Chapter 17, CPI Publication, Indexes, available at *https://www.bls.gov/opub/hom/pdf/homch17.pdf* (last visited August 18, 2017) (explaining that, in the case of an increase in the CPI from 100 to 233.596, ''[o]ne interpretation of this is that a representative set of consumer items that cost $100 in 1982–84 would have cost $233.60 in July 2013.''); United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index—July 2017, Technical Note, available at *https://www.bls.gov/news.release/archives/cpi_08112017.pdf* (last visited August 18, 2017) (explaining that an increase in the CPI

from 100 to 107 ''can also be expressed as the price of a base period market basket of goods and services rising from $100 to $107'').

Therefore, consistent with basic tenets of statutory interpretation, CBP's reading as articulated in the NPRM gives meaning to the plain language of the text. As Congress chose not to direct CBP to round the fees, but rather to round the CPI, and since the CPI is closely related to dollars, CBP believes that this interpretation is the best way to give meaning to the text as written. There is no need to render irrelevant Congress's explicit direction to round the difference in the CPI and to express such a difference in dollars, as urged by the commenter.

Finally, while CBP believes that the language of the FAST Act pertaining to rounding does not apply to the fee amounts, CBP has determined that it has separate authority to adjust the fee amount in the unique situation of the commercial truck fee for efficient processing purposes for both the public and the agency. The statute requires only that the fee and limitation amounts be adjusted ''to reflect'' the percentage change in inflation. The ordinary meaning of the word reflect is to ''[e]mbody or represent (something) in a faithful or appropriate way.'' *See Reflect,* Oxford Dictionaries, *https://en.oxforddictionaries.com/definition/reflect* (Last visited October 2, 2017). Unlike nearly all of the other instances where COBRA user fees are collected, the commercial truck fee is regularly paid in cash at an inspection booth. Cash collection at the port of entry is a manual, burdensome, and time-consuming process. Making change in pennies, given the enormous amount of cash user fee payments made daily at the land border primary inspection booth, would dramatically slow down the clearance of vehicles and increase fuel costs and carbon emissions as a result of idling in long lines. Accordingly, CBP has determined that this fee set forth in paragraph (c) of § 24.22 will be adjusted to the nearest lower nickel ($0.05). (19 CFR 24.22(c)). Commercial truck fees adjusted to the nearest lower nickel therefore still appropriately reflect the change in inflation as required by the statute but also alleviate the hardship of making change in pennies at the primary inspection booth and allow for faster processing and clearance of commercial trucks.

Comment: One commenter noted that the Bureau of Labor Statistics (BLS) may revise the CPI–U figures periodically. As such, stating a definite figure in the CBP regulations may result in an incorrect calculation if the CPI–U for FY14 is subsequently adjusted. The commenter suggested replacing the numeric figure with a reference to the arithmetic average of the CPI–U for FY14.

CBP Response: CBP agrees and will make the suggested change to paragraph (k)(2)(ii) of § 24.22 in the final rule. (19 CFR 24.22(k)).

Comment: Two commenters requested that CBP reconsider the index used to measure the change in inflation. Both suggested that CBP use the ''All items less food and energy'' index as opposed to the CPI–U. The basis for their suggestion is that food and energy prices are relatively volatile and that the index excluding them represents the ''core'' or ''underlying'' rate of inflation and better reflects the costs of business administration activities.

CBP Response: CBP agrees that the commenters' suggested measure of inflation would lead to less volatility in fee amounts. However, the statutory language specifically requires that we use the CPI–U, so we are not able to revise the methodology according to the commenters' suggestion.

Comment: Two commenters viewed the proposal as an opportunity to correct what they view as the double assessment of processing fees when express consignment carrier and centralized hub facilities are used. Both acknowledged that the language at issue found in § 24.23(b)(4)(i) of the CBP Regulations (19 CFR 24.23) is only revised to reflect the addition of the reference to new paragraph (k); however, they argue that assessing the $1 express consignment carrier and centralized hub facilities fee adjusted by inflation for formal entries amounts to double assessment of the merchandise processing fee. They state that if a formal entry is presented to CBP, the $1 express consignment carrier and centralized hub facilities fee should not be assessed as the importer will pay the appropriate MPF with the entry summary as required and that paying the $1 express consignment carrier and centralized hub facilities fee and the ad valorem MPF assesses the same fee twice on a single entry.

CBP Response: The fee set forth in paragraph 24.23(b)(4)(i) of section 24 is required by statute. (19 U.S.C. 58c(b)(9)(A)(ii)). Any changes to the fees themselves are beyond the scope of this rulemaking.

Conclusion

Based on the comments received and further review of the proposed technical corrections, CBP has decided to adopt as final the proposed amendments published in the **Federal Register** (82 FR 32661) on July 17, 2017, with the following three changes as well as the changes to the proposed technical changes discussed above. Specifically, in the introductory paragraphs to §§ 24.22 and 24.23 (19 CFR 24.22 and 24.23) and in paragraph (k)(1) of § 24.22 (19 CFR 24.22(k)(1)), CBP extended the timeframe for publishing notice specifying the amount of the fees and limitations from at least 30 days prior to the effective date to at least 60 days prior to the effective date of the new fees and limitations. Second, in paragraph (k)(2)(ii) of § 24.22, CBP removed the figure 236.009, stated to be the arithmethic average of the CPI–U for FY 2014 and replaced it with an instruction to calculate the arithmethic average of the CPI–U for FY 2014. Finally, in paragraph (c)(1) of § 24.22, CBP inserted language to adjust the fee for commercial trucks down to the nearest lower $0.05 in order to minimize the burden of making change in the primary inspection booth at the port of entry.

Announcement of Adjusted Fees

In accordance with this final rule, CBP is also publishing a separate notice in the **Federal Register** announcing the customs COBRA user fees and limitations as adjusted for fiscal year 2018.

Inapplicability of Delayed Effective Date

Section 553(d) of the Administrative Procedure Act (APA) generally provides that a rule may not take effect earlier than thirty (30) days after it is published in the **Federal Register**. One of the exceptions from this general rule is when there is good cause to make the rule effective sooner. As this rule provides that CBP will publish a separate notice in the **Federal Register** providing 60 days-notice before inflation adjustments to the fees required by the FAST Act are imposed, there is a self-contained delayed effective date within the rule. Accordingly, CBP finds good cause in accordance with 5 U.S.C. 553(d)(3) to waive the 30-day delayed effective date requirement for the rule.

Executive Orders 12866, 13563 and 13771

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 (including potential economic, environmental, public health and safety effects, distributive impacts, and

equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed this rule. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule will affect a combination of individuals and businesses. While most of the businesses that pay the customs COBRA user fees are large corporations, the rule affects all businesses that pay these fees, so this rule will affect a substantial number of small entities. However, the impact will be small and in line with inflation; for example, with the current inflation since the base year, the commercial truck fee will increase by 15 cents. Therefore, CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. This rule does not involve any collection of information.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Harbors, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements

Amendments to the CBP Regulations

For the reasons stated above, parts 24 and 111 of title 19 of the Code of Federal Regulations (19 CFR parts 24 and 111) are amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The general authority citation for part 24 continues to read as follows, the specific authority citation for § 24.22 is added, and the specific authority citation for § 24.23 is revised to read as follows

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.22 also issued under Sec. 892, Pub. L. 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Pub. L. 114–94, 129 Stat. 1312 (19 U.S.C. 58c).

Section 24.23 also issued under 19 U.S.C. 3332; Sec. 892, Pub. L. 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Pub. L. 114–94, 129 Stat. 1312 (19 U.S.C. 58c).

* * * * *

■ 2. In § 24.22:

■ a. Add introductory introductory text;

■ b. Paragraph (b)(1)(i) is amended by adding the words '', as adjusted in accordance with the terms of paragraph (k) of this section,'' after the words ''amount of $437'';

■ c. Paragraph (b)(1)(ii) is amended by adding the words '', as adjusted in accordance with the terms of paragraph (k) of this section,'' after the words ''total of $5,955 in fees'';

■ d. Paragraph (b)(2)(i) is amended by adding the words '', as adjusted in accordance with the terms of paragraph (k) of this section,'' after the words ''fee of $110'';

■ e. Paragraph (b)(2)(ii) is amended by adding the words '', as adjusted in accordance with the terms of paragraph (k) of this section,'' after the words ''$1,500 in fees'';

■ f. Paragraphs (c)(1) and (2) are revised;

■ g. Paragraph (c)(3) is amended by adding the words ''of the $100 CBP fee, as adjusted in accordance with the terms of paragraph (k) of this section, and the APHIS/AQI fee set forth in 7 CFR 354.3'' between the words ''Prepayment'' and ''must be made'' in the second sentence;

■ h. Paragraph (d)(1) is amended by adding the words '', as adjusted in accordance with the terms of paragraph (k) of this section,'' after the words ''fee of $8.25'';

■ i. Paragraph (d)(2) is amended by adding the words '', as adjusted in accordance with the terms of paragraph (k) of this section,'' after the words ''prepayment of $100''; and

■ j. Paragraph (d)(3) is amended by adding the words '', as adjusted in accordance with the terms of paragraph (k) of this section,'' after the words ''fee of $100'';

■ k. Paragraph (e)(1) is amended by adding the words, as adjusted in accordance with the terms of paragraph (k) of this section,'' after the words ''sum of $27.50; and

■ l. Paragraph (e)(2) is amended by adding the words '', as adjusted in accordance with the terms of paragraph (k) of this section'' to the end of the first sentence after the word ''section'';

■ m. Paragraph (f) is amended by adding the words '', as adjusted in accordance with the terms of paragraph (k) of this section'' after the words ''amount of $5.50'';

■ n. Paragraph (g)(1)(i) through (iii) are revised;

■ o. Paragraph (g)(2)(i) is amended by removing the text ''Canada, Mexico, any'' between the words ''means'' and ''territories'', and removing the text '', and any adjacent islands'' after the words ''United States'';

■ p. Paragraph (g)(2)(iii) is amended by adding the words ''and/or the United States'' after the words ''Specified Location'';

■ q. The table in paragraph (g)(2)(iv) is revised;

■ r. Paragraph (g)(4)(ii)(A) is amended by removing the words ''Canada, Mexico,'' between the words ''other than'' and ''one of the territories, and removing the words '', or an adjacent island'' from the end of the sentence;

■ s. Paragraphs (g)(4)(ii)(B) and (C) are revised;

■ t. Paragraph (g)(4)(iii)(A) is amended by removing the words ''Canada, Mexico,'' between the words ''United States'' and ''one of the territories'', and removing the comma and the words ''or an adjacent island'' from the end of the paragraph;

■ u. Paragraph (g)(4)(iii)(B) is amended by removing the words ''Canada, Mexico,'' between the words ''from'' and ''one'', and removing the comma

and the words ''or an adjacent island'' following the words ''United States'' at the end of the sentence;

■ v. Paragraph (g)(4)(iii)(C) is revised;

■ w. Paragraph (g)(5)(v) is amended by adding the words '', as adjusted in accordance with the terms of paragraph (k) of this section,'' after the words ''vessel passenger fee'' in each place that they appear;

■ x. Paragraph (h) is revised;

■ y. Paragraph (i)(7) is amended by adding the words '', as adjusted in accordance with the terms of paragraph (k) of this section'' after the words ''commercial aircraft passengers'';

■ z. Paragraph (i)(8) is amended by adding the words '', as adjusted in accordance with the terms of paragraph (k) of this section'' after the words ''commercial vessel passengers''; and

■ aa. Paragraph (k) is added.

The revisions and additions read as follows:

§ 24.22 Fees for certain services.

This section sets forth the terms and conditions for when the fees and corresponding limitations for certain services are required. The specific customs user fee amounts and corresponding limitations that appear in this section are not the actual fees or limitations but represent the base year amounts that are subject to adjustment each fiscal year in accordance with the Fixing America's Surface Transportation Act (FAST Act) using Fiscal Year 2014 as the base year for comparison. (*See* Appendix A to part 24 for a table setting forth the fees and limitations subject to adjustment along with the corresponding statutory authority, the regulatory citation, the name of the fee or limitation, and the Fiscal Year 2014 base amount which reflects the statutory amounts that were adjusted by the American Jobs Creation Act of 2004 (Pub. L. 108–357).) The methodology for adjusting the fees and limitations to reflect the percentage, if any, of the increase in the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI–U) for the preceding 12-month period (June through May) compared to the Consumer Price Index for fiscal year 2014 is set forth in paragraph (k) of this section. CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations will be published in the **Federal Register** annually for each fiscal year at least 60 days prior to the effective date of the new fees and limitations. The fees and the limitations will also be maintained for the public's convenience on the CBP Web site at *www.cbp.gov.* If a customs user has pre-paid or met the calendar year limit prior to the effective date of the new fees and limitations, no additional fees will be required for that calendar year. If the customs user has not pre-paid or met the calendar year limit prior to the effective date of the new fees and limitations, the customs user will be subject to the adjusted limitation or prepayment amount.

* * * * *

(c) *Fees for arrival of a commercial truck*—(1) *Fees.* The fees for the arrival of a commercial truck consist of two separate fees. A CBP fee of $5.50, as adjusted by the terms of paragraph (k) of this section, but if the adjusted amount is not evenly divided by 0.05 (*e.g.,* $5.74) then adjusted down to the next lower $0.05 (*e.g.,* $5.70), and an Animal and Plant Health Inspection Service/Agricultural Quarantine Inspection (APHIS/AQI) fee set forth in 7 CFR 354.3 for the services provided that CBP collects on behalf of APHIS. Upon arrival at a CBP port of entry, the driver or other person in charge of a commercial truck must tender the fees to CBP unless they have been prepaid as provided for in paragraph (c)(3) of this section. The fees will not apply to any commercial truck which, at the time of arrival, is being transported by any vessel other than a ferry. For purposes of this paragraph, the term ''commercial truck'' means any self-propelled vehicle, including an empty vehicle or a truck cab without a trailer, which is designed and used for the transportation of commercial merchandise or for the transportation of non-commercial merchandise on a for-hire basis.

(2) *CBP fee limitation.* No CBP fee will be collected under paragraph (c)(1) of this section for the arrival of a commercial truck during any calendar year once a prepayment of $100, as adjusted by the terms of paragraph (k) of this section, has been made and a transponder has been affixed to the vehicle windshield as provided in paragraph (c)(3) of this section.

* * * * *

(g) * * *

(1) * * *

(i) Subject to paragraphs (g)(1)(ii) and (g)(3) of this section, a fee of $5.50, as adjusted by the terms of paragraph (k) of this section, must be collected and remitted to CBP for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States except:

(A) When the journey of the arriving passenger originates in a territory or possession of the United States;

(B) When the journey of the arriving passenger originates in the United States and was limited to the territories and possessions of the United States; or

(C) When arriving from one of the territories or possessions of the United States.

(ii) Subject to paragraph (g)(3) of this section, a fee of $1.93, as adjusted by the terms of paragraph (k) of this section, must be collected and remitted to CBP for services provided in connection with the arrival of each passenger aboard a commercial vessel from a territory or possession of the United States, regardless of whether the journey of the arriving passenger originates in a place outside the United States or in the United States.

(iii) For the purposes of this paragraph (g), the term ''territories and possessions of the United States'' includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

* * * * *

(2) * * *

(iv) * * *

Place where journey originates (see (g)(1)(iv))	Fee status for arrival from SL		Fee status for arrival from other than SL	
	Vessel	Aircraft	Vessel	Aircraft
SL	$1.93, as adjusted by the terms of paragraph (k) of this section.	No fee	No fee	No fee
Other than SL or U.S.	$1.93, as adjusted by the terms of paragraph (k) of this section.	No fee	$5.50, as adjusted by the terms of paragraph (k) of this section.	$5.50, as adjusted by the terms of paragraph (k) of this section
U.S.	$1.93, as adjusted by the terms of paragraph (k) of this section.	No fee	N/A	N/A
U.S.	$1.93, as adjusted by the terms of paragraph (k) of this section.	No fee	$5.50, as adjusted by the terms of paragraph (k) of this section.	$5.50, as adjusted by the terms of paragraph (k) of this section

* * * * *

(4) * * *

(ii) * * *

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States, includes a stop in a place other than one of the territories and possessions of the United States and the return arrival to the United States is from a place other than the territories and possessions of the United States; and

(C) When a passenger on a journey through the United States to a foreign destination arrives in the customs territory of the United States from a place other than one of the territories or possessions of the United States, is processed by CBP, and the journey does not originate in the territories and possessions of the United States.

(iii) * * *

(C) When a passenger on a journey through the United States to a foreign destination arrives in the customs territory of the United States from one of the territories and possessions of the United States and is processed by CBP.

* * * * *

(h) *Annual customs broker permit user fee.* Customs brokers are subject to an annual user fee of $138, as adjusted by the terms of paragraph (k) of this section, for each district permit and for a national permit held by an individual, partnership, association, or corporation. The annual user fee for each district permit must be submitted to the port through which the broker was granted the permit. The annual user fee for a national permit must be submitted to the port through which the broker's license is delivered.

* * * * *

(k) *Adjustment for inflation of Customs Consolidated Omnibus Budget Reconciliation Act (COBRA) user fees*—(1) *Fee amounts.* CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations, as adjusted, will be published in the **Federal Register** annually for each fiscal year at least 60 days prior to the effective date of the new fees and limitations. The fee and limitation amounts will also be maintained for the public's convenience on the CBP Web site at *www.cbp.gov.*

(2) *Methodology for annual adjustments of fees and limitation amounts for inflation.* CBP will determine the adjustments, if any, by making the following calculations:

(i) Calculate the arithmetic average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 = 100 (CPI–U) for the current year based on the most recent June-May period. This figure is referred to as (A).

(ii) Calculate the arithmetic average of the CPI–U for FY 2014. This figure is referred to as (B).

(iii) State the arithmetic average of CPI–U for the comparison year which will be either (B) if the fees have never been adjusted in accordance with this paragraph (k), or the arithmetic average of the CPI–U for the last year in which fees were adjusted in accordance with this paragraph (k) as set forth in the **Federal Register** notice that last adjusted the fee. This figure is referred to as (C).

(iv) Calculate the difference between the arithmetic averages of the CPI–U of the comparison year (C) and the current year (A). This difference is referred to as (D). (D) = (A) − (C).

(v) Round the difference (D) to the nearest whole number. This figure is referred to as (E).

(vi) Calculate the percentage change in the arithmetic averages of the CPI–U of the comparison year (C) and the current year (A) which is referred to as (F). (F) = ((E) ÷ (C)) × 100%.

(vii) If (F) is one percent or more, proceed to the next step (viii). If (F) is less than one percent, no adjustment will be made.

(viii) Calculate the difference in the arithmetic average of the CPI–U between the current year (the most recent June through May period) and the base year (FY 2014). This difference is referred to as (G). (G) = (A) − (B).

(ix) Calculate the percentage change in the CPI–U from the base year to the current year. This figure is referred to as (H). (H) = ((G) ÷ (B)) × 100%.

(x) Increase the fees and limitations that are subject to the rules of this paragraph by (H), calculating fees and limitations to the second decimal.

■ 3. In § 24.23:

■ a. Add introductory text;

■ b. Paragraph (b)(1)(i)(A) is amended by adding the words, as adjusted in accordance with the terms of § 24.22(k) of this part,'' after the words ''$1.00 per individual air waybill or bill of lading fee'';

■ c. Paragraph (b)(1)(i)(B) is amended by adding the words '', as adjusted in accordance with the terms of § 24.22(k) of this part,'' after the amounts ''$485'' and ''$25'';

■ d. Paragraph (b)(1)(ii) is amended by adding the words '', as adjusted in accordance with the terms of § 24.22(k) of this part,'' after the words ''surcharge of $3'';

■ e. Paragraph (b)(2)(i) is amended by adding the words '', as adjusted in accordance with the terms of § 24.22(k) of this part,'' after the amount ''$2'';

■ f. Paragraph (b)(2)(ii) is amended by adding the words '', as adjusted in accordance with the terms of § 24.22(k) of this part,'' after the amount ''$6'';

■ g. Paragraph (b)(2)(iii) is amended by adding the words '', as adjusted in accordance with the terms of § 24.22(k) of this part,'' after the amount ''$9''; and

■ h. Paragraph (b)(4) is revised.

The addition and revision read as follows:

§ 24.23 Fees for processing merchandise.

This section sets forth the terms and conditions for when the fees for processing merchandise are required. The specific merchandise processing fee amounts and corresponding limitations that appear in this section are not the actual fees or limitations, but represent the base year amounts that are subject to adjustment each fiscal year in accordance with the Fixing America's Surface Transportation Act (FAST Act) using Fiscal Year 2014 as the base year for comparison. (*See* Appendix B to part 24 for a table setting forth the fees and limitations subject to adjustment along with the corresponding statutory authority, the regulatory citation, the name of the fee or limitation, and the Fiscal Year 2014 base amount which reflects the statutory amounts that were adjusted by the American Jobs Creation Act of 2004 (Pub. L. 108–357).) The methodology for adjusting the fees and limitations to reflect the percentage, if any, of the increase in the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI–U) for the preceding 12-month period (June through May) compared to the Consumer Price Index for fiscal year 2014 is set forth in § 24.22(k) of this part. CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations will be published in the **Federal Register** annually for each fiscal year at least 60 days prior to the effective date of the new fees and limitations. The fees and the limitations will also be maintained for the public's convenience on the CBP Web site at *www.cbp.gov.*

* * * * *

(b) * * *

(4) *Express consignment carrier and centralized hub facilities*—(i) *General.* Each carrier or operator using an express consignment carrier facility or a centralized hub facility must pay to CBP a fee in the amount of $1.00, as adjusted in accordance with the terms of

paragraph (k) of § 24.22 of this chapter, per individual air waybill or individual bill of lading for the processing of airway bills for shipments arriving in the United States. In addition, if merchandise is formally entered and valued at $2,500 or less, the importer of record must pay to CBP the ad valorem fee specified in paragraph (b)(1) of this section, if applicable. An individual air waybill or individual bill of lading is the individual document issued by the carrier or operator for transporting and/or tracking an individual item, letter, package, envelope, record, document, or shipment. An individual air waybill is not a consolidation of several air waybills, and is not a master bill or other consolidated document. An individual air waybill or bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where the shipment is assigned to a single ultimate consignee, and no lower bill unit exists. Payment must be made to CBP on a quarterly basis and must cover the individual fees for all subject transactions that occurred during a calendar quarter.

(ii) *Maximum and minimum fees.* Subject to the provisions of paragraph (b)(1)(i)(A) and (b)(4) of this section relating to the express consignment carrier facility or centralized hub facility fee, the fee per individual air waybill or bill of lading charged under paragraph (b)(1)(i)(A) of this section must not exceed $1, as adjusted in accordance with the terms of § 24.22(k) of this part, and must not be less than $0.35, as adjusted by § 24.22(k) of this part.

(iii) *Quarterly payments.* The following additional requirements and conditions apply to each quarterly payment made under this section:

(A) The quarterly payment must conform to the requirements of § 24.1 of this part, must be submitted electronically via Fedwire or *pay.gov,* or mailed to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278, and must be received by CBP no later than the last day of the month that follows the close of the calendar quarter to which the payment relates.

(B) The following information must be included with the quarterly payment:

(*1*) The identity of the calendar quarter to which the payment relates;

(*2*) The identity of the facility for which the payment is made and the port code that applies to that location and, if the payment covers multiple facilities, the identity of each facility and its port code and the portion of the payment that pertains to each port code; and

(*3*) The total number of individual air waybills and individual bills of lading covered by the payment, and a breakdown of that total for each facility covered by the payment according to the number covered by formal entry procedures, the number covered by informal entry procedures specified in §§ 128.24(e) and 143.23(j) of this chapter, and the number covered by other informal entry procedures.

(C) Overpayments or underpayments may be accounted for by an explanation in, and adjustment of, the next due quarterly payment to CBP. In the case of an overpayment or underpayment that is not accounted for by an adjustment of the next due quarterly payment to CBP, the following procedures apply:

(*1*) In the case of an overpayment, the carrier or operator may request a refund by writing to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278. The refund request must specify the grounds for the refund and must be received by CBP within one year of the date the fee for which the refund is sought was paid to CBP; and

(*2*) In the case of an underpayment, interest will accrue on the amount not paid from the date payment was initially due to the date that payment to CBP is made.

(D) The underpayment or failure of a carrier or operator using an express consignment carrier facility or a centralized hub facility to pay all applicable fees owed to CBP pursuant to paragraph (b)(4) of this section may result in the assessment of penalties under 19 U.S.C. 1592, liquidated damages, and any other action authorized by law.

* * * * *

■ 4. Add appendices A and B to read as follows:

APPENDIX A TO PART 24—CUSTOMS COBRA USER FEES AND LIMITATIONS IN 19 CFR 24.22

19 U.S.C. 58c	19 CFR 24.22	Customs COBRA user fee/limitation	FY14 Base fee/limitation (subject to adjustment in accordance with the FAST Act)
(a)(1)	(b)(1)(i)	Fee: Commercial Vessel Arrival Fee	$437
(b)(5)(A)	(b)(1)(ii)	Limitation: Calendar Year Maximum for Commercial Vessel Arrival Fees.	5,955
(a)(8)	(b)(2)(i)	Fee: Barges and Other Bulk Carriers Arrival Fee	110
(b)(6)	(b)(2)(ii)	Limitation: Calendar Year Maximum for Barges and Other Bulk Carriers Arrival Fees.	1,500
(a)(2)	(c)(1)	Fee: Commercial Truck Arrival Fee	5.50
(b)(2)	(c)(2) and (3)	Limitation: Commercial Truck Calendar Year Prepayment Fee.	100
(a)(3)	(d)(1)	Fee: Railroad Car Arrival Fee	8.25
(b)(3)	(d)(2) and (3)	Limitation: Railroad Car Calendar Year Prepayment Fee	100
(a)(4)	(e)(1) and (2)	Fee and Limitation: Private Vessel or Private Aircraft First Arrival/Calendar Year Prepayment Fee.	27.50
(a)(6)	(f)	Fee: Dutiable Mail Fee	5.50
(a)(5)(A)	(g)(1)(i)	Fee: Commercial Vessel or Commercial Aircraft Passenger Arrival Fee.	5.50
(a)(5)(B)	(g)(1)(ii)	Fee: Commercial Vessel Passenger Arrival Fee (from one of the territories and possessions of the United States).	1.93
(a)(7)	(h)	Fee: Customs Broker Permit User Fee	138

APPENDIX B TO PART 24—CUSTOMS COBRA USER FEES AND LIMITATIONS IN 19 CFR 24.23

19 U.S.C. 58c	19 CFR 24.23	Customs COBRA user fee/limitation	FY14 Base fee/ limitation (subject to adjustment in accordance with the FAST Act)
(b)(9)(A) (ii)	(b)(1)(i)(A)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	$1
(b)(9)(B)(i)	(b)(1)(i)(B)(2)	Limitation: Minimum Express Consignment Carrier/Centralized Hub Facility Fee.	0.35
(b)(9)(B)(i)	(b)(1)(i)(B)(2)	Limitation: Maximum Express Consignment Carrier/Centralized Hub Facility Fee.	1
(a)(9)(B)(i); (b)(8)(A)(i)	(b)(1)(i)(B)(1)	Limitation: Minimum Merchandise Processing Fee	25
(a)(9)(B)(i); (b)(8)(A)(i)	(b)(1)(i)(B)(1)	Limitation: Maximum Merchandise Processing Fee	485
(b)(8)(A)(ii)	(b)(1)(ii)	Fee: Surcharge for Manual Entry or Release	3
(a)(10)(C)(i)	(b)(2)(i)	Fee: Informal Entry or Release; Automated and Not Prepared by CBP Personnel.	2
(a)(10)(C)(ii)	(b)(2)(ii)	Fee: Informal Entry or Release; Manual and Not Prepared by CBP Personnel.	6
(a)(10)(C)(iii)	(b)(2)(iii)	Fee: Informal Entry or Release; Automated or Manual; Prepared by CBP Personnel.	9
(b)(9)(A)(ii)	(b)(4)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	1

PART 111—CUSTOMS BROKERS

■ 5. The general authority citation for part 111 and the specific authority citation for § 111.96 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

* * * * *

§ 111.19 [Amended]

■ 6. In § 111.19(c):

■ a. Remove the phrase ''100 and 138'' in the first sentence; and

■ b. Remove the amounts ''100'' and ''138'' in each place that they appear.

§ 111.96 [Amended]

■ 7. In § 111.96(c):

■ a. In the first sentence, remove the words ''of 138'' and add in their place the words ''specified in § 24.22(h) of this chapter''; and

■ b. Remove the figure ''138'' in each place that it appears.

Ronald D. Vitiello,

Acting Deputy Commissioner, U.S. Customs and Border Protection.

Approved: October 30, 2017.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2017–23878 Filed 10–31–17; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2017–N–5995]

Medical Devices; Immunology and Microbiology Devices; Classification of the BCR–ABL Quantitation Test

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the BCR–ABL quantitation test into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the BCR–ABL quantitation test's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective November 1, 2017. The classification was applicable on July 22, 2016.

FOR FURTHER INFORMATION CONTACT: Ryan Lubert, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4545, Silver Spring, MD 20993–0002, 240–402–6357, *ryan.Lubert@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the BCR–ABL quantitation test as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval.

We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act and part 807 (21 U.S.C. 360(k) and 21 CFR part 807, respectively).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On January 19, 2016, Asuragen, Inc., submitted a request for De Novo classification of the QuantideX qPCR BCR–ABL IS Kit. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on July 22, 2016, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 866.6060. We have named the generic type of device BCR–ABL quantitation test, and it is identified as a reverse transcription-quantitative polymerase chain reaction (RT-qPCR) test for the quantitation of BCR–ABL1 expressed on the International Scale (IS) and control transcripts in total RNA from whole blood of diagnosed t(9;22) positive chronic myeloid leukemia (CML) patients during monitoring of treatment with tyrosine kinase inhibitors. This test is not intended for the diagnosis of CML.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—BCR–ABL QUANTITATION TEST RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures/21 CFR section
False negative results	Special Controls (1) and (2) (21 CFR 866.6060(b)(1) and (2)).
False positive results	Special Controls (1) and (2) (21 CFR 866.6060(b)(1) and (2)).
Lack of traceability of results	Special Control (3) (21 CFR 866.6060(b)(3)).

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR parts 801 and 809, regarding labeling have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 2. Add § 866.6060 to subpart G to read as follows:

§ 866.6060 BCR–ABL quantitation test.

(a) *Identification.* A BCR–ABL quantitation test is identified as a reverse transcription-quantitative polymerase chain reaction (RT-qPCR) test for the quantitation of BCR–ABL1 expressed on the International Scale (IS) and control transcripts in total RNA from whole blood of diagnosed t(9;22) positive chronic myeloid leukemia (CML) patients during monitoring of treatment with tyrosine kinase inhibitors. This test is not intended for the diagnosis of CML.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Premarket notification submissions must include the following information:

(i) The indication for use must indicate the variant(s) for which the assay was designed and validated, for example BCR–ABL e13a2 and/or e14a2.

(ii) A detailed description of all components in the test, including the following:

(A) A detailed description of the test components, all required reagents, instrumentation and equipment, including illustrations or photographs of non-standard equipment or methods;

(B) Detailed documentation of the device software including, but not limited to, standalone software applications and hardware-based devices that incorporate software;

(C) Methodology and protocols for control procedures for the assay to allow reporting on the International Scale;

(D) A description of the result outputs, analytical sensitivity of the assay, and the range of values that will be reported; and

(E) A description of appropriate internal and external controls that are recommended or provided. The description must identify those control elements that are incorporated into the testing procedure.

(iii) Information that demonstrates the performance characteristics of the test, including:

(A) For indications for use based on a threshold established in a predicate device of this generic type, device performance data from either a method comparison study to the predicate device or through a clinical study demonstrating clinical validity using well-characterized prospectively or retrospectively obtained clinical specimens, as appropriate, representative of the intended use population;

(B) For indications for use based on a threshold not established in a predicate device of this generic type, device performance data from a clinical study demonstrating clinical validity using well-characterized prospectively or retrospectively obtained clinical specimens, as appropriate, representative of the intended use population;

(C) Device reproducibility data generated, using a minimum of three sites, of which at least two sites must be external sites, with two operators at each site. Each site must conduct a minimum of three runs per operator over non-consecutive days evaluating a minimum of five different BCR–ABL concentrations that span and are well distributed over the measuring range and include MR3 (0.1 percent IS). Results shall be reported as the standard deviation and percentage coefficient of variation for each level tested. Prespecified acceptance criteria must be provided and followed;

(D) Device precision data using clinical samples to evaluate the within-lot, between-lot, within-run, between run, and total variation;

(E) Device linearity data using a dilution panel created from clinical samples;

(F) Device analytic sensitivity data, including limit of blank, limit of detection, and limit of quantification;

(G) Device specificity data, including interference and cross-contamination; and

(H) Device stability data, including real-time stability of samples under various storage times, temperatures, and freeze-thaw conditions.

(iv) Identification of risk mitigation elements used by your device, including a detailed description of all additional procedures, methods, and practices incorporated into the instructions for use that mitigate risks associated with testing using your device.

(2) Your 21 CFR 809.10 compliant labeling must include the following:

(i) The intended use in your 21 CFR 809.10(a)(2) and (b)(2) complaint labeling must include an indication for use statement that reads ''This test is not intended for the diagnosis of CML''; and

(ii) A detailed description of the performance studies conducted to comply with paragraph (b)(1)(iii) of this section and a summary of the results.

(3) Your device output must include results on the International Scale (IS) and your assay must include multipoint calibration controls traceable to a relevant international reference panel (*e.g.,* the World Health Organization International Genetic Reference Panel for quantitation of BCR–ABL mRNA).

Dated: October 26, 2017.

Lauren Silvis,

Chief of Staff.

[FR Doc. 2017–23742 Filed 10–31–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

25 CFR Chapters I through III and V through VII

30 CFR Chapters II, IV, V, VII, and XII

36 CFR Chapter I

43 CFR Subtitles A and B

50 CFR Chapters I and IV

[178D0102DM, DS6CS00000, DLSN00000.000000, DX.6CS25]

Final Report: Review of the Department of the Interior Actions That Potentially Burden Domestic Energy

AGENCY: Office of the Secretary, Interior.

ACTION: Availability of Final Report.

SUMMARY: The Department of the Interior (Interior or the Department) is announcing the availability of and publishing in its entirety the *Final Report: Review of the Department of the Interior Actions that Potentially Burden Domestic Energy* prepared pursuant to Executive Order 13783, ''Promoting Energy Independence and Economic Growth.''

DATES: November 1, 2017.

ADDRESSES: The report is available online at: *https://www.doi.gov/sites/doi.gov/files/uploads/interior_energy_actions_report_final.pdf.*

FOR FURTHER INFORMATION CONTACT: Mark Lawyer, 202–208–5257, *mark_lawyer@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: Executive Order 13783, ''Promoting Energy Independence and Economic Growth,'' 82 FR 16093 (March 31, 2017), declared a national policy of promoting clean and

safe development of domestic energy resources, while avoiding regulatory burdens that unnecessarily limit energy production, constrain economic growth, or hinder job creation. The Executive Order directed the heads of agencies to undertake an immediate review of all agency actions (including regulations, orders, guidance documents, policies, and other similar agency actions) that potentially burden the development or use of domestically produced energy resources, giving particular attention to oil, natural gas, coal, and nuclear energy resources. The Executive Order instructed agencies not to include agency actions that are required by law, necessary for the public interest, or consistent with the policy set forth in the Order. The Executive Order directed agencies to submit reports describing the actions identified through their reviews and providing specific recommendations that could alleviate or eliminate aspects of agency actions that burden domestic energy production to the Vice President, the Director of the Office of Management and Budget (OMB), the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chair of the Council on Environmental Quality.

The Department of the Interior has aggressively pursued a comprehensive review of Interior's energy activities. Interior is publishing the *Final Report: Review of the Department of the Interior Actions that Potentially Burden Domestic Energy* (October 24, 2017) prepared pursuant to Executive Order 13783 in its entirety in this Notice. Interior also is making the *Final Report* available on its Web site at: *https://www.doi.gov/sites/doi.gov/files/uploads/interior_energy_actions_report_final.pdf.* Please note that while the format of the *Final Report* in this Notice may vary slightly from the version available on the website due to **Federal Register** style guidelines, the substance of both versions is the same.

David L. Bernhardt,

Deputy Secretary.

DEPARTMENT OF THE INTERIOR

Final Report: Review of the Department of the Interior Actions That Potentially Burden Domestic Energy

October 24, 2017

I. PURPOSE OF THIS REPORT
II. INTERIOR'S ROLE IN DOMESTIC ENERGY PRODUCTION, DEVELOPMENT, AND USE
III. IMMEDIATE ACTION—SECRETARIAL ORDERS
IV. RESULTS OF INTERIOR'S REVIEW OF POTENTIALLY ENERGY–BURDENING ACTIONS
A. Bureau of Land Management
B. Bureau of Ocean Energy Management
C. Bureau of Safety and Environmental Enforcement
D. Office of Natural Resources Revenue
E. Office of Surface Mining Reclamation and Enforcement
F. U.S. Fish and Wildlife Service
G. Bureau of Reclamation
H. Bureau of Indian Affairs
I. Integrated Activity Plan for Oil & Gas in the National Petroleum Reserve—Alaska
J. Mitigation
K. Climate Change
V. OUTREACH SUMMARY
VI. CONCLUSION
VII. ATTACHMENTS
Secretarial Orders and Secretary's Memorandum

Report of the Secretary of the Interior

Final Report: Review of the Department of the Interior Actions That Potentially Burden Domestic Energy

I. Purpose of this Report

''*Energy is an essential part of American life and a staple of the world economy. Achieving American energy dominance begins with recognizing that we have vast untapped domestic energy reserves. For too long America has been held back by burdensome regulations on our energy industry. The Department is committed to an America-first energy strategy that lowers costs for hardworking Americans and maximizes the use of American resources, freeing us from dependence on foreign oil.*''

Secretary Zinke, May 1, 2017, Secretarial Order 3351 Strengthening the Department of the Interior's Energy Portfolio

This final report describes the Department of the Interior's (Interior or Department) progress in implementing Executive Order (EO) 13783, *Promoting Energy Independence and Economic Growth,* dated March 28, 2017. EO13783 requires the head of each agency to carry out a review of all agency actions that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. *See* EO13783, section 2(a). On May 8, 2017, the Office of Management and Budget (OMB) issued guidance to agencies on the contents of a draft report. *See* OMB Guidance M–17–24 (May 8, 2017). The Secretary of the Interior (Secretary) has aggressively pursued a comprehensive review of Interior's energy activities and this final report details the results of this review.

II. Interior's Role in Domestic Energy Production, Development, and Use

Interior is the steward and manager of America's natural resources, including oil, gas, coal, hydropower, and renewable energy resources. Interior manages lands, subsurface rights, and offshore areas that produce approximately 19 percent of the Nation's energy. Energy development on public lands increases domestic energy production, provides alternatives to overseas energy resources, creates jobs, and enhances the Nation's energy security. The Office of Natural Resources Revenue (ONRR) collects an average of over $10 billion annual revenue from onshore and offshore energy production, one of the Federal Government's largest sources of non-tax revenue.

Nine of Interior's bureaus have energy programs and responsibilities:

- The Bureau of Land Management (BLM) administers onshore energy and subsurface minerals on certain public lands.
- The Office of Surface Mining Reclamation and Enforcement (OSMRE) works with states and tribes to oversee environmentally sound coal mining operations;
- The Bureau of Ocean Energy Management (BOEM) oversees offshore oil, gas, and wind development.
- The Bureau of Safety and Environmental Enforcement (BSEE) is the lead Federal agency charged with improving safety and ensuring environmental protection related to the offshore energy industry, primarily oil and natural gas, on the U.S. Outer Continental Shelf (OCS).
- The Bureau of Reclamation (BOR) is the second largest producer of hydroelectric power in the United States, generating over 40 million megawatt-hours of electricity each year;
- The Bureau of Indian Affairs (BIA) oversees leasing of tribal and Indian land for energy development.
- The Office of Natural Resources Revenue (ONRR) collects revenue from energy production and development.
- The United States Geological Survey (USGS) conducts research and assessments on the location, quantity, and quality of energy resources, including the economic and environmental effects of resource extraction and use.

The U.S. Fish and Wildlife Service (FWS) and National Park Service (NPS), while not directly involved in the production or development of energy as

part of their missions, may have Federal or non-Federal oil and gas or mineral inholdings. These agencies also manage lands and trails through which important energy-related infrastructure may pass in order to bring affordable energy to American families throughout our country. These agencies therefore have the ability to reduce potential burdens on domestic energy production, development, or transmission.

III. Immediate Action—Secretarial Orders

When the United States is a leader in developing its energy resources, it is less dependent on other nations, leading to a stronger America. Interior is committed to an America-First energy strategy that fosters domestic energy production in order to keep energy prices low for American families, businesses, and manufacturers. Every drop of oil, Mcf of natural gas or MW of offshore wind energy produced here in the U.S. benefits the American workers employed in those operations and also frees us from dependence on foreign energy resources. Beyond enhancing America's energy security, low cost energy benefits the American consumer and enhances American manufacturing competitiveness, making American businesses more competitive globally. Secretary Zinke recognizes that development of energy resources on public lands increases the Nation's domestic energy supply, provides alternatives to overseas energy resources, generates revenue, creates jobs, and enhances national security. Eliminating harmful regulations and unnecessary policies will require a sustained and focused effort. That said, the Department will strike the appropriate balance in order to make use of our Nation's domestic resource wealth while also ensuring careful attention to safe and environmentally responsible operations both onshore and offshore, and promoting conservation stewardship.

Secretary Zinke has issued seven Secretarial Orders to improve domestic onshore and offshore energy production that further these principles. To ensure energy policies receive the highest level attention across Interior, the Secretary established the Counselor to the Secretary for Energy Policy position to coordinate the energy policy of Interior, including, but not limited to, promoting responsible development of energy on public lands managed and administered by Interior, developing strategies to eliminate or minimize regulatory burdens that unnecessarily encumber energy, and promoting efficient and effective processing of energy-related authorizations, permits, regulations, and agreements. *See* Secretarial Order 3351, ''Strengthening the Department of the Interior's Energy Portfolio'' (May 1, 2017). Establishing this position that reports directly to the Secretary assures that developing America's energy resources in a responsible way to create jobs and enhance the energy security of the United States will remain a central priority. The remaining six Secretarial orders are:

- Secretarial Order 3348—Concerning the Federal Coal Moratorium;
- Secretarial Order 3349—American Energy Independence;
- Secretarial Order 3350—America-First Offshore Energy Strategy;
- Secretarial Order 3352—National Petroleum Reserve—Alaska;
- Secretarial Order 3353—Greater Sage-Grouse Conservation and Cooperation with Western States; and
- Secretarial Order 3354—Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program.

These Orders direct Interior bureaus and offices to take immediate and specific actions to identify and alleviate or eliminate burdens on domestic energy development. Within this framework, bureaus have identified actions and, in some cases, already made progress in alleviating or eliminating the energy burdens.

A. Secretary Order 3348—Concerning the Federal Coal Moratorium

One of Secretary Zinke's first acts was to sign Secretarial Order 3348, ''Concerning the Federal Coal Moratorium'' (March 29, 2017), which removed the moratorium on the Federal coal leasing program by revoking a prior Secretarial Order (Secretarial Order 3338, ''Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program''). Secretarial Order 3348 promotes American energy security, job creation, and proper conservation stewardship. It directs BLM to process coal lease applications and modifications expeditiously and directs Interior bureaus and offices to make appropriate changes to policy and guidance documents to further President Donald Trump's policy of promoting American energy independence and economic growth. (See further discussion below at IV.x and E.)

In addition to lifting the coal moratorium, Secretary Zinke took other actions to advance American energy independence. In announcing these actions he said, ''Today I signed a series of directives to put America on track to achieve the President's vision for energy independence and bringing jobs back to communities across the country.'' These directives foster responsible development of coal, oil, gas, and renewable energy on Federal and tribal lands and initiate review of agency actions directed by EO13783.

B. Secretarial Order 3349—American Energy Independence

The most overarching Secretarial Order reducing burdens on energy development is Secretarial Order 3349, ''American Energy Independence'' (March 29, 2017), which directed bureaus to examine specific actions impacting oil and gas development, and any other actions affecting other energy development. It revoked Secretarial Order 3330, ''Improving Mitigation Policies and Practices of the Department of the Interior,'' and directed bureaus and offices to review all actions taken pursuant to that Order for possible reconsideration, modification, or rescission. It also directed each bureau and office to review actions taken regarding rescinded Executive Orders related to climate change. Further, it directed the review of the following specific actions impacting energy development:

- BLM Hydraulic Fracturing Rule (RIN 1004–AE26) (see discussion below under IV.A.i.);
- BLM Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule (RIN 1004–AE14) (see discussion below under IV.A.ii);
- NPS Non-Federal Oil and Gas Rights Rule (RIN 1024–AD78); and
- FWS National Wildlife Refuge System; Management of Non-Federal Oil and Gas Rights (RIN 1018–AX36) (see discussion below under IV.F.).

C. Secretarial Order 3350—America-First Offshore Energy Strategy

This Order enhances opportunities for energy exploration, leasing, conservation stewardship, and development on the Outer Continental Shelf (OCS), thereby providing jobs, energy security, and revenue for the American people by reinitiating the five-year planning process. Among other actions, it directed the review of the following regulatory actions that impact offshore energy development:

- BOEM Notice to Lessees (NTL) No. 2016–N01 entitled, ''Notice to Lessees and Operators of Federal Oil and Gas, and Sulfur Leases, and Holders of Pipeline Right-of-Way and Right-of-Use and Easement Grants in the Outer Continental Shelf'';
- BOEM Offshore Air Quality Control, Reporting, and Compliance Rule (RIN 1010–AD82);

• BSEE Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control (RIN 1014–AA11); and

• BOEM and BSEE Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf Rule (RIN 1082–AA00).

D. Secretarial Order 3352—National Petroleum Reserve—Alaska

This Order provides for clean and safe development of oil and gas resources in the National Petroleum Reserve in Alaska, recognizing that prudent development of these resources is essential to ensuring the Nation's geopolitical security. (See discussion below at IV.J.)

E. Secretarial Order 3353—Greater Sage-Grouse Conservation and Cooperation With Western States

Sage-grouse protections can affect energy development because these activities often share the same land across the 11 western states and 67 million acres of Federal land that are affected by sage grouse habitat. This Order establishes a Sage-Grouse Review Team that includes representatives from the BLM, FWS, and U.S. Geological Survey (USGS) to review the 2015 Sage-Grouse Plans and associated policies, giving appropriate weight to the value of energy and other development on public lands within BLM's overall multiple-use mission and to be consistent with the policy set forth in Secretarial Order 3349, ''American Energy Independence.'' (See discussion below at IV.A.vii.)

F. Secretarial Order 3354—Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program

This Order intends to ensure that quarterly oil and gas lease sales are consistently held and to identify ways to promote the exploration and development of Federal onshore oil and gas and solid mineral resources, including improving quarterly lease sales, enhancing the Federal onshore solid mineral leasing program, and improving the permitting processes. See discussion below at IV.A.

Details of progress in accordance with the aforementioned Executive and Secretarial Orders are described below, as well as relevant proposed actions that are currently under review. Prior to reaching a final determination regarding any proposed action, Interior may be required to comply with the notice and comment requirements of the Administrative Procedure Act or other laws and regulations, and will weigh the results of such procedures accordingly in its decisionmaking process.

IV. Results of Interior's Review of Potentially Energy-Burdening Actions

A. Bureau of Land Management

The Bureau of Land Management administers more land than any other Federal agency, consisting of more than 245 million surface acres and 700 million acres of subsurface mineral development. In response to EO13783 and Secretarial Orders 3348, 3349, and 3354, BLM is revising and reforming its leasing processes, improving the Coal Management Program, and delaying, revising, or rescinding burdensome regulations and policies to improve domestic energy production and support jobs.

Below is a list of specific actions BLM is undertaking to reduce burdens on the production of energy on BLM managed resources.

i. Review of the Hydraulic Fracturing Rule

Executive Order 13783 required Interior to review the final rule entitled, ''Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands,'' 80 FR 16128 (Mar. 26, 2015). Secretarial Order 3349 directed BLM to undertake that review. On July 25, 2017, BLM published a proposed rule to rescind the 2015 hydraulic fracturing rule because the compliance costs of the existing 2015 rule are not justified (82 FR 34464). All 32 states with Federal oil and gas leases and some tribes currently have laws or regulations that address hydraulic fracturing operations. Thus, rescinding the rule has the potential to reduce regulatory burdens by enabling oil and gas operations to occur under one set of regulations within each state or tribal lands, rather than two. Rescinding this rule may result in additional interest in oil and gas development on public lands, especially under higher commodity prices.

Interior has identified this proposed rescission as a deregulatory action under EO13771.

ii. Temporarily Suspend or Postpone Certain Requirements and Review to Rescind or Revise the Venting and Flaring Rule

Executive Order 13783 required Interior to review the final rule entitled, ''Oil and Gas; Waste Prevention, Production Subject to Royalties, and Resource Conservation,'' 81 FR 83008 (Nov. 18, 2016), also known as the ''Venting and Flaring'' rule. Secretarial Order 3349 ordered BLM to review the rule and report to the Assistant Secretary—Land and Minerals Management on whether the rule is fully consistent with the policy expressed in EO13783.

The BLM conducted an initial review of the rule and found that it was inconsistent with the policy stated in EO13783 that ''it 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.'' The BLM recognizes that the 2016 final rule poses a substantial burden on industry, particularly those requirements that are set to become effective on January 17, 2018. The BLM issued a proposed rule that was published in the **Federal Register** on October 5, 2017, seeking comment on temporarily suspending or delaying certain requirements until January 17, 2019, to reduce the regulatory burden on the energy industry. This will provide industry additional time to plan for and engineer responsive infrastructure modifications that will comply with the regulation.

If finalized, the revised regulation will provide significant additional phase-in time to oil and gas operators.

The BLM intends to work with industry to develop metrics, including key timelines or benchmarks, and the reduction of flaring from Federal and Indian lands over time.

Following up on its initial review, BLM has reviewed the 2016 final rule in accordance with the policies set forth in EO13783. The BLM is currently drafting a proposed rule that would eliminate overlap with the Environmental Protection Agency's (EPA) Clean Air Act authorities while also clarifying regulatory provisions related to the beneficial use of gas on Federal and Indian lands.

The BLM has identified the delay of effective date rulemaking as a deregulatory action under EO13771.

iii. Revise Oil and Gas; Onshore Orders Nos. 3, 4 and 5

The burdens placed on industry through these 3 new regulations are being reviewed as directed under EO13783. These 3 rulemakings, which were promulgated and issued concurrently, updated and replaced BLM's Onshore Orders for site security, oil measurement, and gas measurement regulations, respectively, that had been in place since 1989. They are codified in the Code of Federal Regulations at 43

CFR parts 3173, 3174, and 3175. External and internal oversight reviews prompted these rulemakings and found that many of BLM's production measurement and accountability policies were outdated and inconsistently applied. The new rules also address some of the Government Accountability Office (GAO) concerns for high risk with regard to Interior's production accountability. These 3 regulations impose new cost burdens on operators as a result of oil and gas facility infrastructure changes. The cost estimates for each individual rule are as follows:

- Order 3, Site Security: $31.2 million in one-time costs, plus an $11.7 million increase in annual operating costs;
- Order 4, Oil Measurement: $3.3 million in one-time costs, plus a $4.6 million increase in annual operating costs; and
- Order 5, Gas Measurement: $23.3 million one-time cost, plus $12.1 million increase in annual operating costs.

The new regulations also provide a process for approving new technology that meets defined performance goals. Some provisions of the rule may have added regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.

The BLM is currently assessing the rules to determine 1) if additional revisions are needed beyond the already-implemented phase-in period for certain provisions, 2) the ability for industry to introduce new technologies through a defined process, rather than through an exception request, and 3) the built-in waivers or variances. The BLM expects to complete its assessment of possible changes to alleviate burdens that may have added to constraints on energy production, economic growth and job creation by the end of the fourth quarter of FY 2017.

The new regulations have built in necessary waivers or variances. The BLM's establishment of a phase-in period for the new site security and production measurement regulations is an interim measure. The BLM will measure success over the phase-in period in terms of the production measurements, royalties paid, a reduction in under-reporting of production, and greater site security for production facilities.

iv. Revise and Replace Policy, Oil and Gas; IM 2010–117, ''Oil and Gas Leasing Reform—Land Use Planning and Lease Parcel Reviews''

This policy will be replaced with revised guidance for the purpose of establishing greater efficiencies in the oil and gas leasing process. Policy Instruction Memorandum (IM) 2010–117 established a process for leasing oil and gas resources on Federal lands. The BLM intended the IM to reduce the backlog of unissued leases. However, the IM has resulted in longer time frames in analyzing and responding to protests and appeals, as well as longer lead times for BLM to clear and make available parcels for oil and gas lease sales. It has also resulted in increased workload and staffing needs to conduct additional upfront environmental analysis.

The BLM has undertaken an effort to revise and reform its leasing policy and to streamline the leasing process from beginning (i.e. receipt of an Expression of Interest) to end (competitively offering the nominated acreage in a lease sale). Under existing policies and procedures, the process can take up to 16 months (and sometimes longer) from the time lands are nominated to the time a lease sale occurs. The BLM is examining ways to significantly reduce this time by as much as 8–10 months. The BLM plans to complete revisions to the leasing process in the first quarter of FY 2018.

A shorter period from nomination to sale will reduce the number of nominated acres awaiting competitive sale at any given time and will increase industry certainty regarding the acreage it holds. As a result, industry will be able to plan for and execute exploration and production strategies earlier, and respond more effectively to changing market conditions.

Reducing the average time from acreage nomination to lease sale will be BLM's measure of success. The BLM does not control what acreage industry nominates because market conditions can fluctuate dramatically; therefore, total nominated acreage awaiting sale is not likely to be a measure of success.

Until the policy revisions are completed, BLM is setting quarterly lease sale acreage targets to address the acreage currently nominated. The BLM is also identifying ways to augment staff support for potential sales in those offices with the greatest numbers of acres nominated.

v. Rescind Policy, Oil and Gas; IM 2013–101, ''Oil and Gas Leasing Reform—Master Leasing Plans (MLPs)''

This policy announced the incorporation of Master Leasing Plans (MLPs) in the oil and gas leasing process, further explained in Chapter V of the BLM Handbook H–1624–1, entitled ''Planning for Fluid Mineral Resources.'' The IM establishes a process for integrating an MLP into the land use planning process. The BLM has extended this IM several times while the BLM completes the public scoping and analysis for MLPs. An unintended consequence of this policy has been that many areas open to oil and gas leasing have been deferred from leasing while they await the completion of the MLP process.

The BLM has undertaken an effort to revise the leasing reform and MLP policy and to re-establish the BLM Resource Management Plans (RMPs) as the source of lands available for fluid minerals leasing. The BLM is currently evaluating existing MLP efforts with the goal of ending this approach. The BLM expects to rescind this IM and complete the revision of the above BLM Handbook, as well as any other relevant BLM handbooks, in the first quarter of FY 2018.

Because this change will re-establish the RMP as the source of land allocation decisions for fluid minerals, it will result in more streamlined National Environmental Policy Act (NEPA) analysis and a shorter timeframe for acreage nominations to make it to a competitive lease sale. Since extra time and NEPA analysis adds to uncertainty for industry and use of taxpayer dollars by the Department, removing these process-related steps has the effect of decreasing uncertainty.

The primary measure of success in removing regulatory burden from the rescission of the MLP policy will be in the elimination of related nominated acreage sale deferral pending completion of MLP NEPA. While there will continue to be acreage sale deferrals for various reasons, completion of MLP NEPA will no longer be one of them. The time frames will be shorter.

vi. Revise Policy, Oil and Gas; IM 2013–177, ''National Environmental Policy Act (NEPA) Compliance for Oil and Gas Lease Reinstatement Petitions''

This IM directs all BLM oil and gas leasing Field Offices to: 1) ensure RMP conformance; 2) evaluate the adequacy of existing NEPA analysis and documentation; and 3) complete any necessary new or supplemental NEPA analysis and documentation before approving a Class I or Class II oil and gas lease reinstatement petition. This IM has resulted in additional analysis and review time that often involves another surface management agency and, in some instances, has led to adding new lease stipulations prior to lease reinstatement.

Lease reinstatements were previously considered a ministerial matter, entailing a commensurate level of

review and process to complete. However, IM 2013–177 changed that in significant ways, resulting in additional NEPA review and significantly greater timeframes for completing the reinstatement. Rescinding or modifying this policy will greatly reduce decisionmaking timeframes on lease reinstatement requests. The BLM expects to complete review of this policy in the first quarter of FY 2018 and promptly finalize by the second quarter.

The BLM expects that changes to this policy will refocus the emphasis back to existing NEPA analysis and information, which will significantly shorten the time it takes to consider and process a lease reinstatement request. The policy changes will provide greater certainty and reduced expense for energy development companies and result in production occurring sooner.

The BLM will measure the reduction in burden in terms of the average time it takes to consider a complete lease reinstatement request.

Similar to MLPs, in the interim, BLM must identify and evaluate the status of each current lease reinstatement request in order to determine whether and how to expedite review and processing. There are no other interim measures, waivers or variances that are relevant to the process.

vii. Revise Policy, Oil and Gas: IM 2016–140, ''Implementation of Greater Sage-grouse Resource Management Plan Revisions or Amendments—Oil & Gas Leasing and Development Sequential Prioritization''

Policy IM 2016–140 is being reviewed for the purpose of enhancing consistency and certainty for oil and gas development in areas of sage-grouse habitat as directed by EO13783. This IM provides guidance on prioritizing implementation decisions for BLM oil and gas leasing and development, to be consistent with Approved Resource Management Plan Amendments for the Rocky Mountain and Great Basin Greater Sage-grouse Regions and nine Approved Resource Management Plans in the Rocky Mountain Greater Sage-grouse Region (collectively referred to as the Greater Sage-grouse Plans). The IM applies to activities in the areas covered by both the Rocky Mountain and Great Basin Regions Records of Decision, issued by BLM in September 2015, and also contains reporting requirements for communication between BLM State Offices and the Washington Office (WO). The IM may have added administrative burdens since it requires additional analysis and staff time to screen parcels and weigh potential impacts to the Greater Sage-grouse before the parcels are offered for leasing. It also requires additional analysis and staff time to process drilling permit approvals near Greater Sage-grouse areas.

The BLM's effort to avoid listing of the sage-grouse as an endangered species has affected many programs and a large area geographically. With new technologies and capabilities, such as long-reach horizontal boreholes in the oil and gas industry, the impacts are not as significant as once perceived. Likewise, the administrative burden is better understood and is likely less than once thought. Efforts are underway to better understand these conditions and define ways in which energy production and sage-grouse protection may continue to co-exist. Greater consistency and predictability will provide greater stability for industry. The BLM is currently assessing the policy to determine what revisions are needed and expects to complete this review in the fourth quarter of FY 2017.

When the BLM completes this effort, industry will have greater certainty in leasing, exploration and production activities due to availability of acreage for oil and gas development and a defined process and timeframe for consideration of Greater Sage-grouse impacts.

The BLM will measure success by assessing changes in industry's interest in nominating acreage for competitive sale and developing existing leases in areas affected by the Greater Sage-grouse amendments to RMPs. As industry increases its understanding and gains confidence in the consistency and predictability of BLM actions relative to Greater Sage-grouse, then acreage nominations, permit requests, and development should stabilize and be tied to market forces rather than tied to BLM Greater Sage-grouse decisions.

The BLM has been processing acreage nominations in Greater Sage-grouse areas and making them available for competitive sale. In addition, existing leases are being developed. This is evidence, in the interim, that both BLM and industry are developing innovative ways to adapt energy development in light of Greater Sage-grouse protections.

viii. Review of General Greater Sage-Grouse Conservation Policies and Plans

In September 2015, the BLM incorporated Greater Sage-grouse (GRSG) conservation measures into its land use plans within the range of the GRSG. In September 2016, the BLM issued a number of IMs to help guide the implementation of the GRSG plans. These GRSG plans and policies will affect where, when, and how energy and minerals are developed within the range of the GRSG.

Pursuant to Secretarial Order 3353, ''Greater Sage-Grouse Conservation and Cooperation with Western States,'' an Interior Sage-Grouse Review Team (Review Team) is working with the State-Federal Sage-Grouse Task Force to identify opportunities for greater collaboration, to better align Federal and State plans for the GRSG, to support local economies and jobs, and consider new and innovative ways to conserve GRSG in the long-term. Pursuant to the Secretarial Order, in August 2017, the Review Team submitted a report to the Secretary summarizing their review and providing recommendations regarding next steps.

The Review Team's report identified a number of potential actions to enhance the coordination and integration of state and Federal GRSG conservation efforts.

Success will be measured and evaluated in terms of improved working relationships among local, state, tribal, and Federal units of Government and in terms of improved partner and stakeholder understanding of effective GRSG conservation measures and of the science underlying them.

The BLM anticipates that some of the actions outlined in the Review Team's report to the Secretary could be implemented in the near future through changes in policy (through issuance of IMs, for example), technical assistance, or training. Other actions may require amending the land use plans. On October 11, 2017, the Department of the Interior, through BLM, initiated a public scoping process for RMP amendment(s) with associated NEPA documents. The comments may be submitted until November 27, 2017. Depending on the scope and significance, such amendments could take upwards of 9 months to 3 years to complete.

ix. Improve Land Use Planning and NEPA Act Policies and Procedures:

The BLM's land use planning regulations and policies are outlined in 43 CFR subparts 1601 and 1610, Resource Management Planning; BLM Manual Section 1601; and BLM Handbook 1601–1. The BLM's policies for complying with NEPA are outlined in BLM Handbook 1790–1 and the Interior NEPA implementing regulations are at 43 CFR part 46. Taken together, these regulations, manuals, and handbooks establish the policies and procedures BLM follows when conducting land use planning and NEPA compliance, including specific

actions related to energy and mineral development.

Pursuant to the Secretarial Memorandum of March 27, 2017, entitled ''Improving the Bureau of Land Management's Planning and National Environmental Policy Act Processes,'' the BLM is identifying potential actions it could take to streamline its planning and NEPA review procedures. As part of this identification process, BLM is working with state and local elected officials and groups, including the Western Governors' Association and the National Association of Counties, to engage and gather input. The BLM also has invited tribes and the public to provide input on how the Agency can make its planning and NEPA review procedures timelier, less costly, and more responsive to local needs. Pursuant to the Secretarial Memorandum, in September 2017, BLM will submit a report to the Secretary outlining recommended actions.

Once implemented, the actions recommended in the report should reduce the time and/or cost of complying with BLM's statutory direction to conduct land use planning under section 202 of FLPMA and complying with NEPA when evaluating proposed actions. These recommendations also should lead to more-standardized analyses in BLM's NEPA reviews at the land use plan and project level.

The reduction in burden will be measured and evaluated in terms of processing times and/or costs of authorizing energy development.

Some of the actions outlined in BLM's report to the Secretary will be actions that BLM will be able to implement in the near future, such as improvements to business processes, or updates to internal manuals or handbooks. Other actions would require changes in statute or regulation (such as new Categorical Exclusions), may depend on other agencies to act, or may require front-end investments in data or information technology.

x. Review Coal-Related Policies and Actions

On March 29, 2017, Secretary Zinke issued Secretarial Order 3348 to lift the Federal coal moratorium imposed by previous Secretarial Order 3338. This Order conformed to the directive in EO13783 requiring the Secretary to lift the moratorium and commence Federal coal leasing activities consistent with all applicable laws and regulations.

The BLM is working to process coal lease applications and modifications ''expeditiously'' in accordance with regulations and guidance that existed before Secretarial Order 3338. The BLM also ceased activities associated with preparation of the Federal Coal Program Programmatic Environmental Impact Statement (PEIS).

Consistent with EO13783 and Secretarial Order 3348, the BLM is reviewing its policies, with the intent to update or rescind them.

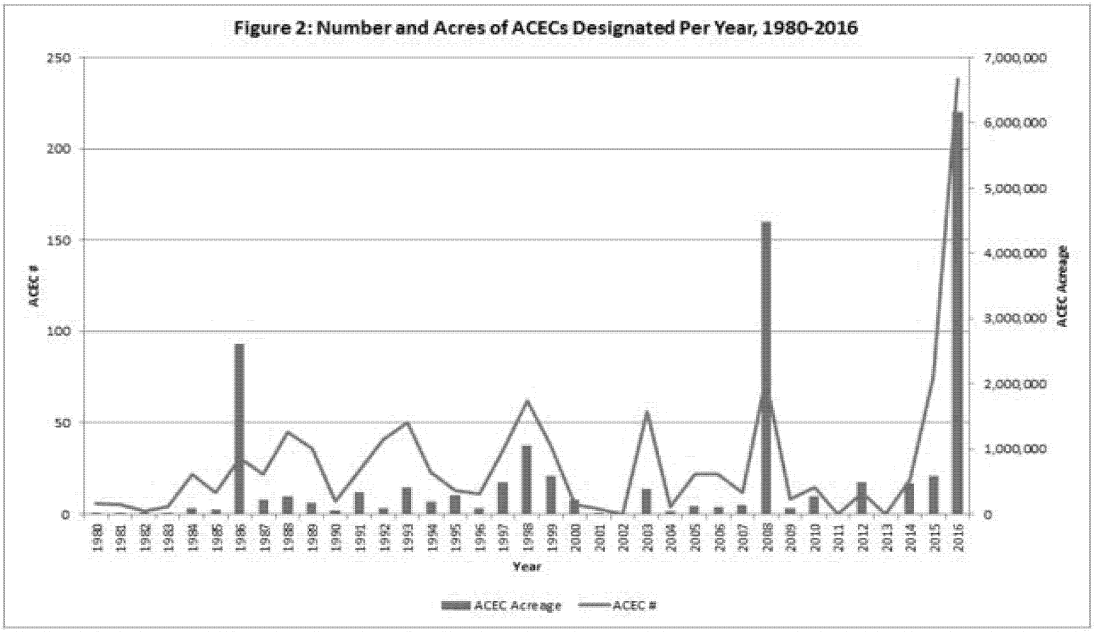
xi. Other Recommendations for Alleviating or Eliminating Actions That Could Directly or Indirectly Burden Energy Exploration or Production

- **Review Land Use Designations**

The BLM land use planning process ensures that public lands are managed in accordance with the intent of Congress as stated in FLPMA (43 U.S.C. 1701 et seq.), under the principles of multiple use and sustained yield. The BLM's Resource Management Plans (RMPs) are the basis for every on-the-ground action the BLM undertakes, which includes determinations on lands suitable for future energy leasing and permitting opportunities. The BLM uses land use designations as a part of the land use planning process to guide the management of certain geographic areas towards particular objectives, values or uses.

While some land use designations are made by Congressional, Secretarial, or Presidential action (and therefore require specific land management principles), the BLM has used broad discretion in establishing other formal and less-formal land use designations to set additional management criteria for public lands. In some cases, these criteria may conflict with other multiple use objectives for the land—such as energy development—and therefore have the potential to burden domestic energy development on public lands by reducing access to leasable acreage.

At the time of this report, BLM identified over 60 different land use designations used in RMPs, many of which may lead to additional restrictions on the use of the land. One example is the Area of Critical Environmental Concern (ACEC) designation, which is authorized by Federal Land Policy and Management Act (FLPMA). The Eastern Interior RMP, finalized on January 3, 2017, designated over 2 million acres of ACEC—much of which was recommended for closure to mineral entry and mineral leasing in order to best meet the objectives of the ACEC. The chart included below provides a visual reference for the increased use of this land use designation especially in more recent RMPs.



Note: Figure 2 only shows the number and acres of ACECs designated per year (by fiscal year) and does not present the number and acres that may have been removed per an RMP amendment or revision. Data includes ACECs that may also be Research Natural Areas. Not included in these data are ACECs that have been designated so far in FY 2017, including 2,062,997 acres of ACECs designated in the AK - Eastern Interior Fortymile and Draanjik RMPs.

The BLM will further evaluate the need for these numerous land use designations as a part of the ongoing review of their planning process. The BLM will also work with state, local, and tribal partners to incorporate efficiencies and update policies on the use of land use designations that may burden or hinder energy development on Federal lands.

• Review Use of Leasing Stipulations and Conditions of Approval

Aside from providing for leasing with standard lease terms in the land use planning process, BLM may apply lease stipulations to a specific unit at the planning stage. Stipulations set additional criteria to which an operator must adhere once the acreage is leased. Stipulations include no surface occupancy restrictions (NSO), which close acreage to surface-disturbing activities, timing restrictions (TL), which close acreage to surface-disturbing activities during certain timeframes, and other controlled surface use (CSU) restrictions, which include more specific restrictions such as sound and visual impacts or construction requirements. In some cases, these stipulations may have an impact on the attractiveness of the lease sale parcel in the bidding process.

The BLM may also assign Conditions of Approval (COA) at the permitting stage when an operator first applies for an Application for Permit to Drill (APD). Once an APD is filed, the BLM will send an onsite inspection team to determine the best location for the well, road, and facilities; identify site-specific concerns and potential environmental impacts associated with the proposal and potential options for mitigating these impacts, including COAs. Site-specific concerns include, but are not limited to: Well spacing; riparian and wetland areas; visual resource management such as painting infrastructure specific colors; and cultural and wildlife survey needs to comply with the National Historic Preservation Act (NHPA) and the Endangered Species Act (ESA).

Lease stipulations and additional conditions of approval added at the permitting stage burden energy development on public lands by adding additional development costs; increasing the complexity of the drilling operations; and extending project timeframes. The 2008 Energy Policy and Conservation Act Phase III study found that of the 128 Federal land use plans surveyed for inventory, approximately 3,125 individual stipulations and 157 types of COAs were being used.[1] The BLM does not have updated figures at the time of this report.

• Review Protest Regulations and Policy

Current BLM regulations allow any party to file a protest on a BLM decision, such as a protest on a land use plan or on a subsequent decision to include a parcel in an oil and gas lease sale. This process provides multiple opportunities to protest every step of the process of offering public lands for oil and gas leasing. To date, many state offices, such as CO, MT, NM, UT, and WY are receiving protests on every oil and gas parcel offered through the Notice of Competitive Lease Sale process.

In the past, protests were parcel-specific on issues unique to the parcel in question. In recent years, the reasons for protesting every parcel in the sale are broad-based and non-parcel specific, such as general concerns on climate change or hydraulic fracturing. In FY 2016, 72 percent of parcels offered for lease were protested. By comparison, in FY 2012, only 17 percent of parcels received protests. The number of parcels offered on the original sale notice decreased from 2,247 in FY 2012 to 820 in FY 2016.

If a protest is still pending on the day of sale, the parcel can still be offered during the sale but the protest must be resolved prior to the lease being issued and the protest may diminish interest in bidding. This in turn can delay payment of the State's share of the bonus bids—which occurred most recently in the State of New Mexico. In September 2016, BLM hosted a record-setting lease sale generating $145 million in revenue, of which $80 million was owed to the state Mineral Leasing Act revenue

[1] *https://www.blm.gov/sites/blm.gov/files/EPCA_III_Inventory_Onshore_Federal_Oil_Gas.pdf;* p. 42, 109.

sharing provision. As a result of the number of protested parcels and the length of time it took to resolve all protests, the payment to the State of New Mexico was delayed approximately 250 days.

This uptick in the protest process and the inability to reach conclusive resolutions in a timely manner is a burden on oil and natural gas development on public lands. A regulatory change may be necessary to limit redundant protests that hinder orderly development. Alternatively, the BLM is investigating the value in creating regional leasing teams that could build sufficient capacity to offer parcels during the BLM's quarterly lease sales.

xii. Revise Energy-Related Collections of Information Under the Paperwork Reduction Act

The BLM anticipates revising energy-related collections of information under the Paperwork Reduction Act (e.g., Approval of Operations (1004–0213) and Application for Permit to Drill (1014–0025)) to reduce administrative burden on energy development and use through simplification of forms and associated instructions/guidance and ceasing collection of information that is unnecessary or lacks practical utility.

B. Bureau of Ocean Energy Management

The BOEM is responsible for managing development of the Nation's offshore energy and mineral resources through offshore leasing, resource evaluation, review, and administration of oil and gas exploration and development plans, renewable energy development, economic analysis, NEPA analysis, and environmental studies. The BOEM promotes energy security, environmental protection and economic development through responsible, science-informed management of offshore conventional and renewable energy and mineral resources. The BOEM carries out these responsibilities while ensuring the receipt of fair market value for U.S. taxpayers on OCS leases, and balancing the energy demands and mineral needs of the Nation with the protection of the human, marine, and coastal environments.

Since the publication of EO13771 on January 30, 2017, BOEM has been reviewing all aspects of its programs to identify regulations and guidance documents that potentially burden the development or use of domestically produced energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.

Below are specific actions BOEM is undertaking to reduce burdens on the production of energy offshore in the America-First Offshore Energy Strategy, as delineated in EO13795 and S.O. 3350:

i. Air Quality Rule

The BOEM has been re-examining the provisions of the air quality proposed rule published on April 5, 2016 (81 FR 19718), which would provide the first substantive updates to the regulation since 1980. The proposed rule addressed air quality measurement, evaluation, and control with respect to oil, gas, and sulphur operations on the OCS of the United States in the central and western Gulf of Mexico and the area offshore the North Slope Borough in Alaska. Interior is currently reviewing recommendations on how to proceed, including promulgating final rules for certain necessary provisions and issuing a new proposed rule that may withdraw certain provisions and seek additional input on others.

ii. Financial Assurance for Decommissioning

Notice to Lessees No. 2016–N01, for which implementation has been suspended, would make substantial changes to BOEM's requirements for companies to provide financial assurance to meet decommissioning obligations. The BOEM has been undertaking a thorough review of the NTL, including gathering stakeholder input.

iii. Arctic Rule

On July 15, 2016, BOEM and the BSEE promulgated a final rule, ''Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf'' (81 FR 46478). Interior is reviewing the requirements for exploratory drilling conducted from mobile drilling units within the Arctic OCS (Beaufort Sea and Chukchi Sea Planning Areas). Interior is considering full rescission or revision of this rule, including associated information collection requirements. Review of this rule is expected to allow greater utilization of the Arctic drilling season.

iv. Oil and Gas Leasing on the Outer Continental Shelf

Secretary Zinke directed development of a new 5-year OCS oil and gas leasing program to spur safe and responsible energy development offshore. On July 3, 2017, BOEM published a request for information and comments on the preparation of a new 5-year National OCS Leasing Program for 2019–2024 (82 FR 30886). Upon its completion, the new program will replace the 2017–2022 program.

Secretarial Order 3350 directly implements EO13795, and also advances Interior's implementation of EO13783 by providing for the reevaluation of actions that impact exploration, leasing, and development of our OCS energy resources. This Secretarial Order enhances opportunities for energy exploration, leasing, and development on the OCS by establishing regulatory certainty for OCS activities. In accordance with this Secretarial Order, Interior is reviewing potential regulatory changes to reduce burden on offshore energy production, development, and use.

In addition, on July 13, Secretary Zinke offered 75.9 million acres offshore Texas, Louisiana, Mississippi, Alabama, and Florida for oil and gas exploration and development. The region-wide lease sale conducted on August 16, 2017, was the first offshore sale under the OCS Oil and Gas Leasing Program for 2017–2022. Under this program, 10 region-wide lease sales are scheduled for the Gulf, where resource potential and industry interest are high, and oil and gas infrastructure is well established. Two Gulf lease sales will be held each year and include all available blocks in the combined Western, Central, and Eastern Gulf of Mexico Planning Areas.

v. Seismic Permitting

Currently BOEM is one of two Federal agencies required to take separate regulatory actions in order to permit geological and geophysical surveying on the OCS. These seismic surveys, which are conducted by applicants, enable BOEM to make informed business decisions regarding oil and gas reserves, engineering decisions regarding the construction of renewable energy projects, and informed estimates regarding the composition and volume of marine mineral resources. This information is also used to ensure the proper use and conservation of OCS energy resources and the receipt of fair market value for the leasing of public lands.

The ongoing delay in reaching decisions on Federal authorization of seismic surveys is a burden that hinders domestic energy development by preventing industry from being able to better determine the size and location of potential energy resources below the seafloor. The BOEM experts believe that these surveys can be authorized with appropriate mitigation measures consistent with the protection required by applicable Federal laws, primarily the Marine Mammal Protection Act

(MMPA) and the Endangered Species Act (ESA). While BOEM is responsible for ultimately issuing a permit to allow these activities to move forward, no seismic surveying can be done without MMPA authorization by the National Marine Fisheries Service (NMFS). For this reason, the issuance of certain seismic permits by BOEM has been held up in a years-long process awaiting NMFS authorization. BOEM and NMFS are currently working on ways to streamline review, as directed in EO 13795, Sec. 3(c).

The Department believes that some improvements can be made through simple program initiatives, such as NMFS assigning dedicated staff to the permits or allowing BOEM to determine MMPA compliance for the purposes of BOEM-related activities in accordance with EO 13807. Finding a genuinely effective solution may warrant statutory changes as well as reorganizing departmental responsibilities within the Executive Branch in order to streamline opportunities to increase efficiency.

vi. Revise Energy-Related Collections of Information Under the Paperwork Reduction Act

The BOEM is reviewing four energy-related information collections, two of which are related to the Arctic Rule, and two of which collect information that is no longer needed.

C. Bureau of Safety and Environmental Enforcement

The BSEE ensures the safe and responsible exploration, development, and production of America's offshore energy resources through regulatory oversight and enforcement. The BSEE is focused on fostering secure and reliable energy production for America's future through a program of efficient permitting, appropriate regulations, compliance monitoring and enforcement, technical assessments, inspections, and incident investigations. As a steward of the Nation's OCS oil, gas, and mineral resources, the Bureau protects Federal royalty interests by ensuring that oil and gas production methods maximize recovery from underground reservoirs.

The BSEE continues the efforts begun earlier this calendar year to review and seek stakeholder input on opportunities to reduce burden on the regulated community while maintaining necessary safety and environmental protections. Specifically, the BSEE is focusing its review on 2 final rules, published in 2016, regarding safety and environmental protection for oil and gas exploration, development and production activities on the OCS. The first is the Well Control and Blowout Preventer (BOP) Rule (81 FR 25888); the second is the Arctic Exploratory Drilling Rule (the Arctic Rule) (81 FR 46478), which was issued jointly by BSEE and BOEM. Both rules (as described below) revised older regulations and added some new requirements that potentially burden development of domestic offshore oil and gas production. The BSEE continues to identify specific issues in both final rules that, if revised or eliminated through a future rulemaking process, could alleviate those burdens without reducing the safety or environmental protections of the rules. The BSEE is beginning the process of drafting timelines and developing stakeholder engagement strategies for potential revision to both sets of regulations. These rules fit into the category of ''Other Actions that Potentially Burden Development or Use of Energy.'' The BSEE has also identified policies that should be re-examined. Those are:

- review decommissioning infrastructure removal requirements and timelines for infrastructure;
- clarify Civil Penalties Guidance; and
- review current policies associated with taking enforcement actions against contractors.

The BSEE already completed publication of a final rule revising requirements of 30 CFR 250.180 to extend the period of time before a lease expires due to cessation of operations from 180 days to 1 year, thus allowing operators greater flexibility to plan exploration activities.[2] The BSEE also improved its civil penalty program through the creation of a Civil Penalty Enforcement Specialist in each district in the Gulf of Mexico Region to serve as a liaison with District and Headquarters throughout a civil penalty case, providing clarity and consistency among civil penalty cases.

The BSEE is also reviewing the Production Safety Systems Rule (30 CFR part 250, subpart H), based on Department guidance received between April and May of 2017. If areas for revision are identified, the BSEE would tier it behind the Well Control Rule (WCR) and the Arctic Rule in terms of potential burden reduction.

Below are the specific details of BSEE's review to identify additional regulations and policies that potentially burden development or use of energy.

i. Revise Well Control and BOP Rule (WCR)

The WCR was issued on April 29, 2016, and consolidated new equipment and operational requirements for well control, including drilling, completion, workover, and decommissioning operations. The rule also incorporated or updated references to numerous industry standards and established new requirements reflecting advances in areas such as well design and control, casing and cementing, real-time monitoring (RTM), subsea containment of leaks and discharges, and blowout preventer requirements. In addition, the final rule adopted several reforms recommended by several bodies that investigated the *Deepwater Horizon* incident.

The BSEE is considering several revisions to its regulations. Among those considerations is a rulemaking to revise the following aspects of the new well control regulations, including but not limited to:

- revising the requirements for sufficient accumulator capacity and remotely-operated vehicle (ROV) capability to both open and close reams on subsea BOPs (*i.e.,* to only require capability to close the rams);
- revising the requirement to shut in platforms when a lift boat approaches within 500 feet;
- extending the 14-day interval between pressure testing of BOP systems to 21 days in some situations;
- clarifying that the requirement for weekly testing of two BOP control stations means testing one station (not both stations) per week;
- simplifying testing pressures for verification of ram closure; and
- revising or deleting the requirement to submit test results to BSEE District Managers within 72 hours.

These changes are expected to strike the appropriate balance in order to maintain important safety and environmental protections while also ensuring development may continue.

The BSEE initiated review of potential regulatory changes to this rule in July 2017. The interim step before issuing a proposed rule to revise existing regulations is to seek input on potential areas of reform from the stakeholders. The BSEE is in the process of determining the most effective way to engage stakeholders to provide meaningful and constructive input on regulatory reform efforts related to well control. As a result of stakeholder outreach, the above list of potential reforms may be increased.

[2] *See,* ''Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Lease Continuation Through Operations,'' 82 FR 26741 (June 9, 2017).

ii. Revise Arctic Rule

The Arctic Rule was published on July 15, 2016 (81 FR 46478), and revised existing regulations and added new prescriptive and performance-based requirements for exploratory drilling conducted from mobile drilling units and related operations on the OCS within the Beaufort Sea and Chukchi Sea Planning Areas (Arctic OCS). After conducting its review to eliminate burdens and increase economic opportunities, BSEE is considering a several revisions to the rule, including but not limited to:

- modifying requirement to capture water-based muds and cuttings;
- eliminating the requirement for a cap and flow system and containment dome that are capable of being located at the well site within 7 days of loss of well control;
- eliminating the reference to the expected return of sea ice from the requirement to be able to drill a relief well within 45 days of loss of well control; and
- eliminating the reference to equivalent technology from the mudline cellar requirement.

The BOEM has also identified an opportunity to reduce burden on operators. A joint rulemaking would likely be undertaken again.

Among the potential benefits of the items listed above is the possibility of allowing greater flexibility for operators to continue drilling into hydrocarbon zones later into the Arctic drilling season. Current leasing strategies in the Arctic constrain future exploratory activities to which this rule would apply.

Success will result in a reduction in burdens associated with exploration of the Nation's Arctic oil and gas reserves while also providing appropriate safety and environmental protection tailored to this unique environment.

Prior to proposing a rulemaking to make the changes above, BSEE and BOEM plan to undertake stakeholder engagement activities. As a result of stakeholder engagement, the list of potential areas for proposed reform may change or grow. This process will enhance our ability to engage the public and stakeholders, as well as ensure our ability to engage in a robust consultation with tribes and Alaska Native Claims Settlement Act corporations. Stakeholder engagement will have the added benefit of allowing BSEE and BOEM to receive input on how the agencies calculate the primary lease term in order to provide a more tailored approach to the limited drilling windows in the Arctic.

iii. Decommissioning Infrastructure Removal Requirements

The BSEE will re-examine the NTL 2010–G05, ''Decommissioning Guidance for Wells and Platforms,'' to determine whether additional flexibility should be provided to better account for facility and well numbers and size, as well as timing consideration that can arise in the case of financial distress or bankruptcy of companies. Any changes to the NTL will not have an impact on companies' underlying decommissioning obligations, but could provide more flexibility to allow for cash-flow management and ultimately increase assurance that decommissioning obligations can be fulfilled without government expense.

iv. Lease Continuation Through Operations

This action was completed on June 9, 2017, when final rule 1014–AA35, ''Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Lease Continuation Through Operations,'' was published in the **Federal Register** (82 FR 26741). Section 121 of the Consolidated Appropriations Act of 2017 mandated that BSEE revise the requirements of 30 CFR 250.180 relating to maintaining a lease beyond its primary term through continuous operations. The final rule changed all of the references to the period of time before which a lease expires due to cessation of operations from ''180 days'' and ''180th day'' to a ''year'' and from ''180-day period'' to a ''1-year period.'' The rule has become effective and is allowing operators greater flexibility to plan exploration activities.

v. Contractor Incidents of Noncompliance

The BSEE currently has a policy that calls for issuing notices of noncompliance (INCs) to contractors as well as operators in certain instances. The BSEE will examine whether this policy is achieving the desired deterrence value or whether an alternative compliance incentive should be considered and the policy revised. There are currently several ongoing court actions that could result in adjustments to this policy. The BSEE will consider all of this information while examining the policy.

vi. Civil Penalties

Since 2013, the BSEE civil penalty program has continued to improve its processes and programs. For example, in 2016, each of the Districts in the Gulf of Mexico Region (GOMR) created the position of Civil Penalty Enforcement Specialist to assist with the review of all INCs to determine which INCs are appropriate for civil penalty assessment, and to act as a liaison with the District and Headquarters (HQ) throughout a civil penalty case. This effort has greatly assisted in proving clarity and consistency to the development of civil penalty cases.

vii. Energy-Related Information Collections under the Paperwork Reduction Act

The BSEE has approximately 25 information collections associated with our regulations and guidance that must be renewed every 3 years on a rolling basis. The renewal process involves an analysis of whether each information collection continues to be necessary and if whether it requires modification. Through this process, BSEE continuously reviews our forms and the information we collect and reduces the collection burden wherever appropriate. Additionally, there may be further burden reduction associated with potential revisions to the Well Control and Arctic rules once final determinations have been made with respect to specific action on those regulations.

D. Office of Natural Resources Revenue

The ONRR is responsible for ensuring revenue from Federal and Indian mineral leases is effectively, efficiently, and accurately collected, accounted for, analyzed, audited, and disbursed to recipients. The ONRR collects an average of over $10 billion annual revenue from onshore and offshore energy production, one of the Federal government's largest sources of non-tax revenue.

i. Royalty Policy Committee

In an effort to ensure the public continues to receive the full value of natural resources produced on Federal lands, Secretary Zinke signed a charter establishing a Royalty Policy Committee (RPC) to provide regular advice to the Secretary on the fair market value of and collection of revenues from Federal and Indian mineral and energy leases, including renewable energy sources. The RPC may also advise on the potential impacts of proposed policies and regulations related to revenue collection from such development, including whether a need exists for regulatory reform. The group consists of 28 local, tribal, state, and other stakeholders and will serve in an advisory nature. The Secretary's Counselor to the Secretary for Energy Policy chairs the RPC. The first meeting will be held on October 4, 2017.

ii. 2017 Valuation Rule

On April 4, 2017, ONRR published a proposed rule that would rescind the 2017 Valuation Rule. The ONRR, after considering public feedback, recognized that implementing the 2017 Valuation Rule would be contrary to the rule's stated purpose of offering greater simplicity, certainty, clarity, and consistency in product valuation. The ONRR determined that the 2017 Valuation Rule unnecessarily burdened the development of Federal and Indian coal beyond what was necessary to protect the public interest or otherwise comply with the law. ONRR therefore repealed the rule in its entirety and reinstated the valuation regulations in effect prior that rule. (82 FR 36934, August 7, 2017).

E. Office of Surface Mining Reclamation and Enforcement

The OSMRE ensures, through a nationwide regulatory program, that coal mining is conducted in a manner that protects communities and the environment during mining, restores the land to beneficial use following mining, and mitigates the effects of past mining by aggressively pursuing reclamation of abandoned mine lands. The OSMRE's statutory role is to promote and assist its partner states and tribes in establishing a stable regulatory environment for coal mining. The proposed level of regulatory grant funding provides for the efficient and effective operations of programs at a level consistent with the anticipated obligations of State and tribal regulatory programs to account for the Nation's demand for coal mine permitting and production.

On February 16, 2017, President Trump signed a resolution under the Congressional Review Act to annul the Stream Protection Rule (SPR) (81 FR 93066, December 20, 2016). This rule imposed substantial burdens on the coal industry and threatened jobs in communities dependent on coal. As described below, OSMRE has drafted a **Federal Register** document to conform the Code of Federal Regulations to the legislation and return the regulations to their previous status and anticipates publication on or about September 30, 2017. In the interim, OSMRE has ensured that the SPR is not being implemented in any way and that regulation is occurring under the pre-existing regulatory system.

The OSMRE is reviewing additional actions to reduce burdens on coal development, including, for example, reviewing the state program amendment process to reduce the time it takes to formally amend an approved Surface Mining Control and Reclamation Act (SMCRA) regulatory program.

In compiling the following list of actions for review, OSMRE considered direct and indirect impacts to the coal industry, as well as impacts to the states with primary responsibility for regulating coal mining activities, pursuant to the SMCRA.

Recommendations for Alleviating or Eliminating Burdensome Actions

i. Disapproval of the Stream Protection Rule

The SPR was published on December 20, 2016, and became effective on January 19, 2017. In accordance with the Congressional Review Act, Congress passed, and the President signed, a resolution of disapproval of the SPR on February 16, 2017, as Public Law 115–5. No provisions of the SPR have been enforced since passage of the resolution. In addition, OSMRE will formally document the CRA nullification of the SPR by publishing in the **Federal Register** a document that replaces the SPR text with the regulations that were in place prior to January 19, 2017. This will result in the removal of any amendments, deletions, or other modifications associated with the nullified rule, and the reversion to the text of all regulations in effect immediately prior to the effective date of the SPR.

The OSMRE estimates the elimination of this rule will save industry approximately $82 million annually, and will reduce the amount of time states and OSMRE are expending in the processing of permit applications and monitoring performance during the life of the operation.

Interior has identified the CRA nullification and subsequent action by OSMRE to conform the CFR to the Congressional action as a deregulatory action under EO 13771.

ii. Work with Interstate Mining Compact Commission (IMCC) to Revisit and Revise Ten-Day Notices and Independent Inspections—Directives INE–24, INE–35, REG–8

Under revisions to OSMRE Directive REG–8, which establishes policies, procedures and responsibilities for conducting oversight of state and tribal regulatory programs, OSMRE conducts 10 percent of all routine oversight inspections with 24 hours' notice to the state regulatory authority. If the state inspector is unavailable to accompany the OSMRE inspector, OSMRE will conduct the inspection alone. These and other oversight inspections sometimes result in the issuance of Ten-Day Notices (TDNs) to the state regulatory authority under Inspection and Enforcement (INE)-35. In addition, INE–24, issued on May 26, 1987, requires OSMRE to issue a TDN to state regulatory authorities upon receipt of a citizen's complaint.

Between 2011 and 2016, 882 TDNs were issued to state regulatory programs. On an annual basis, the majority (39 or 74 percent) of those resulted from citizen's complaints. In addition, an evaluation of data during 2013 found that the number of TDNs issued when the state inspector does not participate was determined to be 6.4 percent of the total oversight inspections, versus 1.5 percent when the state inspector accompanied the OSMRE inspector. State regulatory authorities, particularly in the Appalachian Region, have expressed concern that the number of hours required to prepare TDN responses can be significant.

In an effort to address these concerns, a joint OSMRE and State/Tribal Work Group assessed various topics, including the use of TDNs and independent inspections. In a report issued on July 30, 2014, the Work Group made six specific recommendations for the TDN process and four recommendations regarding the independent inspection process. Interstate Mining Compact Commission (IMCC) member states have requested OSMRE revisit these recommendations, and others, in an effort to implement the recommendations. In addition, OSMRE will revisit and revise, as needed, the specific policy directives governing the use of TDNs and independent inspections in cooperation with the IMCC to reduce the amount of time states and OSMRE are expending to process TDNs.

The review will commence this calendar year, following specific timelines and benchmarks to be established jointly with IMCC.

iii. Work with IMCC to Revise or Rescind OSMRE Memorandum and Directive INE–35—TDNs and Permit Defects

On November 15, 2010, the OSMRE Director issued a memorandum directing OSMRE staff to apply the TDN process and Federal enforcement to permitting issues under approved regulatory programs. In support of this memorandum, on January 31, 2011, the Director reissued Directive INE–35, regarding policy and procedures for the issuance of TDNs. This directive requires the issuance of a TDN whenever a permit issued by the state regulatory authority (RA) contains a ''permit defect,'' which the directive

defines as meaning ''a type of violation consisting of any procedural or substantive deficiency in a permit-related action taken by the RA (including permit issuance, permit revision, permit renewal, or transfer, assignment, or sale of permit rights).'' The directive further states that OSMRE will not review pending permitting decisions and will not issue a TDN for an alleged violation involving a possible permit defect where the RA has not taken the relevant permitting action (e.g., permit issuance, permit revision, permit renewal, or transfer, assignment, or sale of permit rights).

Since the issuance of this policy and associated directive, concerns have been raised by some states and industry stakeholders regarding the potential impact on mining operations where the RA has issued a permit, revision, or renewal, and the operator has commenced activities based upon RA approval. The OSMRE in cooperation with the IMCC will revisit the policy and directive and revise or rescind, as appropriate to provide more certainty to the industry in the state RA permitting process.

The review will commence this calendar year; specific timelines and benchmarks will be established jointly with IMCC.

iv. Revise Processing State Program Amendments—Directive STP–1

Directive STP–1, issued in October 2008, establishes policy and procedures for review and processing of amendments to state regulatory programs. Most changes in state law or regulations that impact an approved SMCRA regulatory program require submission of a formal program amendment to OSMRE for approval. Such changes to primacy programs cannot be implemented until a final amendment is approved by OSMRE. In addition, written concurrence must be received from the Administrator of the Environmental Protection Agency with respect to those aspects of a state/tribal program amendment which relates to air or water quality standards promulgated under the authority of the Clean Air Act or the Clean Water Act prior to OSMRE approval. In accordance with 30 CFR 732.17(h)(13), OSMRE must complete a final action on program amendments within 7 months of receipt. Often, due to the complexities of the process and other issues, including influences outside of OSMRE, it is difficult for OSMRE to meet the required processing times.

The result is that state regulatory authorities are occasionally unable to move forward in a timely manner with needed program amendments.

Based upon the results of an internal control review (ICR) and work with the state/tribal work group, OSMRE is developing new training guides and opportunities for states and revising Directive STP–1 to improve the state program amendment process. The OSMRE will also review the process with the Office of the Solicitor to evaluate opportunities for process improvement. In addition, the recent approval by OMB of the information collection requirements of 30 CFR part 732 was conditioned upon OSMRE developing new guidance and supporting documents for states to use when preparing amendments to approved programs. The OSMRE intends for these actions to reduce its processing time for state program amendments.

The revision of Directive STP–1 and development of training guides is anticipated to be completed this calendar year. OSMRE will track processing times once the revised directive and training have been implemented, and compare results to previous years. The OMB approval of new guidance for Part 732 is required by July 31, 2020.

v. Revise or Rescind OSMRE Policy Advisory and Proposed Rulemaking: Self-Bonding

On August 5, 2016, the OSMRE Director issued a policy advisory on self-bonding. The advisory was in direct response to three of the largest coal mine operators in the nation filing for Chapter 11 protection under the U.S. Bankruptcy Code between 2015 and 2016. Those companies held approximately $2.5 billion of unsecured or non-collateralized self-bonds that various states with federally-approved SMCRA regulatory programs previously accepted to guarantee reclamation of land disturbed by coal mining. The advisory stated that ''the bankruptcy filings confirm the existence of significant issues about the future financial abilities of coal companies and how they will meet future reclamation obligations.'' While recognizing the action of certain state programs to address self-bonding issues, the advisory went on to say that ''each regulatory authority should exercise its discretion and not accept new or additional self-bonds for any permit until coal production and consumption market conditions reach equilibrium, events which are not likely to occur until at least 2021.'' Since the issuance of this advisory, all three companies of concern have completed their plans for Chapter 11 reorganization, and either have or are expected to replace all self-bonds with other forms of financial guarantees.

In addition to the issuance of the policy advisory on self-bonding, OSMRE accepted a petition for rulemaking submitted March 3, 2016, by WildEarth Guardians. The petition requested that OSMRE revise its self-bonding regulations to ensure that companies with a history of insolvency, and their subsidiary companies, not be allowed to self-bond coal mining operations.

Limiting the use of self-bonds, as indicated in the policy advisory or potentially through a rulemaking, could impact a company's ability to continue mining. In addition, there will likely be an increased demand and potential negative impact on the availability of third party surety bonding.

On January 17, 2017, the GAO announced that it will conduct an audit of financial assurances for reclaiming coal mines (Job Code 101326) that will focus on the role of OSMRE in implementing and overseeing the Surface Mining Control and Reclamation Act's requirements related to financial assurances.

In view of the current status of the self-bonding bankruptcies and recent executive orders concerning rulemakings, OSMRE will reconsider the scope of the policy advisory and revise or rescind, as appropriate. In addition, OSMRE will revisit the need for and scope of any potential rulemaking in response to the previously accepted petition. Furthermore, OSMRE will carefully consider the report and recommendations of the pending GAO audit of financial assurances currently underway. The OSMRE will solicit public input prior to finalizing any decision on the need for further rulemaking.

The OSMRE will continue to monitor the status of self-bonding issues in state programs in cooperation with the IMCC and other stakeholders (sureties, industry, and environmental groups).

vi. Revise or Rescind OSMRE Enforcement Memorandum—Relationship between the Clean Water Act (CWA) and SMCRA

On July 27, 2016, the OSMRE Director issued a policy memo to staff providing direction on the enforcement of the existing regulations related to violations of the CWA caused by SMCRA-permitted operations and related issues, such as responses to self-reported violations of National Pollutant Discharge Elimination System (NPDES)

limits and OSMRE responses to Notices of Intent (NOI) to sue alleging CWA violations at SMCRA-permitted operations. The policy memo specifically required an NOI to be processed as a citizen complaint, which requires OSMRE to issue a TDN to the state RA upon receipt of the NOI. In addition, the memo stated that a violation of water quality standards is also a violation of SMCRA regulations.

State regulatory authorities, as well as industry, have raised issues with this guidance document expressing concern with overlap and potential conflicts between section 702(a)(3) [3] of SMCRA and the CWA. In addition, state RAs have raised concerns about new TDNs and related enforcement actions that have been issued in response to this policy guidance. The relationship between the CWA and SMCRA and the role of the state RAs in ensuring compliance in accordance with their approved SMCRA regulatory programs have been longstanding issues. Resolution will bring certainty to the state regulatory programs as well as for the industry.

The OSMRE will revisit the policy issues and concerns in cooperation with the IMCC and will revise or rescind the memorandum, as appropriate. Review of the policy with IMCC member states will commence this calendar year; the revised or rescinded policy should be complete by the end of this calendar year. The OSMRE will consider seeking public input prior to finalizing the policy.

vii. Revise Policy on Reclamation Fee for Coal Mine Waste (Uram Memo) and Propose Rule for Additional Incentives

On July 22, 1994, then-Director Robert Uram issued a memorandum outlining the conditions under which OSMRE would waive the assessment of reclamation fees on the removal of refuse or coal waste material for use as a waste fuel in a cogeneration facility. Recently, the Pennsylvania regulatory authority (PADEP) requested that OSMRE update this policy as outlined below to incentivize reclamation efforts on sites with coal refuse reprocessing activities.

The PADEP believes that the reclamation fees deter operators from reclamation efforts on sites with coal refuse reprocessing activities. Coal refuse sites located within the Anthracite Coal Region are unable or have ceased the removal of coal refuse to be used as waste fuel at co-generation facilities. This is partly or totally due to the assessment of reclamation fees on coal refuse used as waste fuel. In addition, PADEP recommended that OSMRE consider waste derived from filter presses at existing coal preparation plants to be a ''no value'' [4] product, which would encourage its use as a waste fuel rather than requiring it to be disposed in a coal refuse pile.

The OSMRE will revisit the 1994 Uram Memo, with the goal of providing an incentive for use of coal refuse as a coal waste fuel. In addition, OSMRE will revisit the remining incentives provided by the 2006 amendments to SMCRA at section 415, some of which apply specifically to removal or reprocessing of abandoned coal mine waste. Additional incentives pursuant to Section 415 will require promulgation of rules, and, therefore, input from the public will be solicited.

Providing additional incentives to industry to promote remining of coal refuse and other abandoned mine sites will provide for additional reclamation of abandoned mines that would not otherwise be accomplished through the Abandoned Mine Lands (AML) program. Specific benchmarks for measuring success, such as acres of additional reclamation performed, will be developed consistent with the implementation of the incentives.

viii. Energy-Related Information Collections under the Paperwork Reduction Act

The OSMRE reviewed the current industry costs associated with the Paperwork Reduction Act and did not find any information collections that ''potentially burden [5] the development or utilization of domestically produced energy resources'' in accordance EO13783. It should be noted that there will be no industry costs associated with information collection based on the Stream Protection Rule, due to the Congressional Review Act nullification of that final rule.

F. U.S. Fish and Wildlife Service

The FWS is reviewing its final rule, ''Management of Non-Federal Oil and Gas Rights,'' 81 FR 79948 (Nov. 14, 2016) to determine whether revision would be appropriate to reduce burden on energy.

Additionally, below is a list of burdens and opportunities to fulfill the intent of the Executive Order:

i. Streamline Rights-of-way (ROW) for pipelines and electricity transmission

The approval process for new ROW access can be overly restrictive and excessively lengthy. The National Wildlife Refuge System Administration Act, as amended, requires all uses, including rights-of-way, of National Wildlife Refuges to be compatible with the mission of the System. The FWS will work with stakeholders in a more timely fashion to determine if proposed ROW uses are compatible. Additionally, FWS will revise its ROW regulation to streamline the current ROW granting process to significantly decrease the time to obtain ROW approval from the current 3–12 month time frame.

ii. Review Incidental Take Regulations for oil and gas activities in the Southern Beaufort Sea and Chukchi Sea, under the Marine Mammal Protection Act (MMPA)

The MMPA prohibits take (i.e., harass, hunt, capture, or kill) of marine mammals (16 U.S.C. 1361 et seq.) unless authorized by the Secretary. Existing measures in the MMPA incidental take regulations require: 1) maintaining a minimum spacing of 15 miles between all active seismic source vessels and/or drill rigs during exploration activities in the Chukchi Sea; 2) no more than two simultaneous seismic operations and three offshore exploratory drilling operations authorized in the Chukchi Sea region at any time; 3) time restrictions for transit through the Chukchi Sea; 4) time and vessel restrictions in the Hanna Shoal Walrus Use Area; 5) location of polar bear dens and 1-mile buffer; 6) maximum distance around Pacific walruses and polar bears on ice and groups of Pacific walruses in water; 7) sound producing mitigation zones & shut-down/ramp up procedures; 8) marine mammal observers and monitoring requirements; and 9) excessive reporting requirements.

The FWS has the opportunity to review the Chukchi Sea incidental take regulation which expires in 2018, and the regulation for the southern Beaufort Sea expires in 2021. They may either be allowed to expire or be revised and reissued.

[3] Nothing in this Act shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–47), or any of the following Acts or with any rule or regulation promulgated thereunder, including, but not limited to—(3) The Federal Water Pollution Control Act (79 Stat. 903), as amended (33 U.S.C. 1151–1175), the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.

[4] No value determinations are based upon the criteria established in the 1994 Uram Memorandum.

[5] Burden ''means to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources'' (Presidential Executive Order 13783, Promoting Energy Independence and Economic Growth, March 28, 2017).

iii. Modernize Guidance and regulations governing interagency consultation pursuant to Section 7(a)(2) of the Endangered Species Act

Section 7(a)(2) of the Endangered Species Act requires Federal agencies, in consultation with the Secretary of the Interior or the Secretary of Commerce (delegated to the Fish and Wildlife Service and the National Marine Fisheries Service, respectively), to ensure that any action authorized, funded or carried out by the agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. However, the time and expense associated with satisfying the interagency consultation requirements are unnecessarily burdensome.

The FWS has discretion to create efficiencies and streamlining in the consultation process through targeted revision to regulations and/or guidance and is reviewing opportunities for further process improvements.

iv. Build Upon the Efforts of the Western Governors' Association and Others to Improve the Application of the Endangered Species Act, Reduce Unnecessary Burdens on the Energy Industry, and Facilitate Conservation Stewardship

A number of groups, most prominently the Western Governors' Association, have worked to evaluate and develop recommendations to improve the application of the ESA. For example, the Western Governors' Association developed the *Western Governors' Species Conservation and Endangered Species Act Initiative (Initiative),* which conducts broad-based stakeholder discussions focused on issues such as identifying means of incentivizing voluntary conservation, elevating the role of states in species conservation, and improving the efficacy of the ESA. Interior intends to build on these efforts to improve the application of the ESA in a manner that ensures conservation stewardship, while reducing unneeded burdens on the public, including the energy industry.

v. Re-Evaluate Whether the MBTA Imposes Incidental Take Liability and Clarify Regulatory Authorities.

Federal Courts of Appeals have split on whether the Migratory Bird Treaty Act (MBTA) imposes criminal liability on companies and individuals for the inadvertent death of migratory birds resulting from industrial activities. Three circuits—the fifth, eighth, and ninth—have held that it does not, limiting taking liability to deliberate acts done directly and intentionally to migratory birds. Two circuits—the second and tenth—have held that it does. On January 10, 2017, the Office of the Solicitor issued an opinion regarding the issue, which was subsequently suspended pending further review of the opinion and the underlying regulations and decisions. This review is currently ongoing, and may serve as the basis for the development of new internal guidance or regulations that provide clarity to this longstanding issue.

vi. Evaluate the Merits of a General Permit for Incidental Take Under the Bald and Golden Eagle Protection Act

The FWS intends to evaluate the merits of a general permit for incidental take under the Bald and Golden Eagle Protection Action Act (BGEPA). When the bald eagle was delisted under the ESA, FWS issued a rule establishing a permit program for incidental take under BGEPA. On December 16, 2016, FWS adopted a final rule intended to address some of industry's concerns regarding the BGEPA incidental take permit process (81 FR 91494). One measure strongly supported by industry, a general permit for activities that constitute a low risk of taking eagles, was not considered as part of this rulemaking process, though FWS did accept comments on the subject for consideration in a future rulemaking. The FWS is reviewing these comments to determine whether additional regulatory changes would be appropriate to reduce the burden on industry.

G. Bureau of Reclamation

The BOR is the second largest producer of hydroelectric power in the United States, operating 53 hydroelectric power facilities, comprising 14,730 megawatts of capacity. Each year, BOR generates over 40 million megawatt-hours of electricity (the equivalent demand of approximately 3.5 million US homes),[6] producing over one billion dollars in Federal revenue. In addition to our authorities to develop, operate, and maintain Federal hydropower facilities, BOR is also authorized to permit the use of our non-powered assets to non-Federal entities for the purposes of hydropower development via a lease of power privilege (LOPP).

The BOR is committed to facilitating the development of non-Federal hydropower at our existing Federal assets. Acting on this commitment, BOR has undertaken a number of activities, including:

i. Completion of two publically available resource assessments.

Assessments identify technical hydropower potential at existing BOR facilities, irrespective of financial viability.

ii. Collaboration with stakeholder groups to improve the LOPP process and LOPP Directive and Standard (D&S) policy guidance document.

A BOR LOPP is a contractual right given to a non-Federal entity to use a BOR asset (e.g. dam or conduit) for electric power generation consistent with BOR project purposes.

The BOR has conducted LOPP outreach with stakeholder groups and hydropower industry associations; and made resources and staff available via a LOPP website: *https://www.usbr.gov/power/LOPP/index.html.* The BOR has also partnered with sister agencies (United States Army Corps of Engineers and the Department of Energy) under the Memorandum of Understanding (MOU) for Hydropower to, in part, encourage and streamline non-Federal development on Federal infrastructure.

Through these activities, BOR has made resources available to developers and peeled back the barriers that may burden non-Federal hydropower development—while continuing to protect the Federal assets that our customers, operating partners, and stakeholders have depended on for over a century. The response BOR has received from these groups (including the development community) in this effort has been overwhelmingly positive. LOPP projects provide a source of reliable, domestic, and sustainable generation—that supports rural economies and the underlying Federal water resource project.

H. Bureau of Indian Affairs

The BIA provides services to nearly 2 million American Indians and Alaska Natives in 567 federally recognized tribes in the 48 contiguous States and Alaska. The BIA's natural resource programs assist tribes in the management, development, and protection of Indian trust land and natural resources on 56 million surface acres and 59 million subsurface mineral estates. These programs enable tribal trust landowners to optimize sustainable stewardship and use of resources, providing benefits such as

[6] See, *https://www.eia.gov/tools/faqs/faq.php?id=97&t=3*

revenue, jobs and the protection of cultural, spiritual, and traditional resources. Income from energy production is the largest source of revenue generated from trust lands, with royalty income of $534 million in 2016.

Indian Energy Actions

i. Clarify ''Inherently Federal Functions for Tribal Energy Resource Agreements (TERAs)

Tribal Energy Resource Agreements (TERAs) are authorized under Title V of the Energy Policy Act of 2005. A TERA is a means by which a tribe could be authorized to review, approve, and manage business agreements, leases, and rights-of-way pertaining to energy development on Indian trust lands, absent approval of each individual transaction by the Secretary. Interior promulgated TERA regulations in 2008 at 25 CFR part 224. The TERAs offer the opportunity to promote development of domestically produced energy resources on Indian land; however, 12 years after the passage of the Act and 9 years after the issuance of TERA regulations, not one tribe has sought Interior's approval for a TERA. One theory asserted by at least one tribe as to the failure of this legislation is the Act does not address precisely how much Federal oversight would disappear for tribes operating under TERAs. Specifically, Interior had not defined the term ''inherently Federal functions'' that Interior will retain following approval of a TERA. This term appears in Interior's regulations at 25 CFR 224.52(c) and 224.53(e)(2), but not in the Act. Without some assurance as to the benefits (in terms of less Federal oversight) a tribe would receive through clarification of ''inherently Federal functions,'' tribes have no incentive to undergo the intensive process of applying for a TERA. Clarification of this phrase would also address Recommendation 5 of GAO–15–502, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands* (June 2015). The recommendation directed Interior to ''provide additional energy development-specific guidance on provisions of TERA regulations that tribes have identified to Interior as unclear.''

The BIA has been working closely with the Office of the Solicitor to develop guidance on how Interior will interpret the term ''inherently Federal functions.'' It is expected that by providing this certainty as to the scope of Federal oversight, tribes will better be able to justify the process of applying for a TERA. The BIA expects to have the guidance finalized and available on its website by October 2017.

The BIA anticipates that the benefits of this action will be to promote the use of TERAs, which will both save tribes the time and resources necessary to seek and obtain Interior approval of each transaction related to energy development on Indian land, and will help ease Interior's workload by eliminating the need for Departmental review of each individual transaction.

The reduction in burden will be measured by the number of tribes that choose to obtain TERAs. Once each tribe obtains a TERA, Interior will work with the tribe to estimate savings in terms of time and resources.

I. Integrated Activity Plan for Oil & Gas in the National Petroleum Reserve—Alaska

Noting that the National Petroleum Reserve—Alaska (NPR–A) is the largest block of federally managed land in the United States and offers economically recoverable oil and natural gas, the Secretary issued an order focusing on management of this area in a manner that appropriately balances promoting development and protecting surface resources. *See* Secretarial Order 3352, ''National Petroleum Reserve—Alaska'' (May 31, 2017). Currently, 11 million acres (or 48 percent) of the total 22.8 million acres in the NPR–A are closed to leasing under the current Integrated Activity Plan (IAP). The Secretarial Order requires review and revision of the IAP for management of the area and, within the existing plan, maximizing the tracts offered during the next lease sale.

J. Mitigation

Implemented properly, mitigation can be a beneficial tool for advancing the Administration's goals of American energy independence and security, while ensuring public resources are managed for the benefit and enjoyment of the public.

Interior seeks to establish consistent, effective and transparent mitigation principles and standards across all its Agencies. Interior and its bureaus and offices intends to develop consistent terminology, reduce redundancies, and simplify frameworks so that the Federal mitigation programs and stepped down programs are more predictable and consistent. Some mitigation is facilitated by goodwill and some is through our regulatory paradigm.

BLM

i. Review and Revise Mitigation Manual Section (MS–1794) and Handbook (H–1794–1) Related to Mitigation, Which Provide Direction on the Use of Mitigation, Including Compensatory Mitigation, To Support the BLM's Multiple-Use and Sustained-Yield Mandates.

The Mitigation Manual Section and Handbook provide direction on the use of mitigation, including compensatory mitigation, to support BLM's multiple use and sustained yield mandates. The BLM is reviewing whether the 2016 Manual and Handbook replaced several IMs (IM Numbers 2005–069, 2008–204, and 2013–142) issued by BLM for the same purpose.

The BLM is considering revisions to the Manual and Handbook to provide greater predictability (internally and externally), ease conflicts, and may reduce permitting/authorizations times.

Measuring success would be largely quantitative. The BLM would continue to track impacts from land use authorizations and would also track the type and amount of compensatory mitigation implemented and its effectiveness, preferably in a centralized database.

The BLM is drafting an IM that provides interim direction regarding new and ongoing mitigation practices while the Manual and Handbook are being reviewed and revised. Use of the existing Manual and Handbook would continue, as modified and limited by this IM, until they are superseded.

ii. Review of Manual 6220—National Monuments, National Conservation Areas, and Similar Designations (07/13/2012) To Assure That It Conforms to BLM's Revised Mitigation Guidance.

Manual 6220 provides guidance for managing BLM National Conservation Lands designated by Congress or the President as National Monuments, National Conservation Areas, and similar designations (NM/NCA) in order to comply with the designating Acts of Congress and Presidential Proclamations, FLPMA, and the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202). Manual 6220 requires that when processing a new ROW application, BLM will determine, to the greatest extent possible, through the NEPA process, the consistency of the ROW with the Monument or NCA's objects and values; consider routing or siting the ROW outside of the Monument or NCA; and consider mitigation of the impacts from the ROW. Land use plans must identify management actions, allowable uses,

restrictions, management actions regarding any valid existing rights, and mitigation measures to ensure that the objects and values are protected. The manual requires that a land use plan for a Monument or NCA should consider closing the area to mineral leasing, mineral material sales, and vegetative sales, subject to valid existing rights, where that component's designating authority does not already do so.

A review of Manual 6220 to identify where clarity could be provided for mitigation, notification standards, and compatible uses, may potentially reduce or eliminate burdens. The BLM will review Manual 6220 following the proposed revisions to BLM Mitigation Manual Section (MS–1794) and Handbook (H–1794–1) to ensure that Manual 6220 conforms to the BLM's revised mitigation guidance.

Addressing any potential issues, along with providing consistency with BLM Mitigation Manual is expected to provide greater predictability (internally and externally), reduce conflicts, and may reduce permitting/authorizations times.

Success will be measured in BLM meeting legal obligations under the designating Act or Proclamation for each unit and the allowance of compatible multiple uses, consistent with applicable provisions in the designating Act or Proclamation.

iii. Other Reviews of BLM Manual Provisions

Secretarial Order 3349 also revoked a prior order regarding mitigation and directed bureaus to examine all existing policies and other documents related to mitigation and climate change. (*See* Secretarial Order 3330 ''Improving Mitigation Policies and Practices of the Department of the Interior.'') Actions Interior is taking to implement this direction include:

• **BLM Manual 6400—Wild and Scenic Rivers, Policy and Program Direction for Identification, Evaluation, Planning, and Management (07/13/2012)**

Manual 6400 provides guidance for managing eligible and suitable wild and scenic rivers and designated wild and scenic rivers in order to fulfill requirements found in the Wild and Scenic Rivers Act (WSRA). Subject to valid existing rights, the Manual states that minerals in any Federal lands that constitute the bed or bank or are situated within ¼ mile of the bank of any river listed under section 5(a) are withdrawn from all forms of appropriation under the mining laws, for the time periods specified in section 7(b) of the WSRA. The Manual allows new leases, licenses, and permits under mineral leasing laws be made, but requires that consideration be given to applying conditions necessary to protect the values of the river corridor. For wild river segments, the Manual requires that new contracts for the disposal of saleable mineral material, or the extension or renewal of existing contracts, should be avoided to the greatest extent possible to protect river values.

Manual 6400 will be reviewed following the proposed revisions to BLM Mitigation Manual Section and Handbook to ensure that it conforms to BLM revised mitigation guidance. Although the requirements for minerals and mineral withdrawals are legally mandated under the mining and mineral leasing laws in sections 9(a) and 15(2) of the WSRA, Manual 6400 will be reviewed for opportunities to clarify discretionary decision-space.

Ensuring consistency with the BLM Mitigation Manual will foster greater predictability (internally and externally), reduce conflicts, and may reduce permitting/authorizations times.

Success will be measured in terms of complying with the WSRA and identifying and allowing compatible multiple uses.

• **BLM Manual 6280—Management of National Scenic and Historic Trails and Trails under Study or Recommended as Suitable for Congressional Designation (09/14/2012)**

Manual 6280 provides guidance for managing trails under study, trails recommended as suitable, and congressionally designated National Scenic and Historic Trails to fulfill the requirements of the National Trails System Act (NTSA) and the Federal Land Policy and Management Act. Manual 6280 identifies mitigation as one way to address substantial interference with the natural and purposes for which a National Trail is designated.

Manual 6280 will be reviewed following the proposed revisions to the BLM Mitigation Manual Section and Handbook to ensure it conforms to the BLM revised mitigation guidance. Although many of the requirements are legally mandated under the National Trails System Act, Manual 6280 will be reviewed for opportunities to clarify any discretionary decision-space to reduce or eliminate burdens.

Addressing any potential issues, along with providing consistency with the BLM Mitigation Manual is expected to provide greater predictability (internally and externally), reduce conflicts, and may reduce permitting/authorizations time.

Success will be measured in terms of complying with the NTSA and identifying and allowing compatible multiple uses.

FWS

iv. Compensatory Mitigation for Impacts to Migratory Bird Habitat

The FWS has the authority to recommend, but not require, mitigation for impacts to migratory bird habitat under several Federal authorities. Pursuant to a Memoranda of Understanding with the Federal Energy Regulatory Commission (FERC), implementing EO13186 (January 10, 2001), FWS evaluates the impacts of FERC-licensed interstate pipelines to migratory bird habitat.

The FWS is developing Service-wide guidance to ensure the bureau is consistent, fair and objective, appropriately characterizes the voluntary nature of compensatory mitigation for impacts to migratory bird habitat, and demonstrates a reasonable nexus between anticipated impacts and recommended mitigation. The FWS anticipates it will take 3 months to finalize the guidance.

Guidance will result in timely and practicable licensing decisions, while providing for the conservation of migratory Birds of Conservation Concern.

Success will be measured by timely issuance of licenses that contain appropriate recommendations that do not impose burdensome costs to developers.

The FWS Regional and Field Offices will provide informal guidance through email and regularly scheduled conference calls to educate and remind staff of policy.

v. Mitigation Actions—Regulations and Policy Governing Candidate Conservation Agreements with Assurances (CCAAs)

The CCAAs are developed to encourage voluntary conservation efforts to benefit species that are candidates for listing by providing the regulatory assurance that take associated with implementing an approved candidate conservation agreement will be permitted under section 10(a)(1)(A) for the Endangered Species Act if the species is ultimately listed, and that no additional mitigation requirements will be imposed.

Recent revisions to the CCAA regulations and policy and the adoption of ''net conservation benefit'' as an issuance standard has been perceived by

some to impose an unnecessary, ambiguous, and burdensome standard that will discourage voluntary conservation. There are also concerns with the preamble language that suggested that CCAAs may not be appropriate vehicles for permitting take of listed species resulting from oil and gas development activities.

The FWS will solicit public review and comment on the need and basis for a revision of the CCAA regulation and associated policy for the purpose of evaluating whether it should maintain or revise the current regulation and policy or reinstate the former ones. The FWS anticipates that it will take 3 months to prepare the **Federal Register** Notice soliciting public review and comments. The FWS will then publish the **Federal Register** Notice with a 60-day comment period. Based upon comments received, FWS will decide whether and how to revise the regulation and policy.

The anticipated benefits will be ensuring the CCAA standard is clear and encourages stakeholder participation in voluntary conservation of candidate and other at-risk species.

Success will be measured by FWS providing timely assistance to developers if they seek a CCAA.

The FWS Headquarters will provide Regional and Field Offices with informal guidance through email and regularly scheduled conference calls to remind staff of the regulation and policy review.

vi. Mitigation Actions—FWS Mitigation Policy

In 2016, FWS finalized revisions to its 1981 Mitigation Policy, which guides FWS recommendations on mitigating the adverse impacts of land and water development on fish, wildlife, plants, and their habitats.

Some stakeholders believe the revised policy's mitigation planning goal exceeds statutory authority.

The FWS will solicit public review and comment for the purpose of evaluating the policy. The FWS anticipates that it will take 3 months to prepare the **Federal Register** Notice soliciting public review and comment on the policy. The FWS will then publish the **Federal Register** Notice with a 60-day comment period. Based upon comments received, FWS will decide whether and how to revise the policy.

The anticipated benefits will be timely and practicable mitigation recommendations by FWS staff to energy developers (and others) that promote conservation of species and their habitats.

Success will be measured by incorporation of recommendations without delays to the permitting or licensing process.

The FWS Headquarters will provide FWS Regional and Field Offices informal guidance through email and regularly scheduled conference calls to remind staff of the policy review.

vii. FWS ESA Compensatory Mitigation Policy

In 2016, FWS finalized its ESA Compensatory Mitigation Policy (CMP), which steps down and implements the 2016 revised the FWS Mitigation Policy (including the mitigation planning goal). The CMP was established to improve consistency and effectiveness in the use of compensatory mitigation. Its primary intent is to provide FWS staff with direction and guidance in the planning and implementation of compensatory mitigation.

Some stakeholders believe the mitigation planning goal exceeds statutory authority.

The FWS will solicit public review and comment for the purpose of evaluating whether it should modify the policy. Additional legal review will be undertaken after comments are reviewed. The FWS anticipates that it will take three months to prepare the **Federal Register** Notice soliciting public review and comment on the policy. The FWS will then publish the **Federal Register** Notice with a 60-day comment period. Based upon comments received, FWS will decide whether and how to revise the policy.

The anticipated benefits will be timely and practicable mitigation recommendations by FWS staff to energy developers (and others) that promote conservation of species and their habitats.

Success will be measured by incorporation of recommendations without delays to the permitting or licensing process.

The FWS Headquarters will provide FWS Regional and Field Offices informal guidance through email and regularly scheduled conference calls to remind staff of the policy review.

viii. Interim Guidance on Implementing the Final ESA Compensatory Mitigation Policy

This document provides interim guidance for implementing the Service's CMP. The guidance provides operational detail on the establishment, use, and operation of compensatory mitigation projects and programs as tools for offsetting adverse impacts to endangered and threatened species, species proposed as endangered or threatened, and designated and proposed critical habitat under the ESA.

Within 6 months of completing revisions to the ESA Compensatory Mitigation Policy (CMP) (or deciding revisions to the CMP are not necessary), FWS will revise the interim implementation guidance (to be consistent with the revised CMP) and make it available for public review and comment in the **Federal Register** for 60 days. Within 6 months of close of the comment period, FWS will publish the final implementation guidance in the **Federal Register** (Note: we anticipate that the implementation guidance may need to be reviewed under the Paperwork Reduction Act, which may affect the timeline).

The anticipated benefits will be timely and practicable mitigation recommendations by FWS staff to energy developers (and others) that promote conservation of species and their habitats.

Success will be measured by incorporation of recommendations without delays to the permitting or licensing process.

The FWS Headquarters will issue a memorandum to Regional and Field staff reiterating the limited applicability of the CMP's mitigation planning goal and that decisions related to compensatory mitigation must comply with the ESA and its implementing regulations.

K. Climate Change

Interior is reviewing bureau reports of the work conducted to identify requirements relevant to climate that can potentially burden the development or uses of domestically produced energy resources. Most of the bureaus found no existing requirements in place. A couple of bureaus have non-regulatory documents (i.e., handbook, memo, manual, guidance, etc.) that inwardly focus on their units and workforce management activities. Interior is reviewing these to better understand their connection to other management, operations and guidance documents.

BLM

The BLM rescinded its Permanent Instruction Memorandum (PIM) 2017–003 (Jan. 12, 2017).

This Permanent IM transmitted the CEQ guidance on consideration of greenhouse gas (GHG) emissions and the effects of climate change in NEPA reviews, and provided general guidelines for calculating reasonably foreseeable direct and indirect GHG emissions of proposed actions.

As the CEQ guidance was withdrawn pursuant to section 3 of EO13783, the

BLM Permanent IM was rescinded. In the future, BLM will consider issuing new guidance to its offices on approaches for calculating reasonably foreseeable direct and indirect GHG emissions of proposed and related actions.

Any new IM would provide guidance on consideration of GHG emissions and the effects of climate change in NEPA reviews. The BLM is also developing a unified Air Resources Toolkit that can be used across all organizational levels to consistently calculate, as needed and appropriate, relevant air emissions for a variety of BLM resource management functions. Once available, this toolkit will expedite analysis of reasonably foreseeable GHG emissions associated with energy and mineral development.

V. Outreach Summary

To ensure that Interior is considering the input of all viewpoints affected by the identified actions to reduce the burden on domestic energy, Interior has been, and will continue to, seek from outside entities through various means of public outreach including, but not limited to, working closely with affected stakeholders. In accordance with Administrative Procedure Act requirements, the Department is seeking public input on each proposal to revise or rescind individual energy-related regulatory requirements. The Department is also considering input it receives as part of its regulatory reform efforts through *www.regulations.gov* when such input relates to energy-related regulations.

The Department's outreach efforts encompass state, local, and tribal governments, as well as stakeholders such as the Western Governors' Association, Interstate Mining Compact Commission, and natural resource and outdoorsmen groups. To comply with tribal consultation requirements, Interior will host a separate consultation with official representatives of tribal governments on matters that substantially affect tribes, in accordance with the Department's policy on consultation with tribal governments.

VI. Conclusion

Interior is aggressively working to put America on track to achieve the President's vision for energy dominance and bring jobs back to communities across the country. Working with state, local and tribal communities, as well as other stakeholders, Secretary Zinke is instituting sweeping reforms to unleash America's energy opportunities.

VII. Attachments

Secretarial Orders and Secretary's Memorandum

BILLING CODE 4334–63–P

THE SECRETARY OF THE INTERIOR
WASHINGTON

MAR 27 2017

Memorandum

To: Acting Director, Bureau of Land Management

From: Secretary

Subject: Improving the Bureau of Land Management's Planning and National Environmental Policy Act Processes

On March 27, 2017, President Donald J. Trump signed H.J. Resolution 44, which immediately nullified the regulations known as Planning 2.0.

I have heard many concerns about this rule and about the Bureau of Land Management's (BLM) planning and environmental analysis processes. These concerns must be addressed.

Land use planning and environmental analysis are essential to help promote and improve informed decisionmaking and to involve our state, local government, and tribal partners, as well the public in that process for our public lands.

However, important projects and decisions are sometimes excessively delayed and agency land and resource management actions languish in a quagmire of plans, studies, and regulatory reviews. Often these additional steps are not a crucial part of a successful planning effort, informing the public, or communicating the impacts and tradeoffs involved in a decision.

The BLM manages almost 13 percent of the surface area in the United States and roughly one-third of its mineral resources. There is little doubt that BLM has a big job in managing our public lands for a wide variety of activities. These activities contribute to the economic health and prosperity of states and local communities by creating jobs through multiple use. Yet each year, BLM spends $48 million for the planning process and completes more than 5,000 documents to comply with the National Environmental Policy Act (NEPA). Some of those funds and staff time would be better applied toward completing work on the ground and creating economic opportunities.

The feedback I have received from many of our state and local partners and the public is that the system is broken, unnecessarily lengthy and burdensome, and does not produce the result demanded by the American people. The result demanded is to have an effective, efficient, and transparent process that 1) takes less time, 2) costs less money, and 3) is more responsive to local needs. For these reasons, I am directing BLM to go back to the drawing board to define actionable items that will make a measurable impact on improving the Federal planning process.

Fostering a Good Neighbor Policy and Restoring the Multiple-Use Mission of the BLM

I hereby direct BLM, in accordance with its multiple-use mission, to immediately begin a focused effort to identify and implement results-oriented improvements to its land use planning and NEPA processes.

As part of this effort, BLM will identify where redundancies and inefficient processes exist and should be eliminated, while ensuring that we fulfill our legal and resource stewardship responsibilities. These concepts are not mutually exclusive and should guide BLM as it undertakes this effort. The BLM will take a hard look at all aspects of the planning process, including challenges with NEPA, and shall incorporate the views and ideas of our state and local partners in examining and implementing solutions that meet the following criteria:

1. Finding better ways to incorporate and partner with state planning efforts;
2. Reducing duplicative and disproportionate analyses;
3. Considering more user-friendly representation of the planning process so stakeholders can easily determine status;
4. Fostering greater transparency in the NEPA process, including proper accounting of timeframes, delays, and financial cost of NEPA analyses;
5. Seeking opportunities to avoid delays caused by appeals and litigation;
6. Building trust with our neighbors through better integration of the needs of state and local governments, tribal partners, and other stakeholders; and
7. Developing and implementing efforts to "right size" environmental documents instead of defaulting to preparing an Environmental Impact Statement in circumstances when such a document is not absolutely needed.

As BLM evaluates all potential solutions, it shall also include in its analysis how a new rulemaking will meet the aforementioned criteria. In conducting this analysis, BLM shall make every effort to restore order, focus, and efficiency to the Federal land planning process. These efforts will align with the President's and my priorities and values: Making America Safe though Energy Independence; Making America Great Through Shared Conservation Stewardship; Making America Safe – Restoring our Sovereignty; Getting America Back to Work; and Serving the American Family.

Please deliver a report to me by no later than 6 months from today that describes your progress and how it will benefit future planning decisions and activities. The report should also provide recommendations for any regulatory or legislative actions necessary to meet the above goals.

THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3348

Subject: Concerning the Federal Coal Moratorium

Sec. 1 **Purpose**. The Federal coal leasing program is of critical importance to the economy of the United States, supplying approximately 40 percent of the coal produced in the Nation. On January 15, 2016, Secretary's Order 3338, "Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program," was signed and placed a moratorium on the coal leasing program with limited exceptions. Given the critical importance of the Federal coal leasing program to energy security, job creation, and proper conservation stewardship, this Order directs efforts to enhance and improve the Federal coal leasing program.

Sec. 2 **Authorities**. This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended. Other statutory authorities for this Order include but are not limited to the following statutes:

a. Mineral Leasing Act, 30 U.S.C. §1181 *et seq*.

b. Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351 *et seq*.

c. Federal Land Policy and Management Act, 43 U.S.C. 1701-1785.

d. Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201–1328.

Sec. 3 **Background**. Secretary's Order 3338 directs the Bureau of Land Management (BLM) to analyze and "consider potential leasing and management reforms to the current Federal coal program." Secretary's Order 3338 ordered the preparation of a discretionary Programmatic Environmental Impact Statement (PEIS) to analyze potential reforms and ordered a "pause on leasing, with limited exceptions" pending completion of the discretionary Federal Coal Program PEIS. The PEIS is estimated to cost many millions of dollars and would be completed no sooner than 2019, even with robust funding.

Sec. 4 **Revocation of Secretary's Order 3338**. Based upon the Department's review of Secretary's Order 3338, the scoping report for the discretionary Federal Coal Program PEIS issued in January 2017, and other information provided by BLM, I find that the public interest is not served by halting the Federal coal program for an extended time, nor is a PEIS required to consider potential improvements to the program. Accordingly, consistent with the principles of responsible public stewardship entrusted to this office, I revoke Secretary's Order 3338, "Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program."

Sec. 5 **Implementation**. With the revocation of Secretary's Order 3338, BLM is directed to process coal lease applications and modifications expeditiously in accordance with regulations and guidance existing before the issuance of Secretary's Order 3338. All activities associated with the preparation of the Federal Coal Program PEIS shall cease. The Deputy Secretary, Assistant Secretaries, and heads of bureaus and offices are hereby directed to make changes in their policy and guidance documents that are consistent with the revocation of Secretary's Order 3338.

Sec. 6 **Effect of the Order**. This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 7 **Expiration Date**. This Order is effective immediately. It will remain in effect until it is amended, superseded, or revoked.

Secretary of the Interior

Date: MAR 29 2017

THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3349

Subject: American Energy Independence

Sec. 1 **Purpose**. This Order implements the review of agency actions directed by an Executive Order signed by the President on March 28, 2017 and entitled "Promoting Energy Independence and Economic Growth" (March 28, 2017 E.O.). It also directs a reexamination of the mitigation policies and practices across the Department of the Interior (Department) in order to better balance conservation strategies and policies with the equally legitimate need of creating jobs for hard-working American families.

Sec. 2 **Authorities**. This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and other applicable statutory authorities.

Sec. 3 **Background**. Among other provisions, the March 28, 2017 E.O. directs the Department to review all existing regulations, orders, guidance documents, policies, and any other similar actions that potentially burden the development or utilization of domestically produced energy resources. A plan to carry out the review must be submitted to the Director of the Office of Management and Budget (OMB) and to certain other White House officials within 45 days of the date of the March 28, 2017 E.O. The objective of the review is to identify agency actions that unnecessarily burden the development or utilization of the Nation's energy resources and support action to appropriately and lawfully suspend, revise, or rescind such agency actions as soon as practicable.

The March 28, 2017 E.O. also directs the Department to promptly review certain specific actions recently taken by the Department, in particular Secretary's Order 3338, "Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program," and four rules related to onshore oil and gas development.

The March 28, 2017 E.O. also rescinds certain Presidential Actions, reports, and final guidance related to climate change, including:

a. E.O. 13653 of November 6, 2013 (Preparing the United States for the Impacts of Climate Change);

b. Presidential Memorandum of June 25, 2013 (Power Sector Carbon Pollution Standards); and

c. Presidential Memorandum of September 21, 2016 (Climate Change and National Security).

The March 28, 2017 E.O. directs the Department to identify agency actions "related to or arising from" the rescinded Presidential Actions, reports, and guidance, and to initiate a lawful and appropriate process to suspend, revise, or rescind such actions.

The March 28, 2017 E.O. also rescinds the Presidential Memorandum issued on November 3, 2015, entitled "Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment." That Memorandum directed the Secretary of the Interior, among other Cabinet officials, to undertake a number of actions to implement a landscape-scale mitigation policy, including specific directions to the Bureau of Land Management (BLM) and the Fish and Wildlife Service (FWS) to develop mitigation policies that incorporated compensatory mitigation into planning and permitting processes.

Secretary's Order 3330, "Improving Mitigation Policies and Practices of the Department of the Interior," dated October 13, 2013, is directly related to the rescinded Presidential Memorandum on mitigation. Secretary's Order 3330 dovetails with the subsequently issued Presidential Memorandum by directing the development and implementation of a landscape-scale mitigation policy for the Department. As directed by the Order, the Secretary received a report in April 2014 entitled, "A Strategy for Improving Mitigation Policies and Practices of the Department of the Interior." The Strategy set forth a number of "deliverables" by nearly every office and bureau within the Department to advance the stated goal of "landscape-scalemitigation." Given the close nexus between the rescinded Presidential Memorandum and Secretary's Order 3330, a thorough reexamination is needed of the policies set out in that Order.

Sec. 4 **Policy**. To begin implementing the March 28, 2017 E.O., I hereby order the following:

a. Revocation of Secretary's Order 3330. I hereby revoke Secretary's Order 3330, "Improving Mitigation Policies and Practices of the Department of the Interior," dated October 31, 2013. As set forth below, all actions taken pursuant to Secretary's Order 3330 must be reviewed for possible reconsideration, modification, or rescission as appropriate.

b. Review of Department Actions. As set forth in Sec. 5 below, each bureau and office shall review all existing regulations, orders, guidance documents, policies, instructions, notices, implementing actions, and any other similar actions (Department Actions) related to or arising from the Presidential Actions set forth above and, to the extent deemed necessary and permitted by law, initiate an appropriate process to suspend, revise, or rescind any such actions, consistent with the policies set forth in the March 28, 2017 E.O.

Sec. 5 **Implementation**. The following actions shall be taken pursuant to this Order:

a. Mitigation Policy Review.

(i) Within 14 days of the date of this Order, each bureau and office head shall provide to the Deputy Secretary, through their Assistant Secretary, all Department Actions they have adopted or are in the process of developing relating to (1) the Presidential Memorandum dated November 3, 2015, "Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment" and (2) Secretary's Order 3330.

(ii) Within 30 days of the date of this Order, the Deputy Secretary shall inform the Assistant Secretaries whether to proceed with reconsideration, modification, or rescission as appropriate and necessary of any Department Actions they have adopted or are in the process of developing relating to (1) the Presidential Memorandum dated November 3, 2015, "Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment" and (2) Secretary's Order 3330.

(iii) Within 90 days of the date of this Order, each bureau and office required to reconsider, modify, or rescind any such Department Action, shall submit to the Deputy Secretary, through their Assistant Secretary, a draft revised or substitute Department Action for review.

b. Climate Change Policy Review.

(i) Within 14 days of the date of this Order, each bureau and office head shall provide to the Deputy Secretary, through their Assistant Secretary, all Department Actions they have adopted, or are in the process of developing, relating to the Presidential Actions, reports, and guidance that are rescinded by the March 28, 2017 E.O., in particular: Executive Order 13653 of November 6, 2013 (Preparing the United States for the Impacts of Climate Change); Presidential Memorandum of June 25, 2013 (Power Sector Carbon Pollution Standards); Presidential Memorandum of September 21, 2016 (Climate Change and National Security); Report of the Executive Office of the President of June 2013 (The President's Climate Action Plan); Report of the Executive Office of the President of March 2014 (Climate Action Plan Strategy to Reduce Methane Emissions); and the Council on Environmental Quality's final guidance entitled "Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews," 81 *Fed. Reg.* 51866 (August 5, 2016).

(ii) Within 30 days of the date of this Order, the Deputy Secretary shall inform the Assistant Secretaries whether to proceed with reconsideration, modification, or rescission as appropriate and necessary of any Department Actions identified in the review required by subsection (i) above.

(iii) Within 90 days of the date of this Order, each bureau and office required to reconsider, modify, or rescind any such Department Action, shall submit to the Deputy Secretary, through their Assistant Secretary, a draft revised or substitute Department Action, for review.

c. Review of Other Department Actions Impacting Energy Development.

(i) As previously announced by the Department, BLM shall proceed expeditiously with proposing to rescind the final rule entitled, "Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands," 80 *Fed. Reg.* 16128 (Mar. 26, 2015).

(ii) Within 21 days, the Director, BLM shall review the final rule entitled, "Waste Prevention, Production Subject to Royalties, and Resource Conservation," 81 *Fed. Reg.* 83008 (January 17, 2017), and report to the Assistant Secretary - Land and Minerals Management on whether the rule is fully consistent with the policy set forth'in Section 1 of the March 28, 2017 E.O.

(iii) Within 21 days, the Director, National Park Service shall review the final rule entitled, "General Provisions and Non-FederalOil and Gas Rights," 81 *Fed. Reg.* 77972 (Nov. 4, 2016), and report to the Assistant Secretary for Fish and Wildlife and Parks on whether the rule is fully consistent with the policy set forth in Section 1 of the March 28, 2017 E.O.

(iv) Within 21 days, the Director, FWS shall review the final rule entitled, "Management ofNon-Federal Oil and Gas Rights," 81 *Fed. Reg.* 79948 (Nov. 14, 2016), and report to the Assistant Secretary for Fish and Wildlife and Parks on whether the rule is fully consistent with the policy set forth in Section 1 of the March 28, 2017E.O.

(v) Within 21 days, each bureau and office head shall provide to the Deputy Secretary, through their Assistant Secretary, a report that identifies all existing Department Actions issued by their bureau or office that potentially burden (as that term is defined in the March 28, 2017 E.O.) the development or utilization of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear resources.

(vi) Within 35 days, the Deputy Secretary shall provide to me a plan to complete the review of Department Actions contemplated by Section 2 of the March 28, 2017 E.O. The plan must meet all objectives and time lines set forth in the March 28, 2017 E.O.

Sec. 5 **Effect of the Order**. This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies,

instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 6 **Expiration Date**. This Order is effective immediately. It will remain in effect until it is amended, superseded, or revoked.

Secretary of the Interior

Date: MAR 2 9 2017

THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3350

Subject: America-First Offshore Energy Strategy

Sec. 1 **Purpose**. This Order further implements the President's Executive Order entitled: "Implementing an America-First Offshore Energy Strategy" (April 28, 2017); enhances opportunities for energy exploration, leasing, and development on the Outer Continental Shelf (OCS); establishes regulatory certainty for OCS activities; and enhances conservation stewardship, thereby providing jobs, energy security, and revenue for the American people.

Sec. 2 **Authorities**. This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and other applicable authorities, including the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*

Sec. 3 **Background**. Safe and responsible development of our offshore natural resources is critical to the Nation's environment and economy. The Bureau of Ocean Energy Management (BOEM) is responsible for administering the leasing program for oil and gas resources on the OCS and developing a five-year schedule of lease sales designed to "best meet national energy needs" for the five-year period following the schedule's approval, as required in Section 18 of the OCSLA, 43 U.S.C. 1334. The BOEM also permits seismic surveys on the OCS and, in conjunction with the Bureau of Safety and Environmental Enforcement (BSEE), regulates leasing, exploration, and development activities on the OCS.

In January 2017 the 2017 - 2022 Outer Continental Shelf Oil and Gas Leasing Program was approved excluding lease sales in the Atlantic Ocean and the Beaufort and Chukchi Seas offshore Alaska. By excluding these areas from the leasing program, the Department has forgone considering areas that potentially contain tens of billions of barrels of oil and over 100 trillion cubic feet of gas by BOEM's own estimates of undiscovered technically recoverable oil and gas resources. In addition, through a series of Presidential Memoranda issued by the previous Administration, huge swaths of the OCS were withdrawn from disposition by leasing along the Alaska and Atlantic coasts.

In addition to existing restrictions on OCS leasing, concerns have been raised by stakeholders that certain final or proposed rules, such as BSEE's final rule on "*Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control*" published at 81 Federal Register 25887 (April 29, 2016), unnecessarily include prescriptive measures that are not needed to ensure safe and responsible development of our OCS resources. Accordingly, a reevaluation of these rules is appropriate and necessary.

On April 28, 2017, the President issued an Executive Order entitled: "Implementing an America-First Offshore Energy Strategy (Executive Order)," which reconfirmed that it is "the policy of the United States to encourage energy exploration and production, including on the

Outer Continental Shelf, in order to maintain the Nation's position as a global energy leader and foster energy security and resilience for the benefit of the American people." The Executive Order eliminated the previous Administration's OCS leasing withdrawals and directed the Department to take a number of actions designed to ensure robust and responsible exploration and development of our OCS resources. These directives include revising the five-year leasing program and reconsidering promulgation of enumerated final or proposed rules and guidance that impact OCS resource development. This Order is designed to implement the President's directives and take other actions to ensure that responsible OCS exploration and development is promoted and not unnecessarily delayed or inhibited.

Sec. 4 **Directive.** In furtherance of the President's Executive Order, and consistent with principles of responsible public stewardship entrusted to the Department, with due consideration of the critical importance of energy security, job creation, and conservation stewardship, I hereby direct the following:

a. The BOEM shall undertake the following actions:

(1) Immediately initiate development of a new "Five-Year Outer Continental Shelf Oil and Gas Leasing Program", with full consideration given to leasing the OCS offshore Alaska, Mid-Atlantic, South Atlantic, and the Gulf of Mexico, in conformity with the provisions of OCSLA as directed by the President's Executive Order.

(2) In cooperation with the National Marine Fisheries Service, undertake the following activities: (i) establish a plan to expedite consideration of Incidental Take Authorization requests, including Incidental Harassment Authorizations and Letters of Authorization, that may be needed for seismic survey permits and other OCS activities; and (ii) develop and implement a streamlined permitting approach for privately-funded seismic data research and collection aimed at expeditiously determining the offshore energy resource potential of the United States.

(3) Expedite consideration of appealed, new, or resubmitted seismic permitting applications for the Atlantic.

(4) Promptly complete BOEM's previously announced review of Notice to Lessees (NTL) No. 2016-N01 "*Notice to Lessees and Operators of Federal Oil and Gas, and Sulfur Leases, and Holders of Pipeline Right-of-Way and Right-of-Use and Easement Grants in the Outer Continental Shelf*" (September 12, 2016), and provide to the Assistant Secretary – Land and Minerals Management (ASLM), the Deputy Secretary, and Counselor to the Secretary for Energy Policy, a report describing the results of the review and options for revising or rescinding NTL No. 2016-N01. The BOEM's previously announced extension of the implementation timelines for NTL No. 2016-N01 shall remain in effect pending completion of the review by the ASLM, Deputy Secretary, and the Counselor to the Secretary for Energy Policy.

(5) Immediately cease all activities to promulgate the "Offshore Air Quality Control, Reporting, and Compliance" Proposed Rule published at 81 Federal Register 19717

(April 5, 2016) and all other rules and guidance published pursuant thereto. Within 21 days of the issuance of this Order, the Director of BOEM shall provide to the ASLM, the Deputy Secretary, and Counselor to the Secretary for Energy Policy, a report explaining the effects, if any, of not issuing a new rule addressing offshore air quality, and providing options for revising or withdrawing the proposed rule consistent with the policy set forth in section 2 of the Executive Order.

(6) Within 21 days of the issuance of this Order, BOEM shall provide to the ASLM, the Deputy Secretary, and Counselor to the Secretary for Energy Policy, a report summarizing progress on the action items 1-5 above.

b. The BSEE shall undertake the following actions:

(1) Promptly review the final rule on "*Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control*" for consistency with the policy set forth in section 2 of the Executive Order, as well as all policies, rules, guidance, instructions, notices, or other implementing actions that have been adopted or are in the process of being developed relating thereto.

(2) Within 21 days of the issuance of this Order, provide to ASLM, Deputy Secretary, and Counselor to the Secretary for Energy Policy a report summarizing the review and providing recommendations on whether to suspend, revise, or rescind the rule.

c. The BSEE and BOEM are also to undertake the following action: Promptly review the final rule entitled "Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf," 81 Federal Register 46478 (July 15, 2016), for consistency with the policy set forth in section 2 of the Executive Order and, within 21 days of the date of this Order, provide to ASLM, Deputy Secretary, and Counselor to the Secretary for Energy Policy a report summarizing the review and providing recommendations on whether to suspend, revise, or rescind the rule.

d. The Counselor to the Secretary for Energy Policy, in cooperation with the Assistant Secretary for Fish and Wildlife and Parks (ASFWP) and ASLM, shall work with the Department of Commerce to review the National Marine Sanctuary and Monument designations as directed by the Executive Order.

Sec. 5 **Counselor to the Secretary for Energy Policy**. To further promote the deliberate and active coordination of energy policy in the Department, I am, by separate Order, establishing within the Secretary's Immediate Office the position of Counselor to the Secretary for Energy Policy. The Deputy Secretary, ASLM, and ASFWP will coordinate with the Counselor to the Secretary for Energy Policy in implementing this Order.

Sec. 6 **Effect of Order**. This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to, and do not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its

officers or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 7 **Expiration Date**. This Order is effective immediately. It will remain in effect until its provisions are implemented and completed, or until it is amended, superseded, or revoked.

Secretary of the Interior

Date: MAY 0 1 2017

THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3351

Subject: Strengthening the Department of the Interior's Energy Portfolio

Sec. 1 **Purpose**. This Order establishes the position of Counselor to the Secretary for Energy Policy to ensure deliberate and active coordination of energy policy in the Department.

Sec. 2 **Background**. Energy is an essential part of American life and a staple of the world economy. Achieving American energy dominance begins with recognizing that we have vast untapped domestic energy reserves. For too long, America has been held back by burdensome regulations on our energy industry. The Department is committed to an America-first energy strategy that lowers costs for hardworking Americans and maximizes the use of American resources, freeing us from dependence on foreign oil.

Nine of the Department's 10 bureaus have significant energy programs and responsibilities. The Department's energy portfolio includes oil, gas, coal, hydroelectric, wind, solar, geothermal, and biomass. The Department recognizes that the development of energy resources on public lands will increase domestic energy production, provide alternatives to overseas energy resources, create jobs, and enhance the energy security of the United States. Eliminating harmful regulations and unnecessary policies will require a sustained, focused effort.

Sec. 3 **Authority**. This Order is issued under the authority of 43 U.S.C. 1451, Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), and other applicable statues.

Sec. 4 **Counselor to the Secretary for Energy Policy**.

a. There is established in the Immediate Office of the Secretary, the position of Counselor to the Secretary for Energy Policy (Counselor).

b. The Counselor shall report directly to the Secretary, who retains all decision-making authority.

c. The duties of the Counselor position shall include, but are not limited to:

(1) Advising the Secretary, Deputy Secretary, Assistant Secretaries, and Chief of Staff on all aspects of energy policy.

(2) Developing and coordinating strategies, policies, and practices that promote responsible development of all types of energy on public lands managed and administered by the Department.

(3) Identifying regulatory burdens that unnecessarily encumber energy exploration development, production, transportation; and developing strategies to eliminate or minimize these burdens.

(4) Promoting efficient and effective processing of energy-related authorizations, permits, regulations, and agreements. This includes, but is not limited to, working with the Assistant Secretaries and other Department leadership in prioritizing the work of bureaus/offices in developing and implementing energy policy and affairs; tracking progress of bureaus/offices; and resolving obstacles to energy exploration, development, production, and transportation concerns.

d. As directed by the Secretary, the Counselor:

(1) Represents the Secretary, the Deputy Secretary, and/or Chief of Staff on energy-related intra- and inter-agency meetings of high-level governmental officials;

(2) Chairs boards, councils, and committees concerned with research, development, exploration, and transportation of energy; and

(3) Represents the Secretary, the Deputy Secretary, and/or Chief of Staff before energy-related internal and external stakeholder meetings and conferences.

e. The Counselor undertakes such other actions as directed by and on behalf of the Secretary that relate to energy policy and affairs, including but not limited to coordinating:

(1) Policy and regulatory decisionmaking for domestic and international projects;

(2) Development of best management practices for energy projects on the public lands to ensure responsible development of energy; and

(3) Reviews of cost recovery in processing energy applications and monitoring of authorizations under the provisions of Section 304 and Section 504 of the Federal Land Policy and Management Act.

f. The Counselor works with other Federal agencies and offices, and state regulatory agencies and offices, to improve the coordination of energy policy.

Sec. 5 **Implementation.**

a. The Counselor and the Chief of Staff are responsible for implementing this Order.

b. Each Assistant Secretary and bureau/office head, including the Solicitor, shall designate a liaison to serve with the Counselor in accordance with this Order.

Sec. 6 **Expiration Date**. This Order is effective immediately. It will remain in effect until its provisions are converted to the Departmental Manual or until amended, suspended, or revoked, whichever occurs first. The termination of this Order will not nullify implementation of the requirements and responsibilities affected herein.

Secretary of the Interior

Date: MAY 0 1 2017

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

ORDER NO. 3352

Subject: National Petroleum Reserve – Alaska

Sec. 1 **Purpose**. This Order provides for 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. The prudent development of these natural resources in Alaska and beyond is essential to ensuring the Nation's geopolitical security.

Sec. 2 **Authorities**. This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended; the Federal Land Policy and Management Act, 43 U.S.C. 1701-1785; the Naval Petroleum Reserves Production Act of 1976, 42 U.S.C. 6501-6507, as amended; and other applicable statutes.

Sec. 3 **Background**. The National Petroleum Reserve – Alaska (NPR-A) is the largest block of federally managed land in the United States. In 2010, the U.S. Geological Survey estimated the NPR-A contained approximately 895 million barrels of economically recoverable oil and 52.8 trillion cubic feet of natural gas. On February 21, 2013, the Secretary of the Interior signed a Record of Decision approving the Integrated Activity Plan for the NPR-A, which sets forth the Bureau of Land Management's plan for future management of the area. That plan made approximately 11 million of the NPR-A's 22.8 million acres unavailable for leasing, potentially precluding development of up to 350 million barrels of oil and 45 trillion cubic feet of natural gas. The 1.5 million-acre coastal plain of the 19 million-acre Arctic National Wildlife Refuge (ANWR) is the largest unexplored, potentially productive geologic onshore basin in the United States. The primary area of the coastal plain is the Section 1002 Area of ANWR. The Section 1002 Area was specifically set aside by Congress and the President in 1980 because of its potential for oil and natural gas development.

Sec. 4 **Policy and Direction**.

a. Within 21 days of the issuance of this Order, the Assistant Secretary – Land and Minerals Management shall submit to the Counselor to the Secretary for Energy Policy:

(1) a schedule to effectuate the lawful review and development of a revised Integrated Activity Plan for the NPR-A that strikes an appropriate statutory balance of promoting development while protecting surface resources; and

(2) an evaluation, under the existing Integrated Activity Plan, on efficiently and effectively maximizing the tracts offered for sale during the next NPR-A lease sale.

b. Within 21 days of the issuance of this Order, the Assistant Secretary – Land and Minerals Management and the Assistant Secretary – Water and Science shall submit to the Counselor to the Secretary for Energy Policy a joint plan for updating current assessments of undiscovered, technically recoverable oil and natural gas resources of Alaska's North Slope, focusing on Federal lands including the NPR-A and the Section 1002 Area. The joint plan shall include consideration of new geological and geophysical data that has become available since the last assessments, as well as potential for reprocessing existing geological and geophysical data.

c. Within 31 days of the issuance of this Order, the Counselor to the Secretary for Energy Policy shall provide to me a plan to complete the review of the Department's actions set forth above.

Sec. 5 **Effect of Order**. This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 6 **Expiration Date**. This Order is effective immediately. It will remain in effect until its provisions are fully implemented, or until it is amended, superseded, or revoked, whichever occurs first.

Secretary of the Interior

Date:

THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3353

Subject: Greater Sage-Grouse Conservation and Cooperation with Western States

Sec. 1 **Purpose**. The purposes of the Order are to: (1) enhance cooperation between the Department of the Interior (Department) and the States of Oregon, Washington, California, Nevada, Idaho, Utah, Montana, North Dakota, South Dakota, Wyoming, and Colorado (the Eleven Western States) in the management and conservation of the Greater Sage-Grouse (Sage-Grouse) and its habitat; (2) support a partnership with clearly defined objectives and roles for Federal and State entities responsible for Sage-Grouse management and conservation in order to sustain healthy populations of the species; and (3) establish a team to review the Federal land management agencies' Sage-Grouse plan amendments and revisions completed on or before September 2015.

Sec. 2 **Authorities**. This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and pursuant to the land management and programmatic authorities of the bureaus identified below in section 4b.

Sec. 3 **Background**. The Department has broad responsibilities to manage Federal lands and resources for the public's benefit, including, but not limited to, permitting authorized uses; managing habitat to support fish, wildlife, and other resources; protecting cultural resources; and providing recreational and educational opportunities on Federal lands and waters.

The State agencies responsible for fish and wildlife management possess broad powers for the protection and management of fish, wildlife, and plants within their borders, except where preempted by Federal law. State agencies are at the forefront of efforts to maintain healthy fish and wildlife populations and to conserve at-risk species to ensure that protection under the Endangered Species Act (ESA) is not required.

The State-Federal Sage-Grouse Task Force (SGTF) was established in 2011 as a forum for high-level State and Federal representatives to meet and evaluate policies, programs, management actions, data sharing, and other actions affecting conservation of the Sage-Grouse and the sagebrush ecosystem, as well as the health of the communities and economies of the American West.

In September 2015, the Department and the United States Department of Agriculture (USDA) adopted amendments and revisions to 98 Bureau of Land Management (BLM) and U.S. Forest Service (USFS) land use plans across the Eleven Western States addressing, in part, the Sage-Grouse and its habitat (the 2015 Sage-Grouse Plans). The 2015 Sage-Grouse Plans govern management of 67 million acres of Federal lands. More than half of remaining Sage-Grouse habitat is on land managed by BLM and USFS. As the Department moves forward in the management of Sage-Grouse habitat, it is imperative that it does so in a manner that allows both

wildlife and local economies to thrive and incorporate the expertise of Federal employees in the field, local conditions, and proven State and local approaches.

In October 2015, in reliance upon the conservation commitments and progress reflected in Federal land use plan amendments and revisions and other private, State, and Federal conservation efforts, the U.S. Fish and Wildlife Service (FWS) determined that the Sage-Grouse did not warrant listing under the ESA. In making that finding, FWS committed to work with State and Federal partners to conduct a Sage-Grouse status review in 5 years.

Sec. 4 **Policy**.

a. Cooperation with the Eleven Western States on Sage-Grouse Conservation Efforts.

Consistent with governing laws, regulations, and policies, the Department will implement a multifaceted strategy to enhance cooperation with the Eleven Western States primarily responsible for the management and conservation of Sage-Grouse. The strategy will include supporting a partnership that allows the Department and the Eleven Western States to maintain healthy populations of Sage-Grouse and improve collaboration and integration of State and local concerns and approaches into sagebrush management and conservation on Federal lands. Accordingly, and subject to paragraph 4b, below, the BLM Director, working with other heads of bureaus and offices within the Department, USFS, and affected States through the SGTF, shall develop:

(i) memorandums of understanding and other agreements with states and other partners regarding implementation of the 2015 Sage-Grouse Plans;

(ii) training for BLM staff regarding implementation of the 2015 Sage-Grouse Plans, including direction to consider state and local information, as appropriate; and

(iii) memorandums of understanding and other agreements with States and other partners regarding integration of information on Sage-Grouse populations into Federal land management decisions.

b. Department of the Interior Sage-Grouse Review Team.

This Order establishes the Sage-Grouse Review Team (Team). The Team will be made up of land managers and other professionals from bureaus and offices, including BLM, FWS, and the U.S. Geological Survey (USGS). The Team will closely coordinate with USDA and USFS. The Team will engage with appropriate State agencies through the SGTF to coordinate its work. The Team is hereby directed to conduct:

(i) a review of the plans and programs that States already have in place to ensure that the 2015 Sage-Grouse Plans adequately complement state efforts to conserve the species;

(ii) a further examination, through the framework established by the Integrated Rangeland Fire Management Strategy, of issues associated with preventing and fighting the proliferation of invasive grasses and wildland fire, which are leading threats to Sage-Grouse habitat;

(iii) an examination of the impact on individual States disproportionately affected by the large percentage of Federal lands within their borders, recognizing that those lands are important to resource use and development, and to the conservation of the Sage-Grouse;

(iv) a review of the 2015 Sage-Grouse Plans and associated polices, including seven BLM Instruction Memoranda (IM) issued in September 2016. The review will include (1) identification of provisions that may require modification or rescission, as appropriate, in order to give appropriate weight to the value of energy and other development of public lands within BLM's overall multiple-use mission and to be consistent with the policy set forth in Secretary's Order 3349, "American Energy Independence," implementing the Executive Order signed by the President on March 28, 2017, "Promoting Energy Independence and Economic Growth"; and (2) opportunities to conserve the Sage-Grouse and its habitat without inhibiting job creation and local economic growth;

(v) as appropriate, the Team should provide recommendations with regard to (1) captive breeding; (2) opportunities to enhance State involvement; (3) efficacy of target populations on a State-by-State basis; and (4) additional steps that can be taken in the near term to maintain or improve the current population levels and habitat conditions.

Sec. 5. **Implementation**.

a. Within 10 days of the signing of this Order, the Deputy Secretary will designate individuals from within the Department to serve on the Team.

b. The BLM Director will designate an individual to coordinate all activities by and within the Department with respect to implementation of this Order.

c. All bureaus and offices are directed to immediately begin implementing section 4 of this Order by identifying opportunities for cooperative management agreements and collaborative partnerships with the Eleven Western States and by outlining any specific steps to be undertaken.

d. Within 60 days of the date of this Order, the Team shall provide a report to the Secretary summarizing the review set forth in section 4b of this Order and provide recommendations regarding additional steps the Department should take to address any issues identified as a result of that review.

Sec. 6 **Effect of Order**. This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to and

do not create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 7 **Expiration Date**. This Order is effective immediately and will remain in effect until its provisions are accomplished, amended, superseded, or revoked, whichever occurs first.

Secretary of the Interior

Date: June 7, 2017

THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3354

Subject: Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program

Sec. 1 **Purpose**. This Order is intended to ensure that quarterly lease sales are consistently held and to identify other ways the Department of the Interior (Department) may promote the exploration and development of both Federal onshore oil and gas resources and Federal solid mineral resources.

In administering 700 million acres of the Federal mineral resources, the Bureau of Land Management (BLM) has a responsibility to make both Federal oil and gas resources and Federal solid mineral resources available for the benefit of citizens of the United States. Multiple quarterly Federal onshore oil and gas lease sales have been postponed or cancelled since 2009. The Mineral Leasing Act of 1920 requires that oil and gas lease sales "be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary," 30 U.S.C. § 226. In issuing this Order, I am taking corrective action as a responsible public steward to strengthen American energy security and create American jobs.

Sec. 2 **Authorities**. This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950, 64 Stat. 1262, as amended. Other statutory authorities for this Order include, but are not limited to, the following:

(a) Mineral Leasing Act of 1920, 30 U.S.C. §§ 181-287;

(b) Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359; and

(c) Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-1785.

Sec. 3 **Directive**. Consistent with principles of responsible public stewardship entrusted to this office, with due consideration of the critical importance of American energy security, job creation, conservation stewardship, and the economies of affected states, the following actions shall be taken by BLM:

(a) support and improve the implementation of the oil and gas quarterly lease sale provision found in the Mineral Leasing Act;

(b) identify options to improve the Federal onshore oil and gas leasing program and the Federal solid mineral leasing program, as well as identify additional steps to enhance exploration and development of Federal onshore oil and gas resources and Federal solid mineral resources; and

(c) develop an effective strategy to address permitting applications efficiently and effectively as well as develop clear and actionable goals for reducing the permit processing time.

Sec. 4 **Implementation**.

(a) The Assistant Secretary – Land and Minerals Management (ASLM) and the Director, BLM, shall report to the Counselor to the Secretary for Energy Policy within 45 days of the date of this Order on:

(1) progress made to support and improve the quarterly lease sales in the Federal onshore oil and gas leasing program and a timeline for doing so, if not already completed;

(2) options identified to improve the Federal onshore oil and gas leasing program and the Federal solid mineral leasing program to enhance Federal onshore oil and gas and Federal solid mineral exploration and development as required by section 3 above; and

(3) a strategy to process the large number of currently pending permitting applications and improve the permitting process. (As part of this process, the ASLM and Director, BLM, shall consult with the U.S. Department of Agriculture and U.S. Forest Service.)

(b) In addition, the other Assistant Secretaries and heads of bureaus/offices within the Department are hereby directed to:

(1) identify any provisions in their existing policy and guidance documents that would impede BLM's plans to carry out quarterly oil and gas lease sales or its efforts to enhance exploration and development of Federal onshore oil and gas resources and Federal solid mineral resources; and

(2) provide to the Counselor to the Secretary for Energy Policy within 45 days of the date of this Order a report on progress made to eliminate the identified policy or guidance impediments and a timeline for eliminating them, if not already completed.

Sec. 5 **Effect of the Order**. This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

3

Sec. 6 **Expiration Date**. This Order is effective immediately. It will remain in effect until it is amended, superseded, or revoked.

Secretary of the Interior

Date: 6 JUL 17

[FR Doc. 2017–23702 Filed 10–31–17; 8:45 am]

BILLING CODE 4334–63–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2017–0552]

RIN 1625–AA08

Special Local Regulation; Atlantic Ocean, Ft. Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a recurring special local regulation for navigable waters of the Atlantic Ocean in the vicinity of Fort Lauderdale, FL for the Fort Lauderdale Grand Prix of the Seas. The Fort Lauderdale Grand Prix of the Seas race course is located east of South Beach Park and North of the Port Everglades inlet. Approximately 100 high-speed personal watercraft will be participating in the event. The special local regulation is needed to protect personnel, vessels, and the marine environment from potential hazards during the race event. All vessels and persons in the regulated area must follow the direction of Coast Guard personnel, law enforcement, and race officials.

DATES: This rule is effective November 1, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0552 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Mara J. Brown, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone (305) 535–4317, email *Mara.J.Brown@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On June 7, 2017, the company Powerboat P1–USA, LLC notified the Coast Guard that it will be conducting the Ft. Lauderdale Grand Prix of the Seas race annually. This event will occur yearly on one weekend (Friday, Saturday, and Sunday) in November. The race course will be located directly east of South Beach Park in Ft. Lauderdale, FL. The special local regulation is intended to protect personnel, vessels, and the marine environment. On September 6, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, ''Special Local Regulation; Atlantic Ocean, Ft. Lauderdale, FL'' (82 FR 42050). Therein we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this race During the comment period that ended October 6, 2017, we received five comments.

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 impracticable because immediate action is needed to respond to the potential safety hazards associated with this event which will take place this year on November 17, 2017.

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 Miami (COTP) has determined that that potential hazards associated with the high speeds of the participants during the races would be a safety concern for anyone who would enter the race area. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the established race area, marked with buoys.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received five comments on our NPRM published September 6, 2017. All comments were in favor of this regulation. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special local regulation for this event occuring annually on one weekend (Friday, Saturday, and Sunday) in November, with the precise date of the event each year to be published in a notice of enforcement in the **Federal Register**. The special local regulation covers all

navigable waters within the established race area, marked with buoys, approximately one mile north of the Port Everglades inlet. The duration of the zone is intended to protect personnel, vessels, and the marine environment in the navigable waters during the Fort Lauderdale Grand Prix of the Seas race event. Only those vessels participating in the event may enter, transit through, anchor in, or remain within the regulated area, and all vessels and persons in the regulated area must follow the direction of Coast Guard personnel, law enforcement, and race officials.

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, and time-of-year of the special local regulation. Vessel traffic will be able to safely transit around this regulated area, which will impact a small designated area of the Atlantic Ocean in Fort Lauderdale, FL, directly adjacent to the shore, for three days.

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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting three days that will impact a small area in the vicinity of the Port Everglades Inlet. It is categorically excluded from further review under paragraph 34(h) of Figure 201 of the Commandant Instructions. 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 § 100.723 to read as follows:

§ 100.723 Special Local Regulation; Fort Lauderdale Grand Prix of the Seas; Fort Lauderdale, FL.

(a) Location. The following regulated area is established as a special local regulation. All navigable waters contained within an imaginary line connecting the following points: beginning at Point 1 in position 26°6′21″ N., 080°5′51″ W.; thence west to Point 2 in position 26°6′21″ N., 080°6′13″ W.; thence north to Point 3 in position 26°6′57″ N., 080°6′13″ W.; thence east to Point 4 in position 26°6′57″ N., 080°5′52″ W., thence back to origin at point 1. All coordinates are North American Datum 1983.

(b) Definition. The following definitions apply to this section:

(1) The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and Local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(2) The term ''Patrol Commander'' means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector Commander to enforce these regulations.

(3) The term ''spectators'' means all persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) *Regulations.* (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, remain within or transit in excess of wake speed within any of the regulated area may contact the Captain of the Port Miami by telephone at (305) 535–8701, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will use all appropriate means to notify the public in advance of an event of the enforcement of the regulations in this section to include publishing a Notice of Enforcement in the **Federal Register** and through the local Notice to Mariners and Broadcast Notice to Mariners.

(d) *Enforcement date.* This section will be enforced annually on a weekend (Friday, Saturday and Sunday) in the month of November.

Dated: October 23, 2017.

J.H.D. Solomon,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2017–23708 Filed 10–31–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0967]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Alligator River, Columbia, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the US 64/Alligator River Bridge which carries US 64 over the Atlantic Intracoastal Waterway (AICW), Alligator River, mile 84.2, near Columbia, NC. The deviation is necessary to facilitate bridge maintenance. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: The deviation is effective from 7 a.m. on November 6, 2017, through 7 p.m. on November 17, 2017.

ADDRESSES: The docket for this deviation, USCG–2017–0967 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email *Michael.R.Thorogood@uscg.mil.*

SUPPLEMENTARY INFORMATION: The North Carolina Department of Transportation, owner and operator of the US 64/Alligator River Bridge that carries US 64 over the AICW, Alligator River, mile 84.2, at near Columbia, NC, has requested a temporary deviation from the current operating schedule to facilitate application of an epoxy overlay for the drawbridge's entire bridge deck. The bridge has a vertical clearance of 14 feet above mean high water in the closed position and unlimited feet above mean high water in the open position.

The current operating schedule is set out in 33 CFR 117.5. Under this temporary deviation, the bridge will be in the closed-to-navigation position from 7 a.m. to 7 p.m.; on Monday, November 6, 2017, through Saturday, November 11, 2017, and Monday, November 13, 2017, through Friday, November 17, 2017.

The AICW, Alligator River is used by a variety of vessels including, small commercial vessels, tug and barge traffic, and recreational vessels. The Coast Guard has carefully coordinated the restrictions with waterway users in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will open on signal during closure period, if at least 2 hours notice is given. The bridge will be able to open for emergencies and there is no immediate alternative route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterway through our Local Notice and Broadcast Notices to Mariners of the change in operating schedule for the bridge so vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: October 27, 2017.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2017–23745 Filed 10–31–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0932]

RIN 1625–AA00

Safety Zone; Illinois River, Beardstown, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters on the Illinois River between mile marker (MM) 83.0 and MM 87.0. This action is necessary to provide for the safety of life and property on all navigable waters near Beardstown, IL while construction work is completed on new power lines extending across the river. During the period of enforcement, entry into the safety zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative.

DATES: This rule is effective from 6 a.m. on November 1, 2017, through 6 p.m. on December 15, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0932 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Sean Peterson, Chief of Prevention, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314–269–2332, email *Sean.M.Peterson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Upper Mississippi River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM) with respect to this rule because it is impracticable.

The contractor for Ameren Electric Company, The L.E. Meyers Co., notified the Coast Guard on September 25, 2017 that the work would begin November 1, 2017 at 6 a.m. between Illinois River mile marker (MM) 83.0 and MM 87.0, which will cause safety concerns to vessels and obstruct the navigational channel. The contractor will be using helicopters in the placement of steel structures to support new power lines and to stretch the new power lines across the river. Due to the risks associated with power line work crossing the navigational channel, a safety zone is needed. We must establish this temporary safety zone by November 1, 2017 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of the rule is contrary to the public interest because immediate action is necessary to prevent possible loss of life and property from the hazards associated with the overhead power line work.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with overhead power line construction presents a safety concern for all navigable waters of the Illinois River between MM 83.0 and MM 87.0. The purpose of this rule is to ensure safety of life on the navigable waters in the temporary safety zone before, during, and after the overhead power line work.

IV. Discussion of the Rule

This rule establishes a safety zone each day from 6 a.m. to 6 p.m. beginning on November 1, 2017 and ending on December 15, 2017, or until conditions allow for safe navigation, whichever occurs earlier. The safety zone will cover all navigable waters between MM 83.0 and MM 87.0 on the Illinois River in Beardstown, IL. The safety zone is intended to ensure the safety of life and vessels on these navigable waters during overhead power line work. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Exact times of the closures and any changes to the planned schedule will be communicated to mariners using Broadcast and Local Notice to Mariners.

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-year of the safety zone. This temporary final rule establishes a temporary safety zone impacting a four mile area on the Illinois River for a limited time period of twelve hours on forty-five separate days. Additionally, from November 1, 2017 to November 11, 2017 the safety zone will be enforced for only five days while steel structures are being flown over the river and put in place to support the new power lines. During the dates from November 12, 2017 to December 15, 2017 new power lines will be stretched across the river. During the enforcement period, vessels are prohibited from entering into or remaining within the safety zone unless specifically authorized by the COTP or other designated representative. The contractor performing the work will communicate to the COTP when work is not being performed and allow for affected vessel traffic to pass through the area.

Additionally, notice of the safety zone or any changes in the planned schedule will be made via Broadcast and Local

Notice to Mariners. Entry into this safety zone may be requested from the COTP or other designated representative and will be considered on a case-by-case basis.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting twelve hours on thirty-nine separate days that will prohibit entry from MM 83.0 to MM 87.0 on the Illinois River from November 1, 2017 to December 15, 2017. It is categorically excluded from further review under paragraph 34(g) 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 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0932 to read as follows:

§ 165.08–0932 Safety Zone; Illinois River, Beardstown, IL.

(a) *Location.* The following area is a safety zone: All navigable waters of the Illinois River between mile marker (MM) 83.0 and MM 87.0, Beardstown, IL.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Upper Mississippi River (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in § 165.23 of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or a designated representative.

(2) To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through Coast Guard Sector Upper Mississippi River by telephone at 314–269–2332. Those in the safety zone must comply with all lawful orders or

directions given to them by the COTP or a designated representative.

(d) *Effective period.* This rule will be effective from 6 a.m. on November 1, 2017 through 6 p.m. on December 15, 2017. It will be enforced daily from 6 a.m. through 6 p.m.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the dates and times of enforcement.

Dated: October 27, 2017.

Scott A. Stoermer,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2017–23820 Filed 10–31–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Chapter II

Report Prepared Pursuant to Executive Order 13783—Promoting Energy Independence and Economic Growth

AGENCY: Forest Service, USDA.

ACTION: Notification of final report.

SUMMARY: The U.S. Department of Agriculture's Forest Service (Forest Service) has prepared its final report pursuant to Section 2 of Executive Order 13783—Promoting Energy Independence and Economic Growth (E.O. 13783). Section 2 of E.O. 13783 mandates an immediate review of all Federal agency actions that potentially unduly burden the safe, efficient development of domestic energy resources, and requires heads of Federal agencies to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially unduly burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. E.O. 13783 also requires Federal agencies to make recommendations that could alleviate or eliminate aspects of their actions that unduly burden domestic energy production.

DATES: November 1, 2017.

ADDRESSES: The report is available on the Forest Service's Web site at *https://www.fs.fed.us/managing-land/energy.*

FOR FURTHER INFORMATION CONTACT: Sherri Thompson at 303–275–5147 or by mail at 1617 Cole Boulevard, Building 7, Lakewood, CO 80401.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of E.O. 13783 is to eliminate unnecessary Federal procedures that obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources. On National Forest System lands, the USDA and the Forest Service play an important role in assuring that activities associated with Federal and private energy mineral resources, renewable energy projects, and energy-related transmission and distribution facilities are conducted in a manner that minimizes adverse effects on Federal surface resources while avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.

Pursuant to Section 2 of E.O. 13783, the Forest Service reviewed more than 70 agency actions, including regulations, policies, guidance, orders, agreements with partner agencies, and programmatic analyses at the Washington Office and field levels of the agency to assess whether they unduly burden clean and safe domestic energy development. As a result of that review, the Forest Service recommends revising or rescinding parts of 15 agency actions to alleviate or eliminate undue burdens on the prudent development or use of domestic energy sources. Consistent with E.O. 13783, it is in the national interest to promote the clean and safe development of America's vast energy resources. Adopting these recommendations would result in the revision of parts of three regulations, five policies, four agreements with other agencies, one programmatic analysis, and one order and rescinding part of one policy. The Forest Service's recommendations are principally associated with streamlining agency procedures or clarifying agency policy to facilitate more efficient processing of energy proposals by the agency alone or in coordination with its partners.

Dated: October 25, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–23805 Filed 10–31–17; 8:45 am]

BILLING CODE 3411–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R06–OAR–2016–0611; FRL–9969–07–Region 6]

Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan

Correction

In rule document 2017–21947, appearing on pages 48324–48380 in the issue of Tuesday, October 17, 2017, make the following correction:

On page 48370, in the first column, in the sixteenth line from the top, ''97.404(b)(1)'', should read ''97.904(b)(1)''.

[FR Doc. C1–2017–21947 Filed 10–31–17; 8:45 am]

BILLING CODE 1300–00–D

Proposed Rules

Federal Register
Vol. 82, No. 210
Wednesday, November 1, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0636; Notice No. 25–17–02–SC]

Special Conditions: The Boeing Company Model 777–8 and 777–9 Airplanes; Folding Wingtips

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Boeing Model 777–8 and 777–9 airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is folding wingtips. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before December 18, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0636 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Ian Won, FAA, Airframe and Cabin Safety Section, AIR–675, Policy and Innovation Division, Transport Standards Branch, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2145; facsimile 425–227–1360.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

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

Background

On April 19, 2017 (for the Model 777–8 airplane), and May 12, 2015 (for the 777–9 airplane), Boeing applied for an amendment to Type Certificate (TC) No. T00001SE to include the new Model 777–8 and 777–9 airplanes. These airplanes are constructed with new carbon-fiber-reinforced plastic (CFRP) wings with folding wingtips.

The Model 777–9 airplane, a derivative of the Model 777–300ER airplane currently approved under TC No. T00001SE, is a stretched-fuselage, large, twin-engine airplane with seating for 408 passengers and a maximum takeoff weight of 775,000 pounds.

The Model 777–8 airplane, a shortened-body derivative of the Model 777–9 airplane, is a large, twin-engine airplane with seating for 359 passengers and a maximum takeoff weight of 775,000 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777–8 and 777–9 airplanes meet the applicable provisions of the regulations listed in TC No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 777–8 and 777–9 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Model 777–8 and 777–9 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of

the type certification basis under § 21.101.

Novel or Unusual Design Features

The Model 777–8 and 777–9 airplanes will incorporate the following novel or unusual design features: CFRP wings with folding wingtips.

Boeing proposes to incorporate this on-ground wingtip-fold capability to reduce the wingspan from 235 to 212 feet when folded. These folding wingtips, when extended into the flight-deployed position, provide improved aerodynamic performance and efficiency, and comply with Code E [1] gate compatibility when folded during ground operations.

Discussion

Boeing proposes adding folding wingtips to their Model 777–8 and 777–9 airplane wings to improve aerodynamic performance and efficiency when the wingtips are extended into the flight-deployed position, while maintaining Code E gate compatibility when folded during ground operations. This wing-folding feature will be operable on the ground only. Boeing has no plan to carry fuel in the folding sections of the wings.

Boeing has determined that a catastrophic event could occur if the 777–8 and 777–9 airplane wingtips are not properly positioned and secured for takeoff and during flight. In service, numerous takeoff operations with improper airplane configurations have occurred due to failures of the takeoff warning systems, or inadvertent crew actions. For these proposed special conditions, a parallel is drawn between taking off with gust locks engaged and taking off with the wingtips folded, as either condition could result in a catastrophic event. Consequently, the FAA has determined that the level of safety in protecting a misconfigured airplane from takeoff with wingtips folded should be the same as taking off with the gust locks engaged. Therefore, condition 2 of these proposed special conditions has the same intent as § 25.679(a)(2). Per § 25.1309, the applicant must show that such an event is extremely improbable, must not result from a single failure, and that appropriate alerting must be provided for the crew to manage unsafe system-operating conditions. In addition, the applicant must ensure that the wingtips are properly secured during ground operations to protect ground personnel against bodily injury.

Factors to be considered when showing compliance to these proposed special conditions include, but are not limited to:

- With wingtips in the folded position, the conventional airplane-wingtip-position lights may have reduced visibility due to the upward position of the wingtips, possibly impacting ground-operation safety. Light placement may require special consideration to retain the current ground-operation safety, and mitigate any adverse impact this light position may have on pilot visibility during night-lighting conditions.
- Due to upward wingtip positioning on the ground, significant loads may be imposed by wind gusts combined with taxi speed during the transition from the unfolded to the folded position.
- The FAA issued Policy Statement No. PS–ANM–25–12, ''Certification of Structural Elements in Flight Control Systems,'' to address structural elements in systems that act as both structure and as part of a system. This policy provides additional guidance on the appropriate application of the fatigue and damage-tolerance requirements of § 25.571, and the system-safety requirements of §§ 25.671 and 25.1309.

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

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777–8 and 777–9 airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–8 and 777–9 airplanes.

Note: The term ''latch'' refers to the mechanism that allows the wingtip to carry flight loads in the down (flight-deployed) position. The term ''lock'' refers to the mechanism that prevents disconnection of the latch when the wing tip is down.

1. More than one means must be available to alert the flightcrew that the wingtips are not properly positioned and secured prior to takeoff. Each of these means must be unique in their wingtip-monitoring function. When meeting this condition, the applicant must add a function to the takeoff warning system, as required by § 25.703(a)(1) and (2), to warn of an unlocked or improperly positioned wingtip, including indication to the flightcrew when a wingtip is in the folded position during taxi.

2. In addition to a takeoff warning in accordance with § 25.703, a means must be provided to prevent airplane takeoff if a wingtip is not properly positioned and secured for flight.

3. The applicant must consider the effects of folding-wingtip freeplay when evaluating compliance to the design load requirements of 14 CFR subpart C, and the aeroelastic stability (including flutter, divergence, control reversal, and any undue loss of stability and control as a result of structural deformation) requirements of § 25.629. Thus, the effects of normal wear, and other long-term durability conditions (such as corrosion) of the folding-wingtip operating mechanism on freeplay, and its impact on loads and aeroelastic stability, must be considered. Where freeplay limitations are required to ensure aeroelastic stability, acceptable freeplay limits and freeplay check procedures must be established. If lubrication is required to control excessive wear, lubrication intervals must be established. These procedures and limitations must be documented in accordance with § 25.1529. The freeplay-check and mechanism-lubrication intervals, if required, must be documented as a certification maintenance requirement (CMR). Guidance for CMRs can be found in Advisory Circular 25–19A, ''Certification Maintenance Requirements.'' The effects of freeplay on wing-joint torsional and bending stiffness, as well as wing frequencies, must be evaluated when showing compliance to loads and aeroelastic stability requirements. Also, the effects of freeplay on fatigue and damage

[1] A Code E gate is designed to accommodate aircraft wingspans between 170.6 ft. (52m) and 213.3 ft. (65m), and outer main-gear wheel spans between 29.5 ft. (9m) and 45.9 ft. (14m). Boeing 777 airplanes are in this gate-code category.

tolerance must be considered when showing compliance with § 25.571.

4. The folding wingtips and their operating mechanism must be designed for 65 knot, horizontal, ground-gust conditions in any direction as specified in § 25.415(a). Relevant design conditions must be defined using combinations of steady wind and taxi speeds determined by rational analysis utilizing airport wind data. The folding wingtip is not a control surface as specified in § 25.415(b)(c). Therefore, in lieu of the equation provided in § 25.415(b), the hinge moment may be calculated from rational wind-tunnel data. The 1.25 factor specified in § 25.415(d) need not be applied to the portion of the system that is isolated in flight and is not critical for safe flight and landing. The folding-wingtip system must be designed for the conditions specified in § 25.415(e), (f), and (g). Runway roughness, as specified in § 25.491, must be evaluated separately up to the maximum relevant airplane ground speeds. All of the above conditions must be applied to the folding wingtips in the extended (flight-deployed), folded, and transient positions.

5. The airplane must demonstrate acceptable handling qualities during rollout in a crosswind environment, as wingtips transition from the flight-deployed to folded position, as well as during the unlikely event of asymmetric wingtip folding.

6. The wingtip-fold operating mechanism must have stops that positively limit the range of motion of the wingtips. Each stop must be designed to the requirements of § 25.675.

7. The wingtip hinge structure must be designed for inertia loads acting parallel to the hinge line. In the absence of more rational data, the inertia loads may be assumed to be equal to KW as referenced in § 25.393. Hinge design must meet the requirements of § 25.657.

8. In lieu of § 25.1385(b): The forward position lights must be installed such that they consist of a red and a green light spaced laterally as far apart as practicable, and installed forward on the airplane, so that, with the airplane in the normal flying position and with the wingtips in the folded position for ground operations, the red light is on the left side and the green light is on the right side at approximately the level of the wingtips in the takeoff configuration. Each light must be approved and must meet the requirements of § 25.1385(a) and (d). The lights must not impair the vision of the flightcrew when the wingtips are in the folded and transient positions.

9. The applicant must include design features that ensure the wingtips are properly secured during ground operations, to protect ground personnel from bodily injury as well as to prevent damage to the airframe, ground structure, and ground support equipment.

10. The wingtips must have means to safeguard against unlocking from the extended, flight-deployed position in flight, as a result of failures, including the failure of any single structural element. All sources of airplane power that could initiate unlocking of the wingtips must be automatically isolated from the wingtip-fold operating system (including the latching and locking system) prior to flight, and it must not be possible to restore power to the system during flight. The wingtip latching and locking mechanisms must be designed so that, under all airplane flight-load conditions, no force or torque can unlatch or unlock the mechanisms. The latching system must include a means to secure the latches in the latched position, independent of the locking system. It must not be possible to position the lock in the locked position if the latches and the latching mechanisms are not in the latched position, and it must not be possible to unlatch the latches with the locks in the locked position.

Issued in Renton, Washington, on October 25, 2017.

Victor Wicklund,

Manager, Transport Airplane Directorate, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2017–23698 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No.: FAA–2017–0990]

RIN 2120–AK80

Normal and Transport Category Rotorcraft Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the certification standards of normal and transport category helicopters. The proposed changes are necessary to address modern designs currently used in the rotorcraft industry and would reduce the burden on applicants for certification of new rotorcraft designs. The proposed changes would reduce or eliminate the need for certain special conditions currently required to obtain certification of modern rotorcraft. The proposed changes would also incorporate the requirements of equivalent level of safety findings that the FAA has imposed as conditions for approving certain design features.

DATES: Send comments on or before January 30, 2018.

ADDRESSES: Send comments identified by docket number FAA–2017–0990 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Sandra Shelley, Aviation Safety Engineer, Safety Management Group, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *sandra.shelley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA

Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Sections 44701 and 44704. Under section 44701, the FAA is charged with prescribing regulations promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft. Under section 44704, the Administrator issues type certificates for aircraft, aircraft engines, propellers, and specified appliances when the Administrator finds the product is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a). This rulemaking is within the scope of these authorities because it would promote safety by updating the existing minimum prescribed standards used during the type certification process.

I. Overview of Proposed Rule

The FAA proposes to revise regulations in title 14 Code of Federal Regulations (14 CFR) part 27 (Airworthiness Standards: Normal Category Rotorcraft) and part 29 (Airworthiness Standards: Transport Category Rotorcraft) related to the certification of rotorcraft. The proposed changes are necessary due to the extensive application of advancing technologies to rotorcraft. Existing airworthiness standards are inadequate because they do not address increasing design complexity. To address these advances, the FAA currently issues reoccurring special conditions, equivalent level of safety findings (ELOS), and means of compliance (MOC) issue papers. This proposed rule would address these problem areas by updating those standards that cause unnecessary burdens in cost and time to both the FAA and the rotorcraft industry. Compliance with these proposed regulatory changes would continue to be shown by the same testing, analysis, and inspections as in the current certification process and there would be a reduced burden through clarification of the safety requirements for the installed systems.

II. Background

A. Statement of the Problem

The FAA is proposing to update parts 27 and 29 because the regulations were originally published in 1964 and revisions to the airworthiness standards have not kept pace with advances in technology for rotorcraft. The FAA addresses the changes to technology by issuing reoccurring special conditions, ELOS findings, and MOC issue papers. Special conditions are prescribed under 14 CFR 21.16 when the FAA finds the applicable airworthiness standards do not contain adequate or appropriate safety standards because of a novel or unusual design feature. The FAA issues ELOS findings under § 21.21(b)(1) where a design does not literally comply with the airworthiness standards, but compensating factors exist that provide an equivalent level of safety. MOC issue papers document compliance methodologies that fall outside existing guidance and policies. These three processes are necessary to address new design features for which airworthiness standards are lacking, literal compliance with a rule cannot be achieved, or alternative methods of compliance are proposed. In some cases, advancements in technology have rendered the regulations obsolete.

These special conditions, ELOS findings, and MOC issue papers impact FAA resources and applicants' schedules for obtaining FAA approval of their products. By updating the affected standards, many special conditions, ELOS findings, and MOC issue papers would be unnecessary, thus reducing the burden on both the FAA and industry. We also propose to update a few of these rules to correct typographical errors.

Sections 27.1329 and 29.1329 do not adequately address the latest technology in flight control automation. These standards adequately addressed the functionality of autopilots for many years until recently with the development of more sophisticated functions, especially in normal category helicopters. The rotorcraft autopilot systems of previous years controlled only altitude, attitude, and heading. The more advanced autopilot systems also control airspeed, vertical speed, and hover. The current rule is inconsistent with FAA-accepted industry standards and practices. The current rule does not adequately cover the growing changes in the marketplace toward increased automation in the primary flight controls.

Sections 27.1335 and 29.1335 were originally written to address a particular flight control concept called ''flight director systems;'' however, the term itself has long been considered a standard part of a modern autopilot covered under §§ 27.1329 and 29.1329. In addition, the text we propose to remove from §§ 27.1335 and 29.1335 has been added to the proposed §§ 27.1329 and 29.1329 rules. The impact to industry would be minimal since the current material associated with these rules in Advisory Circular (AC) 27–1B, Certification of Normal Category Rotorcraft, and AC 29–2C, Certification of Transport Category Rotorcraft,[1] already recognizes industry standards and practices.

In appendix B to parts 27 and 29, the reference to Amendment 29–14 in section VIII needs to be removed. By citing the amendment within the rule, appendix B requires updating every time a relevant part 27 or part 29 rule is changed.

B. National Transportation Safety Board Recommendations

As a result of incidents involving lithium-ion batteries installed on aircraft, the National Transportation Safety Board (NTSB) issued Safety Recommendations A–14–032 through 036 to the FAA on May 22, 2014.[2] The NTSB recommended the FAA develop abuse tests to simulate failures observed in the incidents investigated and to address findings in recent research (A–14–032), perform these tests on new aircraft for certain installations (A–14–033), develop guidance on acceptable methods to induce thermal runaway that reliably simulates battery failures (A–14–034), review methods of compliance used to certificate in-service lithium-ion battery aircraft installations to ensure that they adequately protect against adverse effects of a cell thermal runaway (A–14–035), and develop policy to establish a panel of technical experts to advise on compliance and best practices for safely installing new technology (A–14–036). This proposed rule would incorporate these NTSB recommendations as they relate to rotorcraft into §§ 27.1353 and 29.1353.

III. Discussion of the Proposal

A. AC 27–1B and AC 29–2C Guidance

AC 27–1B and AC 29–2C provide information on methods of compliance with 14 CFR parts 27 and 29, which contain the airworthiness standards for normal and transport category rotorcraft. These ACs include methods of compliance in the areas of basic design, ground tests, and flight tests. With these proposed rules, the FAA is also proposing related changes to these ACs.

B. Powerplant Instruments (§§ 27.1305 and 29.1305)

Sections 27.1305 and 29.1305 prescribe the specific required powerplant instruments for rotorcraft.

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/.*

[2] *http://www.ntsb.gov/.*

The current rules specify separate indicators for many of these instruments, including engine manifold pressure and engine revolutions per minute (r.p.m.) for reciprocating engines, or gas producer speed, gas temperature, and torque for turbine engines.

Traditionally, pilots determine the powerplant performance conditions by monitoring individual gauges: Gas temperature, gas producer speed, and torque. Sections 27.1305 and 29.1305 establish the required powerplant instruments, and §§ 27.1321 and 29.1321 require that these instruments be easily visible to the pilot. These instruments measure the performance output of the engines and they collectively allow the pilot to continuously monitor the condition and health of the engines.

Many rotorcraft manufacturers have started to incorporate a synthesized power indicator (SPI) that provides a single indicator of engine performance. This single value displayed to the pilot is generally presented as a percentage of the nearest engine limit. The continuously displayed SPI presents the calculated value to the flight crew on the primary flight displays along with a caption indicating the nearest engine limiting parameter that is being used for the SPI displayed calculation. Acceptable designs allow the pilot to monitor engine performance and trends. Technologies such as an SPI, which combine multiple indicators into one, cannot meet the requirements of the current rules. By allowing means other than dedicated indicators, the proposed changes would permit designs incorporating an SPI or similar concepts. The FAA proposes to revise §§ 27.1305(e), (k), (n), and (o) and 29.1305(a)(5), (11), and (12) to allow other means of powerplant indication for these instruments. Section 27.1305(k) would continue to require a tachometer to indicate main rotor speed, but would also require a separate means to indicate the r.p.m. of each engine. The FAA also proposes to modify § 27.1305(o) by replacing ''turboshaft'' with ''turbine'' to be consistent with similar wording used throughout parts 27 and 29.

For part 29, the FAA proposes to add § 29.1305(b)(4) to permit manipulating the powerplant instruments to simulate one engine inoperative (OEI) conditions without damaging the engines. Section 29.1305 requires unbiased engine instrument indications to remain available to assure operation within safe limits. Several helicopter designs include, for Category A [3] training purposes (OEI Training Mode), a feature to represent a simulated engine failure by reducing power of all engines symmetrically. This simulated OEI condition is shown on the engine instruments by biasing the engine power, gas temperature, and gas producer and free power turbine tachometers on the primary flight display. To avoid confusion, the proposed § 29.1305(b)(4) would require additional annunciations to differentiate the simulated OEI condition from that of an actual engine failure.

The proposed changes to § 29.1305 would permit designs incorporating an OEI Training Mode. The FAA is not proposing changes to § 27.1305 because 14 CFR part 27 Category A rotorcraft are approved under appendix C to part 27, which requires compliance with § 29.1305.

C. Rotorcraft Equipment, Systems, and Installations (§§ 27.1309, 29.1309, and Appendix C to Part 27)

Sections 27.1309 and 29.1309 apply generally to all systems on the aircraft that do not otherwise have specific language to analyze the safety aspects of a system. The proposed changes to § 27.1309 would address advances in technology and increases in performance of normal category rotorcraft that were not envisioned when this rule was originally promulgated. Manufacturers installed complex and highly integrated systems in part 27 rotorcraft certificated for instrument flight rules (IFR) under appendix B and Category A operations under appendix C. At that time, the FAA did not envision complex and highly integrated systems would be installed in non-IFR and non-Category A normal category rotorcraft because industry was not employing this advanced technology or the technology did not exist. The analysis methods used to identify and determine the effects of system failures required in § 27.1309 are not adequate for today's complex and highly integrated systems. The use of this advanced technology resulted in an exponential increase in the number of ways rotorcraft systems can fail and a decrease in the discernibility of such failures. To ensure the reliability of the rotorcraft system is not compromised when utilizing complex and highly integrated technology, the FAA is proposing a more structured repeatable failure analysis.

The proposed change would also eliminate the distinction between single-engine and multi-engine rotorcraft. Section 27.1309 currently requires applicants to assess the effects of failures that may be introduced by installed systems and equipment, and distinguishes that the methods for assessing these failures may be different between single and multi-engine rotorcraft. This distinction was envisioned because multi-engine rotorcraft employed complex systems or systems with more severe failure effects. This distinction is now irrelevant since current analysis tools for technologies and associated failure effects do not consider number of engines as required input.

The proposed rule would clarify the requirement to perform a proper failure analysis and also recognize that the severity of failures can vary. Since the current rule was promulgated, the number of failure condition categories has varied. Current industry standards and practices recognize five failure condition categories: Catastrophic, Hazardous, Major, Minor, and No-Safety Effect. The proposed rule recognizes the maximum and minimum failure effects without prescribing the number of failure effect severity categories. This proposed change would also accommodate future changes in industry failure analysis techniques and reflect current certification practices. Additionally, it would eliminate the need to issue recurring special conditions and remove the additional time and cost to industry.

The changes proposed for §§ 27.1309 and 29.1309 would make the sections consistent. These changes would remove the necessity to reference § 29.1309 in appendix C of part 27. Although a specific reference to § 27.1309 would not be added, appendix C of part 27 already requires compliance with all of part 27 for Category A certification. These proposed changes would not eliminate the requirement to reassess compliance with § 27.1309 for applicants who request Category A operations. The FAA proposes to change appendix C to delete the reference to § 29.1309.

The FAA proposes to update § 29.1309 to be consistent with industry standards and practices for conducting failure analysis. These proposed changes are intended to allow flexibility in the types of assessments applicants may provide for showing compliance.

[3] In 14 CFR 1.1, Category A, with respect to transport category rotorcraft, means multiengine rotorcraft designed with engine and system isolation features specified in Part 29 and utilizing scheduled takeoff and landing operations under a critical engine failure concept which assures adequate designated surface area and adequate performance capability for continued safe flight in the event of engine failure.

Section 29.1309 currently requires applicants to assess the effects of failures resulting from installed systems and equipment. The current rule also identifies differences in the depth of assessing failures between Category A and Category B [4] rotorcraft. Complex and highly integrated systems were typically installed in part 29 rotorcraft certificated for Category A operations. Like the distinction between single-engine and multi-engine rotorcraft discussed previously, this distinction was made because the FAA did not envision that complex and highly integrated systems would be installed in rotorcraft certificated for Category B operations. This distinction is now irrelevant since current analysis tools for technologies and associated failure effects do not differ between Category A and Category B. The FAA proposes to add an introductory paragraph and revise paragraphs (a) and (b) to clarify that all equipment, systems, and installations on the rotorcraft must be analyzed and to remove the distinction between Category A and B. Although the effects of the failures may be different, the method for conducting the failure analysis is the same regardless of the operations evaluated.

The term ''warning'' in § 29.1309(c) and (d) has been interpreted as requiring a red level alert, when the intent was to notify the crew of all required annunciations. Therefore, the FAA proposes to modify paragraphs (c) and (d) by removing the terms ''warning'' and ''probability'' and replacing them with ''annunciation'' and ''effect'' respectively, and adding ''misleading data'' as a standard failure mode.

The FAA also proposes removing the requirements of § 29.1309(e) and (f) dealing specifically with electrical systems as they are covered by §§ 29.1351, 29.1353, 29.1355, and 29.1357.

D. Automatic Flight Guidance and Control Systems (§§ 27.1329, 27.1335, 29.1329, and 29.1335)

The FAA proposes to standardize terminology and combine the requirements for automatic pilot and flight director systems into one rule. Sections 27.1329 and 29.1329 address automatic pilot systems while §§ 27.1335 and 29.1335 address flight director systems. At the time these rules were promulgated, the functionality of designs prompted a separate rule for each system. Since then, systems for automatic control of flight have evolved. Modern designs include both automatic pilot and flight director systems and are now referred to as automatic flight guidance and control systems. Having these systems in separate rules that use different terminology has resulted in some confusion. The proposed changes would remove §§ 27.1335 and 29.1335 and incorporate the requirements into §§ 27.1329 and 29.1329. The FAA also proposes to use the term ''automatic flight guidance and control systems'' to address both automatic pilot and flight director systems, as well as the components.

E. Instrument Systems (§ 29.1333 and Appendix B to Parts 27 and 29)

Currently, § 29.1333(a) requires isolating the pilot instrument system from any other operating systems. At the time the rule was promulgated, these systems were federated, and connecting these systems increased the likelihood that a fault in one system would cause a fault in the pilot instrument system. This physical independence between the pilot system and other operating systems prevented the pilot system's reliability from being compromised by other operating systems. With the adoption of microprocessor technology and the trend towards complex and highly integrated systems, the requirement for physical independence is no longer appropriate. The use of this technology resulted in an exponential increase in the number of ways rotorcraft systems can fail and a decrease in the discernibility of such failures. To ensure the reliability of the pilot system is not compromised when utilizing microprocessors or highly integrated systems, modern designs allow redundant systems in the rotorcraft to compare information. Rotorcraft cannot utilize current technology, and redundant systems cannot compare information, when the pilot instrument system is isolated.

The FAA proposes to revise § 29.1333(a) and section VIII(b)(5)(i) of appendix B to parts 27 and 29 to make them applicable only to pneumatic systems. These proposed changes would allow for the use of modern technology to monitor and display highly integrated information regarding the rotorcraft that is currently not permitted. The FAA also proposes revising appendix B to parts 27 and 29 to remove the amendment level as previously discussed in section B of the preamble.

F. Electrical Systems and Equipment (§ 29.1351) and Energy Storage Systems (§§ 27.1353 and 29.1353)

The FAA proposes changing §§ 27.1353 and 29.1353 to provide a general regulation that is not directed at a particular battery or battery chemistry. The existing regulations were first written when backup electrical power was provided solely by a lead acid battery. The regulations were later amended to add requirements specific to the nickel-cadmium battery chemistry. Recently, batteries have been developed using various lithium chemistries. Lead acid, nickel-cadmium, and lithium batteries are all energy storage devices with different operational parameters and failure mechanisms. Rather than add specific lithium battery requirements, which would necessitate further amendments to address future energy storage chemistries, the FAA is proposing to generalize the regulation to accommodate any energy storage system. The proposed regulation would be less prescriptive than the existing regulation.

The FAA's intent with this proposal is that the modified regulation would be directly applicable to both lead acid and nickel-cadmium batteries without imposing additional requirements. In addition, this generalized approach would allow the FAA to consider batteries, fuel cells, or any other energy storage device not yet developed. Certain attributes tied to a specific battery chemistry currently found in the regulation would be addressed in AC 27–1B and AC 29–2C. These proposed changes to §§ 27.1353 and 29.1353 are intended to reduce the burden on the FAA and the rotorcraft industry associated with issuing special conditions and the related issue papers.

Section 29.1353, paragraphs (a) and (b) would be moved into § 29.1351 as paragraphs (e) and (f) respectively. These paragraphs are general requirements for all electrical systems and equipment installations. This change is proposed for consistency because those requirements are more appropriate in § 29.1351. This proposed change would standardize the requirements of §§ 27.1353 and 29.1353 and both section titles would be changed to ''Energy storage systems'' to properly reflect the new language.

G. Instrument Markings (§§ 27.1545, 29.1545, 27.1549, and 29.1549)

The FAA proposes to modify §§ 27.1545(b)(4), 27.1549(b), 29.1545(b)(4), and 29.1549(b) by eliminating the restriction of only using

[4] In 14 CFR 1.1, Category B, with respect to transport category rotorcraft, means single-engine or multiengine rotorcraft which do not fully meet all Category A standards. Category B rotorcraft have no guaranteed stay-up ability in the event of engine failure and unscheduled landing is assumed.

a ''green arc'' to indicate normal operating ranges. The existing rules require using a green arc for normal operating ranges on airspeed and powerplant instruments. Modern glass cockpits generally do not contain these green indicators. The philosophy utilized by modern cockpit designs is the ''dark, quiet cockpit,'' and only yellow or red is presented to indicate the aircraft is outside the normal or safe operating range. The absence of green arcs did not meet the requirement of the rule. Since the rule was promulgated, the FAA has determined that if all abnormal conditions are otherwise adequately indicated, green markings are unnecessary. These accepted design features include the pilot being able to easily interpret (by way of glancing at the instrument) whether a parameter is in a precautionary range (yellow) or beyond a limit (red). Almost every current rotorcraft design now incorporates a glass cockpit that requires an ELOS finding for the absence of green arcs. This proposal only affects the color utilized for the normal operating ranges and does not address graduation markings on an instrument.

The FAA also proposes to remove the term ''radial'' from §§ 27.1545(b)(1), 27.1549(a), 29.1545(b)(1), and 29.1549(a). At the time these rules were promulgated, cockpit instruments were circular, and therefore the technically-correct term ''radial line'' was used. Technological advances have since produced linear-scale gauges rendering the term ''radial'' obsolete. The term ''line'' is intended to represent a radial for round instruments or a line for tape or other style instruments.

The FAA further proposes to replace ''arc'' with ''range'' in §§ 27.1545(b)(3), 27.1545(b)(4), 27.1549(b), 27.1549(c), 27.1549(d), 29.1545(b)(3), 29.1545(b)(4), 29.1549(b), 29.1549(c), and 29.1549(d). When these regulations were created, cockpit instruments were circular. ''Arc'' is a term that only applies to round gauges and not to tape or other style instruments, which are in popular use today. The FAA intends ''range'' to be applied to round, tape, or other style instruments.

Finally, the FAA proposes to move the requirement for indicating V_{NE} (power-off) from § 27.1545(b)(2) to § 27.1545(b)(1)(iii) and modify it to encompass designs that incorporate a means other than a red cross-hatched line. The FAA has previously accepted designs that utilize a single red line for V_{NE} (power-on) and V_{NE} (power-off) when not concurrently displayed. Additionally, a red and white cross-hatched ''barber pole'' may not be the only acceptable method for distinguishing V_{NE} (power-off) from V_{NE} (power-on). The FAA also proposes to apply this change to § 29.1545.

H. Control Markings (§§ 27.1555 and 29.1555)

The FAA proposes to modify §§ 27.1555(c)(1) and 29.1555(c)(1) to permit more than one method to inform the pilot of the usable fuel system capacity. The existing rules require marking the usable fuel capacity at the fuel quantity indicator. Older, analog fuel gauges (many without numbers) used a placard to inform the pilot of the useful fuel quantity. With modern display systems, the location of the fuel quantity indicator, as well as the fact that the location may change, make it impractical to affix a placard next to the display. In addition, although useful fuel capacity is commonly included in the rotorcraft flight manual, the proposed alternate method would make this a requirement to address the lack of continuous display provided by a placard.

I. Typographical and Standardizing Corrections (§§ 27.87, 27.903, 29.955, 29.977, 29.1019, 29.1517, and 29.1587)

The FAA proposes to correct several typographical errors and to revise certain terminology differences between part 27 and part 29. First, the FAA proposes to revise the title of § 27.87 to coincide with the title of § 29.87, which is the equivalent transport category rotorcraft requirement. The title of § 29.87 was changed from ''Limiting height-speed envelope'' to ''Height-velocity envelope'' in order to ''agree with the commonly used term.'' However, the corresponding title to § 27.87 was not similarly changed at that time.

The FAA also proposes to replace the term ''height-speed'' with the term ''height-velocity'' throughout §§ 27.1587, 29.1587, and 29.1517 to be consistent with the title nomenclature of §§ 27.87 and 29.87. These proposed changes are intended to reduce confusion between and within parts 27 and 29.

The FAA also proposes to reformat § 27.903(d) so that it is consistent with the format of the § 29.903(e) engine restart capability requirement. When the § 27.903(d) restart capability requirements were adopted, the paragraph structure of the existing § 29.903(e) was not used even though the technical requirements were intended to be identical. The restart capability requirements of § 27.903(d) are not being changed in this proposal. These proposed changes are intended to reduce confusion between part 27 and part 29 by using a standard format for the same technical requirements.

The FAA proposes to correct a typographical error in §§ 29.955 and 29.1019. When § 29.1305 was updated to add a requirement for an oil pressure indicator for pressure-lubricated gearboxes, the numbering sequence was changed when the additional requirement was inserted at paragraph (a)(6). The § 29.1305(a)(17) fuel filter contamination warning was moved to paragraph (a)(18), and the § 29.1305(a)(18) turbine engine filter contamination warning was moved to paragraph (a)(19). However, the reference to the fuel filter contamination warning in § 29.955(a)(7) and the turbine engine filter contamination warning in § 29.1019(a)(5) were not updated to account for the change in numbering sequence. This proposed change would correct the reference at §§ 29.955(a)(7) and 29.1019(a)(5).

Finally, the FAA proposes to correct a typographical error in § 29.977. When § 29.977 was updated, it incorrectly carried over references to ''airplanes'' from an identical part 23 update. The proposed change would revise § 29.977 by removing the term ''airplanes'' and replacing it with the term ''rotorcraft.''

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995).

This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

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

The FAA proposes to revise regulations in 14 CFR part 27 (Airworthiness Standards: Normal Category Rotorcraft) and part 29 (Airworthiness Standards: Transport Category Rotorcraft) related to the certification of rotorcraft. The proposed changes are necessary due to advancing technologies, which address a lack of adequate airworthiness standards resulting from increasing design complexity. As a result, many regulatory sections are subject to reoccurring special conditions, ELOS, and MOC issue papers. This proposed rulemaking would address these problem areas by updating the rules that cause unnecessary burdens in cost and time to both the FAA and the rotorcraft industry. The compliance cost to industry of these proposed regulation changes would be minimal. The justification for minimal cost by regulation is identified in sections 1 through 9 below.

1. Powerplant Instruments (§§ 27.1305 and 29.1305)

Changes to this section would allow for other means of compliance for powerplant instrument indicators. Other means of compliance are voluntary and do not impose any new cost but could be cost relieving for those that choose to voluntarily comply. Additionally, for § 29.1305, the FAA would permit manipulating the powerplant instruments to simulate OEI conditions without damaging the engines. However, helicopters with OEI Training Mode would require additional indicators to differentiate the OEI condition from actual engine failure, but these indicators are already being installed in current rotorcraft. The FAA believes this proposed change would impose minimal new cost to industry, as these are current industry practice.

2. Normal Category Rotorcraft Equipment, Systems, and Installations (§ 27.1309 and Appendix C to Part 27)

The FAA clarifies the requirement to perform proper failure analysis that would adopt the current industry practice of five failure category conditions. Additionally, the FAA eliminates the distinction between single-engine and multi-engine rotorcraft as this distinction is irrelevant because current analysis tools for technologies and associated failure effects no longer consider the number of engines. As these are current industry practice, the FAA asserts that the cost associated with these changes is minimal.

3. Transport Category Rotorcraft Equipment, Systems, and Installation (§ 29.1309)

This section would be updated to be consistent with industry standards and practices for conducting failure analysis. The proposed rule would clarify the requirement to perform a proper failure analysis and also recognize that the severity of failures can vary. The FAA asserts that performing a proper failure analysis would be minimal cost as it would codify current industry practices. Additionally, this section would be changed to accommodate future changes in industry failure analysis techniques and reflects current certification practices. Moving to a performance based standard would reduce the need to issue recurring special conditions and potentially save manufactures that choose to use an alternative means of compliance. Thus, these proposed changes would impose minimal cost.

4. Automatic Flight Guidance and Control Systems (§§ 27.1329, 27.1335, 29.1329, and 29.1335)

The FAA proposes to standardize terminology and combine the requirements for automatic pilot and flight director systems into one rule. Modern designs include both automatic pilot and flight director systems and are now referred to as automatic flight guidance and control systems. Changes to this section would match current industry practices at a minimal cost.

5. Instrument Systems (§ 29.1333 and Appendix B to Parts 27 and 29)

The FAA proposed change would allow for the use of more modern integrated systems to monitor and display highly integrated information regarding the rotorcraft. This section would impose minimal cost as the updates reflect modern industry practices of integrating instrument systems.

6. Electrical Systems and Equipment (§ 29.1351) and Energy Storage Systems (§§ 27.1353 and 29.1353)

The FAA proposed changes are less prescriptive and performance-based to accommodate different energy storage systems. The modified regulation would be directly applicable to both lead acid and nickel-cadmium batteries without imposing additional requirements. The change would allow the FAA to keep up with changes in technology. Cost to the industry should be minimal as performance based requirements allow for minimal cost options to meet the current standard.

7. Instrument Markings (§§ 27.1545, 29.1545, 27.1549, and 29.1549)

The proposed rule would remove the restrictive requirement for some instrument markings to allow alternative means of compliance, *i.e.*—green arc, radial red line, etc. Allowing for another means of compliance is voluntary and would be either a minimal cost and possibly cost relieving for manufactures that elect to outfit the rotorcraft with different instrument markings.

8. Control Markings (§§ 27.1555 and 29.1555)

The proposed rule would permit more than one method to inform the pilot of the usable fuel system capacity. However, alternative method must address the lack of continuous display. Changes to this section allows for more than one means of compliance. Offering alternative means of compliance allows industry to meet the requirement with the least costly option that can be cost relieving or the existing method of compliance, but either method would be no more than minimal cost.

9. Typographical and Standardizing Corrections (§§ 27.87, 27.903, 29.955, 29.977, 29.1019, 29.1517, and 29.1587)

Costs for proposed changes to this section are minimal as these are strictly typographical or standardizing corrections.

The FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures. The FAA requests comments with supporting justification about the FAA determination of minimal cost impact.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that

agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA proposes to amend the certification standards of normal and transport category helicopters. The proposed changes reflect modern designs currently used in the rotorcraft industry and would reduce the burden on applicants for certification of new rotorcraft designs. The proposed changes would reduce or eliminate the need for certain special conditions currently required to obtain certification of modern rotorcraft. This proposed rule would merely revise and clarify FAA rulemaking procedures; the expected outcome will have only a minimal cost impact on any small entity affected by this rulemaking action.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that the potential benefits are available to both domestic and international firms which would either have no affect or a positive effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

F. International Compatibility and Cooperation

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

G. Environmental Analysis

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

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning

this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

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

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 27

Aircraft, Aviation safety.

14 CFR Part 29

Aircraft, Aviation safety.

The Proposed Amendment

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

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

■ 1. The authority citation for part 27 continues to read as follows:

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

■ 2. Amend § 27.87 by revising the section heading and paragraph (a) introductory text to read as follows:

§ 27.87 Height-velocity envelope.

(a) If there is any combination of height and forward speed (including hover) under which a safe landing cannot be made under the applicable power failure condition in paragraph (b) of this section, a limiting height-velocity envelope must be established (including all pertinent information) for that condition, throughout the ranges of—

* * * * *

■ 3. Amend § 27.903 by revising paragraph (d) to read as follows:

§ 27.903 Engines.

* * * * *

(d) *Restart capability.* (1) A means to restart any engine in flight must be provided.

(2) Except for the in-flight shutdown of all engines, engine restart capability must be demonstrated throughout a flight envelope for the rotorcraft.

(3) Following the in-flight shutdown of all engines, in-flight engine restart capability must be provided.

■ 4. Amend § 27.1305 by revising paragraphs (e), (k) introductory text, (n), and (o) to read as follows:

§ 27.1305 Powerplant instruments.

* * * * *

(e) A means to indicate manifold pressure for each altitude engine.

* * * * *

(k) A means to indicate the r.p.m. of each engine and at least one tachometer, as applicable, for:

* * * * *

(n) A means to indicate the gas temperature for each turbine engine.

(o) A means to enable the pilot to determine the torque of each turbine engine, if a torque limitation is established for that engine under § 27.1521(e).

* * * * *

■ 5. Revise § 27.1309 to read as follows:

§ 27.1309 Equipment, systems, and installations.

The equipment, systems, and installations whose functioning is required by this subchapter must be designed and installed to ensure that they perform their intended functions under any foreseeable operating condition. For any item of equipment or system whose failure has not been specifically addressed by another requirement in this chapter, the following requirements also apply:

(a) The design of each item of equipment, system, and installation must be analyzed separately and in relation to other rotorcraft systems and installations to determine and identify any failure that would affect the capability of the rotorcraft or the ability of the crew to perform their duties in all operating conditions.

(b) Each item of equipment, system, and installation must be designed and installed so that:

(1) The occurrence of any catastrophic failure condition is extremely improbable;

(2) The occurrence of any minor failure condition is no more than probable; and

(3) For the occurrence of any other failure condition, the probability of the failure condition must be inversely proportional to its consequences.

(c) A means to alert the crew in the event of a failure must be provided when an unsafe system operating condition exists to enable them to take corrective action. Systems, controls, and associated monitoring and crew alerting means must be designed to minimize crew errors that could create additional hazards.

(d) Compliance with the requirements of this section must be shown by analysis and, where necessary, by ground, flight, or simulator tests. The analysis must account for:

(1) Possible modes of failure, including malfunctions and misleading data and input from external sources;

(2) The effect of multiple failures and latent failures;

(3) The resulting effects on the rotorcraft and occupants, considering the stage of flight and operating conditions; and

(4) The crew warning cues and the corrective action required.

■ 6. Amend § 27.1329 by revising the section heading, adding introductory

text, and revising paragraphs (a), (d), and (e) to read as follows:

§ 27.1329 Automatic flight guidance and control system.

For the purpose of this subpart, an automatic flight guidance and control system may consist of an autopilot, flight director, or a component that interacts with stability augmentation or trim.

(a) Each automatic flight guidance and control system must be designed so that it:

(1) Can be overpowered by the pilot to allow control of the rotorcraft;

(2) Provides a means to disengage the system by the pilot to prevent it from interfering with the control of the rotorcraft; and

(3) Provides a means to indicate to the flight crew its current mode of operation.

Selector switch position is not acceptable as a means of indication.

* * * * *

(d) The system must be designed so that, within the range of adjustment available to the pilot, it cannot produce hazardous loads on the rotorcraft, or create hazardous deviations in the flight path, under any flight condition appropriate to its use or in the event of a malfunction.

(e) If the automatic flight guidance and control system integrates signals from auxiliary controls or furnishes signals for operation of other equipment, there must be a means to prevent improper operation.

* * * * *

§ 27.1335 [Removed]

■ 7. Remove § 27.1335.

■ 8. Revise § 27.1353 to read as follows:

§ 27.1353 Energy storage systems.

Energy storage systems must be designed and installed as follows:

(a) Energy storage systems must provide automatic protective features for any conditions that could prevent continued safe flight and landing.

(b) Energy storage systems must not emit any explosive or toxic gases, smoke, or fluids except through designed venting provisions and must not accumulate in hazardous quantities within the rotorcraft.

(c) Corrosive fluids or gases that escape from the system must not damage surrounding structures, adjacent equipment, or systems necessary for continued safe flight and landing.

(d) The maximum amount of heat that can be generated during any operation or under any failure condition of the energy storage system or its individual components must not result in any hazardous effect on rotorcraft structure, equipment, or systems necessary for continued safe flight and landing.

(e) Energy storage system installations required for continued safe flight and landing of the rotorcraft must have monitoring features and a means to indicate to the pilot the status of all critical system parameters.

■ 9. Amend § 27.1545 by revising paragraph (b) to read as follows:

§ 27.1545 Airspeed indicator.

* * * * *

(b) The following markings must be made:

(1) A red line—

(i) For rotorcraft other than helicopters, at V_{NE}.

(ii) For helicopters, at V_{NE} (power-on).

(iii) For helicopters, at V_{NE} (power-off). If V_{NE} (power-off) is less than V_{NE} (power-on) and both are simultaneously displayed, the red line at V_{NE} (power-off) must be clearly distinguishable from the red line at V_{NE} (power-on).

(2) [Reserved]

(3) For the caution range, a yellow range.

(4) For the normal operating range, a green or unmarked range.

* * * * *

■ 10. Amend § 27.1549 by revising paragraphs (a) through (d) to read as follows:

§ 27.1549 Powerplant instruments.

* * * * *

(a) Each maximum and, if applicable, minimum safe operating limit must be marked with a red line;

(b) Each normal operating range must be marked as a green or unmarked range;

(c) Each takeoff and precautionary range must be marked with a yellow range or yellow line; and

(d) Each engine or propeller range that is restricted because of excessive vibration stresses must be marked with red ranges or red lines.

* * * * *

■ 11. Amend § 27.1555 by revising paragraph (c)(1) to read as follows:

§ 27.1555 Control markings.

* * * * *

(c) * * *

(1) For fuel systems having no selector controls, the usable fuel capacity of the system must be indicated at the fuel quantity indicator unless it is:

(i) Provided by another system or equipment readily accessible to the pilot; and

(ii) Contained in the limitations section of the rotorcraft flight manual.

* * * * *

■ 12. Amend § 27.1587 by revising paragraph (a)(1) to read as follows:

§ 27.1587 Performance information.

(a) * * *

(1) Enough information to determine the limiting height-velocity envelope.

* * * * *

■ 13. Amend appendix B to part 27 by revising paragraphs VIII introductory text and VIII(b)(5)(i) to read as follows:

Appendix B to Part 27—Airworthiness Criteria for Helicopter Instrument Flight

* * * * *

VIII. *Equipment, systems, and installation.* The basic equipment and installation must comply with §§ 29.1303, 29.1431, and 29.1433, with the following exceptions and additions:

* * * * *

(b) * * *

(5) * * *

(i) For pneumatic systems, only the required flight instruments for the first pilot may be connected to that operating system;

* * * * *

Appendix C to Part 27 [Amended]

■ 14. In appendix C to part 27, amend paragraph C27.2 by removing the entry ''29.1309(b)(2) (i) and (d)-Equipment, systems, and installations.''

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

■ 15. The authority citation for part 29 continues to read as follows:

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

■ 16. Amend § 29.955 by revising paragraph (a)(7) to read as follows:

§ 29.955 Fuel flow.

(a) * * *

(7) The fuel filter required by § 29.997 is blocked to the degree necessary to simulate the accumulation of fuel contamination required to activate the indicator required by § 29.1305(a)(18).

* * * * *

■ 17. Amend § 29.977 by revising paragraphs (a)(1) and (2) to read as follows:

§ 29.977 Fuel tank outlet.

(a) * * *

(1) For reciprocating engine powered rotorcraft, have 8 to 16 meshes per inch; and

(2) For turbine engine powered rotorcraft, prevent the passage of any object that could restrict fuel flow or damage any fuel system component.

* * * * *

■ 18. Amend § 29.1019 by revising paragraph (a)(5) to read as follows:

§ 29.1019 Oil strainer or filter.

(a) * * *

(5) An oil strainer or filter that has no bypass, except one that is installed at an oil tank outlet, must have a means to connect it to the warning system required in § 29.1305(a)(19).

* * * * *

■ 19. Amend § 29.1305 by revising paragraphs (a)(5), (11), and (12) and adding (b)(4) to read as follows:

§ 29.1305 Powerplant instruments.

(a) * * *

(5) A means to indicate manifold pressure for each reciprocating engine of the altitude type;

* * * * *

(11) A means to indicate the gas temperature for each turbine engine;

(12) A means to indicate the gas producer speed for each turbine engine;

* * * * *

(b) * * *

(4) For each Category A rotorcraft for which OEI Training Mode is requested, a means must be provided to indicate to the pilot the simulation of an engine failure, the annunciation of that simulation, and a representation of the OEI power being provided.

* * * * *

■ 20. Revise § 29.1309 to read as follows:

§ 29.1309 Equipment, systems, and installations.

The equipment, systems, and installations whose functioning is required by this subchapter must be designed and installed to ensure that they perform their intended functions under any foreseeable operating condition. For any item of equipment or system whose failure has not been specifically addressed by another requirement in this chapter, the following requirements also apply:

(a) The design of each item of equipment, system, and installation must be analyzed separately and in relation to other rotorcraft systems and installations to determine and identify any failure that would affect the capability of the rotorcraft or the ability of the crew to perform their duties in all operating conditions.

(b) Each item of equipment, system, and installation must be designed and installed so that:

(1) The occurrence of any catastrophic failure condition is extremely improbable;

(2) The occurrence of any minor failure condition is no more than probable; and

(3) For the occurrence of any other failure condition, the probability of the failure condition must be inversely proportional to its consequences.

(c) A means to alert the crew in the event of a failure must be provided when an unsafe system operating condition exists and to enable them to take corrective action. Systems, controls, and associated monitoring and crew alerting means must be designed to minimize crew errors that could create additional hazards.

(d) Compliance with the requirements of this section must be shown by analysis and, where necessary, by ground, flight, or simulator tests. The analysis must account for:

(1) Possible modes of failure, including malfunctions and misleading data and input from external sources;

(2) The effect of multiple failures and latent failures;

(3) The resulting effects on the rotorcraft and occupants, considering the stage of flight and operating conditions; and

(4) The crew warning cues and the corrective action required.

■ 21. Amend § 29.1329 by revising the section heading, adding introductory text, and revising paragraphs (a), (d), and (e) to read as follows:

§ 29.1329 Automatic flight guidance and control system.

For the purpose of this subpart, an automatic flight guidance and control system may consist of an autopilot, flight director, or a component that interacts with stability augmentation or trim.

(a) Each automatic flight guidance and control system must be designed so that it:

(1) Can be overpowered by the pilot to allow control of the rotorcraft;

(2) Provides a means to disengage the system by the pilot to prevent it from interfering with the control of the rotorcraft; and

(3) Provides a means to indicate to the flight crew its current mode of operation. Selector switch position is not acceptable as a means of indication.

* * * * *

(d) The system must be designed so that, within the range of adjustment available to the pilot, it cannot produce hazardous loads on the rotorcraft, or create hazardous deviations in the flight path, under any flight condition appropriate to its use or in the event of a malfunction.

(e) If the automatic flight guidance and control system integrates signals from auxiliary controls or furnishes signals for operation of other equipment, there must be a means to prevent improper operation.

* * * * *

■ 22. Amend § 29.1333 by revising paragraph (a) to read as follows:

§ 29.1333 Instrument systems.

* * * * *

(a) For pneumatic systems, only the required flight instruments for the first pilot may be connected to that operating system.

* * * * *

§ 29.1335 [Removed]

■ 23. Remove § 29.1335.

■ 24. Amend § 29.1351 by adding paragraphs (e) and (f) to read as follows:

§ 29.1351 General.

* * * * *

(e) Electrical equipment, controls, and wiring must be installed so that operation of any one unit or system of units will not adversely affect the simultaneous operation of any other electrical unit or system essential to safe operation.

(f) Cables must be grouped, routed, and spaced so that damage to essential circuits will be minimized if there are faults in heavy current-carrying cables.

* * * * *

■ 25. Revise § 29.1353 to read as follows:

§ 29.1353 Energy storage systems.

Energy storage systems must be designed and installed as follows:

(a) Energy storage systems must provide automatic protective features for any conditions that could prevent continued safe flight and landing.

(b) Energy storage systems must not emit any explosive or toxic gases, smoke, or fluids except through designed venting provisions and must not accumulate in hazardous quantities within the rotorcraft.

(c) Corrosive fluids or gases that escape from the system must not damage surrounding structures, adjacent equipment, or systems necessary for continued safe flight and landing.

(d) The maximum amount of heat that can be generated during any operation or under any failure condition of the energy storage system or its individual components must not result in any hazardous effect on rotorcraft structure, equipment, or systems necessary for continued safe flight and landing.

(e) Energy storage system installations required for continued safe flight and landing of the rotorcraft must have monitoring features and a means to indicate to the pilot the status of all critical system parameters.

■ 26. Amend § 29.1517 by revising the section heading to read as follows:

§ 29.1517 Limiting height-velocity envelope.

* * * * *

■ 27. Amend § 29.1545 by revising paragraph (b) to read as follows:

§ 29.1545 Airspeed indicator.

* * * * *

(b) The following markings must be made:

(1) A red line:

(i) For rotorcraft other than helicopters, at V_{NE}.

(ii) For helicopters, at a V_{NE} (power-on).

(iii) For helicopters, at V_{NE} (power-off). If V_{NE} (power-off) is less than V_{NE} (power-on) and both are simultaneously displayed, the red line at V_{NE} (power-off) must be clearly distinguishable from the red line at V_{NE} (power-on).

(2) [Reserved]

(3) For the caution range, a yellow range.

(4) For the normal operating range, a green or unmarked range.

* * * * *

■ 28. Amend § 29.1549 by revising paragraphs (a) through (d) to read as follows:

§ 29.1549 Powerplant instruments.

* * * * *

(a) Each maximum and, if applicable, minimum safe operating limit must be marked with a red line;

(b) Each normal operating range must be marked as a green or unmarked range;

(c) Each takeoff and precautionary range must be marked with a yellow range or yellow line;

(d) Each engine or propeller range that is restricted because of excessive vibration stresses must be marked with red ranges or red lines; and

* * * * *

■ 29. Amend § 29.1555 by revising paragraph (c)(1) to read as follows:

§ 29.1555 Control markings.

* * * * *

(c) * * *

(1) For fuel systems having no selector controls, the usable fuel capacity of the system must be indicated at the fuel quantity indicator unless it is:

(i) Provided by another system or equipment readily accessible to the pilot; and

(ii) Contained in the limitations section of the rotorcraft flight manual.

* * * * *

■ 30. Amend § 29.1587 by revising paragraph (b)(6) to read as follows:

§ 29.1587 Performance information.

* * * * *

(b) * * *

(6) The height-velocity envelope except for rotorcraft incorporating this as an operating limitation;

* * * * *

■ 31. Amend appendix B to part 29 by revising paragraphs VIII introductory text and VIII(b)(5)(i) to read as follows:

Appendix B to Part 29—Airworthiness Criteria for Helicopter Instrument Flight

* * * * *

VIII. *Equipment, systems, and installation.* The basic equipment and installation must comply with §§ 29.1303, 29.1431, and 29.1433, with the following exceptions and additions:

* * * * *

(b) * * *

(5) * * *

(i) For pneumatic systems, only the required flight instruments for the first pilot may be connected to that operating system;

* * * * *

Issued under authority provided by (Consult AGC) 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on October 19, 2017.

David W. Hempe,

Deputy Executive Director for Regulatory Operations, Aircraft Certification Service.

[FR Doc. 2017–23360 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0848; Airspace Docket No. 13–ANE–2]

Proposed Amendment of Class E Airspace, Berlin, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Berlin, NH, due to the addition of a localizer performance with vertical guidance function (LPV) instrument procedure to runway 18 being created for Berlin Regional Airport (formerly Berlin Municipal Airport). This action also would update the geographic coordinates of the airport to coincide with the FAA's aeronautical database, and would enhance the safety and management of instrument flight rules operations (IFR) at the airport.

DATES: Comments must be received on or before December 18, 2017.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor, Rm. W12–140, Washington, DC 20590; Telephone: (202) 366–9826. You must identify the Docket No. FAA–2017–0848; Airspace Docket No. 13–ANE–2, at the beginning of your comments. You may also submit and review received 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 on line 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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

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 at Berlin

Regional Airport, Berlin, NH, to support IFR operations at the airport.

Comments Invited

Interested persons are invited to comment on this rule 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. You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0848; Airspace Docket No. 13–ANE–2.'' 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 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents 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 considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet or more above the surface within a 10.5-mile radius of Berlin Regional Airport, Berlin, NH, due to the addition of LPV instrument procedures to runway 18. The Berlin VOR/DME navigation aid is no longer needed to define the airspace. Additionally, the geographic coordinates of the airport would be adjusted to coincide with the FAAs aeronautical database. Also, this action would update the airport name to Berlin Regional Airport.

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 designation 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. 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, will 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.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, 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 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 Federal Aviation Administration 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.

* * * * *

ANE NH E5 Berlin, NH [Amended]

Berlin Regional Airport, NH
(Lat. 44°34′31″ N., long. 71°10′33″ W.)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of Berlin Regional Airport,

Issued in College Park, Georgia, on October 18, 2017.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2017–23250 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0856; Airspace Docket No. 17–AWP–10]

Proposed Amendment of Class E Airspace; Hanford, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Hanford Municipal Airport, Hanford, CA, by enlarging the airspace to accommodate area navigation (RNAV) procedures at the airport, removing the Visalia VHF omnidirectional range/distance measuring equipment (VOR/DME) from the airspace description, and amending the geographic coordinates of the airport. This action also would remove Blair Airport from the airport description as the airport no longer exists. This action is necessary for the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 18, 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: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0856; Airspace Docket No. 17–AWP–10, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

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 (Docket No. FAA–2017–0856; Airspace Docket No. 17–AWP–10) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for address and phone number).

Persons 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–2017–0856/Airspace Docket No. 17–AWP–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

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 enlarging the Class E airspace area extending upward from 700 feet above the surface at Hanford Municipal Airport, Hanford, CA to accommodate area navigation (RNAV) procedures at the airport. The Class E airspace area would be modified to within 1.8 miles southwest and 3.2 miles northeast of the 332° bearing from the airport extending to 6.2 miles northwest of the airport (from within a 2.6-mile radius), and within 1.8 miles southwest and 3.2 miles northeast (from within 1.5 miles each side) of the 152° bearing from the airport extending to 6.2 miles southeast of the airport (from 5 miles southeast), and within 1.3 miles each side of the 067° bearing from the airport (from 1.8 miles north and 2.3 miles south of the Visalia VOR/DME) extending to 7.7 miles northeast of the airport.

Also, this action would remove the reference to the Visalia VOR/DME in the legal description as the FAA transitions from ground-based to satellite-based navigation; and would remove Blair Airport from the legal description as the airport no longer exists.

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 designation 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.

* * * * *

AWP CA E5 Hanford, CA [Amended]

Hanford Municipal Airport, CA
(Lat. 36°19′00″ N., long. 119°37′40″ W.)

That airspace extending upward from 700 feet above the surface within 1.8 miles southwest and 3.2 miles northeast of a 332° bearing from the Hanford Municipal Airport extending to 6.2 miles northwest of the airport, and within 1.8 miles southwest and 3.2 miles northeast of a 152° bearing from the airport extending to 6.2 miles southeast of the airport, and within 1.3 miles each side of a 067° bearing from the airport extending to 7.7 miles northeast of the airport.

Issued in Seattle, Washington, on October 18, 2017.

B.G. Chew,

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

[FR Doc. 2017–23244 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0801; Airspace Docket No. 17–ASO–17]

Proposed Amendment of Class E Airspace, Greenville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E surface airspace at Greenville, NC, by removing Pitt County Memorial Hospital Heliport from the Class E surface area airspace associated with Pitt-Greenville Airport. Helicopters departing from the heliport must now receive clearance. Consequently, the cut out from Class E surface airspace is no longer required. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport. This action also would update the geographic coordinates of the airport under Class E surface airspace and Class E airspace extending upward from 700 feet or more above the surface of the earth, to coincide with the FAAs aeronautical database.

DATES: Comments must be received on or before December 18, 2017.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor, Rm W12–140, Washington, DC 20590; Telephone: 1–(800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2017–0801; Airspace Docket No. 17–ASO–17, at the beginning of your comments. You may also submit and review received 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 on line 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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

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 at Pitt-Greenville Airport, Greenville, NC to support IFR operation at the airport.

Comments Invited

Interested persons are invited to comment on this rule 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. You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0801; Airspace Docket No. 17–ASO–17.'' 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 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents 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 considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E surface airspace within a 4.4-mile radius of Pitt-Greenville Airport, Greenville, NC. The Pitt County Memorial Hospital Heliport no longer requires the southwest area below 200 feet from the airport for departures from the heliport. This action is for continued safety and management of IFR operations at the airport. The geographic coordinates of the airport also would be adjusted to coincide with the FAA's aeronautical database.

Class E airspace designations are published in Paragraphs 6002 and 6005, respectively, of FAA Order 7400.11B, dated August 3, 201B, and effective September 15, 201B, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation 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. 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, will 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.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, 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 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 Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ASO NC E2 Greenville, NC [Amended]

Pitt-Greenville Airport, NC
(Lat. 35°38′09″ N., long. 77°23′03″ W.)

Within a 4.4-mile radius of the Pitt-Greenville Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO NC E5 Greenville, NC [Amended]

Pitt-Greenville Airport, NC
(Lat. 35°38′09″ N., long. 77°23′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Pitt-Greenville Airport.

Issued in College Park, Georgia, on October 18, 2017.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2017–23252 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2013–F–1539]

DSM Nutritional Products, Inc.; Withdrawal of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; withdrawal of petition for rulemaking.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (animal use) (FAP 2276) proposing that the food additive regulations be amended to provide for the safe use of ethoxyquin in vitamin D formulations, including 25-hydroxyvitamin D_3, used in animal food.

DATES: The food additive petition was withdrawn on September 13, 2017.

ADDRESSES: For access to the docket to read background documents or 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: Chelsea Trull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6729, *chelsea.trull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 23, 2013 (78 FR 77384), we announced that we had filed a food additive petition (FAP 2276), submitted by DSM Nutritional Products, 45 Waterview Blvd., Parsippany, NJ 07054. The petition proposed to amend the food additive regulations in 21 CFR part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* to provide for the safe use of ethoxyquin as a chemical preservative in vitamin D formulations, including 25-hydroxyvitamin D_3, used in animal food. DSM Nutritional Products, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 571.7).

Dated: October 26, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–23728 Filed 10–31–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2014–F–0295]

DSM Nutritional Products, Inc.; Withdrawal of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; withdrawal of petition for rulemaking.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 2280) proposing that the food additive regulations be amended to provide for the safe use of 25-hydroxyvitamin D_3 in feed for swine.

DATES: The food additive petition was withdrawn on September 13, 2017.

ADDRESSES: For access to the docket to read background documents or 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: Chelsea Trull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6729, *chelsea.trull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 25, 2014 (79 FR 16252), we announced that we had filed a food additive petition (FAP 2280), submitted by DSM Nutritional Products, 45 Waterview Blvd., Parsippany, NJ 07054. The petition proposed to amend the food additive regulations in 21 CFR part 573, *Food Additives Permitted in Feed and Drinking Water of Animals,* to provide for the safe use of 25-hydroxyvitamin D_3 in feed for swine. DSM Nutritional Products, Inc. has now withdrawn the petition without prejudice to a future filing (21 CFR 571.7).

Dated: October 26, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–23729 Filed 10–31–17; 8:45 am]

BILLING CODE 4164–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 17–134; FCC 17–111]

Assessment and Collection of Regulatory Fees for Fiscal Year 2017

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks further comment on the appropriate tiers for calculating terrestrial and satellite international bearer circuit fees, and the methodology by which cable television subscribers in multiple dwelling units (MDUs) are calculated.

DATES: Comments are due on or before December 1, 2017 and reply comments are due on or before December 18, 2017.

ADDRESSES: You may submit comments, identified by MD Docket No. 17–134, by any of the following methods listed in the Comment Filing Procedures section below.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking* (FNPRM), FCC 17–111, MD Docket No. 17–134 adopted on September 1, 2017 and released on September 5, 2017. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com,* or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in

these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

I. Procedural Matters

A. Ex Parte Rules Permit-But-Disclose Proceeding

1. This *Further Notice of Proposed Rulemaking (FY 2017 FNPRM)* shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Comment Filing Procedures

2. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

3. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

4. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (''PDF'') at: *http://www.fcc.gov.*

C. Initial Regulatory Flexibility Analysis

5. An initial regulatory flexibility analysis (IRFA) is contained in this summary. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

D. Initial Paperwork Reduction Act of 1995 Analysis

6. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

II. Introduction

7. In this *Further Notice of Proposed Rulemaking,* we seek further comment on the appropriate tiers for calculating terrestrial and satellite international bearer circuit fees raised in the *FY 2016 NPRM* and the *FY 2017 NPRM* and the methodology for calculating cable television subscribers in multiple dwelling units (MDUs) raised in the *FY 2008 FNPRM.*[1]

A. International Bearer Circuits

8. We seek further comment on this issue to have a more comprehensive record for adopting a new flat rate methodology for terrestrial and satellite IBCs and to revise the tiers for submarine cable systems. We also seek comment on the proposal to adopt a regulatory fee for all holders of section 214 international authorizations.

9. In the *Submarine Cable Order,* the Commission adopted a tiered system using gigabits per second (Gbps)

[1] *FY 2008 FNPRM,* 73 FR 50285, 50290 at paragraphs 27–28.

increments (instead of 64 kbps [2]). The tiers adopted for submarine cable systems at that time were as follows: ''large'' systems, 20 Gbps or more, paying one payment unit each; systems with capacity equal to or greater than 10 Gbps but less than 20 Gbps, paying 50 percent of a payment unit; systems with capacity equal to or greater than 5 Gbps but less than 10 Gbps, paying 25 percent of a payment unit; systems with capacity equal to or greater than 2.5 Gbps but less than 5 Gbps, paying 12.5 percent of a payment unit; and systems with capacity below 2.5 Gbps paying 6.25 percent of a payment unit.[3]

10. We propose revising the tiers for submarine cable systems. We recognize that since we adopted the current tiers for submarine cable systems, the subsequent growth in the industry has moved all but two systems to the highest tier. We seek comment on whether we should revise the tiers. For example, we could adopt the following: Systems with capacity of 10,000 Gbps or more, paying 16 payment units each; systems with capacity equal to or greater than 5,000 Gbps but less than 10,000 Gbps, paying eight payment units; systems with capacity equal to or greater than 2,500 Gbps but less than 5,000 Gbps, paying four payment units; systems with capacity equal to or greater than 1,000 Gbps but less than 2,500 Gbps, paying two payment units; and systems with capacity below 1,000 Gbps paying one payment unit. We seek comment on this proposal.

11. We also propose adopting, for terrestrial and satellite IBCs, the same five tiers used for submarine cable systems. Level 3 contends that two tiers would be sufficient for terrestrial and satellite IBCs to ensure that larger carriers pay a fair amount and to avoid being a barrier to entry for new providers.[4] AT&T opposes a two-tiered approach, contending that the disparities between the volumes of circuits held by different operators may be too large to structure a reasonable and fair system.[5] We seek comment on whether we should adopt the same tiers for common carrier and non-common carrier terrestrial and satellite IBCs. Commenters proposing different tiers, including fewer or greater numbers of tiers, should explain how their proposals would be more equitable.

12. In its comments, the Coalition suggested that the Commission should adopt a fee methodology based on flat fee from every holder of an international section 214 authorization.[6] We seek further comment on this approach. Should a flat fee based on holding an international section 214 authorization replace only the terrestrial and satellite IBCs regulatory fees, with submarine cable IBCs continuing to be assessed on holding a cable landing license, or should it replace all IBC regulatory fees (*i.e.,* terrestrial, satellite and submarine cable)? Would a flat fee on an international section 214 authorization reduce administrative burdens in collecting the IBC fee? The Coalition states that there are approximately 7,000 current international section 214 authorizations,[7] but CTIA notes that many of those are held by companies that do not actually provide international service and many companies hold multiple authorizations.[8] We seek comment on whether a fee should be applied to every holder of an international section 214 authorization regardless of the number of international section 214 authorizations held. Alternatively, should a set fee be applied to every international section 214 authorization? We also seek comment on whether there should be a different fee based on whether the international section 214 authorization is for resale only or for facilities-based services. We seek comment on whether a fee based on international section 214 authorizations should be calibrated based on size. For example, should there be one fee for resale, another up to a certain number of circuits, and a larger fee for any circuits above that amount? We seek comment on CITA's assertion that there are no additional, ongoing costs associated with international section 214 authorizations that are not already covered by the application fees.[9] We seek comment on whether a fee applied to each section 214 authorization holder would capture most carriers that provide non-common carrier services or are there a number of carriers that provide only non-common carrier international services?

B. Cable Television Services—Calculation of Number of Subscribers

13. In the *FY 2008 FNPRM,* the Commission sought comment on the bulk rate calculation for determining the number of subscribers in a multiple dwelling unit or MDU.[10] The methodology for calculating the number of cable subscribers has since been the following:

> Cable television system operators should compute their number of basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December [year], rather than on a count as of December 31, [year].[11]

14. We recognize that the cable television industry has evolved significantly and the bulk rate calculation may not be reasonable or feasible today because of the many services offered today by cable providers. Specifically, with offerings of different packages and bundles, it may no longer be feasible to use a bulk rate calculation. Commenters should discuss if they use the bulk rate calculation or if they separately count each subscriber, even those living in MDUs.

15. We seek comment on whether we should keep the bulk rate calculation, or alternatively, whether we should modify the methodology to more accurately calculate the numbers of subscribers in a MDU. We seek comment on whether we should eliminate the bulk rate calculation due to changes in today's cable market.

III. Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[12] the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking* (*FNPRM*). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this *Further Notice.* The Commission will send a copy of the *Further Notice,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[13]

[2] Sixty-four Kbps is the unit of measurement for voice grade circuits; submarine cable, terrestrial, and satellite international bearer circuits are now largely used for data.

[3] *Submarine Cable Order,* 74 FR 22104, 22107 at paragraph 16 (May 12, 2009).

[4] Level 3 June 29, 2017 ex parte at 1.

[5] AT&T Reply Comments at 3.

[6] Coalition Comments at 8–10.

[7] Coalition Comments at 9.

[8] CTIA Reply at 8.

[9] CTIA Reply at 9.

[10] *FY 2008 Further Notice of Proposed Rulemaking,* 73 FR 50285, 50290 at paragraphs 27–28, August 26, 2008, (*FY 2008 Further Notice*).

[11] This is essentially the same methodology we sought comment on in the *FY 2008 FNPRM.*

[12] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law Number 104–121, Title II, 110 Stat. 847 (1996).

[13] 5 U.S.C. 603(a).

In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[14]

A. Need for, and Objectives of, the Further Notice

2. The *FNPRM* seeks comment regarding (1) adopting a new five-tiered flat rate methodology for assessing regulatory fees for terrestrial and satellite international bearer circuits (IBCs), revising the tiers for submarine cable systems, and adopting a new fee category for all holders of section 214 international authority and (2) revising the calculation for cable television ''Bulk Rate Customers.''

B. Legal Basis

3. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[15]

A. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[16] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[17] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[18] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[19]

5. *Small Entities.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected by the proposals under consideration.[20] As of 2009, small businesses represented 99.9 percent of the 27.5 million businesses in the United States, according to the SBA.[21] In addition, a ''small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field.[22] In addition, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[23] U.S. Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.[24] We estimate that, of this total, as many as 89,327 entities may qualify as ''small governmental jurisdictions.''[25] Thus, we estimate that most local government jurisdictions are small.

6. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''[26] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[27] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[28] Thus, under this size standard, the majority of firms in this industry can be considered small.

7. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS code category is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[29] According to census data from 2012, there were 3,117 establishments that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[30] The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules proposed in the *FNPRM.*

8. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[31] According to census data from 2012, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.[32] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[33] Of this total of 1,307 incumbent local exchange service providers, an estimated 1,006 operated with 1,500 or fewer employees.[34] Consequently, the Commission estimates that most providers of

[14] *Id.*

[15] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[16] 5 U.S.C. 603(b)(3).

[17] 5 U.S.C. 601(6).

[18] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[19] 15 U.S.C. 632.

[20] *See* 5 U.S.C. 601(3) through (6).

[21] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' available at *https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.*

[22] 5 U.S.C. 601(4).

[23] 5 U.S.C. 601(5).

[24] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' available at *https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.*

[25] The 2011 U.S. Census Data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local governmental organizations were small, we note that there were a total of 729 cities and towns (incorporated places and civil divisions) with populations over 50,000. *See http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.* If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 789,237 are small.

[26] *See http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[27] *See* 13 CFR 120.201, NAICS code 517110.

[28] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pi=ECN_2012_US_51SSSZ5&prodType=table.*

[29] 13 CFR 121.201, NAICS code 517110.

[30] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pi=ECN_2012_US_51SSSZ5&prodType=table.*

[31] 13 CFR 121.201, NAICS code 517110.

[32] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5prodType=table.*

[33] *See Trends in Telephone Service,* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[34] *See id.*

incumbent local exchange service are small businesses that may be affected by the rules proposed in this Further Notice.

9. *Competitive Local Exchange Carriers (Competitive LECs),* Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[35] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[36] Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to the Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[37] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[38] Also, 72 carriers have reported that they are Other Local Service Providers.[39] Of this total, 70 have 1,500 or fewer employees.[40] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules proposed in this *FNPRM.*

10. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[41] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[42] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[43] Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules proposed in this *FNPRM*

11. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry.[44] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[45] U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.[46] Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[47] All 193 carriers have 1,500 or fewer employees.[48] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules proposed in this *FNPRM.*

12. *Local Resellers.* Neither the Commission nor the SBA has developed a small business size standard specifically for Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[49] Census data for 2012 show that 1,341 firms provided resale services during that year. [50] Of that number, 1,341 operated with fewer than 1,000 employees.[51] Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[52] Of this total, an estimated 211 have 1,500 or fewer employees.[53] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules proposed in this *Further Notice.*

13. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers.[54] Under that size standard, such a business is small if it has 1,500 or fewer employees.[55] Census data for 2012 show that 1,341 firms provided resale services during that year.[56] Of that number, 1,341 operated with fewer than 1,000 employees.[57] Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[58] Of this total, an estimated 857 have 1,500 or fewer employees.[59] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the rules proposed in the *FNPRM.*

14. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses

[35] 13 CFR 121.201, NAICS code 517110.

[36] *http://factfinder.census.gov/faces/table services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[37] *See Trends in Telephone Service,* at Table 5.3.

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] 13 CFR 121.201, NAICS code 517110.

[42] *http://factfinder.census.gov/faces/table services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[43] *See Trends in Telephone Service,* at Table 5.3.

[44] *http://www.census.gov/cgi-bin/ssd/naics/naicsrch.*

[45] 13 CFR 121.201, NAICS code 517911.

[46] *http://factfinder.census.gov/faces/table services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[47] *See Trends in Telephone Service,* at Table 5.3.

[48] *Id.*

[49] 13 CFR 121.201, NAICS code 517911.

[50] *http://factfinder.census.gov/faces/table services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[51] *http://factfinder.census.gov/faces/table services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[52] *See Trends in Telephone Service,* at Table 5.3.

[53] *Id.*

[54] 13 CFR 121.201, NAICS code 517911.

[55] *Id.*

[56] *http://factfinder.census.gov/faces/table services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[57] *Id.*

[58] *Trends in Telephone Service,* at Table 5.3.

[59] *Id.*

specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[60] Census data for 2012 shows that there were 3,117 firms that operated that year.[61] Of this total, 3,083 operated with fewer than 1,000 employees.[62] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[63] Of these, an estimated 279 have 1,500 or fewer employees.[64] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules proposed in the *FNPRM*

15. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[65] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census Data for 2012 show that there were 967 firms that operated for the entire year.[66] Of this total, 955 firms had fewer than 1,000 employees.[67] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.[68] Of this total, an estimated 261 have 1,500 or fewer employees.[69] Thus, using available data, we estimate that the majority of wireless firms can be considered small and may be affected by rules proposed in this *FNPRM.*

16. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' [70] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: Those having $38.5 million or less in annual receipts.[71] The 2012 Economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than $25 million per year. Based on that Census data we conclude that a majority of firms that operate television stations are small. The Commission has estimated the number of licensed commercial television stations to be 1,383.[72] In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less.[73] We therefore estimate that the majority of commercial television broadcasters are small entities.

17. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [74] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

18. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.[75] These stations are non-profit, and therefore considered to be small entities.[76] There are also 2,528 low power television stations, including Class A stations (LPTV).[77] Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

19. *Radio Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' [78] The SBA has established a small business size standard for this category, which is: Such firms having $38.5 million or less in annual receipts.[79] U.S. Census data for 2012 show that 2,849 radio station firms operated during that year.[80] Of that number, 2,806 operated with annual receipts of less than $25 million per year.[81] According to Commission staff review of BIA Advisory Services, LLC's *Media Access*

[60] 13 CFR 121.201, NAICS code 517110.

[61] *http://factfinder.census.gov/faces/table services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[62] *Id.*

[63] *Trends in Telephone Service,* at Table 5.3.

[64] *Id.*

[65] NAICS code 517210. *See http://www.census.gov/cgi-bin/ssd/naics/naiscsrch.*

[66] *http://factfinder.census.gov/faces/table services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[67] *http://factfinder.census.gov/faces/table services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType;=table.*

[68] *Trends in Telephone Service,* at Table 5.3.

[69] *Id.*

[70] U.S. Census Bureau, 2012 NAICS code Economic Definitions, *http://www.census.gov.cgi-bin/sssd/naics/naicsrch.*

[71] 13 CFR 121.201, NAICS code 515120.

[72] *See FCC News Release,* ''Broadcast Station Totals as of March 31, 2017,'' April 11, 2017; *https://;apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.*

[73] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[74] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1).

[75] *See FCC News Release,* ''Broadcast Station Totals as of March 31, 2017,'' April 11, 2017; *https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.*

[76] *See generally* 5 U.S.C. 601(4), (6).

[77] *See FCC News Release,* ''Broadcast Station Totals as of March 31, 2017,'' April 11, 2017; *https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.*

[78] *http://www.census.gov.cgi-bin/sssd/naics/naicsrch.*

[79] 13 CFR 121.201, NAICS code 515112.

[80] *http://factfinder.census.gov/faces/table services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[81] *http://factfinder.census.gov/faces/table services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

Pro Radio Database on March 28, 2012, about 10,759 (97%) of 11,102 commercial radio stations had revenues of $38.5 million or less. Therefore, the majority of such entities are small entities.

20. In assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[82] In addition, to be determined to be a ''small business,'' the entity may not be dominant in its field of operation.[83] It is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

21. *Cable Television and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature, *e.g.,* limited format, such as news, sports, education, or youth-oriented. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[84] The SBA has established a size standard for this industry of $38.5 million or less. Census data for 2012 shows that there were 367 firms that operated that year.[85] Of this total, 319 operated with annual receipts of less than $25 million.[86] Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules proposed in this *FNPRM.*

22. *Cable Companies and Systems.* The Commission has developed its own small business size standards for cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide.[87] Industry data indicate that there are currently 4,413 active cable systems in the United States.[88] Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.[89] In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[90] Current Commission records show 4,413 cable systems nationwide.[91] Of this total, 3,900 cable systems have less than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.[92] Thus, under this standard as well, the Commission estimates that most cable systems are small entities.

23. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [93] There are approximately 53 million cable video subscribers in the United States today.[94] Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[95] Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.[96] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[97] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. *Direct Broadcast Satellite (DBS) Service.* DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category ''Wired Telecommunications Carriers.'' The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VOIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[98] The SBA determines that a wireline business is small if it has fewer than 1500 employees.[99] Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[100] Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, only two entities provide DBS service, AT&T and DISH Network. AT&T and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we conclude that DBS service is provided only by large firms.

25. *All Other Telecommunications.* ''All Other Telecommunications'' is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking,

[82] ''Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.'' 13 CFR 121.103(a)(1) (an SBA regulation).

[83] 13 CFR 121.102(b) (an SBA regulation).

[84] *https://www.census.gov.cgi-bin/sssd/naics/naicsrch.*

[85] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[86] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US–51SSSZ5&prodType=Table.*

[87] 47 CFR 76.901(e).

[88] *See Eighteenth Competition Report,* 32 FCC Rcd at 584, para. 39 (citing the Commission's Cable Operations and Licensing Systems (COALS) database).

[89] *See https://www.snl.com/web/client?auth=inherit#industry/topCableMSOs* (last visited July 18, 2017).

[90] 47 CFR 76.901(c).

[91] *See* footnote 2, *supra.*

[92] August 5, 2015 report from the Media Bureau based on its research in COALS. *See www.fcc.gov/coals.*

[93] 47 CFR 76.901(f) and notes ff. 1, 2, and 3.

[94] *See* NCTA Industry Data, Cable's Customer Base, available at *https://www.ncta.com/industry-data* (last visited July 6, 2017).

[95] 47 CFR 76.901(f) and notes ff. 1, 2, and 3.

[96] *See https://www.snl.com/web/client?auth=inherit#industry/topCableMSOs* (last visited July 18, 2017).

[97] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 47 CFR 76.901(f) of the Commission's rules. *See* 47 CFR 76.901(f).

[98] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[99] NAICs code 517110; 13 CFR 121.201.

[100] *http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2012_US.51SSSZ4&prodType=table.*

communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[101] The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less.[102] For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million.[103] Thus, a majority of ''All Other Telecommunications'' firms potentially affected by the proposals in the *Notice* can be considered small.

26. *RespOrgs.* Responsible Organizations, or RespOrgs, are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll-free Service Management System for the toll-free subscriber.[104] Although RespOrgs are often wireline carriers, they can also include non-carrier entities. Therefore, in the definition herein of RespOrgs, two categories are presented, *i.e.,* Carrier RespOrgs and Non-Carrier RespOrgs.

27. *Carrier RespOrgs.* Neither the Commission, the U.S. Census, nor the SBA have developed a definition for Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Carrier RespOrgs are Wired Telecommunications Carriers,[105] and Wireless Telecommunications Carriers (except satellite).[106]

28. The U.S. Census Bureau defines Wired Telecommunications Carriers as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[107] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[108] Census data for 2012 show that there were 3,117 Wired Telecommunications Carrier firms that operated for that entire year. Of that number, 3,083 operated with less than 1,000 employees.[109] Based on that data, we conclude that most Carrier RespOrgs that operated with wireline-based technology are small.

29. The U.S. Census Bureau defines Wireless Telecommunications Carriers (except satellite) as establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.[110] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[111] Census data for 2012 show that 967 Wireless Telecommunications Carriers operated in that year. Of that number, 955 operated with less than 1,000 employees.[112] Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireless-based technology are small.

30. *Non-Carrier RespOrgs.* Neither the Commission, the U.S. Census, nor the SBA have developed a definition of Non-Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Non-Carrier RespOrgs are ''Other Services Related to Advertising'' [113] and ''Other Management Consulting Services.'' [114]

31. The U.S. Census defines Other Services Related to Advertising as comprising establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services).[115] The SBA has established a size standard for this industry as annual receipts of $15 million dollars or less.[116] Census data for 2012 show that 5,804 firms operated in this industry for the entire year. Of that number, 5,249 operated with annual receipts of less than $10 million.[117] Based on that data we conclude that the majority of Non-Carrier RespOrgs who provide toll-free number (TFN)-related advertising services are small.

32. The U.S. Census defines Other Management Consulting Services as establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry.[118] The SBA has established a size standard for this industry of $15 million dollars or less.[119] Census data for 2012 show that 3,683 firms operated in this industry for that entire year. Of that number, 3,632 operated with less than $10 million in annual receipts.[120] Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.[121]

33. In addition to the data contained in the four (see above) U.S. Census NAICS code categories that provide definitions of what services and functions the Carrier and Non-Carrier

[101] *http://www.census.gov/cgi-bin/ssssd/naics/naicsrch.*

[102] 13 CFR 121.201; NAICs code 517919.

[103] *http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2012_US.51SSSZ4&prodType=table.*

[104] *See* 47 CFR 52.101(b).

[105] 13 CFR 121.201, NAICS code 517110.

[106] *Id.*

[107] *http://www.census,gov/cgi-bin/sssd/naics.naicsrch.*

[108] 13 CFR 120,201, NAICS code 517110.

[109] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[110] *http://www.census,gov/cgi-bin/sssd/naics.naicsrch.*

[111] 13 CFR 120.201, NAICS code 517120.

[112] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[113] 13 CFR 120.201, NAICS code 541890.

[114] 13 CFR 120.201, NAICS code 541618.

[115] *http://www.census,gov/cgi-bin/sssd/naics.naicsrch.*

[116] 13 CFR 120.201, NAICS code 541890.

[117] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[118] *http://www.census,gov/cgi-bin/sssd/naics.naicsrch.*

[119] 13 CFR 120.201, NAICS code 514618.

[120] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[121] The four NAICS code-based categories selected above to provide definitions for Carrier and Non-Carrier RespOrgs were selected because as a group they refer generically and comprehensively to all *RespOrgs.*

RespOrgs provide, Somos, the trade association that monitors RespOrg activities, compiled data showing that as of July 1, 2016, there were 23 RespOrgs operational in Canada and 436 RespOrgs operational in the United States, for a total of 459 RespOrgs currently registered with Somos.

B. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

34. This *FNPRM* does not propose any changes to the Commission's current information collection, reporting, recordkeeping, or compliance requirements.

C. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[122]

36. The *FNPRM* seeks comment regarding: (1) Adopting a new five-tiered flat rate methodology for assessing regulatory fees for terrestrial and satellite international bearer circuits (IBCs), revising the current five-tiered methodology for submarine cable systems, and adopting a new fee category for all holders of section 214 international authority and (2) revising the calculation for cable television ''Bulk Rate Customers.'' The proposals to adopt a flat five-tier methodology for terrestrial and satellite IBCs might provide relief to smaller entities that would fall into the lowest tier. The proposal to revise the calculation for Bulk Rate Customers for cable television, in multiple dwelling units (MDUs), may affect small cable operators who provide service to MDUs. We are seeking comment on this issue so that we can improve the calculation of customers in MDUs.

D. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

37. None.

[122] 5 U.S.C. 603(c)(1) through (c)(4).

IV. Ordering Clause

38. Accordingly, *it is ordered* that, pursuant to section 9 of the Communications Act of 1934, as amended, 47 U.S.C. 159, this *Further Notice of Proposed Rulemaking is hereby adopted.*

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2017–23215 Filed 10–31–17; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2016–0127; FXES11130900000 167 FF09E42000]

RIN 1018–BB39

Endangered and Threatened Wildlife and Plants; Removing Trichostema austromontanum ssp. compactum (Hidden Lake Bluecurls) From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that we are reopening the comment period for the proposed rule to remove the plant *Trichostema austromontanum* ssp. *compactum* (Hidden Lake bluecurls) from the Federal List of Endangered and Threatened Plants on the basis of recovery. We are reopening the comment period for this proposed rule for 30 days in order to publish a legal notice and to give all interested parties further opportunity to comment on the proposed rule. Comments previously submitted need not be resubmitted, as they will be fully considered in preparing the final delisting determination.

DATES: The comment period on the proposed rule that published January 5, 2017 (82 FR 1297), is reopened. We will accept comments received or postmarked on or before December 1, 2017.

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2016–0127, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''.

(2) *By hard copy:* Submit by U.S. mail or hand-deliver to: Public Comments Processing, Attn: Docket No. FWS–R8–ES–2016–0127, U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803. We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us.

Document availability: A copy of the draft post-delisting monitoring plan referenced throughout the proposed rule can be viewed at *http://ecos.fws.gov/ecp0/profile/speciesProfile?sId=1285,* at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2016–0127, or at the Carlsbad Fish and Wildlife Office's Web site at *http://www.fws.gov/Carlsbad/.*

FOR FURTHER INFORMATION CONTACT: G. Mendel Stewart, Field Supervisor, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008; telephone 760–431–9440; facsimile (fax) 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On January 5, 2017, we published a proposed rule to remove the plant *Trichostema austromontanum* ssp. *compactum* (Hidden Lake bluecurls) from the Federal List of Endangered and Threatened Plants on the basis of recovery (82 FR 1297). We sought information, data, and comments from the public regarding the proposal for 60 days, ending March 6, 2017. We are reopening the comment period on the proposed rule for an additional 30 days (see **DATES**). We will accept written comments and information during this reopened comment period. Please refer to the proposed rule for more information on our proposed action and the specific information we seek.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. All

comments and recommendations, including names and addresses, will become part of the administrative record.

If you submit information via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you mail or hand-deliver a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review, but we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy submissions on *http://www.regulations.gov.*

Authors

The primary author of this document is the Carlsbad Fish and Wildlife Office in Carlsbad, California, in coordination with the Pacific Southwest Regional Office in Sacramento, California.

Authority

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) is the authority for this action.

Dated: September 15, 2017.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2017–23711 Filed 10–31–17; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 82, No. 210

Wednesday, November 1, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 26, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 1, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: 7 CFR 1776, Household Water Well System Grant Program.

OMB Control Number: 0572–0139.

Summary of Collection: The Rural Utilities Service (RUS) is authorized by Section 306E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926e) to administer and make grants to qualified private non-profit organizations which will use the funds to establish lending programs for household water wells.

Need and use of the Information: The grant applicants will provide information to be collected as part of the application and grant process through certain documentation, certifications, and completed forms. Grant applicants must show that the project will provide technical and financial assistance to eligible individuals to remedy household well problems. The grant recipients will establish a revolving loan fund lending program to provide water well loans to individuals who own or will own private wells in rural areas. The individual loan recipients may use the funds to construct, refurbish, and service their household well systems for an existing home.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 7.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 770.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–23707 Filed 10–31–17; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 26, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by December 1, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Southwestern Crown Collaborative Forest Management Social Monitoring.

OMB Control Number: 0596–NEW.

Summary of Collection: The Forest Landscape Restoration Act (FLRA) of 2009 (16 U.S.C. 7303), which enables the Collaborative Forest Landscape Restoration Program (CFLRP), requires monitoring ''to assess the positive or negative ecological, social, and economic effects of projects implementing a selected proposal for not less than 15 years after project

implementation commences.'' The CFLRP program started in 2010 to encourage collaborative groups of neighboring landowners, state, local and tribal government representatives, businesses, interest groups, and nonprofit organizations, to work with the Forest Service (FS) to find common ground pertaining to geographically extensive forest restoration.

Need and Use of the Information: Respondents will be given the option of completing an online version of the monitoring instrument or of completing a paper version. The collection of information will allow FS to meet its obligations under the CFLRP to monitor social impacts and to provide feedback to FS managers about activities, including the decisions making processes, conducted under the CFLRP. Without the collection of information, the FS will be unable to determine whether it is meeting the requirements of the Forest Landscape Restoration Act, nor if they are fully incorporating partner and public input into forest project, implementation, monitoring and/or planning processes as required by law.

Description of Respondents: Residents within the Southwestern Crown CFLRP Landscape and Southwestern Crown Collaborative participants.

Number of Respondents: 2,330.

Frequency of Responses: One time.

Total Burden Hours: 320.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–23709 Filed 10–31–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 26, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 1, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Certified Mediation Program (7 CFR part 785).

OMB Control Number: 0560–0165.

Summary of Collection: The USDA Agricultural Medication Program (AMP) is mandated by Subtitle A and B of Title V of the Agricultural Credit Act of 1987 (Pub. L. 100–233), as amended. Under the program, USDA makes grants to state-designated entitles that provide mediation to agricultural producers, their lenders and others that are directly affected by the action of certain USDA agencies. In mediation, a trained impartial mediator helps participants review and discuss their conflicts, identify options to resolve disputes and agree on solutions. The Farm Service Agency (FSA) is administering the program.

Need and Use of the Information: FSA will collect information to determine whether the participants meet the eligibility requirements to be recipients of grant funds, and secondly, to determine if the grant is being administered as provided by the Act. Lack of adequate information to make these determinations could result in the improper administration and appropriation of Federal grant funds.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 40.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 500.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–23696 Filed 10–31–17; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers for Publication of Legal Notices in the Eastern Region

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Forest Service administrative review procedures require agency officials to publish legal notices in newspapers of record for certain opportunities to comment and opportunities to file pre-decisional objections. Forest Service officials in the Eastern Region will publish those legal notices in the newspapers listed in this notice. The Eastern Region consists of Illinois, Indiana, Ohio, Michigan, Minnesota, Missouri, New Hampshire, Maine, Pennsylvania, Vermont, New York, West Virginia, and Wisconsin. The public shall be advised through a **Federal Register** Notice, of the newspaper of record to be utilized for publishing legal notice of comment and objection opportunities required by those Parts and their associated procedures. This notice fulfills that requirement for the Eastern Region.

FOR FURTHER INFORMATION CONTACT: Michael Tighe; Writer/Editor; 626 E. Wisconsin Avenue; Milwaukee, WI 53202. Phone: (414) 297–3439.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Eastern Region will publish legal notice(s) regarding proposed land management plans as required under 36 CFR 219.16 and legal notice(s) regarding an opportunity to comment on proposed projects as required under 36 CFR 218.24 in the newspapers that are listed in this section by Forest Service administrative unit. Additionally, Responsible Officials in the Eastern Region will publish legal notice(s) of the opportunity to object to a proposed project under 36 CFR part 218 or to object to a land management plan developed, amended, or revised under 36 CFR part 219 in the legal notice section of the newspapers listed in this notice. Additional notice regarding an opportunity to comment or object under the above mentioned regulations may be provided in other newspapers not listed

below at the sole discretion of the Responsible Official. Legal notice published in a newspaper of record of an opportunity to object is in addition to direct notice to those who have requested it and to those who have participated in planning for the project or land management plan proposal.

The timeframe for comment on a proposed action shall be based on the date of publication of the legal notice of the proposed action in the newspaper of record. The timeframe for objection shall be based on the date of publication of the legal notice of the opportunity to object in the newspaper of record.

The following newspapers will be used to provide legal notice.

Eastern Region

Regional Forester Decisions

Affecting National Forest System lands in the Eastern Region, in the states of Illinois, Indiana, Ohio, Michigan, Minnesota, Missouri, New Hampshire, Maine, Pennsylvania, Vermont, New York, West Virginia, and Wisconsin, *The Milwaukee Journal/Sentinel,* published daily in Milwaukee, Milwaukee County, Wisconsin.

Allegheny National Forest, Pennsylvania

Forest Supervisor Decisions

Warren Times Observer, Warren, Warren County, Pennsylvania

District Ranger Decisions

Bradford District: *Bradford Era,* Bradford, McKean County, Pennsylvania
Marienville District: *The Kane Republican,* Kane, McKean County, Pennsylvania

Chequamegon/Nicolet National Forest, Wisconsin

Forest Supervisor Decisions

The Northwoods River News, published Tuesdays, Thursdays, and Saturdays Rhinelander, Oneida County, Wisconsin

District Ranger Decisions

Eagle River/Florence District: *The Northwoods River News,* published Tuesdays, Thursdays, and Saturdays, Rhinelander, Oneida County, Wisconsin
Great Divide District: *The Ashland Daily Press,* published daily in Ashland, Ashland County, Wisconsin
Medford/Park Falls District: *The Star News,* published weekly in Medford, Taylor County, Wisconsin
Washburn District: *The Ashland Daily Press,* published daily in Ashland, Ashland County, Wisconsin
Lakewood/Laona District: *The Northwoods River News,* published Tuesdays, Thursdays, and Saturdays in Rhinelander, Oneida County, Wisconsin

Chippewa National Forest, Minnesota

Forest Supervisor Decisions

Bemidji Pioneer, published daily in Bemidji, Beltrami County, Minnesota

District Ranger Decisions

Blackduck District: *The American,* published weekly in Blackduck, Beltrami County, Minnesota
Deer River District: *The Western Itasca Review,* published weekly in Deer River, Itasca County, Minnesota
Walker District: *The Pilot/Independent,* published weekly in Walker, Cass County, Minnesota

Green Mountain National Forest, Vermont

Forest Supervisor Decisions

The Rutland Herald, published Tuesday–Saturday in Rutland, Rutland County, Vermont

District Ranger Decisions

Manchester, Middlebury and Rochester Districts: *The Rutland Herald,* published Tuesday–Saturday in Rutland, Rutland County, Vermont

Finger Lakes National Forest, New York

Forest Supervisor Decisions:

The Ithaca Journal, published daily in Ithaca, Tompkins County, New York

District Ranger Decisions

Hector District: *The Ithaca Journal,* published daily in Ithaca, Tompkins County, New York

Hiawatha National Forest, Michigan

Forest Supervisor Decisions

The Daily Press, published daily in Escanaba, Delta County, Michigan

District Ranger Decisions

Rapid River District: *The Daily Press,* published daily in Escanaba, Delta County, Michigan
Manistique District: *The Daily Press,* published daily in Escanaba, Delta County, Michigan
Munising District: *The Mining Journal,* published daily in Marquette, Marquette County, Michigan
St. Ignace District: *The Sault News,* published daily in Sault Ste. Marie, Chippewa County, Michigan
Sault Ste. Marie District: *The Sault News,* published daily in Sault Ste. Marie, Chippewa County, Michigan

Hoosier National Forest, Indiana

Forest Supervisor Decisions

The Hoosier Times, published in Bloomington, Monroe County, and Bedford, Lawrence County, Indiana

District Ranger Decisions

Brownstown District: *The Hoosier Times,* published in Bloomington, Monroe County, and Bedford, Lawrence County, Indiana
Tell City District: *The Perry County News,* published in Tell City, Perry County, Indiana

Huron-Manistee National Forest, Michigan

Forest Supervisor Decisions

Cadillac News, published daily in Cadillac, Wexford County, Michigan

District Ranger Decisions

Baldwin-White Cloud Districts: *Lake County Star,* published weekly in Baldwin, Lake County, Michigan
Cadillac-Manistee Districts: *Manistee News Advocate,* published daily in Manistee, Manistee County, Michigan
Mio District: *Oscoda County Herald,* published weekly in Mio, Oscoda County, Michigan
Huron Shores District: *Oscoda Press,* published weekly in Oscoda, Iosco County, Michigan

Mark Twain National Forest, Missouri

Forest Supervisor Decisions

The Rolla Daily News, published Monday through Saturday in Rolla, Phelps County, Missouri

District Ranger Decisions

Ava/Cassville/Willow Springs District: *Springfield News-Leader,* published daily in Springfield, Greene County, Missouri
Cedar Creek District: *Fulton Sun,* published daily in Fulton, Callaway County, Missouri
Eleven Point District: *Prospect News,* published weekly (Wednesday) in Doniphan, Ripley County, Missouri
Rolla District: *Houston Herald,* published weekly (Thursdays) in Houston, Texas County, Missouri
Houston District: *Houston Herald,* published weekly (Thursdays) in Houston, Texas County, Missouri
Poplar Bluff District: *Daily American Republic,* published daily in Poplar Bluff, Butler County, Missouri
Potosi District: *The Independent-Journal,* published weekly (Thursday) in Potosi, Washington County, Missouri
Fredericktown District: *The Democrat-News,* published weekly (Wednesday)

in Fredericktown, Madison County, Missouri

Salem District: *The Salem News,* published weekly (Tuesday) in Salem, Dent County, Missouri

Midewin Tallgrass Prairie, Illinois

Prairie Supervisor Decisions

The Herald News, published daily in Joliet, Will County, Illinois

Monongahela National Forest, West Virginia

Forest Supervisor Decisions

The Inter-Mountain, published daily in Elkins, Randolph County, West Virginia

District Ranger Decisions

Cheat-Potomac District: *The Grant County Press,* published weekly in Petersburg, Grant County, West Virginia

Gauley District: *The Nicholas Chronicle,* published weekly in Summersville, Nicholas County, West Virginia

Greenbrier District: *The Pocahontas Times,* published weekly in Marlinton, Pocahontas County, West Virginia

Marlinton-White Sulphur District: *The Pocahontas Times,* published weekly in Marlinton, Pocahontas County, West Virginia

Ottawa National Forest, Michigan

Forest Supervisor Decisions

The Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan; except, for those projects located solely within the Iron River District; *The Reporter,* published in Iron River, Iron County, Michigan

District Ranger Decisions

Bergland, Bessemer, Kenton, Ontonagon and Watersmeet Districts: *The Ironwood Daily Globe,* published in Ironwood, Gogebic County, Michigan

Iron River District: *The Reporter,* published in Iron River, Iron County, Michigan

Shawnee National Forest, Illinois

Forest Supervisor Decisions

Southern Illinoisan, published daily in Carbondale, Jackson County, Illinois

District Ranger Decisions

Hidden Springs and Mississippi Bluffs Districts: *Southern Illinoisan,* published daily in Carbondale, Jackson County, Illinois

Superior National Forest, Minnesota

Forest Supervisor Decisions

Duluth News-Tribune, published daily in Duluth, St. Louis County, Minnesota

District Ranger Decisions

Gunflint District: *Cook County News-Herald,* published weekly in Grand Marais, Cook County, Minnesota

Kawishiwi District: *Ely Echo,* published weekly in Ely, St. Louis County, Minnesota

LaCroix District: *Mesabi Daily News,* published daily in Virginia, St. Louis County, Minnesota

Laurentian District: *Mesabi Daily News,* published daily in Virginia, St. Louis County, Minnesota

Tofte District: *Duluth News-Tribune,* published daily in Duluth, St. Louis County, Minnesota

Wayne National Forest, Ohio

Forest Supervisor Decisions

Athens Messenger, published Tuesday-Saturday in Athens, Athens County, Ohio

District Ranger Decisions

Athens District-Athens Unit: *Athens Messenger,* published Tuesday-Saturday in Athens, Athens County, Ohio

Athens District-Marietta Unit: *Marietta Times,* published daily in Marietta, Washington County, Ohio

Ironton District: *The Ironton Tribune,* published daily in Ironton, Lawrence County, Ohio

White Mountain National Forest, New Hampshire and Maine

Forest Supervisor Decisions

The New Hampshire Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

District Ranger Decisions:

Androscoggin District: *The New Hampshire Union Leader,* published daily in Manchester, County of Hillsborough, New Hampshire; except, for those projects located solely within the State of Maine; the *Lewiston Sun-Journal,* published daily in Lewiston, County of Androscoggin, Maine

Pemigewasset District: *The New Hampshire Union Leader,* published daily in Manchester, County of Hillsborough, New Hampshire

Saco District: *The New Hampshire Union Leader,* published daily in Manchester, County of Hillsborough, New Hampshire; except, for those projects located solely within the State of Maine; the *Lewiston Sun-Journal,* published daily in Lewiston, County of Androscoggin, Maine

Dated: October 17, 2017.

Glenn Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2017–23803 Filed 10–31–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. The Board is established consistent with the Federal Advisory Committee Act, of 1972, the Forest and Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, and the Federal Public Lands Recreation Enhancement Act. Additional information concerning the Board, including the meeting summary/minutes, can be found by visiting the Board's Web site at: *http://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Wednesday, November 15, 2017, at 1:00 p.m.

All meetings are subject to cancellation. For updated status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Forest Service Center, 8221 Mount Rushmore Road, Rapid City, South Dakota.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Black Hills National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Committee Coordinator, by phone at 605–440–1409 or by email at *sjjacobson@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and

8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide:

(1) Information Topic: Forest Range Program;

(2) Non-Motorized Trails Working Group Presentation;

(3) Motor Vehicle Use Permit Fees;

(4) Black Hills Resilient Landscape Project update; and

(5) Over Snow Use.

The meeting is open to the public. If time allows, the public may make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by November 6, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Board may file written statements with the Board's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Jacobson, Black Hills National Forest Supervisor's Office, 1019 North Fifth Street, Custer, South Dakota 57730; by email to *sjjacobson@fs.fed.us,* or via facsimile to 605–673–9208.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: October 18, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–23806 Filed 10–31–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Open Meeting

The Materials Technical Advisory Committee will meet on November 16, 2017, 10:00 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Introductions and opening remarks by senior management
2. Presentation by Gerard Horner and Anna Bruse on Automated Export System
3. Presentation by Rocco Casagrande on ''Overview of Synthetic Biology ''
4. Open session report by regime representatives
5. Update on plans for 2018/Public Comments/New Business

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than November 9, 2017.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via email.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2017–23727 Filed 10–31–17; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (the Department) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the Commission) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

DATES: Applicable (November 1, 2017).

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC case No.	ITC case No.	Country	Product	Department contact
A–570–863	731–TA–893	PRC	Honey (3rd Review)	Robert James (202) 482–0649.
A–570–979	731–TA–1190	PRC	Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules (1st Review).	Matthew Renkey (202) 482–2312.
C–570–980	701–TA–481	PRC	Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules (1st Review).	Jacqueline Arrowsmith (202) 482–5255.
A–583–849	731–TA–1197	Taiwan	Steel Wire Garment Hangers (1st Review)	Matthew Renkey (202) 482–2312.

DOC case No.	ITC case No.	Country	Product	Department contact
A–552–812	731–TA–1198	Vietnam	Steel Wire Garment Hangers (1st Review)	Matthew Renkey (202) 482–2312.
C–552–813	731–TA–487	Vietnam	Steel Wire Garment Hangers (1st Review)	Matthew Renkey (202) 482–2312.

With respect to the orders on Steel Garment Hangers from Vietnam, we have advanced the initiation date of these Sunset Reviews upon determining that initiation of the Sunset Reviews for all of the Steel Garment Hangers orders on the same date would promote administrative efficiency.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: *http://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[1]

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in these segments.[3] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: October 16, 2017.

James Maeder,

Senior Director performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–23763 Filed 10–31–17; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*) (amending 19 CFR 351.303(g)).

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC) Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Tuesday, November 14, 2017 from 8:30 a.m.–3:30 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register or to submit written comments for dissemination prior to the meeting is 5:00 p.m. EDT on Friday, November 3, 2017. The deadline for members of the public to request auxiliary aids is 5:00 p.m. EDT on Tuesday, November 7, 2017.

ADDRESSES: The meeting will be held in Room 6057–59 at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230. The address to register, submit comments, or request auxiliary aids is: Ms. Amy Kreps, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 28018, 1401 Constitution Avenue NW., Washington, DC 20230 or email: *amy.kreps@trade.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Kreps, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 28018, 1401 Constitution Avenue NW., Washington, DC 20230 (Phone: 202–482–3835; Fax: 202–482–5665; email: *amy.kreps@trade.gov*).

SUPPLEMENTARY INFORMATION: The meeting will take place on November 14 from 8:30 a.m. to 3:30 p.m. EDT. The general meeting is open to the public and time will be permitted for public comment from 3:00–3:30 p.m. EDT. Members of the public seeking to attend the meeting are required to register in advance. Those interested in attending must provide notification by Friday, November 3, 2017 at 5:00 p.m. EDT, via the contact information provided above. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–3835 no less than one week prior to the meeting. Requests received after this date will be accepted, but it may not be possible to accommodate them.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Friday, November 3, 2017 at 5:00 p.m. EDT to ensure transmission to the members before the meeting. Minutes will be available within 30 days of this meeting.

Topic To Be considered: The agenda for the November 14, 2017 meeting includes briefings from the U.S. interagency on ongoing NAFTA negotiations and ITA's Trade Promotion Programs. Also during the meeting, the three ETTAC subcommittees will discuss their top priorities for this charter period, with the goal of generating recommendations for the Secretary of Commerce. Topics under discussion include optimizing the U.S. Government's trade promotion programs, identifying market access barriers, pros and cons of existing trade agreements, and discussing procurement policy, including issues with financing mechanisms, localization requirements and non-tariff barriers. The ETTAC's subcommittees are: Trade Promotion and Export Market Development, Professional Services and Infrastructure Advancement, and Trade Policy and American Competitiveness.

Background: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was originally chartered in May of 1994. It was most recently re-chartered until August 2018.

Dated: October 25, 2017.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2017–23811 Filed 10–31–17; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–067, A–475–839, and A–583–863]

Forged Steel Fittings From the People's Republic of China, Italy, and Taiwan: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 25, 2017.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik at (202) 482–6905 or Robert Palmer at (202) 482–9068 (Taiwan), Katherine Johnson at (202) 482–4929 or Renato Barreda at (202) 482–0317 (the People's Republic of China (PRC)), and Denisa Ursu at (202) 482–2285 or Michael Bowen at (202) 482–0768 (Italy), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On October 5, 2017, the U.S. Department of Commerce (the Department) received antidumping duty (AD) Petitions concerning imports of forged steel fittings from the People's Republic of China (PRC), Italy, and Taiwan, filed in proper form, on behalf of Bonney Forge Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) (collectively, the petitioners).[1] The AD Petitions were accompanied by a countervailing duty (CVD) Petition concerning imports of forged steel fittings from the PRC. The petitioners are domestic producers of forged steel fittings and a certified union that represents workers who produce forged steel fittings.[2]

On October 6 and 10, 2017, the Department requested supplemental information pertaining to certain areas of the Petitions.[3] The petitioners filed responses to these supplemental questions on October 11, 2017.[4] The Department also issued second supplemental questionnaires with

[1] *See* Letter to the Secretary of Commerce re: ''Petitions for the Imposition of Antidumping and Countervailing Duties: Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan'' (October 5, 2017) (the Petitions).

[2] *See* Volume I of the Petitions at 2 and 4.

[3] *See* Letters from the Department to the petitioners re: ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan: Supplemental Questions,'' ''Petition for the Imposition of Antidumping Duties on Imports of Forged Steel Fittings from the People's Republic of China: Supplemental Questions,'' ''Petition for the Imposition of Antidumping Duties on Imports of Forged Steel Fittings from Taiwan: Supplemental Questions,''; Letter from the Department to the petitioners re: ''Petition for the Imposition of Antidumping Duties on Imports of Forged Steel Fittings from Italy: Supplemental Questions,'' dated October 10, 2017.

[4] *See* Letters from the petitioners, re: ''Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan: Response to Supplemental Questions—General Issues'' (General Issues Supplement); ''Forged Steel Fittings from Italy: Response to Supplemental Questions,'' dated October 11, 2017 (Italy AD Supplemental Response); ''Forged Steel Fittings from the People's Republic of China: Response to Supplemental Questions,'' (PRC AD Supplemental Response); and ''Forged Steel Fittings from Taiwan: Response to Supplemental Questions,'' (Taiwan AD Supplemental Response), dated October 11, 2017.

regard to general issues in Volume I of the Petition and for issues specific to the PRC and Italy AD petitions.[5] The petitioners filed their second supplemental response regarding the PRC and Italy AD petitions on October 17, 2017 and second supplemental response regarding general issues on October 18, 2017.[6] Petitioners also filed a revised scope on October 19, 2017.[7]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of forged steel fittings from the PRC, Italy, and Taiwan are being, or likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing forged steel fittings in the United States. Also, consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

The Department finds that the petitioners filed these Petitions on behalf of the domestic industry because the petitioners are interested parties as defined in sections 771(9)(C) and (D) of the Act. The Department also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the AD investigations that the petitioners are requesting.[8]

Periods of Investigation

Because the Petitions were filed on October 5, 2017, the period of investigation (POI) for Taiwan and Italy is October 1, 2016, through September 30, 2017. Because the PRC is a non-market economy (NME) country, the POI for this investigation is April 1, 2017, through September 30, 2017.

Scope of the Investigations

The products covered by these investigations are forged steel fittings from the PRC, Italy, and Taiwan. For a full description of the scope of these investigations, *see* the ''Scope of the Investigations,'' in the Appendix to this notice.

Comments on Scope of the Investigations

During our review of the Petitions, the Department issued questions to, and received responses from, the petitioners pertaining to the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products for which the domestic industry is seeking relief.[9]

As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[10] The Department will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[11] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Tuesday, November 14, 2017, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, November 24, 2017, which is 10 calendar days from the initial comments deadline.[12]

The Department requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact the Department and request permission to submit the additional information. All scope comments must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[13] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department will provide interested parties an opportunity to comment on the appropriate physical characteristics of forged steel fittings to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe forged steel fittings, it may be that only a select few product characteristics take

[5] *See* Letter to the petitioners, re: ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan: Supplemental Questions,'' dated October 17, 2017; Letter to the petitioners, re: Petition for the Imposition of Antidumping Duties on Imports of Forged Steel Fittings from the People's Republic of China: Second Supplement,'' dated October 16, 2017; Letter from the Department to the petitioners re: ''Petition for the Imposition of Antidumping Duties on Imports of Forged Steel Fittings from Italy: Second Supplemental Questionnaire,'' dated October 16, 2017.

[6] *See* Letter from the petitioners re: ''Forged Steel Fittings from the People's Republic of China: Response to Second Supplemental Questions, dated October 17, 2017 (PRC AD Second Supplemental Response); Letter from the petitioners re: ''Forged Steel Fittings from Italy: Response to Second Supplemental Question,'' dated October 17, 2017; Letter from the petitioners to the Department, ''Response to Second Supplemental Question on Industry Support and Cumulation,'' dated October 18, 2017 (Second General Issues Supplement).

[7] *See* Letter from the petitioners to the Department, ''Forged Steel Fittings from China, Italy, and Taiwan: Revised Scope,'' dated October 19, 2017 (Revised Scope). *See also* the Appendix to this notice.

[8] *See* ''Determination of Industry Support for the Petitions'' section, below.

[9] *See* General Issues Supplemental Questionnaire; *see also* General Issues Supplement.

[10] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[11] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[12] *See* 19 CFR 351.303(b).

[13] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on November 14, 2017. Any rebuttal comments must be filed by 5:00 p.m. ET on November 24, 2017. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the records of the PRC, Italy and Taiwan less-than-fair-value investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that forged steel fittings, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[16]

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the Appendix of this notice.[17] The petitioners provided their own production of the domestic like product in 2016 and compared this to the estimated total 2016 production of the domestic like product for the entire domestic industry.[18] We relied on the data the petitioners provided for purposes of measuring industry support.[19]

Our review of the data provided in the Petitions, supplements to the Petitions, and other information readily available to the Department indicates that the petitioners have established industry support.[20] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[21] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[22] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[23] Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that the petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to the AD

[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[16] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Forged Steel Fittings from the People's Republic of China (PRC AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan (Attachment II); Antidumping Duty Investigation Initiation Checklist: Forged Steel Fittings from Italy (Italy AD Initiation Checklist), at Attachment II; and Antidumping Duty Investigation Initiation Checklist: Forged Steel Fittings from Taiwan (Taiwan AD Initiation Checklist), at Attachment II. These checklists are dated concurrently with, and hereby adopted by, this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[17] As noted above, the petitioners submitted a revised scope on October 19, 2017. *See* Revised Scope and the Appendix.

[18] *See* Volume I of the Petitions, at 3–4 and Exhibit I–1; *see also* General Issues Supplement, at 1 and Exhibit I–15; and Second General Issues Supplement, at 1–2.

[19] *Id.* For further discussion, *see* PRC AD Initiation Checklist, at Attachment II; Italy AD Initiation Checklist, at Attachment II; and Taiwan AD Initiation Checklist, at Attachment II.

[20] *See* PRC AD Initiation Checklist, at Attachment II; Italy AD Initiation Checklist, at Attachment II; and Taiwan AD Initiation Checklist, at Attachment II.

[21] *See* section 732(c)(4)(D) of the Act; *see also* PRC AD Initiation Checklist, at Attachment II; Italy AD Initiation Checklist, at Attachment II; and Taiwan AD Initiation Checklist, at Attachment II.

[22] *See* PRC AD Initiation Checklist, at Attachment II; Italy AD Initiation Checklist, at Attachment II; and Taiwan AD Initiation Checklist, at Attachment II.

[23] *Id.*

investigations that they are requesting that the Department initiate.[24]

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[25]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of imports from the subject countries; reduced market share; underselling and price depression or suppression; and a negative impact on the domestic industry's capacity utilization, employment, and profits.[26] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[27]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate AD investigations of imports of forged steel fittings from the PRC, Italy, and Taiwan. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific initiation checklists.

Export Price

For the PRC and Taiwan, the petitioners based U.S. price on export price (EP) using an average unit value (AUV) of publicly available import data.[28] For Italy, the petitioners based U.S. price on EP, which they calculated based on their own prices, reduced to meet the price obtained by a U.S. customer from an Italian producer.[29] Where applicable, the petitioners made deductions from U.S. price for movement and other expenses, consistent with the terms of sale.[30]

Normal Value

With respect to the PRC, the petitioners stated that the Department has found this country to be a NME country in prior administrative proceedings.[31] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, NV in the PRC is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act.[32] In the course of this investigation, all parties, and the public, will have the opportunity to provide relevant information related to the granting of separate rates to individual exporters.

The petitioners claim that Mexico is an appropriate surrogate country for the PRC, because it is a market economy country that is at a level of economic development comparable to that of the PRC, it is a significant producer of comparable merchandise, and public information from Mexico is available to value all material input factors.[33] Based on the information provided by the petitioners, we determine that it is appropriate to use Mexico as a surrogate country for initiation purposes.[34]

Because information regarding the volume of inputs consumed by the PRC producers/exporters is not available, the petitioners relied on the production experience of a domestic producer of forged steel fittings in the United States as an estimate of PRC manufacturers' FOPs.[35] The petitioners valued the estimated FOPs using surrogate values from Mexico.[36] Additionally, for the surrogate values denominated in Mexican pesos, the petitioners converted peso prices into U.S. dollars using the average exchange rate obtained from the Department's Web site for April 2017, through June 2017,[37] and from *www.exchange-rates.org* to obtain the U.S./Mexican exchange rates for the period July 2017 through September 2017.[38]

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs no later than 30 days before the scheduled date of the preliminary determination.

For Italy, the petitioners based NV on a home market price quote obtained for ten selected forged steel fittings produced and sold in Italy within the proposed POI. The petitioners adjusted the price quotes for a distributor markup to obtain the ex-factory price.[39]

For Taiwan, the petitioners provided an affidavit from a foreign market researcher with a home market sales offer for forged steel fittings produced in, and sold or offered for sale in Taiwan.[40]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of forged steel fittings from the PRC, Italy, and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for forged steel fittings for each of the countries covered by this initiation are as follows: (1) PRC—142.72 percent;[41] (2) Italy—18.66 to 80.20 percent;[42] and (3) Taiwan—116.17 percent.[43]

Initiation of Less-Than-Fair-Value Investigations

Based upon the examination of the AD Petitions, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of forged steel fittings from the PRC, Italy, and Taiwan are being, or are likely to be, sold in the United States at less than fair value. In accordance with

[24] *Id.*

[25] *See* Volume I of the Petitions, at 10 and Exhibit I–4.

[26] *Id.* at 10–23 and Exhibits I–4 and I–7 through I–13.

[27] *See* PRC AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan (Attachment III); *see also* Italy AD Initiation Checklist, at Attachment III; *see also* Taiwan AD Initiation Checklist, at Attachment III.

[28] *See* PRC Initiation Checklist and Taiwan AD Initiation Checklist.

[29] *See* Italy AD Initiation Checklist.

[30] *See* PRC AD Initiation Checklist, Italy AD Initiation Checklist and Taiwan AD Initiation Checklist.

[31] *See* Volume II of the Petitions at 1–2.

[32] *See* PRC AD Initiation Checklist.

[33] *See* Volume II of the Petitions at 2 and Exhibits II–1 and II–2.

[34] *See* PRC AD Initiation Checklist.

[35] *See* Volume II of the Petitions at 4–6 and Exhibits II–7. *See also* PRC AD Supplemental Response at Exhibit II–18 and PRC AD Second Supplemental Response.

[36] *See* Volume II of the Petitions at Exhibits II–8 through II–15. *see also* PRC AD Supplemental Response at Exhibit II–19 and PRC AD Second Supplemental Response.

[37] *See* Volume II of the Petitions at Exhibit II–9.

[38] The petitioners noted that ''the Department's exchange rate page {on the Department's Web site} only goes through June 2017. We have therefore used *www.exchange-rates.org* to obtain the U.S./Mexican exchange rates. . .'' *See* PRC AD Supplemental Response at 2 and Exhibits II–19 through II–22.

[39] *See* Italy AD Initiation Checklist.

[40] *See* Taiwan AD Initiation Checklist.

[41] *See* PRC AD Initiation Checklist.

[42] *See* Italy AD Initiation Checklist.

[43] *See* Taiwan AD Initiation Checklist.

section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD law were made.[44] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[45] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to these AD investigations.[46]

Respondent Selection

The petitioners named six companies in Italy and three companies in Taiwan, as producers/exporters of forged steel fittings.[47] Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of companies for any one market economy country is large, the Department intends to review U.S. Customs and Border Protection (CBP) data for U.S. imports of forged steel fittings during the respective POI under the appropriate Harmonized Tariff Schedule of the United States subheadings, and if it determines that it cannot individually examine each company based upon the Department's resources, then the Department will select respondents based on that data. We intend to release CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five business days of the announcement of the initiation of these investigations. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://enforcement.trade.gov/apo.*

Interested parties may submit comments regarding the CBP data and respondent selection by 5:00 p.m. ET seven calendar days after the placement of the CBP data on the record of these investigations. Interested parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for initial comments.

Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. If respondent selection is necessary, within 20 days of publication of this notice, we intend to make our decisions regarding respondent selection based upon comments received from interested parties and our analysis of the record information.

With respect to the PRC, the petitioners named 14 producers/exporters of forged steel fittings from the PRC.[48] In accordance with our standard practice for respondent selection in AD cases involving NME countries, we intend to issue quantity and value (Q&V) questionnaires to producers/exporters of merchandise subject to this investigation and, in the event the Department determines that the number of companies is large, base respondent selection on the responses received. For this investigation, the Department will request Q&V information from known exporters and producers identified with complete contact information in the Petitions. In addition, the Department will post the Q&V questionnaires along with filing instructions on Enforcement and Compliance's Web site at *http://www.trade.gov/enforcement/news.asp.*

Producers/exporters of forged steel fittings from the PRC that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement & Compliance's Web site. The Q&V response must be submitted by the relevant PRC exporters/producers no later than 5:00 p.m. ET on November 9, 2017. All Q&V responses must be filed electronically via ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[49] The specific requirements for submitting a separate-rate application in the PRC investigation are outlined in detail in the application itself, which is available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-separate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[50] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they timely respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that companies from the PRC submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V response will not receive separate-rate consideration.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[51]

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of the PRC, Italy, and Taiwan *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the

[44] *See* Trade Preferences Extension Act of 2015, Public Law No. 114–27, 129 Stat. 362 (2015).

[45] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015).

[46] *Id.* at 46794–95. The 2015 amendments may be found at: *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[47] *See* Volume I of the Petitions at Exhibit I–3.

[48] *See* Volume I of the Petitions at Exhibit I–3.

[49] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[50] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[51] *See* Policy Bulletin 05.1 at 6 (emphasis added).

Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of forged steel fittings from the PRC, Italy, and/or Taiwan, are materially injuring, or threatening material injury to, a U.S. industry.[52] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[53] Otherwise, these investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [54] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[55] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[56] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives.[57] Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided in 19 CFR 351.303(g). The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: October 25, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise covered by these investigations is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings and unions. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, and MSS SP–83, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casting. Pursuant to the applicable standards, fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure rating (usually, but not necessarily expressed in pounds of pressure, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, butt weld fittings, and nipples.

Subject carbon and alloy forged steel fittings are normally entered under HTSUS 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010.

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

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[52] *See* section 733(a) of the Act.

[53] *Id.*

[54] *See* 19 CFR 351.301(b).

[55] *See* 19 CFR 351.301(b)(2).

[56] *See* section 782(b) of the Act.

[57] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (the Department) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after November 2017, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

OPPORTUNITY TO REQUEST A REVIEW: Not later than the last day of November 2017,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Period of review
Antidumping Duty Proceedings	
BRAZIL: Circular Welded Non-Alloy Steel Pipe A–351–809	11/1/16–10/31/17
INDIA: Welded Stainless Pressure Pipe A–533–867	5/10/16–10/31/17
INDONESIA:	
Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses A–560–823	11/1/16–10/31/17
Monosodium Glutamate A–560–826	11/1/16–10/31/17
MEXICO:	

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
Certain Circular Welded Non-Alloy Steel Pipe A–201–805	11/1/16–10/31/17
Seamless Refined Copper Pipe and Tube A–201–838	11/1/16–10/31/17
Steel Concrete Reinforcing Bar A–201–844	11/1/16–10/31/17
REPUBLIC OF KOREA: Certain Circular Welded Non-Alloy Steel Pipe A–580–809	11/1/16–10/31/17
TAIWAN:	
Certain Circular Welded Non-Alloy Steel Pipe A–583–814	11/1/16–10/31/17
Certain Hot-Rolled Carbon Steel Flat Products A–583–835	11/1/16–10/31/17
THAILAND: Certain Hot-Rolled Carbon Steel Flat Products A–549–817	11/1/16–10/31/17
THE PEOPLE'S REPUBLIC OF CHINA:	
Certain Cut-To-Length Carbon Steel A–570–849	11/1/16–10/31/17
Certain Hot-Rolled Carbon Steel Flat Products A–570–865	11/1/16–10/31/17
Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses A–570–958	11/1/16–10/31/17
Diamond Sawblades and Parts Thereof A–570–900	11/1/16–10/31/17
Fresh Garlic A–570–831	11/1/16–10/31/17
Lightweight Thermal Paper A–570–920	11/1/16–10/31/17
Monosodium Glutamate A–570–992	11/1/16–10/31/17
Paper Clips A–570–826	11/1/16–10/31/17
Polyethylene Terephthalate (Pet) Film A–570–924	11/1/16–10/31/17
Pure Magnesium in Granular Form A–570–864	11/1/16–10/31/17
Refined Brown Aluminum Oxide A–570–882	11/1/16–10/31/17
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe A–570–956	11/1/16–10/31/17
Seamless Refined Copper Pipe and Tube A–570–964	11/1/16–10/31/17
UKRAINE: Certain Hot-Rolled Carbon Steel Flat Products A–823–811	11/1/16–10/31/17
UNITED ARAB EMIRATES: Polyethylene Terephthalate (Pet) Film A–520–803	11/1/16–10/31/17
Countervailing Duty Proceedings:	
INDIA: Welded Stainless Pressure Pipe C–533–868	3/11/16–12/31/16
INDONESIA: Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses C–560–824	1/1/16–12/31/16
THE PEOPLE'S REPUBLIC OF CHINA:	
Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses C–570–959	1/1/16–12/31/16
Chlorinated Isocyanurates C–570–991	1/1/16–12/31/16
Lightweight Thermal Paper C–570–921	1/1/16–12/31/16
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe C–570–957	1/1/16–12/31/16
TURKEY: Steel Concrete Reinforcing Bar C–489–819	1/1/16–12/31/16
Suspension Agreements:	
UKRAINE: Certain Cut-To-Length Carbon Steel A–823–808	11/1/16–10/31/17

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

The Department no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[3] Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[4] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity.

[2] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/.*

[3] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[4] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS Web site at *http://access.trade.gov*.[5] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of November 2017. If the Department does not receive, by the last day of November 2017, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 17, 2017.

James Maeder,

Senior Director perfoming the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–23761 Filed 10–31–17; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–813, A–301–803, A–549–833]

Citric Acid and Certain Citrate Salts From Belgium, Colombia, and Thailand: Postponement of Preliminary Determinations of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 1, 2017.

FOR FURTHER INFORMATION CONTACT: Paul Stolz at (202) 482–4474 (Belgium); Stephanie Moore at (202) 482–3692 (Colombia); and Joy Zhang at (202) 482–1168 (Thailand), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 2017, the Department of Commerce (the Department) initiated less-than-fair- value (LTFV) investigations of imports of citric acid and certain citrate salts (citric acid) from Belgium, Colombia, and Thailand.[1] Currently, the preliminary determinations are due no later than November 9, 2017.

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a LTFV investigation within 140 days after the date on which the Department initiated the investigation. However, section 733(c)(1)) of the Act permits the Department to postpone the preliminary determination until no later than 190 days after the date on which the Department initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) the Department concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. The Department will grant the request unless it finds compelling reasons to deny the request. *See* 19 CFR 351.205(e).

On October 11, 2017, Archer Daniels Midland Company (ADM); Cargill Incorporated (Cargill); and Tate & Lyle Ingredients America LLC (Tate & Lyle) (collectively, the petitioners) submitted timely requests pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determinations in these LTFV investigations.[2] The petitioners stated that they request postponement because the Department is still gathering data and questionnaire responses from the foreign producers in these investigations, and additional time is necessary for the Department and interested parties to fully and properly analyze all questionnaire responses.

For the reasons stated above and because there are no compelling reasons to deny the request, the Department, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). As a result, the Department will issue its preliminary determinations no later than December 29, 2017. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of publication of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: October 20, 2017.

Carole Showers,

Executive Director, Office of Policy performing the duties of the Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–23753 Filed 10–31–17; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Citric Acid and Certain Citrate Salts From Belgium, Colombia, and Thailand: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 29828 (June 30, 2017).

[2] *See* letters from the petitioners, ''Antidumping Duty Investigations of Citric Acid and Certain Citrate Salts From Belgium, Colombia and Thailand: Petitioners' Request for Postponement of Preliminary Determinations,'' dated October 11, 2017.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–068]

Forged Steel Fittings From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 1, 2017.

FOR FURTHER INFORMATION CONTACT: Brian Smith at (202) 482–1766 or Jaron Moore at (202) 482–3640, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On October 5, 2017, the U.S. Department of Commerce (the Department) received a countervailing duty (CVD) Petition concerning imports of forged steel fittings from the People's Republic of China (the PRC), filed in proper form on behalf of Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners). The CVD Petition was accompanied by antidumping duty (AD) Petitions concerning imports of forged steel fittings from the PRC, Italy, and Taiwan.[1] The petitioners consist of a domestic producer of forged steel fittings and a certified union that represents workers produce forged steel fittings.[2]

On October 6, 10, and 17, 2017, the Department requested supplemental information pertaining to certain areas of the Petition.[3] The petitioners filed responses to these requests on October 11, 12 and 18, 2017, respectively.[4] The petitioners filed revised scope language on October 19, 2017.[5]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Government of the PRC is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to imports of forged steel fittings from the PRC, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing forged steel fittings in the United States. Also, consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioners supporting their allegations.

The Department finds that the petitioners filed the Petition on behalf of the domestic industry because the petitioners are interested parties as defined in sections 771(9)(C) and (D) of the Act. The Department also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the CVD investigation that the petitioners are requesting.[6]

Period of Investigation

Because the Petition was filed on October 5, 2017, the period of investigation (POI) is January 1, 2016, through December 31, 2016.

Scope of the Investigation

The product covered by this investigation is forged steel fittings from the PRC. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in the Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, the petitioners pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[7]

As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[8] The Department will consider all comments received from interested parties and, if necessary, will consult with the interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, the Department requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on Tuesday, November 14, 2017, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, November 24, 2017, which is 10 calendar days from the initial comments deadline.[10]

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All scope comments must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[11] An electronically

[1] *See* Letter to the Secretary of Commerce from the petitioners re: ''Petitions for the Imposition of Antidumping and Countervailing Duties: Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan'' (October 5, 2017) (the Petitions).

[2] *Id.,* Volume I of the Petitions, at 1 and Exhibit I–1.

[3] *See Letter to the petitioners from the Department,* ''*Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan: Supplemental Questions*'' (October 6, 2017)(General Issues Supplemental Questionnaire); Letter to the petitioners from the Department, ''Petition for the Imposition of Countervailing Duties on Imports of Forged Steel Fittings from the People's Republic of China: Supplemental Questions'' (October 10, 2017) (PRC CVD Supplemental Questionnaire); and Letter to the petitioners from the Department, ''Petitions for the Imposition of Countervailing Duties on Imports of Forged Steel Fittings from the People's Republic of China: Supplemental Questions'' (October 17, 2017) (PRC CVD Second Supplemental Questionnaire).

[4] *See* Letter to the Secretary of Commerce from the petitioners, ''Petition for the Imposition of Countervailing Duties on Imports of Forged Steel Fittings from the People's Republic of China: Response to Supplemental Questions'' (October 12, 2017) (PRC CVD Supplement); *see also* Letter to the Secretary of Commerce from the petitioners, ''Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan: Response to Supplemental Questions—General Issues'' (October 11, 2017) (General Issues Supplement); and Letter to the Secretary of Commerce from the petitioners, ''Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan: Response to Second Supplemental Question on Industry Support and Cumulation'' (October 18, 2017) (Second General Issues Supplement).

[5] *See* Letter to the Secretary of Commerce from the petitioners, ''Forged Steel Fittings from China, Italy, and Taiwan: Revised Scope'' (October 19, 2017).

[6] *See* ''Determination of Industry Support for the Petition'' section below.

[7] *See* General Issues Supplemental Questionnaire; *see also* General Issues Supplement.

[8] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See* 19 CFR 351.303(b).

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), *see also Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements,

Continued

filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, the Department notified representatives of the Government of the PRC of the receipt of the Petition, and provided them the opportunity for consultations with respect to the CVD Petition.[12] These consultations were held via teleconference on October 20, 2017.[13]

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of this investigation. Based on our analysis of the information submitted on the record, we have determined that forged steel fittings, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[16]

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix of this notice. The petitioners provided their own production of the domestic like product in 2016 and compared this to the total 2016 production of the domestic like product for the entire domestic industry.[17] We relied on the data the petitioners provided for purposes of measuring industry support.[18]

Our review of the data provided in the Petition, the supplements to the Petition, and other information readily available to the Department indicates that the petitioners have established industry support.[19] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[22] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that the petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to the CVD

which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx,* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[12] *See* Letter to the Embassy of the People's Republic of China, ''Countervailing Duty Petition on Forged Steel Fittings from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition'' (October 6, 2017).

[13] See Memorandum to the File, ''Consultations with Officials from the Government of China Regarding the Countervailing Duty Petition Concerning Forged Steel Fittings'' (October 20, 2017).

[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[16] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Forged Steel Fittings from the People's Republic of China (PRC CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan (Attachment II). The checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[17] *See* Volume I of the Petition, at 3–4 and Exhibit I–1; *see also* General Issues Supplement, at 1 and Exhibit I–15; and Second General Issues Supplement, at 1–2.

[18] *Id.* For further discussion, *see* PRC CVD Initiation Checklist, at Attachment II.

[19] *See* PRC CVD Initiation Checklist, at Attachment II.

[20] *See* section 702(c)(4)(D) of the Act; *see also* PRC CVD Initiation Checklist, at Attachment II.

[21] *See* PRC CVD Initiation Checklist, at Attachment II.

[22] *Id.*

investigation that they are requesting the Department initiate.[23]

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of imports from the subject country; reduced market share; underselling and price depression or suppression; and a negative impact on the domestic industry's capacity utilization, employment, and profits.[25] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[26]

Initiation of CVD Investigation

Based on the examination of the CVD Petition, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of forged steel fittings from the PRC benefit from countervailable subsidies conferred by the Government of the PRC. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD laws were made.[27] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[28] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.[29]

Subsidy Allegations

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 23 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* the PRC CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioners named 14 companies as producers/exporters of forged steel fittings in the PRC.[30] The Department intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event the Department determines that the number of companies is large and it cannot individually examine each company based upon the Department's resources, where appropriate, the Department intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of forged steel fittings from the PRC during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the Appendix.

On October 19, 2017, the Department released CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.[31] The Department will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition has been provided to the Government of the PRC *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of forged steel fittings from the PRC are materially injuring, or threatening material injury to, a U.S. industry.[32] A negative ITC determination will result in the investigation being terminated.[33] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires;

[23] *Id.*

[24] *See* Volume I of the Petition, at 10 and Exhibit I–4.

[25] *Id.* at 10–23 and Exhibits I–4 and I–7 through I–13.

[26] *See* PRC CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan.

[27] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[28] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[29] *See Applicability Notice,* 80 FR at 46794–95.

[30] *See* Volume I of the Petition at Exhibit I–3.

[31] *See* Memorandum, ''Forged Steel Fittings from the PRC: U.S. Customs Data for Respondent Selection'' (October 19, 2017).

[32] *See* section 703(a)(2) of the Act.

[33] *See* section 703(a)(1) of the Act.

(ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [34] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[35] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

[34] *See* 19 CFR 351.301(b).

[35] *See* 19 CFR 351.301(b)(2).

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[36] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives.[37] Investigations initiated on the basis of the petition filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided in 19 CFR 351.303(g). The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: October 25, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings and unions. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, and MSS SP–83, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casting. Pursuant to the applicable standards, fittings may alsobe machined from bar stock or machined from seamless pipe and tube.

All types of fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure rating (usually, but not necessarily expressed in pounds of pressure, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, butt weld fittings, and nipples.

Subject carbon and alloy forged steel fittings are normally entered under HTSUS 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010.

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

[36] *See* section 782(b) of the Act.

[37] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*''); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[FR Doc. 2017–23759 Filed 10–31–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Localization and Tracking System Testing Consortium

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Research Consortium.

SUMMARY: The National Institute of Standards and Technology (NIST), an agency of the United States Department of Commerce, is establishing the Localization and Tracking System (LTS) Testing Consortium and invites organizations to participate in this Consortium. Participants in this Consortium will have the opportunity to test their LTS leveraging a unique capability on the NIST Gaithersburg campus. The goals of the LTS Testing Consortium are to demonstrate and further develop standardized localization and tracking system testing procedures, and to assess current state of the art. The LTS Testing Consortium will not evaluate whether any individual system is commercially feasible. Participants in the Consortium will be required to sign a Cooperative Research and Development Agreement (CRADA).

DATES: Letters of interest for participation in this LTS Testing Consortium will be accepted until December 15, 2017. LTS testing is expected to occur in April or May 2018, with a pre-event workshop in February, however dates are subject to change.

ADDRESSES: Letters of interest and requests for additional information can be directed to the NIST LTS Testing Consortium Manager, Nader Moayeri, of the Advanced Network Technologies Division of NIST's Information Technology Laboratory. Nader Moayeri's contact information are NIST, 100 Bureau Drive, Stop 8920, Gaithersburg, MD 20899–8920, USA, email: *nader.moayeri@nist.gov,* and telephone: +1 301–975–3767.

FOR FURTHER INFORMATION CONTACT: For further information regarding the terms and conditions of NIST's CRADA, please contact Jeffrey DiVietro, CRADA and License Officer, NIST's Technology Partnerships Office, by mail to 100 Bureau Drive, Mail Stop 2200, Gaithersburg, Maryland 20899–2200, by email to *jeffrey.divietro@nist.gov,* or by telephone at +1 301–975–8779.

SUPPLEMENTARY INFORMATION:

Consortium Objectives: ISO/IEC JTC 1/SC 31 [1] has developed the international standard, ISO/IEC 18305, ''Test and evaluation of localization and tracking systems'' that addresses test methods with performance metrics and considers environmental factors and usage scenarios expected in the field. NIST's objectives under this LTS Testing Consortium are to plan and conduct Test and Evaluation (T&E) activities based on ISO/IEC 18305. Goals of the T&E activities include:

1. Assessment of ISO/IEC 18305 to identify improvements that can be incorporated into the next version of the standard; and

2. Assessment of LTS technologies using the standardized test methods of ISO/IEC 18305 for the dual purposes of comparing technologies to identify strengths and weaknesses of various technological approaches and solutions, and to make it possible for Consortium Members to use that information as a basis for further developing their LTS. The results from the LTS Testing Consortium will allow the validation of ISO/IEC 18305. The results will also allow setting minimum performance requirements for various applications of LTS technology and enable comparisons based on common test methods. Results from this research are expected to improve the performance of LTS technologies.

Background Information: Indoor localization is the capability to determine/estimate the location of an entity to be localized or tracked (ELT), such as a person, a robot, or some other object equipped with an appropriate electronic device [2] in buildings and subterranean structures such as tunnels, caves, and underground mines. Tracking is the capability to estimate the location of such ELT on an ongoing basis and making the location information available to a tracking authority. Localization and tracking, whether indoors or outdoors, has applications in a wide range of domains including public safety, manufacturing, construction, health care, entertainment, social networking, building automation, and defense.

Testing a LTS is complicated for several reasons:

- There are many categories of LTS. Some rely on presence of electronic infrastructure in the environment (building/tunnel/cave/underground mine) to facilitate localization and tracking. Some systems require site-specific training and calibration before they can be used. Some systems need to have access to the floor plans of the building or need to know the global coordinates of its boundaries to operate. Therefore, one must be careful when comparing the performance of various systems to ensure the comparisons are fair.
- A LTS often has RF components. RF propagation can vary considerably from one building to another depending on the construction material used in the building, its floor plans, and objects present in the building. Therefore, the LTS must be tested in a variety of buildings, including a high rise, because a LTS typically has more difficulty in estimating the floor where the ELT is located than in estimating its horizontal location.
- Given that the inertial sensors present in ubiquitous smartphones and other devices used for localization suffer from ''drift'' that worsens over time, it is important to test the LTS using long test scenarios, complex paths, different modes of mobility (*e.g.,* walking, running, sidestepping, walking backwards, and crawling) and speeds of movement. Therefore, the use of large buildings is a prerequisite for a well-designed testing procedure.

Considering the complexities of indoor localization testing above, vendors may not have the opportunity to test their LTS in a thorough and comprehensive manner. Therefore, potential users may be unable to determine whether a given LTS meets their needs. These issues demonstrate the need for standardized testing procedures that can be used to test and compare localization and tracking systems.

Test and Evaluation (T&E) Activities: NIST intends to hold a pre-event workshop for participants of the Consortium to prepare for the T&E activities. NIST anticipates the test event will take place over a period of two weeks (ten business days) about two months after the workshop. Each LTS will be tested over the course of 3–5 days during one of the two weeks. During the two-week T&E event, each LTS will be tested under NIST supervision by the participating company staff members according to the procedures of ISO/IEC 18305. Lessons learned from testing will be used to make modifications to the testing procedures and corresponding future revisions in ISO/IEC 18305. Going forward, NIST intends to use the same set of buildings so that future testing will indicate the industry's improvements in performance of indoor localization and tracking systems. Participation in this LTS Testing Consortium does not guarantee participation in future testing activities.

Methodology: To the extent possible, NIST has chosen structures on its Gaithersburg, MD campus according to the guidelines specified in ISO/IEC 18305. NIST has instrumented the structures with one-inch diameter, circular floor markers. Locations of the floor markers have been surveyed by a professional surveying company using precision laser surveying equipment. In addition, the locations of ~200 Wi-Fi Access Points (APs) in these buildings have been surveyed and the Wi-Fi AP location information will be made available to Consortium Members solely for use in the Consortium and by each Consortium Member's LTS that will be tested at the T&E event. Multiple tracks, each consisting of a set of floor markers, will be used to test each LTS. By comparing the ground truth 3D coordinates of each floor marker with the estimate of the 3D location provided by the LTS under test, the estimation error can be computed and statistical analysis on the error done using the performance metrics specified in ISO/IEC 18305.

Application Process: Interested parties should contact NIST using the

[1] International Organization of Standardization/International Electrotechnical Commission/Joint Technical Committee 1/Subcommittee 31.

[2] It is also possible to have such capability using cameras installed in the environment. In that case, there is no need for the person, robot, or other object to be equipped with an electronic device. However, such imaging-based techniques are beyond the scope of the LTS Testing Consortium.

information provided in the **ADDRESSES** section. NIST will then provide each interested party with a letter of interest template, which the party must complete and submit to NIST. Each party's letter of interest must include the following information:

1. Whether the LTS to be tested is commercially available now or at an advanced productization stages so that it would be commercially available by the end of 2018.
2. Market the indoor LTS is targeting.
3. Given that large buildings will be used for testing, whether the number of units available to install in these buildings is sufficient for the system to go through a suite of tests, one building at a time. (As a point of information, the largest building to be used for testing covers 100,000 square feet of space.)
4. The willingness and ability to send an adequate number of staff members to install and uninstall the indoor LTS in test buildings and operate the equipment to administer the tests under NIST supervision for a period of about 3 days. If for any reason a LTS runs into technical problems and cannot complete the tests in each building in the allotted time slot, NIST has designated the last two days of the week as ''make-up days'', where tests that were not completed in their allotted time slots can be redone. NIST will not be responsible for shipping equipment to NIST and back to your company.
5. Willingness to provide all data form T&E activities to the NIST Consortium Manager for purposes of this project.
6. A statement regarding whether the LTS requires deployment of equipment inside/outside a building in order to be tested; please specify the types of equipment that need to be deployed and how many per every 10,000 square feet of space.
7. If the LTS uses RF technology, please specify the frequency band(s) and power levels the LTS uses.
8. Whether the installation, uninstallation, or operation of the LTS is likely to cause damage of any type to the buildings or furnishing during testing.

Letters of interest may be submitted to the LTS Testing Consortium Manager electronically using the email address provided in the **ADDRESSES** section. Letters of interest must include the name of the organization and the name and contact information for an official representing the organization. Letters of interest must not include any confidential information. NIST will not treat any information provided in the letters of interest as confidential or proprietary. NIST will review the letters of interest from each organization received prior to the closing date provided in the **DATES** section. Eligibility will be determined based on the information provided by the organization in response to the above request for specific information. NIST will notify an applicant in writing of its eligibility to participate in the LTS Testing Consortium. To participate, the eligible applicant will be required to sign a Cooperative Research and Development Agreement (CRADA) with NIST. Each participant's CRADA will have identical terms and conditions that are consistent with the requirements of Title 15, United States Code, Chapter 63, Section 3710a (Cooperative Research and Development Agreements). NIST does not guarantee participation or any other collaboration to any organization submitting a Letter of Interest.

Authority: 15 U.S.C. 3710a.

Kevin Kimball,

Chief of Staff.

[FR Doc. 2017–23807 Filed 10–31–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF574

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. 101/Chehalis River Bridge—Scour Repair in Washington State

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to Washington State Department of Transportation (WSDOT) to take small numbers of marine mammals, by harassment, incidental to U.S. 101/Chehalis River Bridge—Scour Repair in Washington State.

DATES: This authorization is valid from July 1, 2018, through June 30, 2019.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as the issued IHA, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

Issuance of an MMPA 101(a)(5)(D) authorization requires compliance with the National Environmental Policy Act.

NMFS determined the issuance of the proposed IHA is consistent with categories of activities identified in CE B4 (issuance of incidental harassment authorizations under section 101(a)(5)(A) and (D) of the MMPA for which no serious injury or mortality is

anticipated) of the Companion Manual for NAO 216–6A and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude this categorical exclusion.

Summary of Request

NMFS received a request from WSDOT for an IHA to take marine mammals incidental to U.S. 101/Chehalis River Bridge—Scour Repair in the State of Washington. WSDOT's request was for harassment only and NMFS concurs that serious injury or mortality is not expected to result from this activity. Therefore, an IHA is appropriate.

In November 2016, WSDOT submitted a request to NMFS requesting an IHA for the possible harassment of small numbers of marine mammal species incidental to U.S. 101/Chehalis River Bridge-Scour Repair in Washington State, between July 16 to September 30, 2018. WSDOT subsequently updated its project scope and submitted a revised IHA application on July 5, 2017. NMFS determined the IHA application was complete on July 14, 2017. NMFS issued an IHA to WSDOT to take by Level B harassment of the following marine mammal species: Harbor seal (*Phoca vitulina*); California sea lion (*Zalophus californianus*); Steller sea lion (*Eumetopias jubatus*); gray whale (*Eschrichtius robustus*); and harbor porpoise (*Phocoena phocoena*).

Description of Proposed Activity

Overview

WSDOT is proposing to repair an area of scour associated with Pier 14 of the U.S. 101 Chehalis River Bridge (Figures 1–3 and 1–4 in the IHA application). The bridge foundation at Pier 14 is ''scour critical'' due to the bridge foundation being unstable for calculated scour depths. The southwest quadrant of Pier 14 is undermined by scour void as much as 8 feet deep, and some of the untreated timber pilings have been directly exposed to river/estuary water since 2008. Marine borers may weaken enough pilings to require more extensive pier repair if this project is not built in the near future. In addition, the footing and seal are exposed at the other three quadrants of Pier 14.

The purpose of the U.S. 101/Chehalis River Bridge Project is to make the bridge foundation stable for calculated scour depths, protect the foundation from further scour by removing debris, filling the scour void under Pier 14 with cementitious material (to protect the pilings from marine borers), and filling the scour hole and protecting the pier with scour resistant material.

Dates and Duration

Due to NMFS and the U.S. Fish and Wildlife Service (USFWS) in-water work timing restrictions to protect ESA-listed salmonids, planned WSDOT in-water construction is limited each year to July 16 through February 15. For this project, in-water construction is planned to take place between July 16 to September 30, 2018. The total worst-case time for pile installation and removal is 50 hours over 12 days (Table 1).

Specified Geographic Region

The U.S. 101 Chehalis River Bridge is located in the City of Aberdeen, Grays Harbor County, Washington (Figure 1–1 in the IHA application). The bridge is located in Township 17 North, Range 9 West, Section 9, where the Chehalis River enters Grays Harbor. Land use in the Aberdeen area is a mix of residential, commercial, industrial, and open space and/or undeveloped lands (Figure 1–2 in the IHA application).

Detailed Description of In-Water Pile Driving Associated With the U.S. 101 Chehalis River Bridge Repair Project

The proposed project involves noise production that may affect marine mammals: Vibratory hammer driving and removal. Details of the pile driving and pile removal activities are provided in the **Federal Register** notice (82 FR 37426; August 10, 2017) for the proposed IHA and is summarized in Table 1 below.

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING AND REMOVAL DURATIONS

Method	Pile type	Pile size (inch)	Pile No.	Duration (min) per pile	Duration (days)
Vibratory driving	Steel H pile	12	6	30	1
Vibratory driving	Sheet pile		44	30	5
Vibratory removal	Steel H pile	12	6	30	1
Vibratory removal	Sheet pile		44	30	5
Total					12

Comments and Responses

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on August 10, 2017 (82 FR 37426). During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). No other comments were received. Specific comments and responses are provided below.

Comment 1: The Commission recommends that NMFS (1) determine whether action proponents would be required to implement delay or shut-down procedures for vibratory pile driving and removal and (2) include standard mitigation, monitoring, and reporting measures consistently for all authorizations involving those actions.

Response: As stated in the **Federal Register** notice for the proposed IHA (82 FR 37426, August 10, 2017), WSDOT is required to implement delay and shutdown measures if a marine mammal is detected to approach the exclusion zone. The language is further clarified that after a shutdown measure, the construction cannot be resumed until the animal is seen leaving the exclusion zone, or 30 minutes have passed since the last sight of the animal within the zone. These measures are consistent with all authorizations involving in-water pile driving.

Comment 2: The Commission states that the method NMFS used to estimate the numbers of takes during the proposed activities, which summed fractions of takes for each species across project days, does not account for and negates the intent of NMFS's 24-hour reset policy. The Commission states that it noted NMFS developed criteria associated with rounding and recommend that NMFS share these with the Commission.

Response: While for certain projects NMFS has rounded to the whole number for daily takes, for projects like

this one, when the objective of take estimation is to provide more accurate assessments of potential impacts to marine mammals for the entire project, rounding in the middle of a calculation would introduce large errors into the process. In addition, while NMFS uses a 24-hour reset for its take calculation to ensure that individual animals are not counted as a take more than once per day, that fact does not make the calculation and subsequent rounding of take across the entire activity period inherently incorrect. There is no need for daily (24-hour) rounding in this case because there is no daily limit of takes, as long as total authorized takes of marine mammal are not exceeded. NMFS is working on general guidance for take calculation and will share it with the Commission in the near future.

Description of Marine Mammals in the Area of Specified Activities

We have reviewed the applicants' species information—which summarizes available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for accuracy and completeness and refer the reader to Sections 3 and 4 of the applications, as well as to NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*), instead of reprinting all of the information here. Additional general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's Web site (*www.nmfs.noaa.gov/pr/species/mammals/*), or in the U.S. Navy's Marine Resource Assessments (MRA) for relevant operating areas. The MRAs are available online at: *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html*. Table 2 lists all species with expected potential for occurrence in Chehalis Bridge project area and summarizes information related to the population or stock, including potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is considered in concert with known sources of ongoing anthropogenic mortality to assess the population-level effects of the anticipated mortality from a specific project (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock.

Five species (with five managed stocks) are considered to have the potential to co-occur with the proposed construction activities. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2015 SARs (Carretta *et al.,* 2016) and draft 2016 SARs (available online at: *www.nmfs.noaa.gov/pr/sars/draft.htm*).

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	N	20,990	624	132
Family Phocoenidae (porpoises)						
Harbor porpoise	*Phocoena phocoena*	Washington inland waters	N	11,233	66	7.2
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	*Zalophus californianus*	U.S	N	296,750	9,200	389
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	N	71,562	2,498	108
Family Phocidae (earless seals)						
Harbor seal	*Phoca vitulina*	Washington northern inland waters.	N	[4] 11,036	1,641	43

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/*. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Harbor seal estimate is based on data that are 8 years old, but this is the best available information for use here.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis and Determination'' section will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, and the ''Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Potential impacts to marine mammals from the proposed US 101/Chehalis Bridge repair project are from noise generated during in-water pile driving and pile removal activities.

Acoustic Effects

Here, we first provide background information on marine mammal hearing before discussing the potential effects of the use of active acoustic sources on marine mammals.

Marine Mammal Hearing—Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- *Low-frequency cetaceans (mysticetes):* Generalized hearing is estimated to occur between approximately 7 Hertz (Hz) and 35 kilohertz (kHz), with best hearing estimated to be from 100 Hz to 8 kHz;
- *Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids):* Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 to less than 100 kHz;
- *High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data):* Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz.
- *Pinnipeds in water; Phocidae (true seals):* Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz, with best hearing between 1–50 kHz;
- *Pinnipeds in water; Otariidae (eared seals):* Generalized hearing is estimated to occur between 60 Hz and 39 kHz, with best hearing between 2–48 kHz.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Five marine mammal species (2 cetacean and 3 pinniped (2 otariid and 1 phocid) species) have the reasonable potential to co-occur with the proposed construction activities. Please refer to Table 2. Of the cetacean species that may be present, one species is classified as low-frequency cetaceans (*i.e.,* gray whale), and one is classified as high-frequency cetaceans (*i.e.,* harbor porpoise).

The WSDOT's US 101 Chehalis River Bridge Project using in-water pile driving and pile removal could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift (TS)—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of TS just after exposure is the initial TS. If the TS eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (TTS) (Southall *et al.,* 2007).

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced TS. An animal can experience TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Lucke *et al.* (2009) found a TS of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak–to-peak) re: 1 micropascal (μPa), which corresponds to a sound exposure level of 164.5 dB re: 1 μPa^2 s after integrating

exposure. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of root mean square (rms) SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.,* 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. Therefore, based on these studies, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt, 2010; Finneran *et al.,* 2002; Kastelein and Jennings, 2012).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals, which utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band that the animals utilize. Therefore, since noise generated from vibratory pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of sound pressure level) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand, 2009). For WSDOT's Chehalis Bridge repair activities, noises from vibratory pile driving and pile removal contribute to the elevated ambient noise levels in the project area, thus increasing potential for or severity of masking. Baseline ambient noise levels in the vicinity of project area are high due to ongoing shipping, construction and other activities in the Puget Sound.

Finally, marine mammals' exposure to certain sounds could lead to behavioral disturbance (Richardson *et al.,* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.,* 2007). Currently NMFS uses a received level of 160 dB re 1 μPa (rms) to predict the onset of behavioral harassment from impulse noises (such as impact pile driving), and 120 dB re 1 μPa (rms) for continuous noises (such as vibratory pile driving). For the WSDOT's US 101 Chehalis River Bridge Project, only the 120-dB level is considered for effects analysis because WSDOT plans to use vibratory pile driving and pile removal.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory pile removal and pile driving in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.,* 1981) and possibly avoid predators (Wilson and Dill, 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona, 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.,* 1993). In general, fish react more strongly to pulses of sound (such as noise from impact pile driving) rather than continuous signals (such as noise from vibratory pile driving) (Blaxter *et al.,* 1981), and a quicker alarm response is elicited when the sound signal intensity

rises rapidly compared to sound rising more slowly to the same level.

During the coastal construction only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on marine mammals' prey availability in the area where construction work is planned.

Finally, the time of the proposed construction activity would avoid the spawning season of the ESA-listed salmonid species.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise generated from vibratory pile driving and removal. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown measures—discussed in detail below in Mitigation section), Level A harassment is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Applicant's proposed activity includes the use of continuous (vibratory pile driving and removal) source, and therefore the 120 dB re 1 μPa (rms) is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Applicant's proposed activity includes the use non-impulsive (vibratory pile driving and pile removal) source.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER

Hearing group	PTS onset thresholds		Behavioral thresholds	
	Impulsive	Non-impulsive	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB, $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB	$L_{rms,flat}$: 160 dB	$L_{rms,flat}$: 120 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB, $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.		
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB, $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.		
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB, $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.		
Otariid Pinnipeds (OW) (Underwater)	$L_{pk,flat}$: 232 dB, $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB.		

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (Lpk) has a reference value of 1 μPa, and cumulative sound exposure level (LE) has a reference value of 1μPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

Source Levels

The project includes vibratory pile driving and removal of steel H piles and sheet piles. The dimension of the H piles is unknown, but not is expected to be more than 12 inches (in).

Source levels for the steel H pile vibratory driving are based on in-water measurements reported by CALTRANS (2015) of 12-in steel H pile, which are 150 dB_{rms} and 165 dB_{peak} re 1 μPa at 10 meters (m). Source levels for the sheet pile are based on in-water measurements at the Elliot Bay Seawall Project (The Greenbush Group, 2015), which is 165 dB_{rms} and 180 dB_{peak} re 1 μPa at 10 m. For vibratory pile removal, the source levels are conservatively estimated using the pile driving source levels as proxies.

A summary of source levels from different pile driving and pile removal activities is provided in Table 4.

TABLE 4—SUMMARY OF IN-WATER PILE DRIVING SOURCE LEVELS

[At 10 m from source]

Method	Pile type/size	SEL (dB re 1 μPa^2-s)	SPL_{rms} (dB re 1 μPa)
Vibratory driving/removal	12-in steel H pile	150	150
Vibratory driving/removal	Sheet pile	165	165

These source levels are used to compute the Level A injury zones and to estimate the Level B harassment zones. For Level A harassment zones, since the peak source levels for both pile driving are below the injury thresholds, cumulative SEL were used to do the calculations using the NMFS acoustic guidance (NMFS 2016).

Estimating Injury Zones

When NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate.

For cumulative SEL (L_E), distances to marine mammal injury thresholds were estimated using NMFS Optional User Spreadsheet based on the noise exposure guidance.

Isopleths to Level B behavioral zones are based on rms SPL (SPL_{rms}) that are specific for non-impulse (vibratory pile driving) sources. Distances to marine mammal behavior thresholds were calculated using practical spreading.

A summary of the measured and modeled harassment zones is provided in Table 5.

TABLE 5—DISTANCES TO HARASSMENT ZONES

Pile type, size and pile driving method	Injury zone (m)					Behavior zone (m)
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid	
Vibratory driving & removal, sheet pile, 10 piles/day	36.9	3.3	54.6	22.4	1.6	10,000
Vibratory driving & removal, steel H pile, 6 piles/day	2.6	0.2	3.9	1.6	0.1	1,000

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

In most cases, marine mammal density data are from the U.S. Navy Marine Species Density Database (U.S. Navy 2015). Harbor seal density is based on a counts of harbor seals at 44 low-tide haul outs in Grays Harbor by Jeffries, *et al.* (2000), the estimated density of harbor seals in the US 101 Chehalis River Bridge project area is 29.4 animals per square kilometer (km^2).

The Navy Marine Species Density Database (U.S. Navy 2015) estimates the density of California sea lions in the waters offshore of Grays Harbor as 0.033 animals/km^2. This estimate will be used as a surrogate for Grays Harbor.

The Navy Marine Species Density Database (U.S. Navy 2015) estimates the density of Steller sea lions in the waters offshore of Grays Harbor as 0.0145 animals/km^2. This estimate will be used as a surrogate for Grays Harbor.

The Navy Marine Species Density Database (U.S. Navy 2015) estimates the density of harbor porpoises in the waters offshore of Grays Harbor as a range between 0.69 and 1.67 animals

per square kilometer. According to Evenson, *et al.* (2016), the maximum harbor porpoise density in the Strait of Juan de Fuca (approximately 105 miles north of Grays Harbor) in 2014 was 0.768 animals/km². The higher density estimate for waters offshore of Grays Harbor (1.67) will be used for this analysis.

According to counts conducted by Calambokidis *et al.* (2012), 29 gray whales were observed over a 12-year period during the months of July through September (the proposed period of project activities). Based on this data, an average of 2.25 gray whales may be present in Grays Harbor/south Washington coast during the 3-month period.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. For all marine mammal species except gray whale, estimated takes are calculated based on ensonified area for a specific pile driving activity multiplied by the marine mammal density in the action area, multiplied by the number of pile driving (or removal) days. Distances to and areas of different harassment zones are listed in Tables 5 and 6. Total days for sheet pile driving and removal are five days each, and the total day for steel H pile driving and removal is one day each.

TABLE 6—AREAS OF HARASSMENT ZONES

Pile type, size and pile driving method	Injury zone (km²)					Behavior zone (km²)
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid	
Vibratory driving & removal, sheet pile, 10 piles/day	0.004	0.000	0.009	0.002	0.000	2.13
Vibratory driving & removal, steel H pile, 6 piles/day	0.000	0.000	0.000	0.000	0.000	0.67

The results predicted that a total of 666 harbor seals, 1 California sea lion, 0 Steller sea lion, and 38 harbor porpoise could be exposure to received levels that would cause Level B harassment. However, owing to the prior observations that California sea lion and Steller sea lion's presence in the project area, we adjusted the take number of these species to 10.

For gray whales, the Level B takes were estimate based on an average sighting of 2.25 whales in Grays Harbor/south Washington Coast during the months of July through September (Calambokidis *et al.,* (2012) adjusted upwards to 3 animals.

Due to the extreme small injury zones (maximum zone is 0.009 km² for high-frequency cetacean), the calculation predicted no animals would be exposed to noise levels that could cause Level A harassment, and therefore no Level A take is authorized. A summary of estimated marine mammal Level B takes is listed in Table 7.

TABLE 7—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED NOISE LEVELS THAT CAUSE LEVEL B HARASSMENT

Species	Density (animals/km²)	Estimated Level B take	Abundance	Percentage
Pacific harbor seal	29.4	666	11,036	6.03
California sea lion	0.033	10	296,750	0.00
Steller sea lion	0.0145	10	71,562	0.00
Gray whale	NA	3	20,990	0.00
Harbor porpoise	1.67	38	11,233	0.34

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned) and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

1. Time Restriction

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, all in-water construction will be limited to the period between July 16, 2018, and September 30, 2018.

2. Establishing and Monitoring Level A, Level B Harassment Zones, and Exclusion Zones

Before the commencement of in-water construction activities, which include vibratory pile driving and pile removal, WSDOT shall establish Level A harassment zones where received underwater SEL_{cum} could cause PTS (see above).

WSDOT shall also establish Level B harassment zones where received underwater SPLs are higher than 120 dB_{rms} re 1 μPa for non-impulsive noise sources (vibratory pile driving and pile removal).

WSDOT shall establish exclusion zones within which marine mammals could be taken by Level A harassment. For Level A harassment zones that is less than 10 m from the source, a minimum of 10 m distance should be established as an exclusion zone.

A summary of exclusion zones is provided in Table 8.

TABLE 8—EXCLUSION ZONES FOR VARIOUS PILE DRIVING ACTIVITIES AND MARINE MAMMAL HEARING GROUPS

Pile type, size and pile driving method	Exclusion zone (m)				
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid
Vibratory driving and removal, sheet pile, 10 piles/day	37	10	55	22	10
Vibratory driving & removal, steel H pile, 6 piles/day	10	10	10	10	10

NMFS-approved protected species observers (PSO) shall conduct an initial survey of the exclusion zones to ensure that no marine mammals are seen within the Level A zones before pile driving and pile removal of a pile segment begins. If marine mammals are found within the exclusion zone, pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 30 minutes. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone.

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the pile driving operator (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone or 30 minutes have elapsed since the last sighting.

3. Shutdown Measures

WSDOT shall implement shutdown measures if a marine mammal is detected within an exclusion zone or is about to enter an exclusion zone listed in Table 8. In-water pile driving may not resume until the animal is seen leaving the exclusion zone, or 30 minutes have passed since the sighting of the animal within the exclusion zone.

Further, WSDOT shall implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA (if issued) and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

Based on our evaluation of the required measures, NMFS has determined that the prescribed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Monitoring Measures

WSDOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its U.S. 101/Chehalis Bridge Repair Project. The purposes of marine mammal monitoring are to implement mitigation measures and learn more about impacts to marine mammals from WSDOT's construction activities. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required;
2. At least one observer must have prior experience working as an observer;
3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;
4. Where a team of three or more observers are required, one observer

should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

5. NMFS will require submission and approval of observer CVs.

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (*e.g.,* Zeiss, 10 × 42 power). Due to the different sizes of ZOIs from different pile types, two different ZOIs and different monitoring protocols corresponding to a specific pile type will be established.

• For vibratory pile driving and pile removal of sheet piles, a total of four land-based PSOs will monitor the exclusion zones and Level B harassment zone.

• For vibratory pile driving and pile removal of H piles, a total of three land-based PSOs will monitor the exclusion zones and Level B harassment zone.

Locations of the land-based PSOs and routes of monitoring vessels are shown in WSDOT's Marine Mammal Monitoring Plan, which is available online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

To verify the required monitoring distance, the exclusion zones and ZOIs will be determined by using a range finder or hand-held global positioning system device.

Reporting Measures

WSDOT is required to submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the IHA, whichever comes earlier. This report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS would have an opportunity to provide comments on the report, and if NMFS has comments, WSDOT would address the comments and submit a final report to NMFS within 30 days.

In addition, NMFS would require WSDOT to notify NMFS' Office of Protected Resources and NMFS' West Coast Stranding Coordinator within 48 hours of sighting an injured or dead marine mammal in the construction site. WSDOT shall provide NMFS and the Stranding Network with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video.

In the event that WSDOT finds an injured or dead marine mammal that is not in the construction area, WSDOT would report the same information as listed above to NMFS as soon as operationally feasible.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 7, given that the anticipated effects of WSDOT's Chehalis Bridge repair project activities involving pile driving and pile removal on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis by species for this activity, or else species-specific factors would be identified and analyzed.

For all marine mammal species, takes that are anticipated and authorized are expected to be limited to short-term Level B harassment (behavioral) because of the small scale (only a total of 100 piles to be installed and removed), lower source levels (small piles by vibratory pile driving and pile removal), and short durations (maximum five hours pile driving or pile removal per day). Marine mammals present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal. For these reasons, these behavioral impacts are not expected to affect marine mammals' growth, survival, and reproduction, especially considering the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals in the Pacific Northwest.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the ''Anticipated Effects on Marine Mammal Habitat'' section. There is no ESA designated critical area in the vicinity of the Chehalis Bridge Project area. The project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Therefore, given the consideration of potential impacts to marine mammal prey species and their physical environment, WSDOT's proposed construction activity at Chehalis Bridge would not adversely affect marine mammal habitat.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

• No injury, series injury, or mortality is anticipated or authorized;

• All harassment is Level B harassment in the form of short-term behavioral modification; and

• No areas of specific importance to affected species are impacted.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the prescribed monitoring and mitigation measures, NMFS finds that the total take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals.

The estimated takes are below seven percent of the population for all marine mammals (Table 7).

Based on the analysis contained herein of the proposed activity (including the prescribed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Subsistence Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

As a result of these determinations, NMFS has issued an IHA to the Washington State Department of Transportation for the U.S. 101/Chehalis River Bridge—Scour Repair in Washington State, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 26, 2017.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–23748 Filed 10–31–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

DATES: The open session of the meeting will be held on December 4, 2017, from 9:00 a.m. to 11:15 a.m. The executive session held from 11:15 a.m. to 12:00 p.m., will be the closed portion of the meeting.

ADDRESSES: The meeting will be held at the United States Naval Academy in Annapolis, MD. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Lawrence Heyworth IV, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:15 a.m. to 12:00 p.m. on December 4, 2017, will consist of discussions of new and pending administrative/minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor/conduct violations within the Brigade, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public, as the discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Department of the Navy/Assistant for Administration has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:15 a.m. to 12:00 p.m. will be concerned with matters protected under sections 552b(c) (5), (6), and (7) of title 5, United States Code.

Authority: 5 U.S.C. 552b

Dated: October 26, 2017.

E.K. Baldini,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2017–23809 Filed 10–31–17; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board Quarterly Board Meeting

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Announcement of open and closed meetings.

SUMMARY: This notice sets forth the agenda for the November 16–18, 2017 Quarterly Board Meeting of the National Assessment Governing Board (hereafter referred to as Governing Board). This notice provides information to members of the public who may be interested in attending the meeting or providing written comments related to the work of the Governing Board. Notice of this meeting is required under § 10(a)(2) of the Federal Advisory Committee Act (FACA).

DATES: The Quarterly Board Meeting will be held on the following dates:

- November 16, 2017 from 11:15 a.m. to 6:00 p.m.
- November 17, 2017 from 8:30 a.m. to 4:30 p.m.
- November 18, 2017 from 7:30 a.m. to 12:00 p.m.

ADDRESSES: Washington Marriott Georgetown, 1221 22nd Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW., Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279. Written comments may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (see contact information noted above). Information on the Governing Board and its work can be found at *www.nagb.gov.*

The Governing Board is established to formulate policy for the National

Assessment of Educational Progress (NAEP). The Governing Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

November 16–17, 2017 Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work based on agenda items planned for this Quarterly Board Meeting and follow-up items as reported in the Governing Board's committee meeting minutes available at *http://nagb.gov/what-we-do/board-committee-reports-and-agendas.html.*

Detailed Meeting Agenda: November 16–18, 2017

November 16: Committee Meetings

Assessment Development Committee (ADC): Open Session: 11:15 a.m. to 1:30 p.m.

Ad Hoc Committee on Measures of Postsecondary Preparedness: Open Session: 1:45 p.m. to 3:45 p.m.

Executive Committee: Open Session: 4:30 p.m. to 5:00 p.m.; Closed Session: 5:00 p.m. to 6:00 p.m.

November 17: Full Governing Board and Committee Meetings

Full Governing Board: Open Session: 8:30 a.m. to 12:30 p.m.; 3:30 p.m. to 4:30 p.m.

Committee Meetings

ADC: Open Session: 12:45 p.m. to 2:15 p.m.

Reporting and Dissemination (R&D): Open Session 12:45 p.m. to 2:15 p.m.

ADC and R&D Joint Session: Open Session: 2:15 p.m. to 3:15 p.m.

Committee on Standards, Design and Methodology (COSDAM): Open Session: 12:45 p.m. to 2:30 p.m.; Closed Session: 2:30 p.m. to 3:15 p.m.

November 18: Full Governing Board and Committee Meetings

Nominations Committee: Closed Session: 7:30 a.m. to 8:15 a.m.

Full Governing Board: Open Session: 8:30 a.m. to 12:00 p.m.

On Thursday, November 16, 2017, ADC will meet in open session from 11:15 a.m. to 1:30 p.m. Thereafter, the Ad Hoc Committee on Measures of Postsecondary Preparedness will meet in open session from 1:45 p.m. to 3:45 p.m. The Executive Committee will convene in open session from 4:30 p.m. to 5:00 p.m. and in closed session from 5:00 p.m. to 6:00 p.m. During the closed session, the Executive Committee will receive and discuss cost estimates for implementing NAEP's Assessment Schedule for 2014–2024, and the implications of cost and funding estimates for the NAEP Assessment Schedule in relation to the Governing Board's Strategic Vision and draft policy priorities for the NAEP Assessment Schedule. This meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program by providing confidential cost details and proprietary contract costs of current contractors to the public. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

On Friday, November 17, 2017, the Governing Board will meet in open session and also via webcast from 8:30 a.m. to 12:30 p.m.

From 8:30 a.m. to 8:45 a.m., the Governing Board will review and approve the November 17–18, 2017 Governing Board meeting agenda and meeting minutes from the August 2017 Quarterly Board Meeting. Thereafter, the Governing Board Chairman will provide remarks. From 8:45 a.m. to 9:15 a.m., the Secretary of Education, Betsy DeVos, will administer the oath of office to five new members and one reappointed member and provide remarks. See the news release at the following link: *https://www.nagb.org/news-and-events/news-releases/2017/release-20170928-six-leaders-named.html.*

On Friday, November 17, 2017, the Governing Board will hear from a panel of experts on international assessments, Thinking Beyond Borders: The Future of Student Assessment, from 9:15 a.m. to 12:30 p.m. This session will be available via webcast online at *www.nagb.gov* on the day of the event. Members of the public may view the session in person on a first come, first serve basis, with an overflow room also available as needed.

At 12:30 p.m., the Governing Board will recess for a 15 minute break and convene for standing committee meetings which will take place from 12:45 p.m. to 3:15 p.m. The ADC and R&D Committees will meet in open session to conduct regular business. Thereafter, the two committees will meet in an open joint session from 2:15 p.m. to 3:15 p.m.

On Friday November 17, 2017, COSDAM will meet in open session from 12:45 p.m. to 2:30 p.m. and in closed session from 2:30 p.m. to 3:15 p.m. During the closed session, COSDAM will discuss information regarding analyses of the 2017 bridge studies for paper-and-pencil and digital-based assessments, and discuss secure NAEP Reading and Mathematics data. This part of the meeting must be conducted in closed session because the analysis involves the use of secure data for the NAEP Reading and Mathematics assessments on digital-based platforms. Public disclosure of secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b of Title 5 U.S.C.

Following the committee meetings, from 3:15 p.m. to 3:30 p.m., the Governing Board will take a 15 minute break and thereafter meet in open session from 3:30 p.m. to 4:30 p.m.

From 3:30 p.m. to 4:00 p.m., the Board will hear remarks from new members. The Governing Board will then receive their annual ethics briefing conducted by the U.S. Department of Education, Office of General Counsel Ethics Division staff from 4:00 p.m. to 4:30 p.m.

The November 17, 2017 session will adjourn at 4:30 p.m.

On November 18, 2017, the Nominations Committee will meet in closed session from 7:30 a.m. to 8:15 a.m. The Committee will discuss nominees for Governing Board vacancies for terms beginning October 1, 2018. The Nominations Committee's discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code.

The Governing Board will meet in open session on November 18, 2017 from 8:30 a.m. to 12:00 p.m. From 8:30 a.m. to 9:30 a.m. the Governing Board will engage in discussion on the international assessment panel that was convened on Friday, November 17, 2017. Then, from 9:30 a.m. to 10:30 a.m., the Governing Board will discuss the draft resolution on Governing Board priorities for the NAEP Assessment Schedule vis-a-vis the Governing Board's Strategic Vision #9, which is to develop policy approaches to revise the NAEP assessment subjects and schedule.

Following this session, the Governing Board will take a break from 10:30 a.m. to 10:45 a.m.

From 10:45 a.m. to 11:15 a.m. the Governing Board will receive committee reports and take action on the Release Plan for the 2017 NAEP Reading and Mathematics Report Cards for Grades 4 and 8.

From 11:15 a.m. to 12:00 p.m., the Governing Board will engage in discussion on the NAEP Framework Policy Revision pursuant to the Governing Board's Strategic Vision #5, which is to develop new approaches to update NAEP subject area frameworks.

The November 18, 2017 meeting will adjourn at 12:00 p.m.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* beginning on Thursday, November 16, 2017 by 10:00 a.m. ET. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following the meeting.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than 21 days prior to the meeting.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe Web site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Dated: October 27, 2017.

William J. Bushaw,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2017–23751 Filed 10–31–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

State Educational Agency and Local Educational Agency—School Data Collection and Reporting Under ESEA, Title I, Part A; ED–2017–ICCD–0130; Correction

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On October 26, 2017, the U.S. Department of Education published a 60-day comment period notice in the **Federal Register** (Page 49602, Column 1; FR DOC #2017–23222) seeking public comment for an information collection entitled, ''State Educational Agency and Local Educational Agency—School Data Collection and Reporting Under ESEA, Title I, Part A''. The abstract was incorrect, and is corrected as follows:

Although the U.S. Department of Education (ED) determines Title I, Part A allocations for Local Educational Agencies (LEAs), the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, requires State Educational Agencies (SEAs) to adjust ED-determined Title I, Part A LEA allocations to account for newly created LEAs and LEA boundary changes, to redistribute Title I, Part A funds to small LEAs (under 20,000 total population) using alternative poverty data (if an SEA has ED's approval to do so), and to reserve funds for school improvement, State administration, and, if applicable, Direct Student Services. This control number covers only the burden associated with the actual procedures an SEA must follow when adjusting ED-determined LEA allocations.

The Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: October 26, 2017.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–23710 Filed 10–31–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE/NSF High Energy Physics Advisory Panel

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 30, 2017; 8:30 a.m. to 6:00 p.m. and Friday, December 1, 2017; 8:30 a.m. to 4:00 p.m.

ADDRESSES: Hilton Washington, DC North/Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel (HEPAP); U.S. Department of Energy; Office of Science; SC–25/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585; Telephone: (301) 903–1298; email: *john.kogut@science.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

Tentative Agenda: Agenda Will Include Discussions of the Following

November 30–December 1, 2017

- Discussion of Department of Energy High Energy Physics Program
- Discussion of National Science Foundation Elementary Particle Physics Program
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. A webcast of this meeting will be available. Please check the Web site below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, (301) 903–1298 or by email at: *John.Kogut@science.doe.gov.* You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral

statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's Office of High Energy Physics Advisory Panel Web site: *http://science.energy.gov/hep/hepap/meetings/.*

Issued at Washington, DC, on October 27, 2017.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2017–23767 Filed 10–31–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Revision of a Currently Approved Information Collection for the Energy Efficiency and Conservation Block Grant Financing Programs

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

ACTION: Submission for Office of Management and Budget (OMB) review; public comment request.

SUMMARY: The Department of Energy (DOE) invites public comment on a revision of a currently approved collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The information collection requests a revision and three-year extension of its Energy Efficiency and Conservation Block Grant Program, OMB Control Number 1910–5150.

The proposed action will continue the collection of information on the status of financing program activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously. No changes to the collection instrument are being proposed.

Comments are invited on: (a) Whether the revision of the currently approved collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden pertaining to the approved collection of information, including the validity of the methodology and assumptions used; (c) ways to further enhance the quality, utility, and clarity of the information being collected; and (d) ways to further minimize the burden regarding the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this revision to an approved information collection must be received on or before January 2, 2018. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to: Sallie Glaize, EE–5W, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, Email: *Sallie.Glaize@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: James Carlisle, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, Phone: (202) 287–1724, Fax: (412) 386–5835, Email: *Gregory.Davoren@ee.doe.gov*.

Additional information and reporting guidance concerning the Energy Efficiency and Conservation Block Grant Program (EECBG) is available for review at the following Web site: *https://energy.gov/eere/wipo/articles/energy-efficiency-and-conservation-block-grant-financing-programs-after-grant*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5150; (2) Information Collection Request Title: Energy Efficiency and Conservation Block Grant Program Financing Programs; (3) Type of Review: Revision of a Currently Approved Information Collection; (4) Purpose: To collect information on the status of Financing Program activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously; (5) Annual Estimated Number of Respondents: 108; (6) Annual Estimated Number of Total Responses: 175; (7) Annual Estimated Number of Burden Hours: 525; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $21,000. Respondents, total responses, burden hours and the annual cost burden have all been significantly reduced because of the retirement of grants, fewer programs and a lessened burden on reporting and recordkeeping costs.

Statutory Authority: Title V, Subtitle E of the Energy Independence and Security Act (EISA), Public Law 110–140 as amended (42 U.S.C. 17151 *et seq.*).

Issued in Washington, DC, October 26, 2017.

James Carlisle,

Supervisory Policy Advisor, Weatherization and Intergovernmental Program, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2017–23762 Filed 10–31–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–157–000]

DV Trading, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of DV Trading, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 15, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 26, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23780 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–21–000]

Alabama Power Company; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On October 25, 2017, the Commission issued an order in Docket No. EL18–21–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether Southern Companies' [1] market-based rate authority in the South Carolina Electric and Gas Co., City of Tallahassee, and Santee Cooper balancing authority areas may be unjust, unreasonable, unduly discriminatory or preferential. *Alabama Power Company,* 161 FERC 61,102 (2017).

The refund effective date in Docket No. EL18–21–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL18–21–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: October 26, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23779 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP18–51–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Targa Gas Marketing Negotiated Rate to be effective 11/1/2017.

Filed Date: 10/23/17.

Accession Number: 20171023–5300.

Comments Due: 5 p.m. ET 11/6/17.

Docket Numbers: RP18–52–000.

Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2017 October Negotiated Rates to be effective 10/23/2017.

Filed Date: 10/23/17.

Accession Number: 20171023–5482.

Comments Due: 5 p.m. ET 11/6/17.

Docket Numbers: RP18–53–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Update to Fuel Exemption Routes to be effective 12/1/2017.

Filed Date: 10/23/17.

Accession Number: 20171023–5485.

Comments Due: 5 p.m. ET 11/6/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 25, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23778 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petition for Declaratory Order

Docket	No.
IGS ORIX Solar I, LLC, IGS Solar I, LLC	Docket No. EL18–24–000.
IGS ORIX Solar I, LLC	Docket Nos. QF17–1029–002, QF17–1030–001, QF17–1337–001, QF17–1338–001, QF17–1357–001, QF17–1455–001, QF17–1532–001, QF17–1537–001, QF17–1538–001.
IGS Solar I, LLC	Docket Nos. QF17–1256–002, QF17–1257–002, QF17–1258–002.

Take notice that on October 24, 2017, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2017), IGS ORIX Solar I, LLC and IGS Solar I, LLC (together Applicants) filed a petition for declaratory order requesting the Commission grant certain of Applicants' solar generating projects limited waivers of the qualifying facility certification requirement set forth in section 292.203(a)(3) [1] for the period of time during which each project commenced operation to the date Applicants caused a FERC Form 556 Notice of Self-Certification of Qualifying Facility Status to be filed for such project, all as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

[1] Southern Companies include the following: Alabama Power Company; Southern Power Company; Mississippi Power Company; Georgia Power Company; Gulf Power Company; Oleander Power Project, Limited Partnership; Southern Company—Florida LLC; and Mankato Energy Center, LLC.

[1] 18 CFR 292.203(a)(3) (2017).

385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.or* call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on November 24, 2017.

Dated: October 25, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23773 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR17–57–001.
Applicants: Houston Pipe Line Company LP.
Description: Tariff filing per 284.123(b), (e)+(g): Amended Rate Election of Houston Pipe Line Company LP to be effective 11/1/2017; Filing Type: 1270.
Filed Date: 10/13/17.
Accession Number: 201710135143.
Comments Due: 5 p.m. ET 11/3/17.
284.123(g) Protests Due: 5 p.m. ET 12/12/17.

Docket Number: PR18–3–000.
Applicants: New Mexico Gas Company, Inc.
Description: Tariff filing per 284.123(b), (e)+(g): Amended Statement of Operating Conditions to be effective 9/15/2017; Filing Type: 1300.
Filed Date: 10/16/17.
Accession Number: 201710165206.
Comments Due: 5 p.m. ET 11/6/17.
284.123(g) Protests Due: 5 p.m. ET 12/15/17.

Docket Numbers: RP18–40–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Macquarie Energy LLC NRFiling to be effective 11/1/2017.
Filed Date: 10/18/17.
Accession Number: 20171018–5050.
Comments Due: 5 p.m. ET 10/30/17.

Docket Numbers: RP18–41–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendment to NRAFiling MercuriaEnergy America, Inc. to be effective 11/1/2017.
Filed Date: 10/18/17.
Accession Number: 20171018–5052.
Comments Due: 5 p.m. ET 10/30/17.

Docket Numbers: RP18–42–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Addition of Exit Fee language to be effective 11/17/2017.
Filed Date: 10/18/17.
Accession Number: 20171018–5053.
Comments Due: 5 p.m. ET 10/30/17.

Docket Numbers: RP18–43–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Key Span Release to Emera 794830 to be effective 11/1/2017.
Filed Date: 10/18/17.
Accession Number: 20171018–5082.
Comments Due: 5 p.m. ET 10/30/17.

Docket Numbers: RP18–44–000.
Applicants: Centra Pipelines Minnesota Inc.
Description: § 4(d) Rate Filing: Update Shipper Index Oct 2017 to be effective 12/1/2017.
Filed Date: 10/18/17.
Accession Number: 20171018–5157.
Comments Due: 5 p.m. ET 10/30/17.

Docket Numbers: RP18–45–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) Rate Filing: Fuel Tracker Filing 10/19/17 to be effective 12/1/2017.
Filed Date: 10/19/17.
Accession Number: 20171019–5010.
Comments Due: 5 p.m. ET 10/31/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 19, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23776 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT of ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–1093–001.
Applicants: Northern Border Pipeline Company.
Description: Petition of Northern Border Pipeline Company to Amend Language in the Settlement Agreement, et al. under RP12–1093.
Filed Date: 10/20/17.
Accession Number: 20171020–5150.
Comments Due: 5 p.m. ET 10/26/17.

Docket Numbers: RP18–46–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Non-Conforming Negotiated Rate Service Agreements—PTWP Name Change to be effective 7/12/2017.

Filed Date: 10/20/17.
Accession Number: 20171020–5033.
Comments Due: 5 p.m. ET 11/1/17.

Docket Numbers: RP18–47–000.
Applicants: Equitrans, L.P.
Description: Compliance filing Notice Regarding Non-Jurisdictional Gathering Facilities (Auburn CS PEG173/4).
Filed Date: 10/20/17.
Accession Number: 20171020–5043.
Comments Due: 5 p.m. ET 11/1/17.

Docket Numbers: RP18–48–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: DTE Energy Trading Negotiated Rate Agreement to be effective 11/1/2017.
Filed Date: 10/20/17.
Accession Number: 20171020–5054.
Comments Due: 5 p.m. ET 11/1/17.

Docket Numbers: RP18–49–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt (BP 1884–2) to be effective 5/23/2017.
Filed Date: 10/20/17.
Accession Number: 20171020–5055.
Comments Due: 5 p.m. ET 11/1/17.

Docket Numbers: RP18–50–000.
Applicants: BKV Chelsea, LLC,BKV Operating, LLC,Carrizo (Marcellus) LLC,Reliance Marcellus II, LLC.
Description: Joint Petition of BKV Chelsea, LLC, et al. for Limited Transaction Specific Waivers of Commission Policies, Capacity Release Regulations, and Related Pipeline Tariff Provisions under RP18–50.
Filed Date: 10/20/17.
Accession Number: 20171020–5238.
Comments Due: 5 p.m. ET 10/27/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated October 24, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23777 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–7–000.
Applicants: MDU Resources Group, Inc., Otter Tail Power Company.
Description: Request of MDU Resources Group, Inc., et al. for Approvals Pursuant to Section 203 of the Federal Power Act.
Filed Date: 10/24/17.
Accession Number: 20171024–5162.
Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: EC18–8–000.
Applicants: Otter Tail Power Company, MDU Resources Group, Inc.
Description: Request of MDU Resources Group, Inc., et al. for Approvals Pursuant to Section 203 of the Federal Power Act.
Filed Date: 10/24/17.
Accession Number: 20171024–5177.
Comments Due: 5 p.m. ET 11/14/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–2099–000.
Applicants: Black Hills Power, Inc.
Description: Black Hills Power, Inc. submits tariff filing per 35.19a(b): Refund Report (ER17–2098–000, ER17–2099–000 & ER17–2100–000) to be effective N/A.
Filed Date: 10/24/17.
Accession Number: 20171024–5116.
Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: ER17–2197–002.
Applicants: Nevada Power Company.
Description: Tariff Amendment: Rate Schedule No. 155 NPC/CRC Agr. Response to FERC 102417 to be effective 10/1/2017.
Filed Date: 10/24/17.
Accession Number: 20171024–5137.
Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: ER18–137–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Errata to 10/23/17 Filing of Revisions to MISO–PJM JOA re Overlapping Congestion to be effective 3/1/2018.
Filed Date: 10/24/17.
Accession Number: 20171024–5156.
Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: ER18–140–001.
Applicants: Lackawanna Energy Center LLC.
Description: Tariff Amendment: Supplement to Market-Based Rate Application to be effective 12/24/2017.
Filed Date: 10/24/17.
Accession Number: 20171024–5138.
Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: ER18–146–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2017–10–24_MISO–SPP JOA Revisions to Market-to-Market Provisions to be effective 1/4/2018.
Filed Date: 10/24/17.
Accession Number: 20171024–5132.
Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: ER18–148–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2017–10–24_SA 2946 MidAmerican-MidAmerican E&P (J498) Termination to be effective 10/25/2017.
Filed Date: 10/24/17.
Accession Number: 20171024–5134.
Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: ER18–149–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2017–10–24_MISO–SPP JOA Clean-Up Revisions to Article XI and Attachment 3 to be effective 12/24/2017.
Filed Date: 10/24/17.
Accession Number: 20171024–5135.
Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: ER18–150–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: SPP–MISO JOA Revisions to Market-to-Market Provisions to be effective 1/4/2018.
Filed Date: 10/24/17.
Accession Number: 20171024–5136.
Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: ER18–151–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: SPP–MISO JOA Revisions to Article XI and Attachment 3 to be effective 12/24/2017.
Filed Date: 10/24/17.
Accession Number: 20171024–5139.
Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: ER18–152–000.
Applicants: Otter Tail Power Company, Montana-Dakota Utilities Co., NorthWestern Corporation.
Description: § 205(d) Rate Filing: Filing and Restatement of Coyote 1 Station Transmission Facilities Agreement to be effective 7/30/2010.
Filed Date: 10/24/17.
Accession Number: 20171024–5154.
Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: ER18–153–000.

Applicants: Otter Tail Power Company, NorthWestern Corporation, Montana-Dakota Utilities Co.

Description: § 205(d) Rate Filing: Filing and Restatement of Big Stone Plant Transmission Facilities Agreement to be effective 7/30/2010.

Filed Date: 10/24/17.

Accession Number: 20171024–5155.

Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: ER18–154–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: SCE 2018 TRBAA Update to be effective 1/1/2018.

Filed Date: 10/24/17.

Accession Number: 20171024–5157.

Comments Due: 5 p.m. ET 11/14/17.

Docket Numbers: ER18–155–000.

Applicants: EnPowered.

Description: Baseline eTariff Filing: EnPowered USA, Inc. Market Based Rate Tariff to be effective 10/31/2017.

Filed Date: 10/25/17.

Accession Number: 20171025–5000.

Comments Due: 5 p.m. ET 11/15/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 25, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23772 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC17–14–000]

Commission Information Collection Activities (FERC–725U); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection (FERC–725U, Mandatory Reliability Standards: Mandatory Reliability Standard CIP–014) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (82 FR 41618, 9/1/2017) requesting public comments. The Commission received no comments on the FERC–725U and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by December 1, 2017.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0274, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–0710.

A copy of the comments should also be sent to the Commission, in Docket No. IC17–14–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: Mandatory Reliability Standards: Reliability Standard CIP–014.

OMB Control No.: 1902–0274.

Type of Request: Three-year extension of the FERC–725U information collection requirements with no changes to the reporting requirements.

Abstract: Reliability Standard CIP–014–2 [1] requires applicable transmission owners and transmission operators to identify and protect transmission stations and transmission substations, and their associated primary control centers that if rendered inoperable or damaged as a result of a physical attack could result in instability, uncontrolled separation, or cascading within an Interconnection.

Transmission owners and transmission operators must keep data or evidence to show compliance with the standard for three years unless directed by its Compliance Enforcement Authority. If a responsible entity is found non-compliant, it must keep information related to the non-compliance until mitigation is complete and approved, or for the three years, whichever is longer.

Type of Respondents: Transmission owners (TO) and transmission operators (TOP).

Estimate of Annual Burden: [2] The Commission estimates the annual public reporting burden for the information collection as:

[1] Reliability Standard CIP–014–2 was implemented by the letter Order in Docket No. RD15–4–000 issued on 7/14/2015. Docket No. RD15–4–000 was not submitted to OMB because it did not implicate the Paperwork Reduction Act. The revised standard became effective on 10/2/2015 and is now being included in the FERC–725U information collection.

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–725U—MANDATORY RELIABILITY STANDARDS: RELIABILITY STANDARD CIP–014 [3]

	Number and type of respondents (1)	Number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours and cost per response [4] (4)	Total burden hours and total cost (3) * (4)
Year 1:					
R1	334 TO	1	334	20 hrs.; $1,280	6,680 hrs.; $427,520.
R2	334 TO	1	334	34 hrs; $2,448	11,356 hrs.; $817,632.
R3	2 TOP	1	2	1 hrs.; $129	2 hrs.; $258.
R4	30 TO and 2 TOP	1	32	80 hrs.; $5,120	2,560 hrs.; $163,840.
R5	30 TO and 2 TOP	1	32	320 hrs.; $20,480	10,240 hrs.; $655,360.
R6	30 TO and 2 TOP	1	32	304 hrs.; $19,456	9,728 hrs.; $622,592.
Record Retention	334 TO and 2 TOP	1	336	2 hrs.; $76	672 hrs.; $25,536.
Year 2:					
Record Retention	334 TO and 2 TOP	1	336	2 hrs.; $76	672 hrs.; $25,536.
Year 3:					
R1	30 TO	1	30	20 hrs.; $1,280	600 hrs.; $38,400.
R2	30 TO	1	30	34 hrs.; $2,436	1,020 hrs.; $73,080.
R3	2 TOP	1	2	1 hrs.; $129	2 hrs.; $258.
R4	30 TO and 2 TOP	1	32	80 hrs.; $5,120	2,560 hrs.; $163,840.
R5	30 TO and 2 TOP	1	32	80 hrs.; $5,120	2,560 hrs.; $163,840.
R6	30 TO and 2 TOP	1	32	134 hrs.; $8,576	4,288 hrs.; $274,432.
Record Retention	334 TO and 2 TOP	1	336	2 hrs.; $76	672 hrs.; $25,536.
Year 1 Total					41,238 hrs.; $2,712,738.
Year 2 Total					672 hrs.; $25,536.
Year 3 Total					11,702 hrs.; $739,386.
Total (for Years 1–3)					53,612 hrs.; $3,477,660.
Average Annual Burden and Cost (for Years 1–3).					17,871 hrs.; $1,159,220.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 25, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–23723 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

[3] For each Reliability Standard, the Measure shows the acceptable evidence for the associated Reporting Requirement (R numbers), and the Compliance section details the related Recordkeeping Requirement.

[4] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * XX per Hour = Average Cost per Response.

The hourly cost figures are based on data for wages plus benefits from the Bureau of Labor Statistics (as of 11/9/2016) at *https://www.bls.gov/oes/current/naics2_22.htm* and *http://www.bls.gov/news.release/ecec.nr0.htm*. The figures are rounded for the purposes of calculations in this table and are:

1. For electrical engineers (occupation code: 17–2071), $64.29/hr., rounded to $64/hr.

2. For attorneys (occupation code: 23–0000), $129.12/hr., rounded to $129/hr.

3. For administrative staff (occupation code: 43–0000), $37.75/hr., rounded to $38/hr.

The record retention cost is based on the administrative staff category; R3 is based on the attorney category; Requirements R1, R4, R5 and R6 are based on the electrical engineer category; and R2 is a mix of the electrical engineer and related engineering review process (30 hrs. at $64/hr.) and attorney (4 hrs. at $129/hr.) categories. The resulting average hourly figure is $71.65, rounded to $72/hr.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–6–000]

RH energytrans, LLC; Notice of Application

Take notice that on October 16, 2017, RH energytrans, LLC (RH), 558 West 6th Street, Erie, PA 16507, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's Regulations requesting authority to construct and operate a new interstate natural gas pipeline system (referred to as the Risberg Line), including pipeline facilities, two compressor stations, metering and regulating stations and appurtenant facilities in Pennsylvania and Ohio.

Specifically, the project would include a total of 59.9 miles of pipeline incorporating 31.6 miles of existing 8-inch and 12-inch diameter gas pipeline currently used as gathering facilities and 28 miles of new 12-inch diameter pipeline. The pipeline facilities begin at a new point of interconnection with Tennessee Gas Pipeline Company, LLC adjacent to the Meadville Compressor Station in Crawford County, Pennsylvania and extend to a new delivery point interconnection with the distribution facilities of Dominion Energy Ohio (DEO) in North Kingsville in Ashtabula County, Ohio. The project also includes the reconstruction and conversion of two compressor stations totaling 1,862 hp. The Risberg Line would provide for 55,000 Dth/d of firm transportation service to northeast Ohio markets. The estimated cost to construct the project and to acquire the existing gathering pipeline is about $88 million.

The filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to James F. Bowe, Jr., King & Spalding LLP, 1700 Pennsylvania Avenue, Suite 200, Washington, DC 20006, Phone (202) 626–9601, email *jbowe@kslaw.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for

Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: November 16, 2017.

Dated: October 26, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–23721 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–158–000]

EnPowered; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding EnPowered's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 14, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 25, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23782 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–87–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Errata to Make Corrections to Revisions in ER18–87–000 to be effective 4/1/2018.
Filed Date: 10/25/17.
Accession Number: 20171025–5145.
Comments Due: 5 p.m. ET 11/15/17.

Docket Numbers: ER18–156–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA Altagas Sonoran Energy Inc. Service Agreement No. 158 to be effective 10/26/2017.
Filed Date: 10/25/17.

Accession Number: 20171025–5101.
Comments Due: 5 p.m. ET 11/15/17.

Docket Numbers: ER18–157–000.
Applicants: DV Trading, LLC.
Description: Baseline eTariff Filing: DV Trading New Company's Tariff (Initial Tariff Baseline) to be effective 10/26/2017.
Filed Date: 10/25/17.
Accession Number: 20171025–5102.
Comments Due: 5 p.m. ET 11/15/17.

Docket Numbers: ER18–158–000.
Applicants: EnPowered.
Description: Baseline eTariff Filing: EnPowered USA, Inc. Market Based Rate Tariff to be effective 10/31/2017.
Filed Date: 10/25/17.
Accession Number: 20171025–5114.
Comments Due: 5 p.m. ET 11/15/17.

Docket Numbers: ER18–159–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Interconnection Service Agreement SA No. 4810, Queue No. AA2–103 to be effective 9/27/2017.
Filed Date: 10/25/17.
Accession Number: 20171025–5142.
Comments Due: 5 p.m. ET 11/15/17.

Docket Numbers: ER18–160–000.
Applicants: MDU Resources Group, Inc.
Description: § 205(d) Rate Filing: Coyote Concurrence Filing to be effective 9/29/2010.
Filed Date: 10/25/17.
Accession Number: 20171025–5157.
Comments Due: 5 p.m. ET 11/15/17.

Docket Numbers: ER18–161–000.
Applicants: MDU Resources Group, Inc.
Description: § 205(d) Rate Filing: Big Stone Concurrence Filings to be effective 9/29/2010.
Filed Date: 10/25/17.
Accession Number: 20171025–5158.
Comments Due: 5 p.m. ET 11/15/17.

Docket Numbers: ER18–162–000.
Applicants: KASS Commodities.
Description: Tariff Cancellation: Cancellation of MBR Tariff to be effective 12/31/2017.
Filed Date: 10/25/17.
Accession Number: 20171025–5166.
Comments Due: 5 p.m. ET 11/15/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 25, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23781 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–136–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2017–10–25_Errata filing to MISO–PJM JOA revisions to address congestion overlap to be effective 3/1/2018.
Filed Date: 10/25/17.
Accession Number: 20171025–5233.
Comments Due: 5 p.m. ET 11/15/17.

Docket Numbers: ER18–164–000.
Applicants: Public Service Company of Colorado.
Description: Stipulation and Offer of Settlement of Public Service Company of Colorado.
Filed Date: 10/25/17.
Accession Number: 20171025–5247.
Comments Due: 5 p.m. ET 11/15/17.

Docket Numbers: ER18–165–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2017–10–26_SA 3030 Tenaska-Entergy 1st Rev GIA (J486) to be effective 10/23/2017.
Filed Date: 10/26/17.
Accession Number: 20171026–5042.
Comments Due: 5 p.m. ET 11/16/17.

Docket Numbers: ER18–166–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2017–10–25 NSP–MVLP-Connection Agrmt-0.0.0–653 to be effective 1/1/2018.
Filed Date: 10/26/17.
Accession Number: 20171026–5129.
Comments Due: 5 p.m. ET 11/16/17.

Docket Numbers: ER18–167–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3179R1 Transource Missouri & OPPD Interconnection Agreement to be effective 10/18/2017.
Filed Date: 10/26/17.
Accession Number: 20171026–5162.
Comments Due: 5 p.m. ET 11/16/17.

Docket Numbers: ER18–168–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to Interconnection Service Agreement No. 1371, Queue No. K19 to be effective 7/28/2005.
Filed Date: 10/26/17.
Accession Number: 20171026–5228.
Comments Due: 5 p.m. ET 11/16/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 26, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23775 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–140–000]

Lackawanna Energy Center LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Lackawanna Energy Center LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 14, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 25, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23774 Filed 10–31–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0214; FRL–9968–69]

FIFRA Scientific Advisory Panel; Notice of Public Meeting for the Clarification of Charge Questions on Alternate High-Throughput Screens To Determine Endocrine Disruption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a three-hour meeting of the Federal Insecticide, Fungicide, and Rodenticide Act, Scientific Advisory Panel (FIFRA SAP) to review and consider the scope and clarity of the draft charge questions for the November 28–30, 2017 SAP Meeting on the Continuing Development of Alternative High-Throughput Screens to Determine Endocrine Disruption, Focusing on Androgen Receptor, Steroidogenesis, and Thyroid Pathways.

DATES: The meeting will be held on Monday, November 6, 2017 from approximately 2 p.m. to 5 p.m. (EST). This is an open public meeting that will be conducted via webcast using Adobe Connect and telephone. Registration is required to attend this meeting. Please visit: *http://www.epa.gov/sap* to register.

Comments. Written comments on the scope and clarity of the draft charge questions should be submitted by noon on Wednesday, November 1, 2017. FIFRA SAP may not be able to fully consider written comments submitted after noon on Wednesday, November 1, 2017. Requests to make oral comments at the meeting should be submitted on or before noon on Wednesday, November 1, 2017 by registering at *http://www.epa.gov/sap.* For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION** or contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**.

Webcast. This meeting will be webcast only. Please refer to the FIFRA SAP Web site at *http://www.epa.gov/sap* for information on how to access the webcast.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to allow EPA time to process your request.

ADDRESSES:

Meeting: This meeting will be webcast only. Please refer to the following Web site to register and for information on how to access the webcast: *http://www.epa.gov/sap.*

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0214, 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.*

Requests for special accommodations. Submit requests for special accommodations to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Todd Peterson, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 202–564–6428; email address: *peterson.todd@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through *regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2017–0214 in the subject line on the first page of your request.

1. *Written comments.* Written comments should be submitted, using the instructions in **ADDRESSES** and Unit I.B., on or before noon on Wednesday, November 1, 2017, to provide FIFRA SAP the time necessary to consider and review the written comments. FIFRA SAP may not be able to fully consider written comments submitted after noon on Wednesday, November 1, 2017.

2. *Oral comments.* Registration is required to attend this meeting. Please visit: *http://www.epag.gov/sap* to register. Each individual or group wishing to make brief oral comments to FIFRA SAP may submit their request by registering on or before noon Wednesday, November 1, 2017. Oral comments before FIFRA SAP are limited to approximately 5 minutes due to the time constraints of this webcast.

II. Background

A. Purpose of FIFRA SAP Virtual Meeting on Charge Questions on Alternate High-Throughput Screens To Determine Endocrine Disruption

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 pursuant to FIFRA and operates in accordance with requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix). FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. The FIFRA SAP is assisted in their reviews by ad hoc participation from the Science Review Board (SRB). As a scientific peer review mechanism, FIFRA SAP provides comments, evaluations, and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. The FIFRA SAP strives to reach consensus; however, is not required to reach consensus in its recommendations to the Agency.

B. Public Meeting

During the meeting scheduled for Monday, November 6, 2017, the FIFRA SAP will review and consider the Charge Questions for the Panel's November 28–30, 2017 meeting on the Continuing Development of Alternative High-Throughput Screens to Determine Endocrine Disruption, Focusing on Androgen Receptor, Steroidogenesis, and Thyroid Pathways. The SAP will receive a short background briefing including the EPA's history and current position on the use of alternative high-throughput screens. In addition, the panel members will have the opportunity to comment on the scope and clarity of the draft charge questions. Subsequent to this meeting, final charge questions will be provided for the FIFRA SAP's deliberation on the white papers and supplemental information during the in-person meeting to be held on November 28–30, 2017.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background documents and charge questions to the FIFRA SAP are in the docket (identification number EPA–HQ–OPP–2017–0214). The Agenda for the virtual meeting will be posted at: *www.epa.gov/sap/virtual-meeting-clarify-draft-charge-questions-high-throughput-screens-determine-endocrine.* In addition, the Agency may provide additional background documents as additional materials become available. You may obtain electronic copies of most meeting documents, including FIFRA SAP composition (*i.e.,* members and *ad hoc* members for this meeting) and the meeting agenda, at *http://www.regulations.gov* and the FIFRA SAP Web site at *http://www.epa.gov/sap.*

FIFRA SAP will prepare meeting minutes approximately 90 calendar days after the in-person meeting. The meeting minutes will be posted on the FIFRA SAP Web site: *http://www.epa.gov/sap* and may be accessed in the docket at *http://www.regulations.gov.*

Authority: 7 U.S.C. 136 *et. seq.;* 21 U.S.C. 301 *et seq.*

Dated: October 11, 2017.

Inza Graves,

Deputy Director, Office of Science Coordination and Policy.

[FR Doc. 2017–23817 Filed 10–31–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards (SFFAS) 53, Budget and Accrual Reconciliation

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standards (SFFAS) 53, *Budget and Accrual Reconciliation.*

The Statement is available on the FASAB Web site at http://www.fasab.gov/accounting-standards/. Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW., Mailstop 6H19, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: October 27, 2017.

Wendy M. Payne,

Executive Director.

[FR Doc. 2017–23801 Filed 10–31–17; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of each agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012034–007.

Title: Hamburg Sud/Maersk Line Vessel Sharing Agreement.

Parties: Hamburg-Sud and Maersk Line A/S.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The amendment adds Peru to the geographic scope of the Agreement. The parties request expedited review.

Agreement No.: 012067–022.

Title: U.S. Supplemental Agreement to HLC Agreement.

Parties: BBC Chartering Carriers GmbH & Co. KG and BBC Chartering & Logistic GmbH & Co. KG, as a single member; Hanssy Shipping Pte. Ltd.; and Industrial Maritime Carriers, L.L.C.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W, New York, NY 10024.

Synopsis: The amendment deletes Austral Asia Line Pte. Ltd. as a party to the ancillary HLC Agreement.

Agreement No.: 201234.

Title: Agreement by Ocean Common Carriers to Participate on the Exchange Board.

Parties: CMA CGM S.A.; COSCO Shipping Co., Ltd., Hapag-Lloyd AG; and Mitsui O.S.K. Lines, Ltd.

Filing Party: Ashley W. Craig, Esq.; Venable LLP; 600 Massachusetts Ave. NW., Washington, DC 20001.

Synopsis: The Agreement authorizes CMA CGM SA, Hapag-Lloyd AG, Mitsui O.S.K. Lines, Ltd., and COSCO Shipping Co., Ltd. to serve on the board of New York Shipping Exchange Inc. (NYSHEX). The parties request expedited review.

Agreement No.: 201235.

Title: Agreement by Ocean Common Carriers to Use Standard Service Contract Terms.

Parties: CMA CGM S.A.; COSCO Shipping Co., Ltd., Hapag-Lloyd AG; and Mitsui O.S.K. Lines, Ltd.

Filing Party: Ashley W. Craig, Esq.; Venable LLP; 600 Massachusetts Ave. NW., Washington, DC 20001.

Synopsis: The Agreement authorizes the Parties to agree upon the use of standard terms to be included in the NYSHEX Forward Contract template, which will form the basis for service contracts entered into via the NYSHEX platform. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: October 27, 2017.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–23784 Filed 10–31–17; 8:45 am]

BILLING CODE 6731–AA–P

GENERAL SERVICES ADMINISTRATION

[Notice–WWICC–2017–03; Docket No. 2017–0003; Sequence 3]

World War One Centennial Commission; Notification of Upcoming Public Advisory Meeting

AGENCY: World War One Centennial Commission, General Services Administration.

ACTION: Meeting Notice.

SUMMARY: Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act. This notice provides the schedule and agenda for the December 13, 2017 meeting of the World War One Centennial Commission (the Commission). The meeting is open to the public.

DATES: *Meeting date:* The meeting will be held on Wednesday, December 13, 2017, starting at 9:00 a.m. Eastern Standard Time (EST), and ending no later than 2:00 p.m. (EST).

ADDRESSES: The meeting will be held at the Offices of the World War 1 Centennial Commission at 1800 G Street NW., Washington, DC 20006, Street Level. This location is handicapped accessible. The meeting will be open to the public. Persons attending in person are requested to refrain from using perfume, cologne, and other fragrances.

Written comments may be submitted to the Commission and will be made part of the permanent record of the Commission. Comments must be received by 5:00 p.m. (EST), December 8, 2017, and may be provided by email to *daniel.dayton@worldwar1centennial.gov.*

Contact Daniel S. Dayton at *daniel.dayton@worldwar1centennial.org* to register to comment during the meeting's 30-minute public comment period. Registered speakers/organizations will be allowed five minutes, and will need to provide written copies of their presentations. Requests to comment, together with presentations for the meeting, must be received by 5:00 p.m. (EST), on Friday, December 8, 2017. Please contact Mr. Dayton at the email address above to obtain meeting materials.

FOR FURTHER INFORMATION CONTACT: Daniel S. Dayton, Designated Federal Officer, World War 1 Centennial Commission, 701 Pennsylvania Avenue NW., Room 123, Washington, DC 20004–2608, at 202–380–0725 (**note:** this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The World War One Centennial Commission was established by Public Law 112–272 (as amended), as a commission to ensure a suitable observance of the centennial of World War I, to provide for the designation of memorials to the service of members of the United States Armed Forces in World War I, and for other purposes. Under this authority, the Committee will plan, develop, and execute programs, projects, and activities to commemorate the centennial of World War I, encourage private organizations and State and local governments to organize and participate in activities commemorating the centennial of World War I, facilitate and coordinate activities throughout the United States relating to the centennial of World War I, serve as a clearinghouse for the collection and dissemination of information about events and plans for the centennial of World War I, and develop recommendations for Congress and the President for commemorating the centennial of World War I. The Commission does not have an appropriation and operates on donated funds.

Agenda: Wednesday, December 13, 2017

Old Business

- Acceptance of minutes of last meeting
- Public Comment Period

New Business

- Executive Director's Report—Executive Director Dayton
- Executive Committee Report—Commissioner Hamby
- Financial Committee Report—Vice Chair Fountain
- Memorial Report—Vice Chair Fountain
- Fundraising Report—Commissioner Sedgwick
- Education Report—Dr. O'Connell
- Endorsements—(RFS)—Dr. Seefried
- International Report—Dr. Seefried
- Other Business
- Chairman's Report
- Set Next Meeting
- Motion to Adjourn

Dated: October 26, 2017.

Daniel S. Dayton,

Designated Federal Official, World War I Centennial Commission.

[FR Doc. 2017–23756 Filed 10–31–17; 8:45 am]

BILLING CODE 6820–95–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2017–02; Docket 2017–0002; Sequence 21]

Notice of intent To Prepare a Supplemental Environmental Impact Statement for the San Ysidro Land Port of Entry (LPOE) Modernization and Expansion Project

AGENCY: Public Building Service (PBS), General Services Administration (GSA).

ACTION: Notice of intent; Announcement of meeting.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations, and the GSA Public Buildings Service NEPA Desk Guide, GSA is issuing this notice to advise the public that a Supplemental Environmental Impact Statement (SEIS) will be prepared for the San Ysidro LPOE Modernization and Expansion Project (Project).

DATES: *Meeting Date:* A public scoping meeting will be held on Wednesday, November 8th, 2017 from 4:00 p.m., Pacific Time (PT), to 6:00 p.m., PT. The meeting will be an informal open house, where visitors may come, receive information, and provide written comments. Agencies and the public are encouraged to provide written comments regarding the scope of the SEIS. Written comments must be received by November 30, 2017.

ADDRESSES: The public scoping meeting will be held at The Front, 147 West San Ysidro Boulevard, San Ysidro, CA 92173. Written comments must be sent to the General Services Administration, Attention: Osmahn Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, 50 United Nations Plaza, Room 3345 Mailbox 9, San Francisco, CA 94102, or via email to *osmahn.kadri@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Osmahn A. Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, GSA, Pacific Rim Region, at 415–522–3617. Please also call this number if special assistance is needed to attend and participate in the public scoping meeting.

SUPPLEMENTARY INFORMATION: GSA intends to prepare a SEIS to analyze the potential impacts resulting from proposed modifications and minor design changes to the San Ysidro LPOE Modernization and Expansion Project. The San Ysidro LPOE is located at the terminus of Interstate 5 at the United States-Mexico border in the San Ysidro community of San Diego, California.

Background

A Final Environmental Impact Statement (EIS) and Record of Decision (ROD) were published in September 2009. Both addressed the reconfiguration and expansion of the San Ysidro LPOE in three independent construction phases to improve overall capacity and operational efficiency. In May 2014, GSA published a Final SEIS and ROD that evaluated changed circumstances and proposed modifications to the Project, including (1) the incorporation of northbound pedestrians inspections at the proposed southbound-only pedestrian crossing facility, on the west side of the LPOE, and modification of the phasing/timing of the construction of the pedestrian crossing facility; (2) changes to the development footprint on the west side of the LPOE and design refinements to the Virginia Avenue Transit Center; (3) a change in the number of vehicle lanes and the installation of southbound inspection booths and overhead canopies on the proposed southbound roadway; and (4) minor changes in the design and/or timing of implementation of several Project elements. GSA prepared a Revision to the Final SEIS in August 2015 that addressed minor changes to the alignment of the southbound roadway and employee access road, as well as specific information that was not known or available at the time the Final EIS or Final SEIS were prepared (regarding the details of the on-site wastewater treatment facility).

Phase 1 is complete and included the construction of a pedestrian bridge, additional northbound vehicle lanes and inspection facilities, a new southbound pedestrian crossing facility on the east side of the LPOE, a new bi-directional pedestrian crossing facility on the west side of the LPOE, and the Virginia Avenue Transit Center. Phase 2 is fully funded and involves the construction of new buildings. Phase 3 is fully funded and includes construction of a southbound roadway and associated inspection equipment. Phases 2 and 3 are anticipated to be completed in 2019.

The SEIS will address changes to the Project, which include acquisition of one parcel of land on the east side of the LPOE and incorporation of this additional land area into the LPOE.

Alternatives Under Consideration

Two action alternatives are under consideration in addition to the No-Action Alternative. Alternative 1 would include demolition of the existing building on the acquisition site and expansion of the LPOE pedestrian plaza. Alternative 2 would involve renovating the existing on-site building. The No Action Alternative assumes that the site would not be acquired by GSA and the additional land area would not be incorporated into the LPOE.

Scoping Process

Scoping will be accomplished through a public scoping meeting, direct mail correspondence to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have, an interest in the Project.

Dated: October 23, 2017.

Matthew Jear,

Director, Portfolio Management Division, Pacific Rim Region, Public Buildings Service.

[FR Doc. 2017–23754 Filed 10–31–17; 8:45 am]

BILLING CODE 6820–Y1–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting conducted as a telephone conference call. This call will be open to the public. Preregistration is required for both public participation and comment. Any individual who wishes to participate in the call should email *OMH-ACMH@hhs.gov* by December 4, 2017. Instructions regarding participating in the call and how to provide verbal public comments will be given at the time of preregistration.

Information about the meeting is available from the designated contact and will be posted on the Web site for the Office of Minority Health (OMH), *www.minorityhealth.hhs.gov.* Information about ACMH activities can be found on the OMH Web site under the heading *About OMH.*

DATES: The conference call will be held on December 5, 2017, 1:00 p.m.–3:00 p.m. ET.

ADDRESSES: Instructions regarding participating in the call will be given at the time of preregistration.

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; email *OMH-ACMH@hhs.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health on improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the OMH.

The topics to be discussed during the teleconference include finalizing recommendations regarding improving the access and quality of data related to the opioid usage and health disparities. The recommendations will be given to the Deputy Assistant Secretary for Minority Health.

This call will be limited to 125 participants. The OMH will make every effort to accommodate persons with special needs. Individuals who have special needs for which special accommodations may be required should contact Professional and Scientific Associates at (703) 234–1700 and reference this meeting. Requests for special accommodations should be made at least ten (10) business days prior to the meeting.

Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to two minutes per speaker during the time allotted. Individuals who would like to submit written statements should email, mail, or fax their comments to the designated contact at least seven (7) business days prior to the meeting.

Any members of the public who wish to have electronic or printed material distributed to ACMH members should email *OMH-ACMH@hhs.gov* or mail their materials to the Designated Federal Officer, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business on November 28, 2017.

Dated: October 27, 2017.

Minh Wendt,

Designated Federal Officer, Advisory Committee on Minority Health.

[FR Doc. 2017–23816 Filed 10–31–17; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health 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 Environmental Health Sciences Special Emphasis Panel; Time-Sensitive Review of potential exposures associated with Hurricane Harvey.

Date: November 20, 2017.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Room 3003, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Laura A, Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 919–541–2824, *laura.thomas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 27, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–23815 Filed 10–31–17; 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; Topics in Virology.

Date: November 3, 2017.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John C Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in the Vision Biology.

Date: November 29, 2017.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Tobacco Regulatory Science (R01, R21, R03).

Date: December 5, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 17–142: International Research in Infectious Diseases, including AIDS (R01).

Date: December 5, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neuroscience Assay, Diagnostics and Animal Model Development.

Date: December 5, 2017.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Susan Gillmor, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1730, *susan.gillmor@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Toxicology and Digestive, Kidney and Urological Systems AREA Review.

Date: December 5, 2017.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Glial and Neurovascular Diseases.

Date: December 5, 2017.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 27, 2017.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–23813 Filed 10–31–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed 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 Cancer Institute Special Emphasis Panel Cancer Biomarkers & Biospecimens.

Date: December 14, 2017.

Time: 1:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove 9609 Medical Center Drive, Room 7W106 Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Reed A. Graves, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 9609 Medical Center Drive, Room 7W106 Bethesda, MD 20892–9750, 240–276–6384 *gravesr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: *October 26, 2017.*

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–23814 Filed 10–31–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N03A, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines were initially developed in accordance with

Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories).

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844–486–9226.

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

Dynacare, * 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891, x7.

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories).

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only.

Brian Makela,

Chemist, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2017–23768 Filed 10–31–17; 8:45 am]

BILLING CODE 4160–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification and Clarification of the National Customs Automation Program Tests Regarding Post-Summary Corrections and Periodic Monthly Statements

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) modification and clarification to the National Customs Automation Program (NCAP) tests pertaining to the processing of post-summary correction (PSC) claims and periodic monthly statements (PMS). Except to the extent expressly announced or modified by this document, all aspects, rules, terms and conditions announced in previous notices regarding the PSC and PMS tests remain in effect.

DATES: As of November 1, 2017, the modification and clarification to the PSC and PMS tests will be operational.

ADDRESSES: Comments concerning this test program may be submitted via email to Monica Crockett at *ESARinfoinbox@dhs.gov* with a subject line identifier reading, ''Post-Summary Corrections and Periodic Monthly Statements.''

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Randy Mitchell, Director, Commercial Operations, Revenue and Entry, Trade Policy and Programs, Office of Trade, via email at *Randy.Mitchell@cbp.dhs.gov.* For technical questions related to ABI transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to the Client Representative Branch at (703) 650–3500.

SUPPLEMENTARY INFORMATION:

I. Background

Post-Summary Correction (PSC) and Periodic Monthly Statement (PMS) Test Programs

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement (NAFTA) Implementation Act (Customs Modernization Act) (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS) as the CBP-authorized electronic data interchange (EDI) system. ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions.

CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions and add new functionality. Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. *See* T.D. 95–21, 60 FR 14211 (March 16, 1995). A list of ACE tests is provided in Section III below.

A. PSC Test Program

On June 24, 2011, CBP published a notice in the **Federal Register** (76 FR 37136) that announced a plan to conduct an NCAP test concerning new ACE capabilities allowing importers to file a PSC for certain entry summaries using the Automated Broker Interface (ABI). Importers and their brokers are also allowed to use ABI to file a PSC to those pre-liquidation ACE entry summaries that were accepted by CBP, fully paid, and under CBP control. On November 19, 2013, CBP published a notice in the **Federal Register** (78 FR 69434) modifying and clarifying the terms and conditions of the PSC test. On December 12, 2016, CBP published another notice in the **Federal Register** (81 FR 89482) further modifying and clarifying the terms and conditions of the PSC test and expanding the list of entry types that could be corrected via a PSC. One of the entry types added was entry type 23 (Temporary Importation Bond (TIB)).

Before the December 12, 2016 notice became effective, CBP published another notice on January 9, 2017, in the **Federal Register** (82 FR 2385), republishing the December 12th notice, and correcting and further clarifying the terms and conditions of the PSC test. Subsequently, on January 17, 2017, CBP published a notice in the **Federal Register** (82 FR 4901) delaying the effective date of the January 9th notice until further notice. Then, on June 8, 2017, CBP published a notice in the **Federal Register** (82 FR 26699) announcing that the January 9th notice would become effective on July 8, 2017. Finally, on June 30, 2017, CBP published a notice in the **Federal Register** (82 FR 29910) delaying the effective date until further notice.

B. PMS Test Program

On February 4, 2004, CBP published a notice in the **Federal Register** (69 FR 5362) that announced a plan to conduct an NCAP test concerning PMS which allows importers to deposit estimated duties, fees and taxes on a monthly basis. CBP modified and clarified the PMS test in seven subsequent **Federal Register** notices published on: September 8, 2004 (69 FR 54302); February 1, 2005 (70 FR 5199); August 8, 2005 (70 FR 45736); September 22, 2005 (70 FR 55623); January 20, 2006 (71 FR 3315); June 2, 2006 (71 FR 32114); and October 17, 2008 (73 FR 61891). On December 12, 2016, CBP published a notice in the **Federal Register** announcing a modification to the PMS test. *See* 81 FR 89482. On January 9, 2017, CBP published a notice in the **Federal Register** (82 FR 2385), republishing the December 12, 2016 notice with some corrections and further clarification. Subsequently, on January 17, 2017, CBP published a notice in the **Federal Register** (82 FR 4901) delaying the effective date of the January 9th notice until further notice. On June 8, 2017, CBP published a notice in the **Federal Register** (82 FR 26699) announcing that the January 9th notice would become effective on July 8, 2017. Finally, on June 30, 2017, CBP published a notice in the **Federal Register** (82 FR 29910) delaying the effective date until further notice.

II. Test Modifications and Clarification

This document announces a modification and clarification of the PSC test, and a modification of the PMS test. The modifications and clarification are discussed separately below. Except to the extent expressly announced or modified by this document, all aspects, rules, terms, requirements, obligations and conditions announced in previous notices regarding the PSC and PMS tests remain in effect.

A. Modification of the PSC Test

This document announces that CBP is extending the deadline for filing a PSC. The new deadline requires a PSC to be transmitted within 300 days of the date of entry or 15 days prior to the scheduled liquidation date, whichever

date is earlier. Prior to this modification, a PSC had to be transmitted within 270 days of the date of entry, but could not be filed within 20 days of the scheduled liquidation date. This change is being made to increase the amount of time a filer has to submit a PSC on entry summaries.

B. Clarification of the PSC Test

CBP announced in the December 12th notice that the types of entries that may be corrected by filing a PSC were expanded to additional entry types, one of them being entry type 23 (TIB). This notice clarifies that a PSC concerning a TIB may be filed only to correct data elements of a TIB that do not change a TIB entry to another entry type; in addition, this notice clarifies that a PSC may not change data elements that change another entry type to a TIB entry. For example, a PSC may correct the value declared on a TIB entry, but it may not change the classification of the article to a classification that is not entitled to be filed as a TIB entry, as that classification change would necessarily change a TIB entry to another entry type.

C. Modification of the PMS Test

The proposed modification, published in the January 9, 2017 notice, considers a PMS as paid, in the event the importer uses the Automated Clearing House (ACH) debit process, when CBP receives notification from the Treasury Department that funds are available and transferred to CBP from the financial institution designated by the importer for payment of the ACH debit authorization. This modification reverses the proposed modification because ACE cannot accommodate the proposed change at this time due to technical constraints. Therefore, CBP will continue to consider a PMS as paid when CBP transmits the debit authorization to the designated financial institution. *See* 69 FR 5362 (February 4, 2004).

III. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of National Customs Automation Program (NCAP) Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).

- Modification of NCAP Test Concerning ACE Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test: 80 FR 39790 (July 10, 2015).
- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test: 80 FR 50644 (August 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency Message Set through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test: 80 FR 54305 (September 9, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Document Image System (DIS) Regarding Future Updates and New Method of Submission of Accepted Documents: 80 FR 62082 (October 15, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Cargo Release for Entry Type 52 and Certain Other Modes of Transportation: 80 FR 63576 (October 20, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue (ESAR) Test of Automated Entry Summary Types 51 and 52 and Certain Modes of Transportation: 80 FR 63815 (October 21, 2015).
- Modification of the National Customs Automation Program Test Concerning the Automated Commercial Environment Portal Account to Establish the Exporter Portal Account: 80 FR 63817 (October 21, 2015).
- Modification of National Customs Automation Program Test Concerning the Automated Commercial Environment Partner Government Agency Message Set Regarding the Toxic Substances Control Act Certification Required by the Environmental Protection Agency: 81 FR 7133 (February 10, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings: 81 FR 10264 (February 29, 2016).
- Modification of the National Customs Automation Program (NCAP); Test Concerning the Partner Government Agency Message Set for Certain Data Required by the Environmental Protection Agency (EPA): 81 FR 13399 (March 14, 2016).
- Cessation of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 81 FR 18634 (March 31, 2016).
- Automated Commercial Environment (ACE); Announcement of National Customs Automation Program Test of the In-Transit Manifest Pilot Program: 81 FR 24837 (April 27, 2016).
- Announcement of National Customs Automation Program (NCAP) Test Concerning the Submission through the Automated Commercial Environment (ACE) of Certain Import Data and Documents Required by the U.S. Fish and Wildlife Service: 81 FR 27149 (May 5, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings Accompanied by Food and Drug Administration (FDA) Data: 81 FR 30320 (May 16, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Electronic Entry and Entry Summary Filings: 81 FR 32339 (May 23, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) Protest Module as the Sole CBP-Authorized Method for Filing Electronic Protests: 81 FR 49685 (July 28, 2016).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Portal Accounts to Establish the Protest Filer Account and Clarification that the Terms and Conditions for Account Access Apply to all ACE Portal Accounts: 81 FR 52453 (August 8, 2016).
- National Customs Automation Program (NCAP) Test Concerning Electronic Filing of Protests in the Automated Commercial Environment (ACE): 81 FR 53497 (August 12, 2016).
- Modification of the National Customs Automation Program (NCAP) Test Regarding Reconciliation and Transition of the Test from the Automated Commercial System (ACS) to the Automated Commercial Environment (ACE): 81 FR 89486 (December 12, 2016).
- Modification and Clarification of the National Customs Automation Program (NCAP) Test Regarding Post-Summary Corrections and Periodic Monthly Statements: 81 FR 89482 (December 12, 2016).
- Effective Date for the Automated Commercial Environment (ACE) Being the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Electronic Drawback and Duty Deferral Entry and Entry Summary Filings: 81 FR 89486 (December 12, 2016).
- Electronic Notice of Liquidation: 81 FR 89375 (December 12, 2016).
- Modification and Clarification of the National Customs Automation Program Tests Regarding Post-Summary Corrections and Periodic Monthly Statements; Republication with Correction and Further Clarification: 82 FR 2385 (January 9, 2017).
- Delay of Effective Date for the Automated Commercial Environment (ACE) Becoming the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Electronic Drawback and Duty Deferral Entry and Entry Summary Filings: 82 FR 4900 (January 17, 2017).
- Delayed Effective Date for Modifications of the National Customs Automation Program Tests Regarding Reconciliation, Post-Summary Corrections, and Periodic Monthly Statements: 82 FR 4901 (January 17, 2017).
- Effective Date for the Automated Commercial Environment (ACE) Becoming the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Electronic

Drawback and Duty Deferral Entry and Entry Summary Filings: 82 FR 26698 (June 8, 2017).

- Effective Date for Modifications of the National Customs Automation Program Tests Regarding Reconciliation, Post-Summary Corrections, and Periodic Monthly Statements: 82 FR 26699 (June 8, 2017).
- Delayed Effective Date for Modifications of the National Customs Automation Program Tests Regarding Reconciliation, Post-Summary Corrections, and Periodic Monthly Statements: 82 FR 29910 (June 30, 2017).
- Delay of Effective Date for the Automated Commercial Environment (ACE) Becoming the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Electronic Drawback and Duty Deferral Entry and Entry Summary Filings: 82 FR 29910 (June 30, 2017).
- Extension and Clarification of Test Program Regarding Electronic Foreign Trade Zone Admission Applications and Transition of Test from the Automated Commercial System to the Automated Commercial Environment: 82 FR 38923 (August 16, 2017).
- Automated Commercial Environment (ACE) Becoming the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Duty Deferral Entry and Entry Summary Filings: 82 FR 38924 (August 16, 2017).
- Delay of Transition of Test Program Regarding Electronic Foreign Trade Zone Admission Applications from the Automated Commercial System to the Automated Commercial Environment: 82 FR 43395 (September 15, 2017).

Dated: October 26, 2017.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2017–23747 Filed 10–31–17; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

COBRA Fees To Be Adjusted for Inflation in Fiscal Year 2018 CBP Dec. 17–17

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) is adjusting certain customs user fees and limitations established by the Consolidated Omnibus Budget Reconciliation Act (COBRA) for Fiscal Year 2018 in accordance with the Fixing America's Surface Transportation Act (FAST Act) as implemented by CBP regulations published elsewhere in this issue of the **Federal Register.**

DATES: The adjusted amounts of customs COBRA user fees and their corresponding limitations set forth in this notice for Fiscal Year 2018 are required as of January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Director—Revenue Division, 317–298–1107, *bruce.ingalls@cbp.dhs.gov;* or Tina Ghiladi, Director—Fee Strategy, Communications, and Integration, 202–344–3722, *tina.ghiladi@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2015, the Fixing America's Surface Transportation Act (FAST Act, Pub. L. 114–94) was signed into law. Section 32201 of the FAST Act amended section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by requiring certain customs COBRA user fees and corresponding limitations to be adjusted by the Secretary of the Treasury (Secretary) to reflect certain increases in inflation.

In a final rule, CBP Dec. 17–16, published elsewhere in this issue of the **Federal Register**, CBP amended §§ 24.22 and 24.23 of title 19 of the Code of Federal Regulations (19 CFR 24.22 and 24.23) to implement the requirements of the FAST Act. Specifically, CBP created a new paragraph (k) in section 24.22 (19 CFR 24.22(k)) that sets forth the methodology to determine the change in inflation as well as the factor by which the fees and limitations will be adjusted, if necessary. The fees and limitations subject to adjustment, which are set forth in Appendix A and Appendix B of part 24, include the commercial vessel arrival fees, commercial truck arrival fees, railroad car arrival fees, private vessel arrival fees, private aircraft arrival fees, commercial aircraft and vessel passenger arrival fees, dutiable mail fees, customs broker permit user fees, barges and other bulk carriers arrival fees, and merchandise processing fees as well as the corresponding limitations.

Determination of Whether an Adjustment Is Necessary for Fiscal Year 2018

In accordance with the amended regulations in 19 CFR 24.22, CBP determines whether the fees and limitations must be adjusted to reflect inflation. For fiscal year 2018, this is done by comparing the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI–U) for the current year (June 2016–May 2017) with the average of the CPI–U for Fiscal Year 2014 to determine the change in inflation, if any. If there is an increase in the CPI of greater than one (1) percent, CBP must adjust the customs COBRA user fees and corresponding limitations using the methodology set forth in 19 CFR 24.22(k). Following the steps provided in paragraph (k)(2) of § 24.22, CBP has determined that the increase in the CPI between the most recent June to May 12-month period (June 2016–May 2017) and Fiscal Year 2014 is 2.542 percent. (19 CFR 24.22(k)). As the increase in the CPI is greater than one (1) percent, the customs COBRA user fees and corresponding limitations must be adjusted for Fiscal Year 2018.

Determination of the Adjusted Fees and Limitations

Using the methodology set forth in § 24.22(k)(2) of the CBP regulations (19 CFR 24.22(k)), CBP has determined that the factor by which the fees and limitations will be adjusted is 2.677 percent. In reaching this determination, CBP calculated the values for each variable found in 19 CFR 24.22(k) as follows:

- The arithmetic average of the CPI–U for June 2016–May 2017, referred to as (A) in the CBP regulations, is 242.328 [1]
- The arithmetic average of the CPI–U for Fiscal Year 2014, referred to as (B), is 236.009;
- The arithmetic average of the CPI–U for the comparison year, referred to as (C), is 236.009;
- The difference between the arithmetic averages of the CPI–U of the comparison year (Fiscal Year 2014) and the current year (June 2016–May 2017), referred to as (D), is 6.320;
- This difference rounded to the nearest whole number, referred to as (E), is 6;
- The percentage change in the arithmetic averages of the CPI–U of the comparison year (Fiscal Year 2014) and the current year (June 2016–May 2017), referred to as (F), is 2.542 percent;
- The difference in the arithmetic average of the CPI–U between the current year (June 2016–May 2017) and the base year (Fiscal Year 2014), referred to as (G), is 6.320; and

[1] The figures provided in this notice may be rounded for publication purposes only. The calculations for the adjusted fees and limitations were made using unrounded figures, unless otherwise noted.

• Lastly, the percentage change in the CPI–U from the base year (Fiscal Year 2014) to the current year (June 2016–May 2017), referred to as (H), is 2.677 percent.

Announcement of New Fees and Limitations

The adjusted amounts of customs COBRA user fees and their corresponding limitations for Fiscal Year 2018 as adjusted by 2.677 percent set forth below are required as of January 1, 2018. Table 1 provides the fees and limitations found in 19 CFR 24.22 as adjusted for Fiscal Year 2018 and Table 2 provides the fees and limitations found in 19 CFR 24.23 as adjusted for Fiscal Year 2018.

TABLE 1—CUSTOMS COBRA USER FEES AND LIMITATIONS FOUND IN 19 CFR 24.22 AS ADJUSTED FOR FISCAL YEAR 2018

19 U.S.C. 58c	19 CFR 24.22	Customs COBRA user fee/limitation	New fee/limitation adjusted in accordance with the FAST Act
(a)(1)	(b)(1)(i)	Fee: Commercial Vessel Arrival Fee	$448.70
(b)(5)(A)	(b)(1)(ii)	Limitation: Calendar Year Maximum for Commercial Vessel Arrival Fees.	6,114.46
(a)(8)	(b)(2)(i)	Fee: Barges and Other Bulk Carriers Arrival Fee	112.95
(b)(6)	(b)(2)(ii)	Limitation: Calendar Year Maximum for Barges and Other Bulk Carriers Arrival Fees.	1,540.17
(a)(2)	(c)(1)	Fee: Commercial Truck Arrival Fee	5.65
(b)(2)	(c)(2) and (3)	Limitation: Commercial Truck Calendar Year Prepayment Fee.	102.68
(a)(3)	(d)(1)	Fee: Railroad Car Arrival Fee	8.47
(b)(3)	(d)(2) and (3)	Limitation: Railroad Car Calendar Year Prepayment Fee	102.68
(a)(4)	(e)(1) and (2)	Fee and Limitation: Private Vessel or Private Aircraft First Arrival/Calendar Year Prepayment Fee.	28.24
(a)(6)	(f)	Fee: Dutiable Mail Fee	5.65
(a)(5)(A)	(g)(1)(i)	Fee: Commercial Vessel or Commercial Aircraft Passenger Arrival Fee.	5.65
(a)(5)(B)	(g)(1)(ii)	Fee: Commercial Vessel Passenger Arrival Fee (from one of the territories and possessions of the United States).	1.98
(a)(7)	(h)	Fee: Customs Broker Permit User Fee	141.70

TABLE 2—CUSTOMS COBRA USER FEES AND LIMITATIONS FOUND IN 19 CFR 24.23 AS ADJUSTED FOR FISCAL YEAR 2018

19 U.S.C. 58c	19 CFR 24.23	Customs COBRA user fee/limitation	New fee/limitation adjusted in accordance with the FAST Act
(b)(9)(A)(ii)	(b)(1)(i)(A)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	$1.03
(b)(9)(B)(i)	(b)(1)(i)(B)(2)	Limitation: Minimum Express Consignment Carrier/Centralized Hub Facility Fee.	0.36
(b)(9)(B)(i)	(b)(1)(i)(B)(2)	Limitation: Maximum Express Consignment Carrier/Centralized Hub Facility Fee.	1.03
(a)(9)(B)(i); (b)(8)(A)(i)	(b)(1)(i)(B)(1)	Limitation: Minimum Merchandise Processing Fee	25.67
(a)(9)(B)(i); (b)(8)(A)(i)	(b)(1)(i)(B)(1)	Limitation: Maximum Merchandise Processing Fee	497.99
(b)(8)(A)(ii)	(b)(1)(ii)	Fee: Surcharge for Manual Entry or Release	3.08
(a)(10)(C)(i)	(b)(2)(i)	Fee: Informal Entry or Release; Automated and Not Prepared by CBP Personnel.	2.05
(a)(10)(C)(ii)	(b)(2)(ii)	Fee: Informal Entry or Release; Manual and Not Prepared by CBP Personnel.	6.16
(a)(10)(C)(iii)	(b)(2)(iii)	Fee: Informal Entry or Release; Automated or Manual; Prepared by CBP Personnel.	9.24
(b)(9)(A)(ii)	(b)(4)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	1.03

Tables 1 and 2 setting forth the adjusted fees and limitations for Fiscal Year 2018 will also be maintained for the public's convenience on the CBP Web site at *www.cbp.gov.*

Dated: October 30, 2017.

Kevin K. McAleenan,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2017–23876 Filed 10–31–17; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3381–EM: ID FEMA–2017–0001]

California; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of California (FEMA–3381–EM), dated February 14, 2017, and related determinations.

DATES: This amendment was issued October 20, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective February 23, 2017.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–23718 Filed 10–31–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4338–DR: Docket ID FEMA–2017–0001]

Georgia; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4338–DR), dated September 15, 2017, and related determinations.

DATES: This amendment was issued October 18, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 15, 2017.

Bibb, Chattahoochee, Clarke, Clinch, Decatur, Dodge, Dooly, Glascock, Grady, Gwinnett, Heard, Henry, Jefferson, Lanier, Lee, McDuffie, Mitchell, Pulaski, Stewart, Sumter, Terrell, Thomas, Towns, Twiggs, Union, Upson, Webster, White, and Wilkinson Counties for Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–23799 Filed 10–31–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4346–DR; Docket ID FEMA–2017–0001]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4346–DR), dated October 16, 2017, and related determinations.

DATES: The declaration was issued October 16, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 16, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of South Carolina resulting from Hurricane Irma during the period of September 6–13, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Warren J. Riley, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Carolina have been designated as adversely affected by this major disaster:

Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Charleston, Colleton, Dorchester, Edgefield, Georgetown, Hampton, Jasper, McCormick, Oconee, and Pickens Counties for Public Assistance.

All areas within the State of South Carolina are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–23716 Filed 10–31–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4345–DR: Docket ID FEMA–2017–0001]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4345–DR), dated October 16, 2017, and related determinations.

DATES: The declaration was issued October 16, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 16, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Louisiana resulting from Tropical Storm Harvey during the period of August 27 to September 10, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William J. Doran III, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Louisiana have been designated as adversely affected by this major disaster:

The parishes of Allen, Beauregard, Calcasieu, Cameron, Natchitoches, Red River, Sabine, St. Charles, and Vernon for all categories of Public Assistance.

The parishes of Acadia, Assumption, De Soto, Iberia, Jefferson Davis, Lafayette, Lafourche, Plaquemines, Rapides, St. Mary, and Vermillion for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

All areas within the State of Louisiana are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–23800 Filed 10–31–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4344–DR;Docket ID FEMA–2017–0001]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–4344–DR), dated October 10, 2017, and related determinations.

DATES: The declaration was issued October 10, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 10, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of California resulting from wildfires beginning on October 8, 2017, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such

a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William Roche, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of California have been designated as adversely affected by this major disaster:

Butte, Lake, Mendocino, Napa, Nevada, Sonoma, and Yuba Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All areas within the State of California are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–23720 Filed 10–31–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Revision of Agency Information Collection Activity Under OMB Review: TSA Pre✓® Application Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0059, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 4, 2017. The collection involves the submission of biographic and biometric information by individuals seeking to enroll in the TSA Pre✓® Application Program, as well as an optional customer satisfaction survey.

DATES: Send your comments by December 1, 2017. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to:

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (EO) 13771, Reducing Regulation and Controlling Regulatory Costs, and EO 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

Title: TSA Pre✓® Application Program.

Type of Request: Revision of currently approved collection.

OMB Control Number: 1652–0059.

Form(s): NA.

Affected Public: Air Travelers.

Abstract: The Transportation Security Administration (TSA) implemented the TSA Pre✓® Application Program pursuant to its authority under sec. 109(a)(3) of the Aviation and Transportation Security Act (ATSA), Public Law 107–71 (115 Stat. 597, 613, Nov. 19, 2001, codified at 49 U.S.C. 114 note), which authorizes TSA to establish registered traveler programs, as well as section 540 of the DHS Appropriations Act, 2006, Public Law 109–90 (119 Stat. 2064, 2088–89, Oct. 18, 2005), which requires TSA to collect a fee for any registered traveler program by publication of a notice in the **Federal Register**.

The TSA Pre✓® Application Program enhances aviation security by

permitting TSA to better focus its limited security resources on passengers who are more likely to pose a threat to civil aviation, while also facilitating and improving the commercial aviation travel experience for the public. Travelers who choose not to enroll in this initiative are not subject to any limitations on their travel because of their choice; they will be processed through normal TSA screening before entering the sterile areas of airports. TSA also retains the authority to perform standard or other screening on a random basis on TSA Pre✓® Application Program participants and any other travelers authorized to receive expedited physical screening.

Under the TSA Pre✓® Application Program, individuals submit biographic (including, but not limited to, name, date of birth, gender, prior and current addresses, contact information, country of birth, images of identity documents, proof of citizenship/immigration status) and biometric (such as fingerprints, iris scans, or facial images) information to TSA's enrollment contractor. The enrollment contractor transmits this data via secure interface to TSA, which uses the information to conduct a security threat assessment (STA) based on checks of law enforcement, citizenship/immigration, regulatory violation, and intelligence databases, including a criminal history records check. TSA also uses the information submitted for identity verification during enrollment. The results are used by TSA to determine whether an individual poses a low risk to transportation or national security justifying eligibility for TSA Pre✓®.

TSA makes the final determination on eligibility for the TSA Pre✓® Application Program and notifies the applicant of the decision. On average, applicants receive notification from TSA within two to three weeks of the submission of their completed applications. Approved applicants are issued a Known Traveler Number (KTN) that is used for multiple purposes. Airline passengers who submit their KTN when making airline reservations may be eligible for expedited screening on flights originating from U.S. airports with TSA Pre✓® lanes.[1] TSA uses the traveler's KTN and other information during passenger pre-screening to verify that the individual traveling matches the information on TSA's list of known travelers and to confirm TSA Pre✓® expedited screening eligibility. TSA will also use the information collected, or verify the KTN and KTN-holder information, to determine a KTN holder's eligibility for other programs, such as potential eligibility for a reduced fee for another vetting program or participation in other DHS Trusted Traveler programs. TSA also will use the information submitted for identity verification at airport security checkpoints.

Eligibility for the TSA Pre✓® Application Program is within the sole discretion of TSA, which provides written notification to applicants denied eligibility, including reasons for the denial. Applicants initially deemed ineligible have an opportunity to correct cases of misidentification or inaccurate criminal or citizenship/immigration records. For example, if advised during the application eligibility review process that the criminal record discloses a disqualifying criminal offense, the applicant has 60 days from the date of the denial letter to submit written notification of an intent to correct any information he or she believes to be inaccurate. The applicant must also provide a certified, revised record, or the appropriate court must forward a certified true copy of the information. TSA will review any information submitted and make a final decision. If neither notification nor a corrected record is received by TSA, the agency may make a final determination to deny eligibility. Individuals ineligible for the TSA Pre✓® Application Program are screened at airport security checkpoints pursuant to standard screening protocols.

TSA invites all TSA Pre✓® applicants to complete an optional survey to gather information on the applicants' overall customer satisfaction with the service received at the enrollment center. The optional survey is administered at the end of the enrollment service. TSA will use the information to determine whether any trends exist regarding customer service at a particular enrollment center, for potential customer utility and potential frequency of KTN usage for the overall program or particular application enrollment activity, and to take steps to improve service.

In June and July 2017, TSA launched a proof of concept initiative at Hartsfield-Jackson Atlanta International Airport and Denver International Airport to determine whether fingerprints from TSA Pre✓® Application Program applicants, who volunteered to participate in the proof of concept, could be used for identity verification at airport security checkpoints. TSA is using the operational throughput information from this proof of concept to determine how to implement optimally the use of biometrics collected during enrollment (fingerprints, iris, and/or facial image) for identity verification at airport checkpoints. TSA intends to continue to expand on the use of biometrics for identity verification at the time of travel.

TSA is seeking a revision to the currently approved request to allow for the collection of additional biometrics, particularly facial images but may include other biometrics such as iris, from TSA Pre✓® Application Program applicants. Currently, TSA collects fingerprints from these applicants, which are used for, among other things, criminal history records checks. The regular collection of biometrics, such as facial images, will provide TSA with the ability to use those biometrics for identity verification at TSA checkpoints, potentially eliminating the need to show identity documents and improving both security and the customer experience.

In addition, the TSA Pre✓® Application Program will begin accepting renewals in December 2018 for individuals whose five-year eligibility is expiring. To reduce applicant burden, TSA will allow most existing Program applicants to complete their renewal online rather than requiring the applicant to appear in person at an enrollment center. Certain individuals (*e.g.,* applicants who have changed their name, applicants with low quality fingerprints, etc.) will receive notification during the online renewal process that they are required to conduct in-person re-enrollment, and other applicants may wish to renew their enrollment in-person. TSA will continue to store biographic and biometric data submitted during initial enrollment, as described above, plus any new data collected when individuals apply for renewal, and will utilize these data to conduct a new STA.

Average Annual Number of Respondents: An estimated 2,503,105 annualized respondent-enrollments over a three-year period.

Estimated Annual Burden Hours: An estimated 4,150,473 annualized hours based on a three-year projection.[2] This estimate includes the time for pre-enrollment, all aspects of enrollment (including a voluntary customer

[1] Passengers who are eligible for expedited screening through a dedicated TSA Pre✓® lane typically will receive more limited physical screening, *e.g.,* will be able to leave on their shoes, light outerwear, and belt, to keep their laptop in its case, and to keep their 3–1–1 compliant liquids/gels bag in a carry-on. For airports with TSA Pre✓® lanes, see *https://www.tsa.gov/precheck/map.*

[2] TSA updated the annual estimates for the respondents and burden hours since the submission of the 60-day notice, which indicated respondents of 2,497,903 and burden hours of 4,717,413.

satisfaction survey), and correction of records if needed.

Estimated Cost Burden: A $231,537,857 annualized cost burden based on a three-year projection.[3] The TSA fee per respondent for those who apply for the program directly with TSA will remain $85, which covers TSA's program costs and the FBI fee for the criminal history records check.

Dated: October 27, 2017.

Christina Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2017–23770 Filed 10–31–17; 8:45 am]

BILLING CODE 9110–05–P

[3] The cost burden in the 60-day Notice was incorrectly based on the hourly cost accounting for applicants' lost wages. The 30-day Notice corrects this to show the cost burden based instead on the application fee, post-enrollment biometric submission fee, and cost burden for corrections of record.

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Agency Information Collection Activity Under OMB Review: Military Severely Injured Joint Support Operations Center (MSIJSOC) and Travel Protocol Office (TPO) Programs

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. On July 18, 2017, TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information. The collection involves the submission of travel information to TSA to provide wounded warriors, severely injured military personnel, and certain other travelers with assistance through the airport security screening process.

DATES: Send your comments by December 1, 2017. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be made available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

Title: Military Severely Injured Joint Support Operations Center (MSIJSOC) and Travel Protocol Office (TPO) Programs.

Type of Request: New collection.

OMB Control Number: 1652–XXXX.

Form(s): TSA Form 412, Travel Support Request and TSA Form 417, Screening Assistance Request.

Affected Public: Wounded warriors, severely injured military personnel, foreign dignitaries, accredited Ambassadors to the United States, and other travelers requiring an escort through the airport security screening process.

Abstract: Under the Aviation and Transportation Security Act (ATSA), TSA is responsible for security in all modes of transportation including screening operations for passenger air transportation and for carrying out such other duties relating to the transportation security as it considers appropriate. *See* sec. 101(a) of ATSA (Pub. L. 107–71, 115 Stat. 597 (November 19, 2001) (codified at 49 U.S.C. 114). The Helping Heroes Fly Act directs TSA to develop and implement a process to support and facilitate the ease of travel and, to the extent possible, provide expedited passenger screening services for severely injured or disabled members of the Armed Forces and severely injured or disabled veterans through passenger screening. *See* sec. 2 of the Helping Heroes Fly Act (Pub. L. 113–27, 127 Stat. 503 (Aug. 9, 2013) (codified at 49 U.S.C. 44927). Based on these requirements, TSA established the MSIJSOC and TPO programs to support and facilitate the movement of wounded warriors, severely injured military personnel, veterans, and other travelers requiring an escort through the airport security screening process.

To implement the MSIJSCO and TPO programs, TSA must collect the passenger's name, flight itinerary (scheduled flight departure and arrival information), and contact information to successfully facilitate movements through the screening process at U.S. airports and its territories. TSA shares this information with airports on the passenger's itinerary to coordinate efforts, to synchronize seamless transitions with the affected parties, and protect security operations.

Number of Respondents: 14,934.[1]

Estimated Annual Burden Hours: An estimated 1,245 hours annually.

Dated: October 27, 2017.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2017–23769 Filed 10–31–17; 8:45 am]

BILLING CODE 9110–05–P

[1] TSA updated the annual estimates for the respondents and burden hours since the submission of the 60-day notice, which indicated respondents of 5,600 and burden hours of 467.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO200000/LXSGPL000000/17x/L11100000.PH0000]

Notice of Intent To Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements or Environmental Assessments; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent; correction.

SUMMARY: This action corrects typographical errors in the **FOR FURTHER INFORMATION CONTACT** section of a notice published in the **Federal Register** on Wednesday, October 11, 2017.

ADDRESSES: Comments regarding this Correction Notice should be sent to Johanna Munson by phone at (208) 373–3834, email at *BLM_sagegrouse planning@blm.gov,* or mail: 1387 South Vinnell Way, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: You may submit comments or get further information by visiting *http://bit.ly/GRSGplanning.* For contact information or a list of local BLM contacts, please see the **FOR FURTHER INFORMATION CONTACT**, or **SUPPLEMENTARY INFORMATION** sections in the original notice.

Correction

In the **Federal Register** of October 11, 2017 (82 FR 47248) in FR Doc. 2017–21958 correct the following:

On page 47248, column 3, which reads ''State Office at (208) 373–7834'' is hereby corrected to read, ''State Office at (208) 373–3834''.

On page 47248, column 3, which reads ''83708'' is hereby corrected to read ''83709''.

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

John F. Ruhs,

Acting BLM Deputy Director, Operations.

[FR Doc. 2017–23804 Filed 10–31–17; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17X LLWO600000.L18200000.XP0000]

2017 Second National Call for Nominations for Resource Advisory Councils and Other BLM Land Management Advisory Committees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this Notice is to request a second call for public nominations for the Bureau of Land Management (BLM) Resource Advisory Councils (RAC) that have members whose terms are scheduled to expire or have expired. RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas.

DATES: All nominations must be received no later than December 1, 2017.

ADDRESSES: Nominations and completed applications for RACs should be sent to the appropriate BLM offices listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Twinkle Thompson, BLM Communications, 1849 C Street NW., Room 5645, Washington, DC 20240, 202–208–7301.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, the timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of State, county, or local elected office, employees of a State agency responsible for management of natural resources, representatives of Indian tribes within or adjacent to the area for which the council is organized, representatives of academia who are employed in natural sciences, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.

The following must accompany all nominations:

—Letters of reference from represented interests or organizations;

—A completed RAC application; and

—Any other information that addresses the nominee's qualifications.

Simultaneous with this Notice, BLM State Offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the State.

Before including any address, phone number, email address, or other personal identifying information in the application, nominees should be aware this information may be made publicly available at any time. While the nominee can ask to withhold the personal identifying information from public review, BLM cannot guarantee that it will be able to do so.

Nominations and completed applications for RACs should be sent to the appropriate BLM offices listed below:

Alaska

Alaska RAC

Lesli Ellis-Wouters, BLM Alaska State Office, 222 West 7th Avenue, #13, Anchorage, AK 99513, 907–271–4418.

California

California Desert District Advisory Council

Steve Razo, BLM California Desert District, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553, 951–697–5217.

Northern California RAC

Jeff Fontana, BLM Northern California District, 2550 Riverside Drive, Susanville, CA 96130, 530–252–5332.

Carrizo Plain National Monument Advisory Committee

Serena Baker, BLM Central California District Office, 5152 Hillsdale Circle, El Dorado Hills, CA 95762, 916–941–3146.

Idaho

Boise District RAC

Michael Williamson, BLM Boise District Office, 3948 South Development Avenue, Boise, ID 83705, 208–384–3393.

Montana and Dakotas

Central Montana RAC

Jonathan Moor, BLM Lewistown Field Office, 920 Northeast Main Street, Lewistown, MT 59457, 406–538–1943.

Dakotas RAC

Mark Jacobsen, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, MT 59301, 406–233–2800.

Eastern Montana RAC

Mark Jacobsen, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, MT 59301, 406–233–2800.

Western Montana RAC

David Abrams, BLM Butte Field Office, 106 North Parkmont, Butte, MT 59701, 406–533–7617.

New Mexico

Pecos District RAC

Glen Garnand, BLM Pecos District Office, 2909 West Second Street, Roswell, NM 88201, 575–627–0209.

Oregon/Washington

John Day-Snake RAC

Lisa Clark, BLM Prineville District Office, 3050 NE 3rd Street, Prineville, OR 97754, 541–416–6864.

Southeast Oregon RAC

Larisa Bogardus, BLM Lakeview District Office, 1301 South G Street, Lakeview, OR 97630, 541–947–6237.

Southwest Oregon RAC

Christina Breslin, BLM Medford District Office, 3040 Biddle Road, Medford, OR 97504, 541–618–2371.

Steens Mountain Advisory Council

Tara Thissell, BLM Burns District Office, 28910 Highway 20 West, Hine, OR 97738, 541–573–4519.

Utah

Utah RAC

Lola Bird, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101, 801–539–4033.

Grand Staircase-Escalante National Monument Advisory Committee

Larry Crutchfield, BLM Grand Staircase-Escalante National Monument Office, 669 South Highway 89 A, Kanab, UT 84741, 435–644–1209.

Wyoming

Wyoming RAC

Kristen Lenhardt, BLM Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003, 307–775–6015.

Authority: 43 CFR 1784.4–1.

John F. Ruhs,

Acting Deputy Director.

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BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024128: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Sam Noble Oklahoma Museum of Natural History, Norman, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Sam Noble Oklahoma Museum of Natural History (Museum) at the University of Oklahoma has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Sam Noble Oklahoma Museum of Natural History at the address in this notice by December 1, 2017.

ADDRESSES: Dr. Marc Levine, Assistant Curator of Archaeology, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072–7029, telephone (405) 325–1994, email *mlevine@ou.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Sam Noble Oklahoma Museum of Natural History, Norman, OK. The human remains and associated funerary objects were removed from the following counties in the State of Oklahoma: Beckham, Caddo, Canadian, Cotton, Custer, Garfield, Garvin, Grady, Kiowa, Lincoln, McClain, Oklahoma, Pottawatomie, Roger Mills, and Washita.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Sam Noble Oklahoma Museum of Natural History professional staff in consultation with representatives of the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

History and Description of the Remains

In 1978 and 1981, human remains representing, at minimum, 5 individuals were removed from the Devils Canyon site (34Ki0001) in Kiowa County, OK. The site was first surveyed and recorded by David J. Werner of the University of Oklahoma in 1947, and later resurveyed in 1978 by Richard Drass of the Oklahoma Archeological Survey. Additional materials from the site were donated to the Museum by landowner Bernice Winters in 1978 and 1981. Individuals 1 and 2 are commingled fragmentary remains of adults of

indeterminate sex. An infant approximately 1 year old is represented by a single deciduous molar and is designated as Individual 3. Individuals 4 and 5 are partial and complete crania, respectively, and are likely adult male. No known individuals were identified. The associated funerary objects from the site are collectively associated with Individuals 1, 2, and 3 and include 23 faunal bone fragments, 2 of which are burned. The Devils Canyon site is a historic period Wichita settlement. The determination is based on U.S. Government records which note that the U.S. Army visited the site in 1834.

In 1968, human remains representing, at minimum, 2 individuals were removed from the Edwards/Carter site (34Bk0002) in Beckham County, OK. This site was recorded for the Oklahoma Archeological Survey by Rex Wilson and Charles Robertson in October of 1955, and again in August of 1965. Most of the excavations were conducted by the University of Oklahoma Field School in 1968 and the associated collections were subsequently turned over to the Museum. The human remains consist of commingled cranial and long bone fragments and one molar tooth. The two individuals represented are adults, one probable male and one of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

The Edwards/Carter site is associated with the Edwards Complex, dating from approximately A.D. 1500–1650 and including the initial Spanish contact period. Based on continuity of the cultural material, these remains may be related to the western group of the Wichita. Oral history, as well as post-contact European records, supports the presence of the Wichita in the area at this time.

In 1955, human remains representing, at minimum, 5 individuals were removed from the Sandstone Creek 1 site (34Bk0001) in Beckham County, OK. The site was recorded by the University of Oklahoma by Cain in 1955 and surveyed by Fenton Wheeler. Materials from the site, including Burials 1 and 3, were transferred to the Museum at an unknown date. Remains from Burial 2 are not present at the Museum. Burial 1 contains, at minimum, two individuals. Burial 1A is a partial skeleton of a young adult male, 20–35 years old, and Burial 1B is a vertebral column of an adult of indeterminate sex. Burial 3 contains at least three individuals. Burial 3A is a fragmentary skeleton of an adult male, Burial 3B is a fragmentary skeleton of a probable male adult, and Burial 3C consists of cranial remains of a child, 4–6 years old. No known individuals were identified. The 4 associated funerary objects from Burial 3 are deer teeth.

In 1978, human remains representing, at minimum, 1 individual were removed from the Hubbard 2 site (34Bk0005) in Beckham County, OK. The burial and associated funerary objects from this site were excavated by amateur archeologists, reburied, later salvaged in 1978, and then transferred to the Museum in 1979. The human remains consist of a complete skeleton of a young adult female, 20–35 years old. No known individual was identified. The 41 associated funerary objects include 4 hammerstones, 1 ground stone fragment, 1 flint core, 1 quartzite core, 1 chipped stone axe, 28 chipped stone flakes, and 5 faunal bone fragments.

In 1959, human remains representing, at minimum, 2 individuals were removed from the Fowler site (34Bk0006) in Beckham County, OK. This site was exposed by erosion associated with an artificial pond on private land. The Oklahoma Archeological Survey Data Record indicates that, prior to 1959, the owner excavated, reburied, and re-excavated one of the three burials at the site. According to the Burial Data Records, Burial 2 was excavated by the State Crime Bureau and later turned over to the Museum. Burials 1 and 3 were either reburied or may still be in the possession of the land owner. Only Burial 2 was found to be in the possession of the Museum. Burial 2 consists of two individuals. Individual 1 is a partial skeleton of a young adult male, 25–30 years old. Individual 2 is an adult represented by three teeth and one cranial fragment. No known individuals were identified. No associated funerary objects are present.

In 1973, human remains representing, at minimum, 1 individual were removed from the I–40 Burial site (34Bk0049) in Beckham County, OK. The burial was salvaged on June 23, 1973, by the Oklahoma Highway Archeological Survey prior to highway construction on Interstate-40 near Sayre, OK (ODOT-state property). Materials from the site were turned over to the Museum in June of 1973. The burial consists of highly fragmentary skeletal remains of an adult, at least 35 years old, of indeterminate sex. No known individual was identified. The 10 associated funerary objects include 1 deer ulna fragment, 8 faunal bone awl fragments, and 1 chipped stone core.

In September of 1982, human remains representing, at minimum, 1 individual were removed from the Red Rock Canyon 1 site (34Cd0138) in Caddo County, OK. The site is located along a canyon wall in Red Rock Canyon State Park. The site had been disturbed by park personnel who had been removing dirt from the area. Collections were then made by the Oklahoma Archeological Survey in 1982, while further investigating construction damage in the park. Materials recovered were subsequently donated to the Museum in October of 1982. The human remains are a fragmentary skeleton of an adult male. No known individual was identified. The 14 associated funerary objects include 9 faunal bone fragments, three of which are burned, 1 small sample of charcoal, 1 pottery sherd, 2 chipped stone flakes, and 1 small fragment of dried organic matter.

In 1974 and 1975, human remains representing, at minimum, 2 individuals were removed from the Takoah site (34Cd0244) in Caddo County, OK. The site was first surveyed and recorded in 1974 by Charles Wallis of the Oklahoma Conservation Commission for the Oklahoma Archeological Survey and was excavated in 1975. Recovered materials were accessioned by the Museum in 1975 and 1988. Two burials were excavated at the site. Burial 1 is a partial skeleton of a young adult female, 20–35 years old. Burial 2 is a partial skeleton of an adult male, 25–45 years old. No known individuals were identified. A total of 172 associated funerary objects were-removed from site 34Cd0244. Burial 1 is associated with 76 faunal bones or bone fragments, 13 chipped stone cobble fragments, 24 chipped stone flakes, 1 chipped stone projectile point fragment, 1 ground stone mano, 1 ground stone fragment, 2 unmodified rocks, 1 piece of clay, 2 wood fragments, 2 shells, 17 shell fragments, and 1 soil sample from the burial. Burial 2 is associated with 18 faunal bone fragments, 4 chipped stone cobble fragments, 1 unmodified cobble, 6 chipped stone flakes, 1 shell fragment, and 1 soil sample taken from within the skull of the individual in Burial 2.

In 1988, human remains representing, at minimum, 1 individual were removed from the Majors 3 site (34Cd0299) in Caddo County, OK. The remains were excavated by Jack Hofman on private land and accessioned by the Museum in 1988. The human remains removed from the site consist of a partial skeleton of a young adult male, 20–35 years old. No known individual was identified. No associated funerary objects are present.

On August 27, 1976, human remains representing, at minimum, 1 individual were removed from an unnamed site (34Cn0036) in Canadian County, OK. This site was discovered on November 17, 1975, during a survey of land proposed for the construction of a rest

area along Interstate-40. The material and remains from this site were turned over to the Museum in 1981. The human remains consist of 10 small bone fragments of an adult of indeterminate sex. No known individual was identified. No associated funerary objects are present.

On November 10, 1987, human remains representing, at minimum, 3 individuals were removed from the Sanders site (34Ct0011) in Cotton County, OK. The human remains and associated artifacts from the Sanders Site were recovered by Robert Brooks of the Oklahoma Archeological Survey on November 10, 1987, after the site had been vandalized by unauthorized digging on private land, and subsequently donated to the Museum in 1988. Two burials were excavated at the site. Burial 1 contains a partial skeleton of an adult female, 18–25 years old. Burial 2 contains a fragmentary skeleton of a child, 5–6 years old, and 3 long bone fragments of an infant, both of indeterminate sex. No known individuals were identified. The 143 associated funerary objects are associated with both burials and include 49 chipped stone fragments, 26 ground stone fragments, 9 pottery sherds, 5 shell fragments, and 54 faunal bone fragments.

In 1971, human remains representing, at minimum, 2 individuals were removed from the Henry site (34Ct0017) in Cotton County, OK. The site was exposed on private land, recovered in 1971 by the Oklahoma Anthropological Society, supervised by Hofman, and subsequently donated to the Museum in the same year. Two burials were excavated. Burial 1 is a complete skeleton of a middle-aged adult female, 35–50 years old. Burial 2 is a complete skeleton of an older adult female, over 50 years old. No known individuals were identified. A total of 5 associated funerary objects were removed from site 34Ct0017. Burial 1 is associated with 1 chipped stone knife, 1 flake, and 1 shell pendant. Burial 2 is associated with 2 chipped stone flakes.

In 1985, human remains representing, at minimum, 1 individual were removed from the Austin site (34Ct0021) in Cotton County, OK. A burial was exposed by a road grader and reported to the Oklahoma Archeological Survey by private citizens. The skeletal remains and associated funerary objects were excavated by Robert Brooks in 1985, and donated to the Museum on July 29, 1985. The human remains consist of a very fragmentary skeleton representing a young adult, 20–25 years old, probably male. No known individual was identified. The 10 associated funerary objects include 7 shell fragments, 1 pottery sherd, 1 chipped stone flake, and 1 charcoal sample.

On September 22, 1978, human remains representing, at minimum, 3 individuals were removed from the Carley site (34Cu0082) in Custer County, OK. A private collector reported the site to the Oklahoma Archeological Survey and it was recorded by Survey staff on September 22, 1978. The collector gave materials from the site to the Survey who then transferred them to the Museum in 1980. The remains are commingled and fragmentary, representing at least 2 adult females and 1 adult male. No known individuals were identified. No associated funerary objects are present.

In June of 1965, human remains representing, at minimum, 2 individuals were removed from the Kingery site (34Gf0000) in Garfield County, OK. The site was excavated by the Oklahoma River Basin Survey, with field work directed by Barr and assisted by Slovacek, Brown, and Harwood from the Ponca City, OK, Chapter of the Anthropological Society. The human remains were transferred to the Museum in 1966. The human remains from the site are fragmentary and commingled and represent one young adult female, 20–35 years old and one middle-aged adult male, 35–50 years old. No known individuals were identified. No associated funerary objects are present.

In April of 1958, human remains representing, at minimum, 3 individuals were removed from an unnamed site (34Ml0000) in McClain County, OK. A pottery vessel was found in a grave exposed by erosion on the L.E. Howorton Farm near Rosedale, OK, by Bill Eddleman and donated to the Museum by William Villines on May 8, 1958. Additional skeletal material was discovered in the Museum collections in 1995, also from an unknown location near Rosedale. The skeletal remains and pottery vessel may have originated from the same burial. Individuals 1 and 2 are commingled remains of an adult female and an adult of indeterminate sex. Individual 3 is represented by a single long bone fragment of an infant, less than 3 years old. No known individuals were identified. The 9 associated funerary objects are associated with all 3 individuals from the site and include 1 partially restored pottery vessel, 1 chipped stone flake, 1 faunal bone, and 6 pottery sherds.

In December of 1958, human remains representing, at minimum, 1 individual were removed from the Willingham site (34Ml0005) in McClain County, OK. The site was first recorded by W.H. Villines in 1953. Excavations were conducted in 1958 by the Oklahoma Anthropological Society under the direction of Sherman Lawton and Robert Bell and material from the site was subsequently donated to the Museum the same year. In 1964, bulldozing operations at an oil well exposed additional material at the site and was excavated by the Oklahoma Archeological Survey. Three burials were discovered but are not in the possession of the Museum. It is unclear if they were excavated or left in the ground. The human remains from the site in the possession of the Museum consist of a long bone fragment and a heavily worn tooth of an adult of indeterminate sex. No known individual was identified. The 88 associated funerary objects include 3 chipped stone scrapers, 2 modified flint fragments, 10 chipped stone flakes, 1 lithic abrader fragment, 1 ground stone mano fragment, 3 unmodified sandstone fragments, 3 unmodified large stones, 15 faunal bone fragments, 7 shell fragments, and 43 pottery sherds.

In June of 1970, human remains representing, at minimum, 1 individual were removed from the Baker 1 site (34Rm0074) in Roger Mills County, OK. Material from the site was recovered during a surface survey after the site was disturbed by the construction of a dam. The collection was recorded by Don Wyckoff of the Oklahoma Archeological Survey and subsequently turned over to the Museum the same year. The human remains consist of a single tooth of an adult of indeterminate sex. No known individual was identified. The 24 associated funerary objects include 22 flakes, 1 flint core, and 1 quartzite core.

Sites 34Bk0001, 34Bk0005, 34Bk0006, 34Bk0049, 34Cd0138, 34Cd0244, 34Cd0299, 34Cn0036, 34Ct0011, 34Ct0017, 34Ct0021, 34Cu0082, 34Gf0000, 34Ml0000, 34Ml0005, and 34Rm0074 are Plains Village Period in age, dating from approximately A.D. 900–1500. The Carley site (34Cu0082) may have also been occupied into the period of initial Spanish contact. These determinations are based on archeological context and diagnostic cultural materials (*e.g.,* chipped and ground stone, ceramics, and/or bone tools). Ethnohistoric, ethnographic, and oral historical evidence support the cultural continuity of Plains Village Period populations in these areas with the Wichita and Affiliated Tribes.

In 1957, human remains representing, at minimum, 3 individuals were removed from the Hubbard site (34Bk0004) in Beckham County, OK. The site was discovered on private property after the spring floods of 1957. The landowner contacted the Sheriff's

office and the remains were sent to the State Crime Bureau in Oklahoma City, OK, who forwarded them to Alice Brues of the University of Oklahoma Medical Center. Brues identified the remains as Native American and further excavation was carried out by the Highway Salvage Archaeology Program. The remains were subsequently donated to the Museum in 1957. Burial 1 contains two individuals, including the partial skeleton of a probable female adolescent, 10–14 years old, and a portion of the face of an adult of indeterminate sex. Burial 2 contains a child, 6–8 years old, of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In 1987, human remains representing, at minimum, 2 individuals were removed from the Coy Nuttley site (34Bk0023) in Beckham County, OK. Material from the Coy Nuttley Site, an open habitation site on private land near Elk City, OK, was given to the Oklahoma Archeological Survey by an amateur collector and subsequently donated to the Museum in June of 1987. The human remains consist of a cranial fragment and two loose teeth of an adult of indeterminate sex and three loose teeth of a child, 9–12 years old. No known individuals were identified. The 11 associated funerary objects, linked to both individuals, are fragments of deer bone.

In 1984, human remains representing, at minimum, 1 individual were removed from an unnamed site (34Bk0094) in Beckham County, OK. The human remains were found by a private land owner and turned over to Larry Neal and Alan Wormser of the Oklahoma Archeological Survey in 1984 and later donated to the Museum in 1988. The human remains from this site consist of a partial cranium of a young adult, 20–35 years old, probably male. No known individual was identified. No associated funerary objects are present.

In 1951, human remains representing, at minimum, 1 individual were removed from the Goodman 1 site (34Cu0001) in Custer County, OK. The site was originally discovered by the landowner when a large piece of daub was discovered during plowing in 1941. In 1951, the tenant reported that, while digging a cellar, he uncovered two burials which were subsequently donated to the Museum the same year. Burial 1 is a complete skeleton of a young adult male, 20–35 years old. A second burial was recorded from the site but is not in the possession of the Museum. No known individual was identified. A total of 46 associated funerary objects were removed from site 34Cu0001. Burial 1 is associated with 3 shell fragments, 1 ground stone mano fragment, 1 stone elbow pipe, and 6 faunal bone fragments. Burial 2 is associated with 1 ceramic pot without handles, 1 ceramic pot with handles, 31 shell beads, 1 chipped stone projectile point, and 1 flint knife.

In 1957, human remains representing, at minimum, 3 individuals were removed from the Heerwald (Jordan) site (34Cu0027) in Custer County, OK. This site is on private land on a ridge south of Turkey Creek, a tributary of the Washita River. Material was recovered by James Schaeffer of the Highway Salvage Archaeology program in 1957, when I–40 was constructed south of old US 66, and was subsequently donated to the Museum. The burial contains 3 individuals. Individual 1 is a partial skeleton of a young adult female, 20–25 years old, Individual 2 is a partial skeleton of a child, 6–7 years old, and Individual 3 is a partial skeleton of a fetus. No known individuals were identified. The 45 associated funerary objects include 1 pottery sherd, 3 shells, 2 unmodified shell fragments, 1 modified shell, 6 unmodified sandstone fragments, 1 ground stone mano, 1 projectile point fragment, 1 Washita type projectile point, 1 Harrell type projectile point (embedded in the first lumbar vertebra of Individual 1), 3 chipped stone flakes, 1 chipped stone end scraper, 2 chipped stone fragments, 1 chipped stone cobble, 20 faunal bone fragments, and 1 charcoal sample.

In March and April of 1969, human remains representing, at minimum, 3 individuals were removed from the Cotter-Hutson site (34Cu0041) in Custer County, OK. The human remains and associated objects from Burial 1 of the Cotter-Hutson site were discovered by a private land owner while plowing and then recovered by members of the Oklahoma Archeological Survey and the Oklahoma Anthropological Society in March of 1969. Burial 2 was recovered in April of 1969. Both burials and associated funerary objects were donated to the Museum in 1981. Burial 1 is a fragmentary skeleton of a child, 6–7 years old. Burial 2 is a partial skeleton of a child, 4–5 years old. A third individual is an adult male represented by a mandible found on the surface. No known individuals were identified. A total of 119 associated funerary objects were recovered from site 34Cu0041. Burial 1 is associated with 5 deer bone and tooth fragments, 8 shell fragments, 3 pottery sherds, 8 ground stone fragments, 3 ground stone fragments, 2 pebbles, 6 flakes, 15 seeds, 1 faunal bone fragment, 17 chipped stone flakes from the surface directly above the burial, and 2 bags of soil from the burial itself. Burial 2 is associated with 38 seeds, 6 faunal bone fragments, 1 ground stone fragment, 1 shell scraper, 1 shell fragment, and 2 bags of burial soil and burned material.

In 1969, human remains representing, at minimum, 1 individual were removed from the Arrington site (34Cu0042) in Custer County, OK. The site was reported to the Oklahoma Archeological Survey in 1969 by a private landowner who had discovered a burial while plowing. Material from the site was subsequently donated to the Museum the same year. The human remains are a partial skeleton of a middle-aged adult female, 35–50 years old. No known individual was identified. The 10 associated funerary objects include 1 unburned faunal bone fragment, 4 burned faunal bone fragments, 2 shell fragments, and 3 chipped stone flakes.

In 1957, human remains representing, at minimum, 5 individuals were removed from the Selzer site (34Gd0016) in Grady County, OK. The site was exposed by flooding in 1957 on a terrace above the Washita River on privately held land. Three burials were excavated and later donated to the Museum. Burial 1 is a young adult female, 18–22 years old, Burial 2 is an adult male, and Burial 3 is an adult of indeterminate sex. There are two additional individuals that are fragmentary and commingled. Individual 4 is a probable young adult female, 20–35 years old. Individual 5 is an adolescent, 15–18 years old, of indeterminate sex. No known individuals were identified. A total of 29 associated funerary objects were removed from site 34Gd0016. Burial 3 is associated with 18 pottery sherds and 2 shell fragments. Individuals 4 and 5 are associated with 1 chipped stone flake, 1 ground stone mano, and 7 shell fragments.

In 1963, human remains representing, at minimum, 1 individual were removed from the WRP 9 site (34Gd0024) in Grady County, OK. The site was originally reported in 1963 by Dick McWilliams who discovered the burial eroding out of a road cut. The burial was salvaged by the Museum later that year. The burial is a complete skeleton of a young adult male, 20–35 years old. No known individual was identified. No associated funerary objects are present.

On September 13, 1977, human remains representing, at minimum, 6 individuals were removed from the Horne 1 site (34Gd0078) in Grady County, OK. The site was uncovered when an Oklahoma Natural Gas pipeline went through the area in 1977. The site was officially recorded by the Oklahoma Archeological Survey on

September 13, 1977, and material from the site was donated to the Museum in 1981 and 1985. The skeletal remains of three of the individuals include an adult male, 30–40 years old, an infant, 1–1.5 years old, and a child, 6–9 years old. Three other individuals are commingled and all are adults of indeterminate sex. The commingled remains may contain fragmentary skeletal material belonging to the three previously mentioned individuals. No known individuals were identified. The 138 associated funerary objects include 2 chipped stone cobbles, 3 chipped stone cobble fragments, 3 unmodified lithic fragments, 2 pottery sherds, 3 shell fragments, 123 faunal bone fragments, 1 faunal tooth, and 1 bison tibia digging tool.

In June of 1992, human remains representing, at minimum, 4 individuals were removed from the Jewett site (34Gd0081) in Grady County, OK. This site is located on privately held land and was initially recorded by the staff of the Oklahoma Archeological Survey on November 4, 1977. Salvage was conducted by Robert Brooks, prompted by the discovery of a burial during construction of an oil field in 1992. Remains were removed under the state burial law and transferred to the Museum the same year. Burial 1 is a fragmentary skeleton of an adult of indeterminate sex. Burial 2 is a fragmentary skeleton of a probable young adult female, 20–35 years old. Burials 3 and 4 are both fragmentary skeletons of adults of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In November 1987, human remains representing, at minimum, 1 individual were removed from an unnamed site (34Gv0000) in Garvin County, OK. Human remains from the site were initially collected by Jesse Taylor from a creek bottom near Elmer City, OK, and then transferred to the State Archaeologist by the Oklahoma Medical Examiner's Office. The material was later received by the Museum from the Oklahoma Archeological Survey in May of 1988. The human remains consist of a single complete cranium of a young adult male, 20–35 years old. No known individual was identified. No associated funerary objects are present.

In the summer of 1937, human remains representing, at minimum, 3 individuals were removed from the Braiden site (34Gv0001) in Garvin County, OK. This site was excavated by the Works Progress Administration on private land in 1937, and formally recorded by Charles Bareis in February of 1955. The material was subsequently donated to the Museum. Burial 1 contains two individuals, a cranium of an adult male and loose teeth of a child, 3–6 years old. Burial 2 contains small bone fragments of an adult of indeterminate sex. No known individuals were identified. The 105 associated funerary objects from Burial 2 include 35 faunal bone fragments, 19 chipped stone fragments, 2 chipped stone knives, 3 chipped stone points, 4 chipped stone scrapers, and 42 pottery sherds.

In 1937, human remains representing, at minimum, 18 individuals were removed from the Grant Site (34Gv0002) in Garvin County, OK. Located on a terrace above the Washita River near Wynnewood, OK, the site was excavated by the Works Progress Administration in 1937, under the direction of Forrest E. Clements of the University of Oklahoma. Material from the site was taken to the University of Oklahoma for storage and the human remains and associated funerary objects were accessioned by the Museum in 1937 and 1948. Individual 1 is a partial skeleton of a middle-aged adult female, 35–50 years old. Individual 2 is a partial skeleton of a middle-aged adult male, 35–50 years old. Individual 3 is a partial skeleton of an infant, 1–2 years old. Individual 4 is a fragmentary skeleton of an infant, 1–3 years old. Individual 5 is a fragmentary skeleton of an infant, 6 months to 1 year old. Individual 6 is a fragmentary skeleton of a newborn infant. Individual 7 is a complete skeleton of a middle-aged adult female, 35–50 years old. Individual 8 is a partial skull of a young adult male, 20–35 years old. Individual 9 is a fragmentary skeleton of a middle-aged adult female, 35–50 years old. Individual 10 is a fragmentary skeleton of an adult of indeterminate sex. Individuals 11 and 12 are represented by fragmentary and commingled post-cranial remains. Both of these individuals are adults, one female, and the other of indeterminate sex. Individuals 13, 14, and 15 are represented by fragmentary and commingled remains of at least two adults of indeterminate sex and one child. Individual 16 is a fragmentary skeleton of a middle-aged to older adult female, 40–55 years old. Individuals 17 and 18 are represented by fragmentary and commingled post-cranial remains of at least two adults of indeterminate sex. No known individuals were identified. A total of 32 associated funerary objects were removed from site 34Gv0002. Individual 1 is associated with 1 pottery sherd. Individual 2 is associated with 1 complete ceramic bowl. Individual 3 is associated with 6 faunal bone fragments. Individual 4 is associated with 1 pottery sherd, 1 faunal bone fragment, and 1 shell scraper. Individual 5 is associated with 1 unmodified rock. Individual 7 is associated with 18 faunal bone fragments, 1 bison scapula hoe, and 1 bone awl.

In 1952, human remains representing, at minimum, 2 individuals were removed from the Lacey Farm 1 site (34Gv0005) in Garvin County, OK. The site is on a high ridge north of the Washita River. It was recorded by Charles Bareis in 1955, however, prior to that time many private collectors had visited the site. The site was resurveyed in 1993, by Richard Drass and material from the site was subsequently turned over to the Museum. Individual 1 is a partial cranium of an adult male. Individual 2 is a fragmentary cranium of an adult of indeterminate sex. No known individuals were identified. A total of 38 associated funerary objects were removed from site 34Gv0005. Individual 1 is associated with 5 pottery sherds and 2 modified faunal bone fragments. Individual 2 is associated with 1 two-handed ground stone mano, 1 faunal bone awl, 2 faunal skull and horn hoes, 7 faunal bone hoe fragments, 2 modified faunal bone fragments, 9 unmodified faunal bone fragments, 2 deer bone fragments, 1 deer tooth, and 6 pottery sherds.

In 1982, human remains representing, at minimum, 1 individual were removed from the Arthur site (34Gv0032) in Garvin County, OK. The remains were recovered in 1982, during excavations under a house by Robert Brooks and were accessioned by the Museum in 1987. The remains consist of a fragmentary skeleton of an infant approximately 1 year old. No known individual was identified. The 532 associated funerary objects include 135 shell fragments, 149 pottery sherds, 20 clay fragments, 15 sandstone fragments, 1 hammer stone, 170 chipped stone flakes, 1 chipped stone projectile point, 1 chipped stone biface fragment, 29 faunal bone fragments, 10 burned faunal bone fragments, and 1 charcoal sample.

Between 1982 and 1985, human remains representing, at minimum, 8 individuals were removed from the Thelma Wilson site (34Gv0043) in Garvin County, OK. This site, overlooking the Washita River east of Pauls Valley, was initially surveyed and recorded by Don Wyckoff of the Oklahoma Archeological Survey in 1970. In 1982, Jim Mayberry contacted the survey to report material eroding from a cut bank on the site. In early 1983, Richard Drass and Robert Brooks assisted Jim Mayberry in salvaging the material. The burials and associated objects were turned over to the Museum

in 1985. Burial 1 is a fragmentary skull of a child, 3–5 years old. Burial 2 contains a fragmentary skeleton of an adult male and a fragmentary skeleton of a young adult, 20–35 years old, of indeterminate sex. Burial 3 is a fragmentary cranium of an adolescent, 12–15 years old. Burial 4 is a single molar tooth and small bone fragments of a middle-aged adult, 35–50 years old, of indeterminate sex. Burial 5 is a single molar tooth and cranial fragments of a child, 10–12 years old. Two additional individuals are represented by a single molar tooth of a child, 3–5 years old, and a cranial fragment of an adult of indeterminate sex. No known individuals were identified. A total of 17 associated funerary objects were removed from site 34Gv0043. Both individuals in Burial 2 are associated with 1 pottery sherd, 2 modified lithic flakes, 2 unmodified lithic flakes, 1 unmodified stone pebble, 1 lithic atlatl hook, 1 boatstone, 1 faunal bone fragment, and 3 fragments of burned faunal bone. Burial 3 is associated with 4 pottery sherds and 1 unmodified lithic flake.

In 1980 and 1981, human remains representing, at minimum, 3 individuals were removed from the Franklin Cordell site (34Wa0003) in Washita County, OK. Located on a cultivated and terraced hillside in Washita County, this site was first surveyed by Robert Bell of the University of Oklahoma in 1955. Prior to that time however, the site was often visited by amateur collectors. A subsequent survey was carried out by Richard Drass in 1977, after plowing had exposed additional material. In 1980, an extensive excavation was conducted by the Eastern Oklahoma County Chapter of the Oklahoma Archaeological Society under the direction of the Oklahoma Archeological Survey, supervised by David Hughes. The material was transferred to the Museum in 1980 and 1981. Individual 1 is an adult greater than 35 years old, of indeterminate sex, and represented by a single mandible fragment. Individual 2 is an adolescent or young adult, approximately 18–22 years old, of indeterminate sex, also represented by a single mandible fragment. Individual 3 is an adult greater than 20 years old, of indeterminate sex, and represented by 5 loose teeth and a manual phalange. No known individuals were identified. No associated funerary objects are present.

On September 7, 1974, human remains representing, at minimum, 7 individuals were removed from the Hinz site (34Wa0004) in Washita County, OK. This site was exposed by cultivation and erosion and first discovered by Denny Carley of Southwestern Oklahoma State University in 1974. Carley notified the Oklahoma Archeological Survey and on September 7, 1974, Roger Saunders, Jack Hoffman, and Daryl Wheaton of the Survey excavated the site. The material was transferred to the Museum in 1981. Three burials were excavated. Burial 1 is a complete skeleton of a child, 4–6 years old. Burial 2 is a partial skeleton of a young adult male, 20–35 years old. Burial 3 is a partial skeleton of an adult of indeterminate sex. Individual 4 is a fragmentary skeleton of an adult of indeterminate sex. Individual 5 is a fragmentary skeleton of a child. Individuals 6 and 7 are represented by loose teeth and commingled small bone fragments of an adult of indeterminate sex and a child, 5–7 years old. No known individuals were identified. A total of 54 associated funerary objects were removed from site 34Wa0004. Burial 1 is associated with 12 chipped stone flakes and fragments, 1 piece of sandstone, 1 pottery sherd, 2 mussel shells, and 2 conch shell pendants. Burial 2 is associated with 15 pottery sherds, 1 faunal bone fragment, and 7 shell fragments. Burial 3 is associated with 11 chipped stone flakes, 1 pottery sherd, and 1 piece of sandstone.

In 1955 and 1960, human remains representing, at minimum, 66 individuals were removed from the McLemore/Cross site (34Wa0005) in Washita County, OK. This site was discovered by a private citizen and recorded by Rex Wilson of the Oklahoma Archeological Survey in 1955. A large-scale excavation was conducted in 1960, directed by Don Wyckoff and Robert Bell. Most of the material from the McLemore site, including the human remains and associated funerary objects, were transferred to the Museum in 1960. An additional human bone was transferred to the Museum in 2008 by a private collector. Burial 1 has 2 individuals, both are infants, 0.5–1 year old. Burial 2 is a middle-aged adult female, 35–45 years old. Burial 3 is an infant, 1.5–2 years old. Burial 4 is a middle-aged adult female, 40–55 years old. Burial 5 is an infant, 0–0.5 year old. Burial 6 is an infant, 0.5–1 year old. There are 2 individuals from Burial 7, a young adult, 20–25 years old, probably a female, and an infant, 0–0.5 year old. Burial 8 is also a newborn infant. Burial 9 has 2 individuals, a child, 9–12 years old and an infant, 1–1.5 years old. Burial 10 is a middle-aged adult female, 35–40 years old. Burial 11 is an infant, 1–1.5 years old. Burial 12 is an infant, 0–0.5 year old. Burial 13 is an adolescent, 18–20 years old, probably a male. Burial 14 is a middle-aged adult male, 35–45 years old. Burial 15 is a middle-aged adult female, 35–50 years old. Burial 16 is an infant, 0.5–1 year old. Burial 17 is an infant, 0.5–1.5 years old. Burial 18 are two infants, 0–0.5 year old. Burial 19 is an infant, 0–0.5 year old. Burial 20 is a middle-aged adult female, 35–45 years old. Burial 21 is an infant, 0–0.5 year old. Burial 22 has 2 individuals, a young adult male, 30–35 years old and an infant, 0–0.5 year old. Burial 23 also has 2 individuals, a young adult female, 25–30 years old and a fetus. Burial 24 is an adult, 30–39 years old, probably a female. Burial 25 is an infant, 1.5–3 years old. Burial 27 has 3 individuals, a young adult female, 27–35 years old and 2 newborn infants. Burials 28 and 29 are both infants, 0–0.5 year old. Burial 30A is a middle-aged adult female, 45–50 years old and Burial 30B is a middle- aged adult, 40–44 years old, probably a male. Burial 31 is an infant, 0–0.5 year old. Burial 32 is an infant, 1.5–2 years old. Burial 33 is a middle-aged adult male, 45–55 years old. There are 2 individuals from Burial 34, a middle-aged adult male, 45–50 years old and a middle-aged adult of indeterminate sex, 40–44 years old. Burial 35 is an infant, 0–0.5 year old. Burial 36 has 2 individuals, a child, 2–3 years old and an infant, 0–0.5 year old. Burial 37 also has 2 individuals, a child, 2–3 years old and an infant, 0–0.5 year old. Burial 38 is an infant, 0–0.5 year old. Burial 39 is a child, 3–5 years old. Burial 40 is an infant, 0–0.5 year old. Burial 41 is a child, 2–3 years old. Burials 42 and 43 are both infants, 0–0.5 year old. Burial 44 is a child, 5–6 years old. Burial 45 is a middle-aged adult male, 45–55 years old. Burials 46 and 47 are two probable young adult females, 25–30 years old. Burial 48 is an infant, 0–0.5 year old. Burial 49 is a young adult of indeterminate sex, 20–35 years old. Burials 50 and 51 are middle-aged adults of indeterminate sex, 35–50 years old. Burial 52 is an infant, 0–0.5 year old. Burial 53 is an adult of indeterminate sex. Burial 54 is an infant, 0–0.5 year old. No known individuals were identified. There are 292 isolated and commingled bone and bone fragments from the site, likely belonging to the individuals listed above.

A total of 1,053 associated funerary objects were removed from site 34Wa0005. The two individuals from Burial 1 are associated with 2 chipped stone fragments, 3 pottery sherds, and 4 faunal bone fragments. Burial 2 is associated with 1 unmodified stone, 1 chipped stone scraper, 2 pottery sherds,

and 1 shell fragment. Burial 3 is associated with 1 fragment of petrified wood. Burial 4 is associated with 2 chipped stone flakes, 9 pottery sherds, and 2 faunal bone fragments. Burial five is associated with 3 faunal bone fragments. Burial 6 is associated with 1 bone fragment and 1 shell fragment. The two individuals from Burial 7 are associated with 1 chipped stone projectile point, 2 pottery sherds, and 6 faunal bone fragments. Burial 8 is associated with 1 human effigy pot and 1 soil sample taken from the pot. The two individuals from Burial 9 are associated with 1 ceramic pot, 2 pottery sherds, 9 ceramic figurine fragments, 6 shell fragments, and 11 faunal bone fragments. Burial 10 is associated with 1 ceramic pot. Burial 11 is associated with 1 ceramic pot, 1 pottery sherd, 1 shell, 1 shell fragment, 1 unmodified faunal bone fragment, and 1 faunal bone awl fragment. Burial 12 is associated with 1 chipped stone projectile point fragment, 2 faunal bone fragments, and 1 faunal tooth. Burial 13 is associated 6 chipped stone fragments, 1 unmodified rock, 3 pottery sherds, 1 partial skeleton of a crow, 3 faunal bone fragments, 1 soil sample taken from the burial, and 1 chipped stone projectile point embedded in a vertebra of the individual. Burial 14 is associated with 1 chipped stone projectile point, 1 stone pipe, 1 chipped stone core, 1 chipped stone flake, 2 chipped stone fragments, 3 pottery sherds, 5 faunal bone fragments, and 1 soil sample taken from the burial. Burial 15 is associated with 1 chipped stone flake, 8 chipped stone fragments, 1 chipped stone scraper, 8 fragments of soapstone, 2 pieces of unmodified sandstone, 1 ceramic pot, 3 pottery sherds, 1 shell, 1 shell fragment, 1 deer mandible grater, 2 faunal bone hoes, 2 modified faunal bone fragments, and 4 unmodified faunal bone fragments. Burial 16 is associated with 1 ceramic pot. The two individuals from Burial 18 are associated with 1 pottery sherd, 1 unmodified rock, 1 faunal scapula hoe, and 1 faunal bone fragment. Burial 20 is associated with 1 chipped stone fragment, 1 unmodified rock, 1 ceramic pot, 2 modified faunal bone fragments, and 1 unmodified faunal bone fragment. Burial 21 is associated with 1 pottery sherd, 1 faunal bone fragment, 2 shell scrapers, and 5 shell fragments. The two individuals from Burial 22 are associated with 1 chipped stone end scraper, 1 chipped stone fragment, 2 unmodified stones, 9 pottery sherds, 1 ceramic pot, 2 shell fragments, 1 shell bead, and 10 faunal bone fragments. The two individuals from Burial 23 are associated with 15 chipped stone fragments, 2 pottery sherds, 8 shell fragments, 2 modified faunal bone fragments, 9 unmodified faunal bone fragments, and 1 soil sample taken from the burial. Burial 24 is associated with 1 soapstone fragment, 2 chipped stone fragments, 3 shell fragments, and 7 faunal bone fragments. Burial 25 is associated with 1 ceramic pot, 1 pottery sherd, and 1 shell. Burial 26 is associated with 3 shell fragments and 3 faunal bone fragments. The three individuals from Burial 27 are associated 2 unmodified rocks, 2 ceramic pots, 4 pottery sherds, 1 shell pendant, 21 shells and shell fragments, 2 deer mandible graters, and 6 faunal bone fragments. Burial 28 is associated with 16 soapstone fragments and 1 faunal bone fragment. Burial 30A is associated with 2 pottery sherds and 1 faunal bone fragment. Burial 30B is associated with 1 shell fragment and 4 faunal bone fragments. Burials 30A and 30B are also associated with 1 chipped stone flake, 4 pottery sherds, 2 shells, 1 fragment of burned faunal bone, and 3 faunal bone fragments. Burial 31 is associated with 1 ground stone mano and 2 shells. Burial 32 is associated with 1 pottery sherd, 1 shell fragment, and 1 faunal bone fragment. Burial 33 is associated with 18 chipped stone fragments, 5 pottery sherds, 4 shell fragments, 11 burned faunal bone fragments, and 12 unmodified faunal bone fragments. The two individuals from Burial 34 are associated with 6 chipped stone knives, 4 chipped stone projectile points, 1 chipped stone flake, 4 chipped stone fragments, 2 unmodified lithic fragments, 1 piece of worked selenite, 1 ceramic pot, 2 pottery sherds, 1 ball of clay, 2 shells, 2 faunal bone awls, and 3 faunal bone fragments. The two individuals from Burial 36 are associated with 3 pottery sherds, 3 shells, 121 shell beads, and 1 faunal bone fragment. The two individuals from Burial 37 are associated with 1 ceramic pot, 1 faunal bone fragment, and 422 shell beads. Burial 38 is associated with 1 pottery sherd and 3 shell fragments. Burial 39 is associated with 1 chipped stone fragment, 2 unmodified stones, 12 pottery sherds, 4 faunal bone fragments, and 1 soil sample taken from the burial. Burial 40 is associated with 1 chipped stone scraper, 3 shell fragments, and 1 burned faunal bone fragment. Burial 41 is associated with 1 pottery sherd, 1 burned faunal bone fragment, and 1 unmodified faunal bone fragment. Burial 42 is associated with 1 chipped stone fragment, 2 shell fragments, and 3 faunal bone fragments. Burial 44 is associated with 2 pottery sherds and 5 faunal bone fragments. Burial 45 is associated with 1 chipped stone projectile point, 2 chipped stone fragments, 1 unmodified stone, 1 stone pipe, 4 pottery sherds, 3 burned faunal bone fragments, 3 unmodified faunal bone fragments, and 1 soil sample taken from the burial. Burial 46 is associated with 1 unmodified rock, 1 pottery sherd, 4 shell fragments, and 2 faunal bone fragments. Burial 47 is associated with 2 chipped stone knives, 1 chipped stone fragment, 1 unmodified stone, 1 ceramic pot, 1 pottery sherd, 3 shells, 1 shell bead, and 2 soil samples taken from the burial. Burial 48 is associated with 1 shell and 1 pottery sherd. Additionally, 3 soil samples were taken from the general burial area and are associated with all of the human remains collectively.

In 1977, human remains representing, at minimum, 1 individual were removed from the Duerksen site (34Wa0143) in Washita County, OK. The remains were found near the Washita River by Denny Carley, a member of the Oklahoma Anthropological Society. He donated the remains to the Oklahoma Archeological Survey in 1977, which were later transferred to the Museum in 1980. The human remains consist of a fragmentary cranium of a young adult male, 20–35 years old. No known individual was identified. No associated funerary objects are present.

Sites 34Bk0004, 34Bk0023, 34Bk0094, 34Cu0001, 34Cu0027, 34Cu0041, 34Cu0042, 34Gd0016, 34Gd0024, 34Gd0078, 34Gd0081, 34Gv0000, 34Gv0001, 34Gv0002, 34Gv0005, 34Gv0032, 34Gv0043, 34Wa0003, 34Wa0004, 34Wa0005, and 34Wa0143 are Plains Village Period, Washita River phase in age, dating approximately from A.D. 1250–1400. It is possible that the Braiden site (34Gv0001) could also date to the earlier Paoli phase (A.D. 900–1250), and the Lacey Farm 1 site (34Gv0005) has Paoli phase components in addition to Washita River phase components. These determinations are based on archeological context and diagnostic cultural materials (*e.g.,* chipped and ground stone, ceramics, and/or bone tools), oral history, and post-contact European records. The Paoli and Washita River phases demonstrate continuity in material culture with known groups of the Wichita and Affiliated Tribes.

In 1955, human remains representing, at minimum, 2 individuals were removed from the Coulter site (34Ml0008) in McClain County, OK. The human remains and associated funerary objects were salvaged from a slush pit in the middle of the Coulter Site by William Villines. The site was recorded

by Stephan de Borhegyi for the University of Oklahoma in 1955, and then the material was donated to the Museum later in the same year. The human remains removed from the site include two commingled partial skeletons, both of whom are adult males. No known individuals were identified. The 343 associated funerary objects include 187 pottery sherds, 1 partially restored pot, 1 ceramic spindle whorl, 15 shell fragments, 118 faunal bone fragments, 1 faunal bone awl, 1 ground stone mano fragment, 9 chipped stone flakes, 8 chipped stone cores, and 2 chipped stone scrapers.

This site is Plains Village Period, Paoli phase in age, dating from approximately A.D. 900–1250. This determination is based on archeological context and diagnostic cultural materials (*e.g.,* chipped and ground stone, ceramics, and/or bone tools), oral history, and post-contact European records. The Paoli phase demonstrates continuity in material culture with the subsequent Washita River phase (A.D. 1250–1400) and later known groups of the Wichita and Affiliated Tribes.

In 1984, human remains representing, at minimum, 2 individuals were removed from the Patton site (34Bk0093) in Beckham County, OK. The human remains were collected in the field by Larry Neal and Alan Wormser of the Oklahoma Archeological Survey and later donated to the Museum in 1988. Individual 1 is a fragmentary skeleton of a young adult female, 20–35 years old. Individual 2 is a fragmentary skeleton of an adolescent, 12–15 years old, of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In 1985, human remains representing, at minimum, 1 individual were removed from the Linville 2 site (34Rm0492) in Roger Mills County, OK. The site was exposed by a bulldozer and material was recovered as part of a salvage operation funded by the Oklahoma Archeological Survey, conducted by Richard Drass, Pete Thurmond, John Flick, Don Wyckoff, Louis Albert, Peggy Flynn, and Michael Moore. The material was transferred to the Museum in 1987. The burial is a fragmentary skeleton of an adult female. No known individual was identified. The 158 associated funerary objects include 24 pottery sherds, 27 chipped stone flakes, 1 small stone projectile point, 11 shell fragments, 32 faunal bone fragments, 1 faunal bone awl, 58 cobbles and cobble fragments, 1 cobble biface, 2 charred nutshells, and 1 sample of organic material.

Sites 34Bk0093 and 34Rm0492 are from the Plains Village Period and date to the Custer phase, from approximately A.D. 800–1250. These determinations are based on archeological context and diagnostic cultural materials (*e.g.,* chipped and ground stone, ceramics, and/or bone tools), oral history, and post-contact European records. The Custer phase demonstrates continuity in material culture with the subsequent Washita River phase (A.D. 1250–1400) and later known groups of the Wichita and Affiliated Tribes.

In 1981 and 1983, human remains representing, at minimum, 2 individuals were removed from the Carnegie Canyon site (34Cd0076) in Caddo County, OK, by the Oklahoma Conservation Commission. Excavations by Christopher Lintz and Stephan Hall occurred in 1981 and 1983, and material from the site was transferred to the Museum in 1983 and 1985. Individual 1 is a fragmentary skeleton of a probable female adult. Individual 2 is a single long bone fragment of an adult of indeterminate sex. No known individuals were identified. The 13 associated funerary objects are 12 faunal bone fragments associated with Individual 1 and 1 soil sample associated with Individual 2.

In 1989, human remains representing, at minimum, 1 individual were removed from the Cut Bank Site (34Ln0101) in Lincoln County, OK. This site was surveyed and recorded in 1989 by Charles S. Wallis Jr. of the Oklahoma Conservation Commission as part of the Bellcow Reservoir Resurvey and Testing Program in conjunction with studies on the impact area of the Kickapoo Nations Watershed in northwestern Lincoln County, OK. Material from the site was turned over to the Museum in 1991. The human remains consist of a single cranial fragment of an adult of indeterminate sex. No known individual was identified. No associated funerary objects are present.

In 1952 and 1986, human remains representing, at minimum, 4 individuals were removed from the Brewer site (34Ml0003) in McClain County, OK. This site is on the south bank of the Canadian River and was originally surveyed and recorded in 1950, by the University of Oklahoma. William Villines of Rosedale, OK, brought a collection from the site to the Department of Anthropology at the University of Oklahoma in 1951. Additional material was salvaged by Richard Drass, Robert Brooks, and Alan Wormser of the Oklahoma Archeological Survey, after more material had been exposed by oil well workers in 1986. The material was accessioned by the Museum in 1953 and 1988. Burial 1 contains two individuals, an adult male and a young adult, 20–35 years old, of indeterminate sex. Burial 2 contains a young adult, 20–35 years old, of indeterminate sex. Burial 3 contains a probable young adult female, 20–35 years old. No known individuals were identified. A total of 61 associated funerary objects were removed from site 34Ml0003. Both individuals from Burial 1 are associated with 1 chipped stone flake tool, 1 modified cobble, 1 bone pin, 1 ground stone fragment, 11 pottery sherds, 1 shell fragment, 1 shell scraper, 5 faunal bone fragments, and 1 charcoal sample. Burial 2 is associated with 7 pottery sherds, 7 worked shell fragments, 6 chipped stone flakes, 1 ground stone fragment, 1 faunal bone fragment, 1 soil sample, and 10 soil flotation samples. Burial 3 is associated with 1 pottery sherd, 1 ground stone fragment, 1 shell fragment, and 2 faunal bone fragments.

On November 26, 1979, human remains representing, at minimum, 1 individual were removed from the Chevrolet site (34Ok0100) in Oklahoma County, OK. This site was exposed by heavy machinery during a construction project along Crutcho Creek in Oklahoma County and salvaged by Richard Drass and Sarah Herstand of the Oklahoma Archeological Survey. The material was transferred to the Museum in 1981. The human remains are a fragmentary skeleton of an adolescent, 13–16 years old, of indeterminate sex. No known individual was identified. The 42 associated funerary objects include 11 unmodified sandstone fragments, 1 chipped stone biface, 1 modified cobble, 11 chipped stone flakes, 2 pieces of charred material, 1 soil sample from the burial, 13 pieces of baked earth, and 2 pottery sherds.

In 1987, human remains representing, at minimum, 3 individuals were removed from an unnamed site (34Pt0000) in Pottawatomie County, OK. The human remains were collected by Michael Moore during a survey project near the Rose-Fast site and accessioned by the Museum in 1988. The human remains are highly fragmentary and commingled and represent an adult male, an adult female, and a child, 8–12 years old. No known individuals were identified. No associated funerary objects are present.

Sites 34Cd0076, 34Ln0101, 34Ml0003, 34Ok0100, and 34Pt0000 date to the Plains Woodland Period (A.D. 1–1000). The Brewer site (34Ml0003) may also date to the Plains Village Period. The unnamed site from Pottawatomie County is in close proximity to, and is believed to be associated with, the Rose-

Fast site, a Plains Woodland Period site. These determinations are based on archeological context and diagnostic cultural materials (*e.g.,* chipped and ground stone, ceramics, and/or bone tools), oral history, and post-contact European records. Ethnohistoric, ethnographic, and oral historical evidence support the cultural continuity of the Woodland Period with the subsequent Plains Village Period in the area and with the Wichita and Affiliated Tribes.

Determinations Made by the Sam Noble Oklahoma Museum of Natural History

Officials of the Sam Noble Oklahoma Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 193 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 3,389 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Marc Levine, Assistant Curator of Archaeology, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072–7029, telephone (405) 325–1994, email *mlevine@ou.edu,* by December 1, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma, may proceed.

The Sam Noble Oklahoma Museum of Natural History is responsible for notifying the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma, that this notice has been published.

Dated: September 8, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–23794 Filed 10–31–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024125: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Human Remains Repository, Department of Anthropology, University of Wyoming, Laramie, WY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Human Remains Repository, Department of Anthropology, University of Wyoming, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Human Remains Repository, Department of Anthropology, University of Wyoming. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Human Remains Repository, Department of Anthropology, University of Wyoming, at the address in this notice by December 1, 2017.

ADDRESSES: Dr. Rick L. Weathermon, Curator, Human Remains Repository, Department 3431, Anthropology, 1000 East University Avenue, University of Wyoming, Laramie, WY 82071, telephone (307) 314–2035, email *rikw@uwyo.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Human Remains Repository, Department of Anthropology, University of Wyoming, Laramie, WY. The human remains and associated funerary objects were removed from multiple counties in the State of Wyoming.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Human Remains Repository, Department of Anthropology, University of Wyoming, professional staff in consultation with representatives of the Arapaho Tribe of the Wind River Reservation, Wyoming. The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; and Yankton Sioux Tribe of South Dakota were invited to consult, but did not participate.

History and Description of the Remains

At some time prior to 1976, human remains representing, at minimum, three individuals were removed from the area of Pumpkin Buttes in Campbell County, WY, by members of the Wyoming Archaeological Society, Sheridan Chapter. In 1998, the

fragmentary human remains were transferred to the Human Remains Repository as HR251a–c, and represent three Native American individuals consisting of one male, over 40 years old, one female, 18–22 years old, and one male, approximately 14 years old. No known individuals were identified. No associated funerary objects are present.

In 1984, human remains representing, at minimum, one individual were removed from the Rawhide site (48CA509) in Campbell County, WY, by the Wyoming State Archaeological Survey Office. The fragmentary human remains are recorded as HR145 in the Human Remains Repository records and represent a Native American child, about 8 years old, of undetermined sex. No known individual was identified. No associated funerary objects are present.

At some time prior to 1970, human remains representing, at minimum, one individual, were removed from a site located about 35 miles north and slightly east of Douglas in Converse County, WY, by unknown individuals. The human remains were kept at the Pioneer Museum in Douglas until 1975, when they were transferred to the Human Remains Repository. The fragmentary human remains are recorded as HR018 in the Human Remains Repository records and represent a Native American male, approximately 34–40 years old. No known individual was identified. No associated funerary objects are present.

In 1986, human remains representing, at minimum, one individual, were removed from the Antelope Coal Mine permit area (site 48CO481) in Converse County, WY. The human remains have been housed at the Human Remains Repository since that time. The fragmentary human remains are recorded as HR0111 in the Human Remains Repository records and represent a Native American female, 18–21 years old. No known individual was identified. No associated funerary objects are present.

In 1988, human remains representing, at minimum, one individual, were removed from site 48CO1432 in Converse County, WY, by the Wyoming State Archaeological Survey Office. The human remains have been housed at the Human Remains Repository since that time. The fragmentary human remains are recorded as HR144 in the Human Remains Repository records and represent a Native American male, over 50 years old. No known individual was identified. No associated funerary objects are present.

At some time prior to 1986, human remains representing, at minimum, one individual, were removed from a location near the town of Shawnee in Converse County, WY, by the landowner. The human remains have been housed at the Human Remains Repository since that time. The human remains are recorded as HR0152 in the Human Remains Repository records and represent a Native American male, over 50 years old. No known individual was identified. No associated funerary objects are present.

At some time in the mid-1980s, human remains representing, at minimum, one individual, were removed from an unknown location in Converse County, WY, by the Converse County Sheriff's Office. The remains have been housed at the Human Remains Repository since that time. The fragmentary human remains are recorded as HR155 in the Human Remains Repository records and represent a Native American individual of undetermined sex, over 40 years old. No known individual was identified. No associated funerary objects are present.

At some time during the early 1970s, human remains representing, at minimum, one individual, were removed from an unknown site near Bill in Converse County, WY, by the Converse County Sheriff's Office. The human remains were transferred to the Human Remains Repository in 2010. The fragmentary human remains are recorded as HR0282 in the Human Remains Repository records and represent an adult Native American male. No known individual was identified. No associated funerary objects are present.

In 1997, human remains representing, at minimum, one individual, were removed from an unknown site in Converse County, WY, by the Converse County Sheriff's Office. The human remains were transferred to the Human Remains Repository in 2010. The fragmentary human remains are recorded as HR0300 in the Human Remains Repository records and represent an adult Native American male. No known individual was identified. No associated funerary objects are present.

In 1974, human remains representing, at minimum, one individual, were removed from the Bishop Ranch in Crook County, WY, by the landowner. The human remains were given to the Rockpile Museum in Gillette, who transferred them to the Human Remains Repository in 1996. The human remains are recorded as DB052 in the Human Remains Repository records and represent a Native male, over 60 years old. No known individual was identified. No associated funerary objects are present.

In 1983, human remains representing, at minimum, one individual, were removed from a location south of Keyhole Reservoir in Crook County, WY, by the Crook County Sheriff's Office and then transferred to the Human Remains Repository in 1984. The fragmentary human remains are recorded as FC044 in the Human Remains Repository records and represent a Native American female, over 50 years old. No known individual was identified. No associated funerary objects are present.

In 1881, human remains representing, at minimum, one individual, were removed from the area of Rifle Pit Road in Crook County, WY, by unknown individuals. The human remains were given to the Sundance Museum in 1975, and transferred to the Human Remains Repository in 2009. The fragmentary human remains are recorded as HR264 in the Human Remains Repository records and represent a Native American young adult female. No known individual was identified. No associated funerary objects are present.

In 1975, human remains representing, at minimum, one individual, were removed from site 48GO8 near the North Platte River in Goshen County, WY, by University of Wyoming Department of Anthropology personnel and transferred to the Human Remains Repository in approximately 1987. The fragmentary human remains are recorded as HR043 in the Human Remains Repository records and represent a Native American female, 25–27 years old. No known individual was identified. No associated funerary objects are present.

In 1975, human remains representing, at minimum, one individual, were removed from site 48NA67 north of Casper in Natrona County, WY, by University of Wyoming Department of Anthropology personnel. The human remains have been at the Human Remains Repository since that time and, based on radiocarbon dating, are between 5100 and 5500 years old. The fragmentary human remains are recorded as HR045 in the Human Remains Repository records and represent a Native American male, 50–65 years old. No known individual was identified. No associated funerary objects are present.

In 1992, human remains representing, at minimum, one individual, were removed from the North Platte River drainage west of Casper in Natrona County, WY, by the Natrona County Sheriff's Office and transferred to the Human Remains Repository in 1993.

The fragmentary human remains are recorded as FC090 in the Human Remains Repository records and represent a Native American female, 22–24 years old. No known individual was identified. The two associated funerary objects include one lot of glass seed trade beads and one lot of small leather fragments.

In 1993, human remains representing, at minimum, one individual, were removed from a location a few miles north of Casper in Natrona County, WY, by the Natrona County Sheriff's Office. The human remains have been at the Human Remains Repository since that time. The fragmentary human remains are recorded as FC107 in the Human Remains Repository records and represent a Native American child, of indeterminate sex, 8–9 years old. No known individual was identified. The one associated funerary object consists of a bison bone fragment.

At some time prior to the 1970s, human remains representing, at minimum, one individual, were removed from an unknown location and given to the Casper, WY, Police Department. The human remains had been in the police department evidence lockup from 30 to over 40 years. No other provenience information is available. In 2009, the human remains were accessioned into the University of Wyoming Human Remains Repository. The fragmentary human remains are recorded as HR263 in the Human Remains Repository records and represent a Native American older adult male. No known individual was identified. No associated funerary objects are present.

In 1956, human remains representing, at minimum, one individual, were removed from site 48NO2 about 8 miles southwest of Lusk in Niobrara County, WY, by Wyoming State Museum personnel and transferred to the University of Wyoming Anthropology Department in 1983. Additional associated remains were located in the State Museum in 1995 and transferred to University of Wyoming, Anthropology, in 1996. The fragmentary human remains are recorded as HR110 in the Human Remains Repository records and represent a Native American male, 50–65 years of age. No known individual was identified. No associated funerary objects are present.

At some time prior to 1971, human remains representing, at minimum, one individual, were removed from site 48WE34, about 4 miles south southeast of Upton, Weston County, WY, by the landowner and given to the University of Wyoming Anthropology Department in 1971. The fragmentary human remains are recorded as HR007 in the Human Remains Repository records and represent a Native American female, 50–65 years old. No known individual was identified. The two associated funerary objects include a bone awl fragment and small piece of hematite.

At some time in the 1930s, human remains representing, at minimum, one individual, were removed from site 48WE487, about 7 miles west of the Wyoming-South Dakota state line, in Weston County, WY, by a sheepherder. The human remains have been at the University of Wyoming Anthropology Department since the mid-1980s. The fragmentary human remains are recorded as HR203 in the Human Remains Repository records and represent a possible Native American, approximately 20 years of age, of indeterminate sex. No known individual was identified. The 42 associated funerary objects include 42 red ocher-stained non-diagnostic bifacial stone tools.

In 1978, human remains representing, at minimum, one individual, were removed from a location approximately two miles north of Newcastle in Weston County, WY, by Weston County Sherriff's Department personnel and stored at the Anna Miller Museum in Newcastle until 1992, when they were transferred to the University of Wyoming Anthropology Department. The fragmentary human remains are recorded as FC008 in the Human Remains Repository records and represent a Native American male, 48–60 years old. No known individual was identified. No associated funerary objects are present.

Determinations Made by the Human Remains Repository, Department of Anthropology, University of Wyoming

Officials of the Human Remains Repository, Department of Anthropology, University of Wyoming have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on features of the skeletal elements or their archeological contexts.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 23 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 47 funerary objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Arapaho Tribe of the Wind River Reservation, Wyoming.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Arapaho Tribe of the Wind River Reservation, Wyoming.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Arapaho Tribe of the Wind River Reservation, Wyoming.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Rick L. Weathermon, Curator, Human Remains Repository, Department 3431, Anthropology, 1000 East University Avenue, University of Wyoming, Laramie, WY 82071, telephone (307) 314–2035, email *rikw@uwyo.edu,* by December 1, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Arapaho Tribe of the Wind River Reservation, Wyoming, may proceed.

The Human Remains Repository, Department of Anthropology, University of Wyoming, is responsible for notifying the Arapaho Tribe of the Wind River Reservation, Wyoming, that this notice has been published.

Dated: September 8, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–23793 Filed 10–31–17; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–945 (Modification Proceeding)]

Certain Network Devices, Related Software and Components Thereof (II) Institution of Modification Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a modification proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. 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 January 27, 2015, based on a Complaint filed by Cisco Systems, Inc. of San Jose, California (''Cisco''). 80 FR 4313–14 (Jan. 27, 2015). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), by reason of infringement of certain claims of U.S. Patent Nos. 7,023,853 (''the '853 patent''); 6,377,577 (''the '577 patent''); 7,460,492 (''the '492 patent''); 7,061,875 (''the '875 patent''); 7,224,668 (''the '668 patent''); and 8,051,211 (''the '211 patent''). The Complaint further alleges the existence of a domestic industry. The Commission's Notice of Investigation named Arista Networks, Inc. of Santa Clara, California (''Arista'') as the respondent. The Office of Unfair Import Investigations (''OUII'') was also named as a party to the investigation. The Commission terminated the investigation in part as to certain claims of the asserted patents. Notice (Nov. 18, 2015) (see Order No. 38 (Oct. 27, 2015)); Notice (Dec. 1, 2015) (see Order No. 47 (Nov. 9, 2015)).

On May 4, 2017, the Commission found a violation of section 337 with respect to certain of the asserted claims of the '577 and '668 patents. Notice (May 4, 2017); 82 FR 21827–29 (May 10, 2017); *see also* Notice of Correction (May 30, 2017); 82 FR 25811 (June 5, 2017). The Commission issued a limited exclusion order (''LEO'') and a cease and desist order (''CDO'') against Arista. *Id.* The Commission did not find a violation with respect to the '853, '875, '492, and '211 patents. *Id.*

On June 30, 2017, Cisco filed a notice of appeal with the United States Court of Appeals for the Federal Circuit (''Federal Circuit''), seeking review of the Commission's finding of no violation. *Cisco Sys., Inc.* v. *Int'l Trade Comm'n,* Appeal No. 17–2289. On July 21, 2017, Arista filed a notice of appeal with the Federal Circuit, seeking review of the Commission's finding of violation. *Arista Networks, Inc.* v. *Int'l Trade Comm'n,* Appeal No. 17–2336. On August 3, 2017, the Federal Circuit consolidated the Arista and Cisco appeals. *Cisco Sys., Inc.* v. *Int'l Trade Comm'n,* Appeal No. 17–2289, Dkt. No. 20. The consolidated appeal is currently pending before the Federal Circuit.

On August 25, 2017, Arista filed a motion with the Federal Circuit seeking to stay the Commission's remedial orders pending resolution of the appeal on the merits. On September 22, 2017, the Federal Circuit denied this request ''subject to the condition that the product redesign on which Cisco relies to deny irreparable harm must be permitted to enter the country, without being blocked by the Commission order under review in this case, unless and until Commission proceedings are initiated and completed to produce an enforceable determination that such a redesign is barred by the order here under review or by a new or amended order.'' *Cisco Sys, Inc.* v. *ITC; Arista Networks, Inc.* v. *ITC,* Appeal Nos. 2017–2289, –2351, Order at 3 (Fed. Cir. Sept. 22, 2017).

On September 27, 2017, Cisco petitioned for a modification proceeding to determine whether Arista's redesigned switches infringe the patent claims that are the subject of the LEO and CDO issued in this investigation and for modification of the remedial orders to specify the status of these redesigned products. On October 10, 2017, Arista filed its opposition to Cisco's petition. On October 17, 2017, Cisco filed a Motion for Leave to Submit a Reply in Support of Its Petition for a Modification Proceeding. The Commission grants Cisco's motion to file a reply.

The Commission has determined that the request complies with the requirements for institution of a modification proceeding under Commission Rule 210.76. Accordingly, the Commission has determined to institute a modification proceeding and has delegated the proceeding to the Chief Administrative Law Judge to designate a presiding Administrative Law Judge. Cisco, Arista, and OUII are named as parties to the proceeding.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 27, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–23785 Filed 10–31–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1186–1187 (Review)]

Certain Stilbenic Optical Brightening Agents From China and Taiwan; Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty orders on certain stilbenic optical brightening agents from China and Taiwan 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 these reviews on April 3, 2017 (82 FR 16226) and determined on July 7, 2017 that it would conduct expedited reviews (82 FR 37237, August 9, 2017).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

in these reviews on October 27, 2017. The views of the Commission are contained in USITC Publication 4737 (October 2017), entitled *Certain Stilbenic Optical Brightening Agents from China and Taiwan: Investigation Nos. 731–TA–1186–1187 (Review).*

By order of the Commission.

Issued: October 27, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–23797 Filed 10–31–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Batteries and Electrochemical Devices Containing Composite Separators, Components Thereof, and Products Containing Same, DN 3269;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of LG Chem, Ltd.; LG Chem Michigan Inc.; LG Chem Power Inc.; and Toray Industries, Inc. on October 25, 2017. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain batteries and electrochemical devices containing composite separators, components thereof, and products containing same. The complaint names as respondents Amperex Technology Limited of Hong Kong; DJI Technology Co., Ltd. of China; DJI Technology, Inc. of Burbank, CA; Guangdong OPPO Mobile Telecommunications Corp., Ltd. of China; and OPPO Digital, Inc. of Menlo Park, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3269'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.) [1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews,

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 26, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–23725 Filed 10–31–17; 8:45 am]

BILLING CODE 7020–02–P

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Road Construction Machines and Components Thereof, DN 3270;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Caterpillar Inc. and Caterpillar Paving Products, Inc. on October 26, 2017. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain road construction machines and components thereof. The complaint names as respondents Wirtgen GmbH of Germany; Joseph V gele AG of Germany; Wirtgen Group Holding GmbH of Germany; and Wirtgen America, Inc. of Antioch, TN. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3270'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.)[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 26, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–23730 Filed 10–31–17; 8:45 am]

BILLING CODE 7020–02–P

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–481 and 731–TA–1190 (Review)]

Crystalline Silicon Photovoltaic Cells and Modules From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on crystalline silicon photovoltaic cells and modules from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted November 1, 2017. To be assured of consideration, the deadline for responses is December 1, 2017. Comments on the adequacy of responses may be filed with the Commission by January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 7, 2012, the Department of Commerce issued antidumping and countervailing duty orders on imports of crystalline silicon photovoltaic cells and modules from China (77 FR 73017–73021). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product,* CPSV cells and CPSV modules, corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* as all producers of CSPV cells and CSPV modules. One firm was excluded from the *Domestic Industry* under the related parties provision.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is December 7, 2012.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the

same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Deputy Agency Ethics Official, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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 contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 1, 2017. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is January 16, 2018. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 17–5–397, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2016, except as noted (report quantity data in kilowatts and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are

employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2016 (report quantity data in kilowatts and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2016 (report quantity data in kilowatts and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 26, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–23654 Filed 10–31–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–893 (Third Review)]

Honey From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on honey from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted November 1, 2017. To be assured of consideration, the deadline for responses is December 1, 2017. Comments on the adequacy of responses may be filed with the Commission by January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 10, 2001, the Department of Commerce issued an antidumping duty order on imports of honey from China (66 FR 63672). Following the first five-year reviews by Commerce and the Commission, effective August 2, 2007, Commerce issued a continuation of the antidumping duty order on honey from China (72 FR 42384). Following the second five-year reviews by Commerce and the Commission, effective December 13, 2012, Commerce issued a continuation of the antidumping duty order on imports of honey from China (77 FR 74173). The Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first and second five-year review determinations, the Commission found that there was one *Domestic Like Product* consisting of all honey, consistent with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first and second five-year review determinations, the Commission found a single *Domestic Industry* consisting of the U.S. producers of honey, both raw and processed. The Commission also found that packers, who produce processed honey, as well as beekeepers, who produce raw honey, should be treated as U.S. producers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Deputy Agency Ethics Official, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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 contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 1, 2017. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 16, 2018. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the

Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 17–5–398, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2011.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2016, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production and/or packing (quantity) and, if known, an estimate of the percentage of total U.S. production and/or packing of the *Domestic Like Product* accounted for by your firm's(s') production and/or packing;

(b) Number of domestic honey producing colonies, including yield per colony (quantity), and/or capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2016 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2016 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2011, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 26, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–23655 Filed 10–31–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–487 and 731–TA–1197–1198 (Review)]

Steel Wire Garment Hangers From Taiwan and Vietnam; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on steel wire garment hangers from Taiwan and Vietnam would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted November 1, 2017. To be assured of consideration, the deadline for responses is December 1, 2017. Comments on the adequacy of responses may be filed with the Commission by January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 10, 2012, the Department of Commerce issued an antidumping duty order on imports of steel wire garment hangers from Taiwan (77 FR 73424). On February 5, 2013, the Department of Commerce issued antidumping and countervailing duty orders on imports of steel wire garment hangers from Vietnam (78 FR 8105–8108). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Taiwan and Vietnam.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of steel wire garment hangers that is coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* as all producers of steel wire garment hangers.

(5) The *Order Dates* are the dates that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Dates* are December 10, 2012 (Taiwan) and February 5, 2013 (Vietnam).

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Deputy Agency Ethics Official, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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 contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 1, 2017. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is January 16, 2018. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 17–5–399, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject*

Merchandise, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2016, except as noted (report quantity data in number of hangers and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2016 (report quantity data in number of hangers and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2016 (report quantity data in number of hangers and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise*

produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 26, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–23656 Filed 10–31–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0060]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection in Use Without an OMB Control Number, CJIS Name Check Form (1–791)

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until January 2, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306 (facsimile: 304–625–5093) or email *glbrovey@ic.fbi.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted via email to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection in use without an OMB control number.

(2) *The Title of the Form/Collection:* CJIS Name Check Request.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* 1–791.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Agencies authorized to submit applicant fingerprints into the Next Generation Identification (NGI) system for noncriminal justice purposes such as employment, benefits, and licensing. This form is completed to obtain a name check for an applicant when the fingerprints have been rejected twice for quality to ensure eligible individuals are not denied employment, benefits, or licensing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 77,816 respondents will complete each form within approximately 5 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 6,485 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: October 26, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–23704 Filed 10–31–17; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0033]

Standard on the Control of Hazardous Energy (Lockout/Tagout); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Standard on the Control of Hazardous Energy (Lockout/Tagout).

DATES: Comments must be submitted (postmarked, sent, or received) by January 2, 2018.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit

three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0033, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3653, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0033) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The standard specifies several information collection requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to control the release of hazardous energy while workers service, maintain, or repair machines or equipment when activation, start up, or release of energy from an energy source is possible; proper control of hazardous energy prevents death or serious injury among these workers.

Energy Control Procedure (paragraph (c)(4)(i)). With limited exception, employers must document the procedures used to isolate from its energy source and render inoperative, any machine or equipment prior to servicing, maintenance, or repair by workers. These procedures are necessary when activation, start up, or release of stored energy from the energy source is possible, and such release could cause injury to the workers.

Paragraph (c)(4)(ii) states that the required documentation must clearly and specifically outline the scope, purpose, authorization, rules, and techniques workers are to use to control hazardous energy, and the means to enforce compliance. The document must include at least the following elements:

(A) A specific statement regarding the use of the procedure;

(B) Detailed procedural steps for shutting down, isolating, blocking, and securing machines or equipment to control hazardous energy;

(C) Detailed procedural steps for placing, removing, and transferring lockout or tagout devices, including the responsibility for doing so; and

(D) Requirements for testing a machine or equipment to determine and verify the effectiveness of lockout or tagout devices, as well as other energy control measures.

Protective Materials and Hardware (paragraphs (c)(5)(ii)(D) and (c)(5)(iii)). Paragraph (c)(5)(ii)(D) requires that lockout and tagout devices indicate the identity of the employee applying it. Paragraph (c)(5)(iii) requires that tags warn against hazardous conditions if the machine or equipment is energized. In addition, the tag must include a legend such as one of the following: Do Not Start; Do Not Open; Do Not Close; Do Not Energize; Do Not Operate.

Periodic Inspection Certification Records (paragraph (c)(6)(ii)). Under paragraph (c)(6)(i), employers are to conduct inspections of energy control procedures at least annually. An authorized worker (other than an authorized worker using the energy control procedure that is the subject of the inspection) is to conduct the inspection and correct any deviations or inadequacies identified. For procedures involving either lockout or tagout, the inspection must include a review, between the inspector and each authorized worker, of that worker's responsibilities under the procedure; for procedures using tagout systems, the review also involves affected workers, and includes an assessment of the workers' knowledge of the training elements required for these systems. Paragraph (c)(6)(ii) requires employers to certify the inspection by documenting the date of the inspection and identifying the machine or equipment inspected, the workers included in the inspection, and the worker who performed the inspection.

Training Certification Records (paragraph (c)(7)(iv)). Under paragraph (c)(7)(iv), employers are to certify that workers completed the required training, and that this training is up-to-date. The certification is to contain each worker's name and the training date. Written certification of the training assures the employer that workers receive the training specified by the standard.

Notification of Employees (paragraph (c)(9)). This provision requires the employer or authorized worker to notify affected workers prior to applying, and after removing, a lockout or tagout device from a machine or equipment.

Off-Site Personnel (Contractors, etc.) (paragraph (f)(2)(i)). When the on-site employer uses an off-site employer (*e.g.,* a contractor) to perform the activities covered by the scope and application of the standard, the two employers must inform each other regarding their respective lockout or tagout procedures.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary

for the proper performance of the Agency's functions, including whether the information is useful;

- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply—for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting an adjustment increase of 102,613 burden hours (from 2,646,702 hours to 2,749,315 hours). This increase is a result of updated data showing an increase in the number of affected low-impact establishments (from 435,063 establishments to 461,523 establishments). In addition, OSHA is requesting an adjustment increase of $52,265 in operation and maintenance costs (from $1,426,421 to $1,478,686) associated with the purchase of tags and ties by employers. This increase is also a result of updated data showing an increase in the number of affected low-impact establishments.

Type of Review: Extension of a currently approved collection.

Title: Standard on the Control of Hazardous Energy (Lockout/Tagout) (29 CFR 1910.147).

OMB Control Number: 1218–0150.

Affected Public: Business or other for-profits.

Number of Respondents: 754,348.

Frequency: Initially; Annually; On occasion.

Average Time per Response: Various.

Estimated Number of Responses: 75,072,010.

Estimated Total Burden Hours: 2,749,315.

Estimated Cost (Operation and Maintenance): $1,478,686.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0033). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on October 26, 2017.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017–23743 Filed 10–31–17; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (17–082)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, 300 E Street SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546, (202) 358–1351.

SUPPLEMENTARY INFORMATION:

I. Abstract

Citizen science and crowdsourcing are tools that engage, educate and empower the public to apply their curiosity and contribute their talents to a wide range of scientific and societal issues. NASA's mission to *reach for new heights and reveal the unknown so that what we do and learn will benefit all humankind.* NASA uses the vantage point of space to achieve with the science community and our partners a deep scientific understanding of our planet, other planets and solar system bodies, the interplanetary environment, the Sun and its effects on the solar system, and the universe beyond. Citizen science and crowdsourcing can support NASA's mission and purpose by providing new opportunities to explore our solar system and our own home planet like never before, producing critical data that expands our knowledge of the universe, and advancing our ability to provide societal benefit through the synergy of satellite and ground based observations.

II. Methods of Collection

Citizen science and crowdsourcing collections submitted under this generic clearance can be stand-alone projects or

the methods may be incorporated into an existing or new project, including, but not limited to, projects in the following typology:

▪ Data gathering projects. These projects may include: (1) Observation, characterization and documentation of natural phenomena or general environmental health observations, opinions, or preferences or (2) surveying participants or screening environmental conditions, including using specialized equipment provided by project leaders to record and submit data, or submitting samples plus descriptors (*e.g.* of air or water) for testing. Data may be collected using technologies mentioned above, through structured data forms, surveys, focus groups or interviews, submitting photographs or other media, surveys or questionnaires, or providing written observations.

▪ Classification/problem solving projects. Participants' tasks may include: (1) Observation of recorded materials provided by project organizers (images, video, etc.) through structured data submission forms, surveys or questionnaires in an online or computer program, clicking boxes, highlighting parts of text or image, and providing comments and/or annotations; (2) Classification of images or sounds using structured data submission forms or clicking boxes in an online or computer program; (3) Transcribing information, by typing handwritten logs or notes; (4) Performing a function meant to generate human behavior data; or (5) Problem-solving or manipulation of data. Tasks 1–5 may be conducted via structured actions or instructions or through the use of ''human-based computational game'' or ''game with a purpose'', a human-based computational technique in which a computational process performs its function by presenting certain steps to humans in an entertaining way.

III. Data

Title: NASA Citizen Science.

OMB Number: 2700–XXXX.

Type of review: New information collection.

Affected Public: Individuals.

Estimated Number of Respondents: 10,000–50,000.

Estimated Time per Response: 5–10 minutes.

Estimated Total Annual Public Burden Hours: 450,000 to 600,000 hours.

Estimated Total Annual Government Cost: $100,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2017–23744 Filed 10–31–17; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995 on the National Science Foundation Proposal and Award Policies and Procedures Guide. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

DATES: Comments regarding these information collections are best assured of having their full effect if received December 1, 2017.

ADDRESSES: Comments should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W182000, Alexandria, Virginia 22314 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton at the address above. Copies of the submission(s) may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: This is the second notice for public comment; the first was published in the **Federal Register** at 82 FR 32724, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. The primary purpose of this revision is to implement changes described in the Supplementary Information section of this notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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.

Title of Collection: ''National Science Foundation Honorary Awards.''

OMB Approval Number: 3145–0035.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Abstract: The National Science Foundation (NSF) administers several external awards, among them the President's National Medal of Science, the Alan T. Waterman Award, the National Science Board (NSB) Vannevar Bush Award, the NSB Public Service Award, the Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM) program, and the Presidential Awards for Excellence in Mathematics and Science Teaching (PAEMST) program.

In 2003, to comply with E-government requirements, the nomination processes

were converted to electronic submission through the National Science Foundation's (NSF) FastLane system or via other electronic systems as described in the individual nomination process. Individuals can now prepare nominations and references through *www.fastlane.nsf.gov/honawards/.* First-time users must register on the Fastlane Web site using the link found in the upper right-hand corner above the ''Log In'' box before accessing any of the honorary award categories. The nominations for PAESMEM also may be submitted via *www.grants.gov.* Nominations and applications are submitted on the PAEMST portal at *www.PAEMST.org.*

Use of the Information: The Foundation has the following honorary award programs:

• *President's National Medal of Science.* Statutory authority for the President's National Medal of Science is contained in 42 U.S.C. 1881 (Pub. L. 86–209), which established the award and stated that ''(t)he President shall . . . award the Medal on the recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as . . . appropriate.''

Subsequently, Executive Order 10961 specified procedures for the Award by establishing a National Medal of Science Committee which would ''receive recommendations made by any other nationally representative scientific or engineering organization.'' On the basis of these recommendations, the Committee was directed to select its candidates and to forward its recommendations to the President.

In 1962, to comply with these directives, the Committee initiated a solicitation form letter to invite these nominations. In 1979, the Committee initiated a nomination form as an attachment to the solicitation letter. A slightly modified version of the nomination form was used in 1980.

The Committee has established the following considerations for selection of candidates:

a. The impact of an individual's body of work on the current state of his or her field of science or engineering;

b. Whether the individual's achievements are of an unusually significant nature in relation to the potential effects on the development of thought in his or her field of science or engineering;

c. Whether the nominee has demonstrated unusually distinguished service in the general advancement of science and/or engineering for the Nation, especially when accompanied by substantial contributions to the content of science;

d. The recognition of the nominee by peers within his or her community, and whether s/he is recognized for substantial impact in fields in addition to his/her discipline;

e. If the nominee has made contributions to innovation and industry;

f. Whether the nominee has demonstrated sustained influence on education through publications, teaching activities, outreach, mentoring, etc., and;

g. Whether the nominee's contributions have created significant positive impact for the Nation.

In 2003, the Committee changed the active period of eligibility to three years, including the year of nomination. After that time, candidates must be re-nominated with a new nomination package for them to be considered by the Committee.

Narratives are now restricted to three pages of text, as stipulated in the guidelines at: *https://www.fastlane.nsf.gov/honawards/medalHome.do.*

• *Alan T. Waterman Award.* Congress established the Alan T. Waterman Award in August 1975 (42 U.S.C. 1881a (Pub. L. 94–86) and authorized NSF to ''establish the Alan T. Waterman Award for research or advanced study in any of the sciences or engineering'' to mark the 25th anniversary of the National Science Foundation and to honor its first Director. The annual award recognizes an outstanding young researcher in any field of science or engineering supported by NSF. In addition to a medal, the awardee receives a grant of $1,000,000 over a five-year period for scientific research or advanced study in the mathematical, physical, medical, biological, engineering, social, or other sciences at the institution of the recipient's choice.

The Alan T. Waterman Award Committee was established by NSF to comply with the directive contained in Public Law 94–86. The Committee solicits nominations from members of the National Academy of Sciences, National Academy of Engineering, scientific and technical organizations, and any other source, public or private, as appropriate.

In 1976, the Committee initiated a form letter to solicit these nominations. In 1980, a nomination form was used which standardized the nomination procedures, allowed for more effective Committee review, and permitted better staff work in a short period of time. On the basis of its review, the Committee forwards its recommendation to the Director, NSF, and the National Science Board (NSB).

Candidates must be U.S. citizens or permanent residents and must be 35 years of age or younger or not more than seven years beyond receipt of the Ph.D. degree by December 31 of the year in which they are nominated. Candidates should have demonstrated exceptional individual achievements in scientific or engineering research of sufficient quality to place them at the forefront of their peers. Criteria include originality, innovation, and significant impact on the field.

• *Vannevar Bush Award.* The Vannevar Bush Award honors truly exceptional lifelong leaders in science and technology who have made substantial contributions to the welfare of the Nation through public service activities in science, technology, and public policy. The National Science Board established this award in 1980 in the memory of Vannevar Bush, who served as a science advisor to President Franklin Roosevelt during World War II, helped to establish Federal funding for science and engineering as a national priority during peacetime, and was behind the creation of the National Science Foundation.

The Vannevar Bush Award recipient is selected annually by the National Science Board's Subcommittee on Honorary Awards (AWD), which is established to solicit nominations from scientific, engineering, and educational societies and institutions, in both the public and private sectors.

Candidates for the Vannevar Bush Award should have demonstrated outstanding leadership and accomplishment in meeting at least two of the following selection criteria:

1. Candidates must be U.S. citizens.

2. Distinguished himself/herself through public service activities in science and technology.

3. Pioneered the exploration, charting, and settlement of new frontiers in science, technology, education, and public service.

4. Demonstrated leadership and creativity that have inspired others to distinguished careers in science and technology.

5. Contributed to the welfare of the Nation and mankind through activities in science and technology.

6. Demonstrated leadership and creativity that has helped mold the history of advancements in the Nation's science, technology, and education.

Nomination Submissions must include:

1. A current curriculum vita without publications (no more than 5 pages).

2. A narrative statement (no more than 8 pages) addressing the candidate's activities and contributions related to the selection criteria.

3. A proposed award citation addressing the candidate's activities in and contributions to national public service activities in science, technology, and public policy.

4. Contact information for award candidate and nominator (mailing address, email address, and phone number).

5. Two reference letters (no more than 2 pages each) from individuals familiar with the candidate's accomplishments, and not affiliated with the candidate's home institution. Letters should be submitted by email to *nsbawards@nsf.gov* on letterhead as a PDF file.

Nominations remain active for three years, including the year of nomination. After that time, candidates must be renominated with a new nomination for them to be considered by the selection committee.

Awards Ceremony

The award recipient is presented with a medal and honored at the NSF Annual Awards Ceremony and Dinner in Washington, DC.

• *NSB Public Service Award.* The National Science Board established the Public Service Award in November 1996 to honor individuals and groups that have made substantial contributions to increasing public understanding of science and engineering in the United States. These contributions may be in a wide variety of areas that have the potential of contributing to public understanding of and appreciation for science and engineering—including mass media, education and/or training programs, and entertainment.

Eligibility includes any individual or group (company, corporation or organization) that has increased the public understanding of science or engineering.

Candidates for the NSB Public Service Award should have demonstrated outstanding leadership and accomplishment in meeting the following selection criteria:

1. Increased the public's understanding of the processes of science and engineering through scientific discovery, innovation, and its communication to the public.

2. Encouraged others to help raise the public understanding of science and technology.

3. Promoted the engagement of scientists and engineers in public outreach and scientific literacy.

4. Contributed to the development of broad science and engineering policy and its support.

5. Influenced and encouraged the next generation of scientists and engineers.

6. Achieved broad recognition outside of the candidate's area of specialization.

7. Fostered awareness of science and technology among broad segments of the population.

Note: Members of the U.S. Government are not eligible for this award.

Nomination Procedures:

Nominations for an individual must include:

1. A current curriculum vita without publications (no more than 3 pages).

2. A narrative statement (no more than 5 pages) addressing the following:

a. The candidate's public service activities in science and engineering, and

b. the candidate's contributions to public understanding of science and engineering, as they relate to the selection criteria.

3. Contact information of candidate and nominator (mailing address, email address, phone number).

Nominations must be submitted by email to: *nsbawards@nsf.gov.*

Nominations for a group must include:

1. A narrative statement (no more than 5 pages) addressing the following:

a. The group's activities, and how it accomplishes the selection criteria for the award,

b. length of years of the program,

c. number and type of individuals served by the group's activities; and

d. data on the success of the program (if available).

2. Contact information of candidate and nominator (mailing address, email address, phone number).

3. Reference letters are optional, and up to 3 letters (no more than to 2 pages each) may be submitted on letterhead as a PDF file.

Nominations must be submitted by email to: *nsbawards@nsf.gov.*

Nominations remain active for three years, including the year of nomination. After that time, candidates must be re-nominated with a new nomination for them to be considered by the selection committee.

Awards Ceremony

Award recipients are presented with a medal and honored at the NSF Annual Awards Ceremony and Dinner in Washington, DC.

• *Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM) Program*

In 1996, the White House, through the National Science and Technology Council (NSTC) and the Office of Science and Technology Policy (OSTP), established the Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM) program. The program, administered on behalf of the White House by the National Science Foundation, seeks to identify outstanding mentoring efforts or programs designed to enhance the participation of groups (women, minorities and persons with disabilities as well as groups from low socioeconomic regions) underrepresented in science, mathematics and engineering. The awardees will serve as exemplars to their colleagues and will be leaders in the national effort to more fully develop the Nation's human resources in science, mathematics and engineering. This award is managed at NSF by the Directorate for Education and Human Resources (EHR).

The award will be made to U.S. citizens or U.S. permanent residents based on the following: (1) An individual who has demonstrated outstanding and sustained mentoring and effective guidance to a significant number of early career STEM professionals, students at the K–12, undergraduate, or graduate education level or (2) to an organization that, through its programming, has enabled a substantial number of students underrepresented in science, mathematics and engineering to successfully pursue and complete the relevant degree programs as well as mentoring of early career STEM professionals. Nominees must have served in a mentoring role for at least five years. Nominations are reviewed for impact, significance of the mentoring activity and quality of the mentoring activity. Nominations for organizational awards must demonstrate rigorous evaluation and/or assessment during the five-year period of the mentoring activity.

Award Ceremony

The awardees are hosted for two days in Washington, DC, for celebratory activities. Recipients of the PAESMEM award receive a monetary award in the amount of $10,000 from NSF and a commemorative Presidential certificate. If scheduling permits, the President meets with the mentors for a photo opportunity at the White House. The Director of OSTP and the Director of

NSF present the awards to the mentors at an awards ceremony.

• *Presidential Award for Excellence in Mathematics and Science Teaching*

The Presidential Award for Excellence in Mathematics and Science Teaching (PAEMST) is the highest recognition that a kindergarten through 12th-grade mathematics or science teacher may receive for outstanding teaching in the United States. Enacted by Congress in 1983, this program authorizes the President to bestow 108 awards, assuming there are qualified applicants. In even-numbered years, nominations are accepted for elementary teachers (grades K–6); in odd-numbered years, secondary teachers (grades 7–12) are nominated. This award is managed at NSF by the Directorate for Education and Human Resources (EHR).

Nomination Criteria

A teacher may be nominated by a principal, another teacher, students, members of the community, or the general public. Self-nominations are allowed. Awardees must be either U.S. Citizens or U.S. Permanent Residents. A Nominee must meet the following criteria to apply:

• Be highly qualified as deemed by their states, districts, or schools;

• Teach in one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the four U.S. territories, including the Department of Defense Schools (DoDEA).

• Hold a degree or appropriate credentials in the category for which they are applying.

• Be a full-time employee of the school or school district.

• Have at least 5 years of mathematics or science teaching (including computer science) experience prior to application.

• Teach mathematics or science at the kindergarten through 6th grade level or at the 7th through 12th grade level in a public or private school.

• Not have received the national PAEMST award in any prior competition or category.

Application Process

• Applicants complete a 12-page written document on five dimensions of outstanding teaching (content knowledge, pedagogy, assessment, leadership and professional development) and submit a video of one class. Three letters of reference including one from a school official are required, along with a resume or biographical sketch.

• The applicant has a 7-month period (October to May) to complete applications and submit them for state review. The nomination period is from October to April.

Review of Nominations

• State coordinators convene state selection committees of prominent mathematicians, scientists, mathematics and science educators, and past awardees to select up to five mathematics and five science finalists for recognition at the state level and for submission to NSF. To ensure consistency, state selection committees review their applications using the same criteria and scoring information that was approved by OSTP.

• NSF (EHR) convenes a National Selection Committee of prominent mathematicians, scientists, mathematics and science educators, and past awardees that review the application packets of the state finalists and make recommendations to NSF. NSF reviews these recommendations and recommends one awardee in both mathematics and science for all eligible jurisdictions, when possible, to OSTP. Alternatively, NSF may recommend two awardees from a discipline in a jurisdiction, when warranted.

Award Ceremony

The awardees are hosted for 3–4 days in Washington, DC, for a variety of professional development sessions and celebratory activities. Each awardee receives a citation signed by the President and $10,000 from NSF. If scheduling permits, the President meets the teachers for a photo opportunity at the White House. The Director of OSTP and the Director of NSF present the citations to the teachers at an awards ceremony. Awardees also have the opportunity to meet their congressional representatives and education representatives from other federal agencies.

Estimate of Burden: These are annual award programs with application deadlines varying according to the program. Public burden also may vary according to program; however, across all the programs, it is estimated that each submission will average 19 hours per respondent. If the nominator is thoroughly familiar with the disciplinary background of the nominee, time spent to complete the nomination may be considerably reduced. See the table below for the burden estimates for each award.

Award	Estimated number of responses	Estimated annual burden hours per response	Total estimated annual burden hours
President's National Medal of Science	80	20	1,600
Alan T. Waterman Award	70	20	1,400
Vannevar Bush Award	20	15	300
Public Service Award	30	15	450
PAESMEM	200	20	4,000
PAEMST	1,000	24	24,000
Totals	1,800		41,350

Respondents: Individuals, businesses or other for-profit organizations, universities, non-profit institutions, and Federal and State governments.

Frequency of Responses: Annually.

Dated: October 27, 2017.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2017–23740 Filed 10–31–17; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2018–14 and CP2018–30; MC2018–15 and CP2018–31; MC2018–16 and CP2018–32; MC2018–17 and CP2018–33]

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 negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 2, 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).:* MC2018–14 and CP2018–30; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 61 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 25, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Timothy J. Schwuchow; *Comments Due:* November 2, 2017.

2. *Docket No(s).:* MC2018–15 and CP2018–31; *Filing Title:* USPS Request to Add Priority Mail Contract 371 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 25, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Timothy J. Schwuchow; *Comments Due:* November 2, 2017.

3. *Docket No(s).:* MC2018–16 and CP2018–32; *Filing Title:* USPS Request to Add Priority Mail Express Contract 52 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 25, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Jennaca D. Upperman; *Comments Due:* November 2, 2017.

4. *Docket No(s).:* MC2018–17 and CP2018–33; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 23 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 25, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Jennaca D. Upperman; *Comments Due:* November 2, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–23705 Filed 10–31–17; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2018–34; CP2018–35]

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 negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 3, 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

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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.

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II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2018–34; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1D Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* October 26, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 3, 2017.

2. *Docket No(s).:* CP2018–35; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* October 26, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 3, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–23758 Filed 10–31–17; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81963; File No. SR–BatsEDGX–2017–41]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect in the Exchange's Governing Documents, Rulebook and Fees Schedules, a Non-Substantive Corporate Branding Change, Including Changes to the Company's Name, the Intermediate's Name, and the Exchange's Name

October 26, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2017, Bats EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 file a proposed rule change with respect to amendments of the Second Amended and Restated Certificate of Incorporation (the ''Company's Certificate'') and Third Amended and Restated Bylaws (the ''Company's Bylaws'') of its parent corporation, CBOE Holdings, Inc. (''CBOE Holdings'' or the ''Company'') to change the name of the Company to Cboe Global Markets, Inc. With respect to CBOE V, LLC, an intermediate Holding Company of the Exchange (the ''Intermediate''), the Exchange proposes to amend the Certificate of Formation and Limited Liability Company Operating Agreement of CBOE V, LLC (the ''Operating Agreement''), in connection with a related name change for the Intermediate. The Exchange also proposes to amend its Second Amended and Restated Certificate of Incorporation (the ''Exchange Certificate''), Seventh Amended and Restated Bylaws of Bats EDGX Exchange, Inc. (the ''Exchange Bylaws''), rulebook and fees schedules (collectively ''operative documents'') in connection with the name change of its parent Company, Intermediate, and the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 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

Background

The purpose of this filing is to reflect in the Exchange's governing documents (and the governing documents of its parent company, CBOE Holdings) and the Exchange's rulebook and fees schedules, a non-substantive corporate branding change, including changes to the Company's name, the Intermediate's name, and the Exchange's name. Particularly, references to Company's, Intermediate's and Exchange's names will be deleted and revised to state the new names, as described more fully below. No other substantive changes are being proposed in this filing. The Exchange represents that these changes are concerned solely with the administration of the Exchange and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons is any way. Accordingly, this filing is being submitted under Rule 19b–4(f)(3). In lieu of providing a copy of the marked name changes, the Exchange represents that it will make the necessary non-substantive revisions described below to the Exchange's corporate governance documents, rulebook, and fees schedules, and post updated versions of each on the Exchange's Web site pursuant to Rule 19b–4(m)(2).

The Company's Name Change

In connection with the corporate name change of its parent company, the Exchange is proposing to amend the Company's Certificate and Bylaws. Specifically, the Company is changing its name from ''CBOE Holdings, Inc.'' to ''Cboe Global Markets, Inc.''.

(a) Company's Certificate

The Exchange proposes to (i) delete the following language from Paragraph (1) of the introductory paragraph: ''The name of the Corporation is CBOE Holdings, Inc.'' and (ii) amend Article First of the Company's Certificate to reflect the new name, ''Cboe Global Markets, Inc.'' The Exchange also proposes to add clarifying language and cite to the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed name change. The Exchange notes that it is not amending the Company's name in the title or signature line as the name changes will not be effective until the Company, as currently named, files the proposed changes in Delaware. Thereafter, the Exchange will amend the Certificate to reflect the new name in the title and signature line. The Exchange also notes that although the name of ''Chicago Board Options Exchange, Incorporated'' is changing to ''Cboe Exchange Inc.'', it is not amending the name of Chicago Board Options Exchange, Incorporated (''CBOE'') referenced in Article Fifth(a)(iii) at this time. Particularly, the Exchange notes that unlike the exception applicable to proposed changes to the Company's name,[3] a vote of stockholders is required to adopt an amendment to the reference of CBOE's name. As such, the Exchange will submit a rule filing to amend the Certificate to reflect the new CBOE name at such time it is ready to obtain stockholder approval.

(b) Company's Bylaws

With respect to the Company's Bylaws, references to ''CBOE Holdings, Inc.'' will be deleted and revised to state ''Cboe Global Markets, Inc.'' The Exchange also proposes to eliminate the reference to ''Chicago Board Options Exchange, Incorporated'' in Article 10, Section 10.2. Particularly, Section 10.2 provides that ''for so long as the Corporation shall control, directly or indirectly, any national securities exchange, including, but not limited to Chicago Board Options Exchange, Incorporated (a ''Regulated Securities Exchange Subsidiary''), before any amendment, alteration or repeal of any provision of the Bylaws shall be effective, such amendment, alteration or repeal shall be submitted to the board of directors of each Regulated Securities Exchange Subsidiary, and if such amendment, alteration or repeal must be filed with or filed with and approved by the Securities and Exchange Commission, then such amendment, alteration or repeal shall not become effective until filed with or filed with and approved by the Securities and Exchange Commission, as the case may be.'' As the Company currently controls a number of Regulated Securities Exchange Subsidiaries, it does not believe it is necessary to explicitly reference only Chicago Board Options Exchange, Incorporated and therefore proposes to delete the following language: ''including, but not limited to Chicago Board Options Exchange, Incorporated''.

The Intermediate's Name Change

For purposes of consistency, certain of the Parent's subsidiaries have also undertaken to change their legal names. As a result, the Exchange also proposes to change the name of the Intermediate from ''CBOE V, LLC'' to ''Cboe Bats, LLC.''

(a) Certificate of Formation

As it relates to the Certificate of Formation of CBOE V, LLC, references to ''CBOE V, LLC'' will be deleted and revised to state its new name ''Cboe Bats, LLC''. The Exchange also proposes to add clarifying and conforming language in order to conform to, as well as cite to, the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed name change. The Exchange notes to conform with the revised language in the introductory paragraph, it also proposes to amend references to ''LLC'' to ''limited liability company''. The Exchange also notes that it is not amending the Intermediate's name in the title or signature line as the name changes will not be effective until the Intermediate, as currently named, files the proposed changes in Delaware.[4] Thereafter, the Exchange will amend the Certificate of Formation to reflect the new name in the title and signature line.

(b) Operating Agreement

As it relates to the Operating Agreement of the Intermediate, references to ''CBOE V, LLC'' will be deleted and revised to state its new name ''Cboe Bats, LLC'' and references to ''CBOE Holdings, Inc.'' will be deleted and revised to state ''Cboe Global Markets, Inc.''. The Exchange also proposes to add clarifying and conforming language in connection with the proposed name change, including new Section 12.5 (''Effect of Amendment''), which provides that the ''Agreement amends, restates and supersedes the Original Agreement in all respects. From and after the date hereof, this Agreement shall be the limited liability company operating agreement of the Company for all purposes.''

The Exchange's Name Change

For purposes of consistency, certain of the Parent's subsidiaries have also undertaken to change their legal names. As a result, the Exchange also proposes to change its name from ''Bats EDGX Exchange, Inc.'' to ''Cboe EDGX Exchange, Inc.'' throughout its rules, fees schedules and corporate documents. Additionally, the Exchange notes that its affiliated exchanges Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, and CBOE Futures Exchange, LLC (collectively the ''affiliates'') have also proposed name changes to Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe Exchange, Inc., Cboe C2 Exchange, Inc. and Cboe Futures Exchange, LLC, respectively. Lastly, the Exchange is changing the name of ''Bats Trading, Inc.'' to ''Cboe Trading, Inc.''

Therefore, the Exchange proposes to amend its: (i) Second Amended and Restated Certificate of Incorporation of Bats EDGX Exchange, Inc., (ii) Seventh Amended and Restated Bylaws of Bats EDGX Exchange, Inc., (iii) Rulebook, (iv) Fee Schedule for EDGX Equities and (v) Fee Schedule for EDGX Options (collectively, the ''Operative Documents'') to reflect the name changes.

(a) Exchange's Certificate

The Exchange proposes to (i) delete the following language from the introductory paragraph: ''The name of the Corporation is Bats EDGX Exchange, Inc.'' and (ii) amend Article First of the Exchange's Certificate to reflect the new name, ''Cboe EDGX Exchange, Inc.''. The Exchange also proposes to add clarifying language and cite to the applicable provisions of the General Corporation Law of the State of

[3] *See* Section 242(b) of the General Corporation Law of the State of Delaware.

[4] The Exchange notes that the current signature block of the Certificate of Formation references ''CBOE Holdings, Inc.'' instead of ''CBOE V, LLC''. The Exchange proposes to correct that reference and refer to ''CBOE V, LLC'', which as noted, will be changed to ''Cboe Bats, LLC'' at a later date.

Delaware in connection with the proposed name change. The Exchange notes that it is not amending the Exchange's name in the title or signature line as the name changes will not be effective until the Exchange, as currently named, files the proposed changes in Delaware. Thereafter, the Exchange will amend the Certificate to reflect the new name in the title and signature line.

(b) Exchange's Bylaws

For the Exchange's Bylaws, all references to ''Bats EDGX Exchange, Inc.'' will be deleted and revised to state ''Cboe EDGX Exchange, Inc.''.

(c) Exchange's Rulebook

For the Rules of Bats EDGX Exchange, Inc., all references to ''Bats EDGX Exchange, Inc.'' will be deleted and revised to state ''Cboe EDGX Exchange, Inc.''. Additionally, the Exchange's affiliates are also filing similar rule filings to change their names, as noted above. As such, all references to ''Bats BYX Exchange, Inc.'', ''Bats EDGA Exchange, Inc.'', ''Bats BZX Exchange, Inc.'', ''C2 Options Exchange, Incorporated'', ''Chicago Board Options Exchange, Incorporated'' [5] and ''CBOE Futures Exchange, LLC'' in the EDGX's rules will likewise be deleted and revised to state ''Cboe BYX Exchange, Inc.'', Cboe EDGA Exchange, Inc.'', ''Cboe BZX Exchange, Inc.'', ''Cboe C2 Exchange, Inc.'', ''Cboe Exchange, Inc.'' and ''Cboe Futures Exchange, LLC'', respectively. The Exchange notes that references to ''CBOE'' will be deleted and revised to state ''Cboe Options''. The Exchange notes that references to ''Bats Exchange'' will be deleted and revised to state ''Cboe Bats Exchange''. Additionally, all references to ''CBOE Holdings, Inc.'' will be deleted and revised to state ''Cboe Global Markets, Inc.''.

The Exchange will also delete references to ''Bats Trading, Inc.'' and ''Bats Trading'' and replace it with references to ''Cboe Trading, Inc.'' and ''Cboe Trading'', respectively. References to ''Bats One'' will be deleted and revised to state ''Cboe One'', all references to ''Bats Connect'' will be deleted and revised to state ''Cboe Connect'', and all references to ''CBOE Livevol, LLC'' will be deleted and revised to state ''Cboe Livevol, LLC''.

(d) Exchange's Fees Schedule

For the EDGX Equities Fee Schedule, any reference to ''Bats EDGX Exchange'' will be deleted and revised to state ''Cboe EDGX Exchange''. Additionally, all references to ''Bats One'' will be deleted and revised to state ''Cboe One'' and all references to ''Bats Connect'' will be deleted and revised to state ''Cboe Connect''.

(e) EDGX Options Fee Schedule

For the EDGX Options Fee Schedule, all references to ''Bats EDGX Options Exchange'' will be deleted and revised to state ''Cboe EDGX Options Exchange'' and all references to ''CBOE'' will be deleted and revised to state ''Cboe Options''. Lastly, all references to ''Bats Connect'' will be deleted and revised to state ''Cboe Connect''.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] 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.

In particular, the proposed change is a non-substantive change and does not impact the governance, ownership or operations of the Exchange. The Exchange believes that by ensuring that its parent company's governance documents and the Exchange's operative documents accurately reflect the new legal names, the proposed rule change would reduce potential investor or market participant confusion.

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 intended to address competitive issues but rather is concerned solely with updating the Company's and Exchange's governance and operative documents to reflect the abovementioned name changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(3) thereunder,[9] the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization, and therefore has become effective.

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–BatsEDGX–2017–41on 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–BatsEDGX–2017–41. This file number should be included on the subject line if email is used. To help the Commission process and review your

[5] The Exchange notes that the EDGX rules refer to ''C2 Options Exchange, Incorporated'' and ''Chicago Board Options Exchange, Incorporated'' as ''C2 Options Exchange, Inc.'' and ''Chicago Board Options Exchange'' in Rules 2.3, 18.7, 18.9, 28.3, 29.5, and 29.7.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(3).

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsEDGX–2017–41 and should be submitted on or before November 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23739 Filed 10–31–17; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32884; 812–14683]

The Relative Value Fund et al.

October 26, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees, early withdrawal charges (''EWCs'') and early repurchase fees.

APPLICANTS: The Relative Value Fund and the Infinity Core Alternative Fund (the ''Initial Funds'') and Vivaldi Asset Management, LLC (the ''Adviser'').

DATES: The application was filed on August 8, 2016 and amended on March 8, 2017 and June 30, 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 November 20, 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: Vivaldi Asset Management, LLC, 225 W. Wacker Drive, Suite 2100, Chicago IL 60606; The Relative Value Fund and the Infinity Core Alternative Fund c/o UMB Fund Services, Inc., 235 West Galena Street, Milwaukee, WI 53212.

FOR FURTHER INFORMATION CONTACT: Rachel Loko, Senior Counsel or Holly Hunter-Ceci, Assistant Chief Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Relative Value Fund is a Delaware statutory trust that is registered under the Act as a non-diversified, closed-end management investment company. The Relative Value Fund's investment objective is long-term capital appreciation. The Relative Value Fund seeks to achieve its investment objective by generating attractive long-term returns with low sensitivity to traditional equity and fixed income indices through a ''multi-manager'' approach implementing strategies including without limitation, global macro, opportunistic equity anf fixed income, systematic and arbitrage strategies that invest in different asset classes, securities and derivatives instruments. The Infinity Core Alternative Fund is a Maryland statutory trust that is registered under the Act as a non-diversified, continuously offered closed-end management investment company. The Infinity Core Alternative Fund's investment objective is long-term capital growth. The Infinity Core Alternative Fund seeks to achieve its investment objective by operating as a ''fund of funds'' that invests primarily in general or limited partnerships, funds, corporations, trusts or other investment vehicles based primarily in the United States that invest or trade in a wide range of securities, and, to a lesser extent, other property and currency interests. The Infinity Core Alternative Fund may also make investments meant to hedge exposures deemed too risky or to invest in strategies not employed by investment funds or to hedge a position in an investment fund that is locked-up or difficult to sell.

2. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940, as amended. The Adviser serves as investment adviser to the Initial Funds.

3. The applicants seek an order to permit the Initial Funds to issue multiple classes of shares and to impose asset-based distribution and/or service fees and EWCs.

4. Applicants request that the order also apply to any continuously offered registered closed-end management investment company that may be organized in the future for which the Adviser, or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,[1] acts as investment adviser and which operates as an interval fund pursuant to rule 23c–3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

Securities Exchange Act of 1934 (''Exchange Act'') (each, a ''Future Fund'' and together with the Initial Funds, the ''Funds'').[2]

5. The Initial Funds are currently making a continuous public offering of beneficial interest in connection with their registration statement. Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange nor quoted on any quotation medium. The Funds do not expect there to be a secondary trading market for their shares.

6. If the requested relief is granted, the Relative Value Fund will offer Advisor Class Shares alongside its current CIA Class Shares and the Infinity Core Alternative Fund will amend its registration statement to continuously offer at least one additional class of shares (the ''New Class Shares'') alongside its currently offered Initial Class Shares. Each of the Adviser Class Shares, the CIA Class Shares, the Initial Class Shares and the New Class Shares will have their own fee and expense structure. The Funds may in the future offer additional classes of shares and/or another sales charges structure. Because of the different distribution fees, services and any other class expenses that may be attributable to the each class of shares, the net income attributable to, and the dividends payable on, each class of shares may differ from each other.

7. Applicants state that, from time to time, the Funds may create additional classes of shares, the terms of which may differ from other share classes in the following respects: (i) The amount of fees permitted by different distribution plans or different service fee arrangements; (ii) voting rights with respect to a distribution plan of a class; (iii) different class designations; (iv) the impact of any class expenses directly attributable to a particular class of shares allocated on a class basis as described in the application; (v) any differences in dividends and net asset value resulting from differences in fees under a distribution or service fee arrangement or in class expenses; (vi) any EWC or other sales load structure; and (vii) exchange or conversion privileges of the classes as permitted under the Act.

8. Applicants state that shares of a Fund may be subject to an early repurchase fee (''Early Repurchase Fee'') at a rate of no greater than 2% of the aggregate net asset value of a shareholder's shares repurchased by the Fund if the interval between the date of purchase of the shares and the valuation date with respect to the repurchase of those shares is less than one year. Any Early Repurchase Fees will apply equally to all classes of shares of a Fund, consistent with section 18 of the Act and rule 18f–3 thereunder. To the extent a Fund determines to waive, impose scheduled variations of, or eliminate any Early Repurchase Fee, it will do so consistently with the requirements of rule 22d–1 under the Act as if the Early Repurchase Fee were a CDSL (defined below) and as if the Fund were an open-end investment company and the Fund's waiver of, scheduled variation in, or elimination of, any such Early Repurchase Fee will apply uniformly to all shareholders of the Fund regardless of class. Applicants state that the Initial Funds do not intend to impose an Early Repurchase Fee.

9. Applicants state that the Relative Value Fund has adopted a fundamental policy to repurchase a specified percentage of its shares at net asset value on a quarterly basis. Such repurchase offers will be conducted pursuant to rule 23c–3 under the Act. The Infinity Core Alternative Fund provides periodic liquidity with respect to its shares pursuant to Rule 13e–4 under the Exchange Act. Each of the Future Funds will likewise adopt fundamental investment policies and make periodic repurchase offers to its shareholders in compliance with rule 23c–3 or will provide periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Exchange Act.[3] Any repurchase offers made by the Funds will be made to all holders of shares of each such Fund.

10. Applicants represent that any asset-based service and/or distribution fees for each class of shares of the Funds will comply with the provisions of the NASD Rule 2830(d) (''NASD Sales Charge Rule'').[4] Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[5] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[6]

11. Each of the Funds will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to the Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

12. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of that Fund attributable to each class, except that the net asset value and expenses of each class will reflect the expenses associated with the distribution plan of that class, service fees attributable to that class (if any), including transfer agency fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

13. Applicants state that each Fund may impose an EWC on shares submitted for repurchase that have been held less than a specified period and may waive the EWC for certain categories of shareholders or transactions to be established from time to time. Applicants state that each Fund will apply the EWC (and any waivers or

[2] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

[3] Applicants submit that rule 23c–3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to Rule 415 under the Securities Act of 1933, as amended.

[4] Any reference to the NASD Sales Charge Rule includes any successor or replacement to the NASD Sales Charge Rule.

[5] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[6] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). See also Rules 12d1–1, *et seq.* of the Act.

scheduled variations, or elimination of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act as if the Funds were open-end investment companies.

14. Each Fund operating as an interval fund pursuant to rule 23c–3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with such Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act, as if the Fund were an open-end investment company subject to rule 11a–3. In complying with rule 11a–3, each Fund will treat an EWC as if it were a contingent deferred sales load (''CDSL'').

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(a)(2) of the Act provides that a closed-end investment company may not issue or sell a senior security that is a stock unless certain requirements are met. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits an ''interval fund'' to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for the Funds to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the EWCs they intend to impose are functionally similar to CDSLs imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–10 permits open-end investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor and state that the same policy considerations support imposition of EWCs in the interval fund context. In addition, applicants state that EWCs may be necessary for the distributor to recover distribution costs. Applicants represent that any EWC imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs.

Asset-Based Distribution and/or Service Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis

different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution and/or service fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution fees.

3. For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution and/or service fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23695 Filed 10–31–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81956; File No. SR–OCC–2017–017]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Liquidity for Same Day Settlement

October 26, 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 October 13, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by the OCC would revise OCC's By-Laws to expand upon existing authority to borrow against the Clearing Fund.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to modify the tools available to OCC in order to provide a mechanism for addressing the risks of liquidity shortfalls, specifically, in the extraordinary situation where OCC faces a liquidity need to meet its same-day settlement obligations as a result of a bank or securities or commodities clearing organization failing to achieve daily settlement.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Proposed Changes

Current Practice

Presently, Article VIII, Section 5(e) of OCC's By-Laws provides OCC with the authority to borrow against the Clearing Fund in two circumstances. First, Article VIII, Section 5(e) of OCC's By-Laws provides OCC the authority to borrow where OCC ''deems it necessary or advisable to borrow or otherwise obtain funds from third parties in order to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise.'' Second, Article VIII, Section 5(e) of OCC's By-Laws provides OCC the authority to borrow against the Clearing Fund where OCC ''sustains a loss reimbursable out of the Clearing Fund pursuant to [Article VIII, Section 5(b) of OCC's By-Laws] but [OCC] elects to borrow or otherwise obtain funds from third parties in lieu of immediately charging such loss to the Clearing Fund.'' In order for a loss to be reimbursable out of the Clearing Fund under Article VIII, Section 5(b) of OCC's By-Laws, it must arise from a situation in which any bank or securities or commodities clearing organization has failed ''to perform any obligation to [OCC] when due because of its bankruptcy, insolvency, receivership, suspension of operations, or because of any similar event.'' [3]

Under either of the two aforementioned circumstances, OCC is authorized to borrow against the Clearing Fund for a period not to exceed 30 days, and during such period, the borrowing shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to Article VIII, Section 5. However, if any part of the borrowing remains outstanding after 30 days, then at the close of business on the 30th day (or the first Business Day thereafter) such amount must be considered an actual loss to the Clearing Fund, and OCC must immediately allocate such loss in accordance with Article VIII, Section 5.

Proposed Change

While Article VIII, Section 5(e) of OCC's By-Laws currently provides for borrowing authority in the more extreme scenarios involving a bank's or securities or commodities clearing

[3] To the extent that a loss resulting from any of the events referred to in Article VIII, Section 5(b) is recoverable out of the Clearing Fund pursuant to Article VIII, Section 5(a), the provisions of Article VIII, Section 5(a) control and render the provisions of Article VIII, Section 5(b) inapplicable.

organization's bankruptcy, insolvency, receivership, suspension of operations or similar event, such authority does not extend to the similar, but less extreme scenarios in which a bank or securities or commodities clearing organization might be temporarily unable to timely make daily settlement with OCC for reasons other than its bankruptcy, insolvency, receivership or suspension of operations or similar events. An example of such a related scenario would be a disruption of the ordinary operations of a settlement bank that temporarily prohibits the bank from timely effecting settlement payments in accordance with OCC's daily settlement cycle.

The proposed rule change would expand upon the existing borrowing authority in Article VIII, Section 5(e) of OCC's By-Laws. As expanded, OCC would be authorized to borrow (or otherwise obtain funds through any means determined to be reasonable by the Executive Chairman, COO or CAO) against the Clearing Fund in the extraordinary event that OCC faces a liquidity need in order to complete same-day settlement. As specified in the proposed rule text, the funds obtained from any such transaction can be used only for their stated purpose, namely, to satisfy a need for liquidity for same-day settlement. Consistent with the existing borrowing authority in Article VIII, Section 5(e) of OCC's By-Laws, OCC would be authorized to borrow against the Clearing Fund for a period not to exceed 30 days, and during such period, the funds obtained would not be deemed to be charges against the Clearing Fund, irrespective of how such funds are applied, and the borrowing shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to Article VIII, Section 5. However, in the unlikely event that any part of the borrowing were to remain outstanding after 30 days, then at the close of business on the 30th day (or the first Business Day thereafter), such amount would be considered an actual loss to the Clearing Fund, and OCC must immediately allocate such loss in accordance with Article VIII, Section 5.

Like the existing borrowing authority in Article VIII, Section 5(e) of OCC's By-Laws, OCC envisions that the proposed expanded authority only would be relevant in extraordinary circumstances and, even then, only would be used where OCC, exercising its discretion, believes the employment of this particular authority would be appropriate to address OCC's immediate liquidity need.

OCC proposes to amend Sections 1(a), 5(b) and 5(e) of Article VIII of its By-Laws in order to give effect to the expanded borrowing authority discussed herein. Section 5(e) of Article VIII of OCC's By-Laws would be amended to permit OCC to borrow against the Clearing Fund if it reasonably believes such borrowing is necessary to meet its liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement.

Section 1(a) of Article VIII of OCC's By-Laws would be amended to include conforming changes that would reflect that the purpose of the Clearing Fund includes borrowing against the Clearing Fund as permitted under Section 5(e) of Article VIII of the By-Laws.

Section 5(b) of Article VIII of the By-Laws would be amended to include conforming changes that would declare that any borrowing remaining outstanding for less than 30 days may be considered, in OCC's discretion, an actual loss and the amount of any such loss then shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time, and any borrowing remaining outstanding on the 30th day shall be considered an actual loss to the Clearing Fund and the amount of any such loss shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time. The OCC proposes to include discretionary authority to declare any borrowing outstanding for less than 30 days as an actual loss chargeable against the Clearing Fund because the proposed borrowing authority is intended only to address same-day liquidity needs, and intended to be promptly repaid upon the bank's or securities or commodities clearing organization's resolution of the temporary disruption. In the unlikely circumstance that a disruption of a bank or securities or commodities clearing organization is not timely resolved, OCC may need to exercise its discretion to declare an actual loss, depending on the size of the borrowing, to ensure that OCC replenishes its ''Cover 1'' financial resources.[4] The requirement to recognize any borrowing outstanding after 30 days as an actual loss chargeable against the Clearing Fund would be consistent with the requirements of the borrowing authority currently permitted by Section 5(e) of Article VIII of the By-Laws.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The proposed rule change is designed to ensure that OCC can continue to promptly settle the securities and derivatives transactions it clears by enhancing the existing tools OCC has to address liquidity shortfalls. Specifically, the proposed rule change would expand the existing borrowing authority in OCC's By-Laws to also authorize borrowing in the extraordinary event that OCC faces a liquidity need in order to complete same day settlement, independent of whether OCC has suffered a loss resulting from the bankruptcy or similar event of a bank or securities or commodities clearing organization.

It is conceivable, though extremely unlikely, that parties may fail to make timely settlement with OCC as the result of an event that does not result in a loss to OCC from the bankruptcy, insolvency, resolution, suspension of operations or similar event of a bank or securities or commodities clearing organization. A hypothetical example of one such event might be a temporary disruption to the ordinary operation of a settlement bank resulting from a technology issue. The issue presents no concern about the bank's creditworthiness (or the creditworthiness of any Clearing Member that has selected such institution as its settlement bank) but the bank's technology issue nonetheless temporarily interferes with the ability of the bank to timely move funds in accordance with OCC's daily settlement cycle. In this hypothetical, the most likely alternative for OCC is to exercise its ability under Rule 505 to extend the settlement window to the close of Fedwire. The proposed rule change would provide OCC with an alternative tool with which to address the type of extraordinary circumstance highlighted by OCC's hypothetical. The proposed rule change would improve OCC's ability to address the situation in the hypothetical example because use of the proposed expanded borrowing authority would enable OCC to borrow against the Clearing Fund in order to avoid

[4] ''Cover 1'' financial resources refers to the requirement that a CCA maintains financial resources sufficient to enable it to cover the ''default of the participant family that would potentially cause the largest aggregate credit exposure for the [CCA] in extreme but plausible market conditions.'' 17 CFR 240.17Ad–22(e)(7)(viii).

[5] 15 U.S.C. 78q–1(b)(3)(F).

disrupting its ordinary settlement cycle (and thusly, to avoid imposing the same disruption on Clearing Members), thereby avoiding the need to extend the settlement window and allowing OCC to settle transactions in a more timely fashion. In this regard, OCC believes the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, in accordance with the requirements of Section 17A(b)(3)(F) of the Act.[6]

Additionally, Rule 17Ad–22(e)(7)(viii) requires that a covered clearing agency (''CCA'') address foreseeable liquidity shortfalls that would not be covered by the CCA's liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.[7] As stated above, OCC believes that it could be foreseeable, though extremely unlikely, that a bank or securities or commodities clearing organization may fail to make timely settlement with OCC as the result of an event that does not result in a loss to OCC from the bankruptcy, insolvency, resolution, suspension of operations or similar event of such bank or securities or commodities clearing organization. The proposed rule change would improve OCC's ability to address such situations by expanding OCC's borrowing authority to enable OCC to borrow against the Clearing Fund in order to avoid disrupting its ordinary settlement cycle (and thusly, to avoid imposing the same disruption on Clearing Members).

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act[8] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe the proposed rule change would have any impact or impose any burden on competition. The primary purpose of the proposed rule change is to enhance the existing tools OCC has to address liquidity shortfalls by expanding the existing borrowing authority in OCC's By-Laws to also authorize borrowing in the extraordinary event that OCC faces a liquidity need in order to complete same day settlement. The proposed rule change would apply equally to all Clearing Members and would not affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user. As such, OCC believes that the proposed changes would not have any impact or impose any burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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 Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2017–017 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–OCC–2017–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_017.pdf.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2017–017 and should be submitted on or before November 22, 2017.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23736 Filed 10–31–17; 8:45 am]

BILLING CODE 8011–01–P

[6] *Id.*

[7] 17 CFR 240.17Ad–22(e)(7)(viii).

[8] 15 U.S.C. 78q–1(b)(3)(I).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81950; File No. SR–BatsBZX–2017–71]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Rule 21.1 To Adopt a New Time in Force Applicable to the Exchange's Equity Options Platform

October 26, 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 October 20, 2017, Cboe BZX Exchange, Inc. (the ''Exchange'') (formerly known as Bats BZX Exchange, Inc.) filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to update Rule 21.1 to adopt a new Time in Force applicable to the Exchange's equity options platform (''BZX Options'').

The text of the proposed rule change is available at the Exchange's Web site at *www.markets.cboe.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

In 2016, the Exchange and its affiliates Bats BYX Exchange, Inc. (now known as Cboe BYX Exchange, Inc.) (''BYX''), Bats EDGA Exchange, Inc. (now known as Cboe EDGA Exchange, Inc.) (''EDGA''), and Bats EDGX Exchange, Inc. (now known as Cboe EDGX Exchange, Inc.) (''EDGX'') received approval to affect a merger (the ''Merger'') of the Exchange's indirect parent company, Bats Global Markets, Inc. (''BGM''), with CBOE Holdings, Inc. (now known as Cboe Global Markets, Inc.) (''CBOE Holdings''), the direct parent of Chicago Board Options Exchange, Incorporated (now known as Cboe Exchange, Inc.) (''Cboe Options'') and C2 Options Exchange, Incorporated (now known as Cboe C2 Exchange, Inc.) (''C2 Options'', and together with the Exchange, BYX, EDGA, EDGX, and Cboe Options the ''Cboe Affiliated Exchanges'').[5] The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. In the context of such migration, the Exchange is working to align its systems to offer certain features currently offered by Cboe Options and C2 Options as well as striving to maintain consistent technology with the options platform operated by EDGX (''EDGX Options''). Although the Exchange intentionally offers certain features that differ from those offered by its affiliates and will continue to do so, the Exchange believes that offering similar functionality to the extent practicable will reduce potential confusion for Users.

The Exchange proposes to amend Exchange Rule 21.1, Definitions, to add a new Time in Force, namely the time in force of ''At the Open'' or ''OPG''.

As proposed, ''At the Open'' or ''OPG'' shall mean, for an order so designated, an order that shall only participate in the opening process on the Exchange. An OPG order not executed in the opening process will be cancelled. The Exchange's affiliate, EDGX Options, recently received approval of various rule changes, including the adoption of a Time in Force of OPG that is identical to the Exchange's proposed rule.[6] The Exchange notes that other options exchanges also offer Times in Force that, similar to OPG, limit an order to participating in an exchange's opening process.[7]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, consistent rules and functionality between the Exchange and its affiliated exchanges will reduce complexity and help avoid potential confusion by the Users of the Exchange that are also participants on other Cboe Affiliated Exchanges.

The Exchange believes the proposed amendment will reduce complexity and increase the understanding of the Exchange's operations for all Users of the Exchange. In particular, by offering the same Times in Force as EDGX Options, the Exchange will avoid confusion from market participants that participate on both the Exchange and EDGX Options. In turn, when Cboe Options and C2 Options are migrated to the same technology as that of the Exchange, Users of the Exchange and other Cboe Affiliated Exchanges will have access to similar functionality on all Cboe Affiliated Exchanges. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 Exchange notes that the proposal will promote consistency between the Exchange and its affiliated exchanges, and is part of a larger technology integration that will ultimately reduce complexity for Users of the Exchange that are also participants on other Cboe Affiliated Exchanges. The Exchange does not believe that the proposed changes will have any direct impact on competition. Thus, the Exchange does not believe that the proposal creates any significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 79585 (December 16, 2016), 81 FR 93988 (December 22, 2016) (SR–BatsBZX–2016–68; SR–BatsBYX–2016–29; SR–BatsEDGA–2016–24; SR–BatsEDGX–2016–60).

[6] See Securities Exchange Act Release No. 81891 (October 17, 2017) (SR–Bats–EDGX–2017–29).

[7] *See, e.g.,* C2 Rule 6.10(c)(7); ISE Rule 715(o).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [12] 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 the proposed rule change is based on EDGX Rule 21.1(f)(6) and is identical to such rule. Thus, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public because the proposal does not present any new or novel issues that have not been previously considered by the Commission. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[13]

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.

[10] 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.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 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).

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–2017–71 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–2017–71. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2017–71 and should be submitted on or before November 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81955; File No. SR–OCC–2017–010]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Related to The Options Clearing Corporation's Default Management Policy

October 26, 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 October 12, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by The Options Clearing Corporation (''OCC'') would formalize and update OCC's Default Management Policy, which would promote compliance with multiple requirements applicable to OCC under Rule 17Ad–22, including Rules 17Ad–22(e)(4)(ix) (Replenishment of Resources) and (e)(13) (Default Management).[3] The Default Management Policy is included as confidential Exhibit 5.[4]

The proposed rule change does not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.17Ad–22(e)(4)(ix) and (e)(13).

[4] The Commission notes that Exhibit 5 is included in the filing, not in this Notice.

[5] OCC's By-Laws and Rules can be found on OCC's public Web site: *http://optionsclearing.com/about/publications/bylaws.jsp.*

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Background

On September 28, 2016, the Commission adopted amendments to Rule 17Ad–22 [6] and added new Rule 17Ab2–2 [7] pursuant to Section 17A of the Securities Exchange Act of 1934, as amended, (''Act'') [8] and the Payment, Clearing, and Settlement Supervision Act of 2010 (''Payment, Clearing and Settlement Supervision Act'') [9] to establish enhanced standards for the operation and governance of those clearing agencies registered with the Commission that meet the definition of a ''covered clearing agency,'' as defined by Rule 17Ad–22(a)(5) [10] (collectively, the new and amended rules are herein referred to as the ''CCA'' rules). OCC meets the definition of a covered clearing agency and is therefore subject to the requirements of the CCA rules.[11]

Relevance of OCC's Default Management Policy to Rules 17Ad–22(e)(4)(ix) and (e)(13)

Certain of the CCA rules relate to matters that, as described below, are addressed by OCC's Default Management Policy (''DM Policy''). Specifically, Rules 17Ad–22(e)(4)(ix) and (e)(13) respectively require OCC to, among other things, establish, implement, maintain, and enforce written policies and procedures reasonably designed to: (i) Effectively identify, measure, and manage its credit exposures to participants and those arising from its payment, clearing and settlement processes, including by ''describing [OCC's] process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated'' [12] and (ii) ensure that OCC ''has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring [OCC's] participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedure, at least annually and following material changes thereto.'' [13] OCC believes that the DM Policy promotes compliance with these requirements under Rules 17Ad–22(e)(4)(ix) and (e)(13), and an overview of the DM Policy is provided below.

Default Management Policy

OCC proposes to formalize its DM Policy, which would apply in the event of a default by a Clearing Member, settlement bank or a financial market utility with which OCC has a relationship (''FMU'').[14] The purpose of the policy is to outline OCC's default management framework and describe the default management steps that OCC has authority to take depending upon the facts and circumstances of a default. The DM Policy focuses on Clearing Member default, which OCC believes is appropriate because Clearing Member default represents a substantial part of the overall default risk that is posed to OCC in connection with its central counterparty clearing services.[15]

OCC notes that the DM Policy is part of a broader framework used by OCC to manage the default of a Clearing Member, settlement bank or FMU, including OCC's By-Laws, Rules, and other policies and procedures. The broader framework is designed to collectively ensure that OCC would appropriately manage any such default consistent with OCC's obligations as a covered clearing agency, including under Rule 17Ad–22.[16]

The DM Policy describes the authority of OCC's Board of Directors (''Board'') or a Designated Officer [17] to summarily suspend a Clearing Member pursuant to OCC Rule 1102(a) in the event the Clearing Member defaults. The DM Policy further provides that, pursuant to OCC Rule 707, OCC may suspend a Clearing Member that participates in a cross-margining program in the event of a default regarding its cross-margining accounts. Upon any suspension of a Clearing Member, the DM Policy states that OCC would immediately notify a number of parties, including the suspended Clearing Member, regulatory authorities, participant and other exchanges (as applicable) in which the suspended Clearing Member is a common member, other Clearing Members,[18] and OCC's Board.[19]

In the event of a Clearing Member suspension, the DM Policy provides that OCC's Financial Risk Management department (''FRM'') shall prepare an exposure summary report to be provided to OCC's Management Committee detailing, among other things, the open obligations of the suspended Clearing Member, collateral deposited by the Clearing Member, obligations to other FMUs and a summary of related entity exposure. The report summarizes the net settlement obligation of the suspended Clearing Member at the time of default. The DM Policy further provides that a recommendation as to any liquidity needs requiring a draw on OCC's credit facilities would be provided to OCC's Management Committee and subsequently be authorized, as applicable, by the Executive Chairman, CAO, or COO, as provided for in Article VIII, Section 5 of the By-Laws. These practices ensure that OCC's Management Committee remains properly informed and can make

[6] Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (''CCA Adopting Release''); *see also* 17 CFR 240.17Ad–22.

[7] 17 CFR 240.17Ab2–2.

[8] 15 U.S.C. 78q–1.

[9] 12 U.S.C. 5461 *et. seq.*

[10] 17 CFR 240.17Ad–22(a)(5).

[11] *Id.*

[12] 17 CFR 240.17Ad–22(e)(4)(ix).

[13] 17 CFR 240.17Ad–22(e)(13).

[14] Examples of such FMUs contemplated by the DM Policy are the following securities or commodities clearing organizations: The Depository Trust Company, National Securities Clearing Corporation, and the Chicago Mercantile Exchange. In an event of default by one of these securities or commodities clearing organizations, or by a settlement bank, OCC has authority under certain conditions pursuant to Article VIII, Section 1.(a)(vii) and 5.(b) of the By-Laws to manage the default using Clearing Member contributions to the Clearing Fund.

[15] For purposes of the DM Policy, references to a Clearing Member suspension or default contemplate the circumstances specified in OCC Rule 1102, which constitute events of ''default'' under Interpretation and Policy .01 to the Rule.

[16] In this regard, the DM Policy provides that OCC publishes key aspects of its default management Rules and procedures on its Web site. The summary is *available at https://www.theocc.com/risk-management/default-rules/.*

[17] For this purpose, the term Designated Officer includes the Executive Chairman, Chief Administrative Officer (''CAO''), Chief Operating Officer (''COO''), Chief Risk Officer (''CRO'') and Executive Vice President—Financial Risk Management (''EVP–FRM'').

[18] OCC Rule 1103 requires OCC to notify all Clearing Members of the suspension as soon as possible.

[19] With respect to pending transactions of a suspended Clearing Member, the DM Policy provides that these will be handled pursuant to OCC Rule 1105, provided that OCC has no obligation to accept the trades effected by a suspended Clearing Member post-suspension.

appropriate decisions in the default management process.

The DM Policy describes OCC's existing authority under OCC Rule 505 to extend the time for OCC's settlement obligations (*i.e.,* payment obligations owed by OCC to Clearing Members). The DM Policy notes that any such determination to extend the settlement time and the reasons thereof will be promptly reported by OCC to the Commission and the Commodity Futures Trading Commission (''CFTC''), however, the effectiveness of the extension is not be conditioned upon such reporting. The DM Policy notes that such an extension may be necessary as a result of a Clearing Member default or a failure of a Clearing Member's settlement bank.

To address situations in which a Clearing Member's settlement bank fails or experiences an operational outage that prevents the Clearing Member from meeting its settlement obligations to OCC, the DM Policy provides that OCC requires each Clearing Member to maintain procedures detailing how it would meet its settlement obligations in such an event. The DM Policy further provides that a Designated Officer would determine whether to enact these alternate settlement procedures in the event that a Clearing Member's settlement bank is unable to perform.

The DM Policy sets forth the sequence or ''waterfall'' of financial resources that OCC may use to meet its obligations in the event of a Clearing Member suspension to provide certainty regarding the order in which these resources would be applied. Specifically, the DM Policy describes that OCC is able to use the following financial resources: (i) Margin deposits of the suspended Clearing Member; (ii) deposits in lieu of margin of the suspended Clearing Member; [20] (iii) Clearing Fund deposits of the suspended Clearing Member; (iv) Clearing Fund deposits of non-defaulting Clearing Members; (v) Clearing Fund assessments against Clearing Members; and (vi) the current or retained earnings of OCC, subject to the unanimous approval of certain OCC shareholders.[21]

In the case of a suspended Clearing Member, the DM Policy outlines the means by which OCC may determine close out positions and collateral of the suspended Clearing Member pursuant to OCC's Rules, including certain provisions under Chapter XI of the Rules. Based upon recommendations from OCC's risk staff, the EVP–FRM may take any one, or any combination, of the following actions pursuant to the terms of OCC's By-Laws and Rules: (i) Net the suspended Clearing Member's positions by offset; (ii) effect market transactions to close out open short positions, long positions, and collateral; (iii) transfer the positions and related collateral to a non-suspended Clearing Member; (iv) effect hedging transactions to reduce the risk to OCC of open positions; (v) conduct a private auction of the positions and collateral of the suspended Clearing Member; (vi) exercise unsegregated and segregated long options; (vii) set cash settlement values or perform buy-in or sell-out processes; and (viii) defer close-out, as may be authorized by certain officers of OCC.[22]

In addition, the DM Policy specifies that OCC risk staff will develop a Close-out Action Plan (''CAP'') and present it to the EVP–FRM for approval. The DM Policy provides that upon approval of the CAP by the EVP–FRM, FRM and other designated business OCC business units and personnel will be responsible for its execution. The DM Policy also provides that OCC's legal department would advise OCC's Management Committee on OCC's authority to execute the proposed CAP and describe the responsibilities for the execution, monitoring and reporting of the CAP and escalation of issues to OCC's Management Committee. The CAP process is designed to ensure that OCC has an appropriate process in place to analyze its exposures, take into consideration current and expected market conditions, and evaluate the tools and resources available to deal with those exposures under the circumstances so that OCC can appropriately manage any default in a manner that would protect Clearing Members, investors, the public interest, and the markets that OCC serves.

The DM Policy provides that OCC would generally liquidate all positions and collateral of a suspended Clearing Member, and the proceeds would be attributed to the account type from which they originated. It also specifies that as a registered clearing agency with the Commission and a registered derivatives clearing organization with the CFTC, OCC is required to comply with regulatory requirements to safeguard customer assets.

In the event of a default, OCC would immediately demand any pledged collateral of the suspended Clearing Member from custodian(s) to ensure those resources are available for default management purposes. For example, the DM Policy provides that, among other things, cash and proceeds from any liquidated collateral or demand of payment on a letter of credit would be placed in the appropriate liquidating settlement account, pursuant to OCC Rule 1104. The DM Policy further provides that all pledged valued margin collateral will be moved by the Collateral Services Department into an OCC account and may be transferred to an auction recipient, delivered to a liquidating agent or delivered to a liquidating settlement account. In the case of deposits in lieu of margin, however, the DM Policy states that OCC would only demand such collateral to meet obligations arising from the assignment of a related contract.

After the close-out of the suspended Clearing Member is completed, the DM Policy describes that the Executive Chairman, CAO, or COO would determine whether, consistent with Article VIII, Section 5(a) of OCC's By-Laws, an assessment must be made against the Clearing Fund in connection with the liquidation. In the event of a shortfall whereby the close-out of the suspended Clearing Member does not result in enough resources to cover its obligations, the DM Policy states that each Clearing Member, consistent with Article VIII, Section 6 of OCC's By-Laws, may be assessed an additional amount equal to the amount of its initial Clearing Fund deposit, as determined by the Executive Chairman, CAO, or COO. The DM Policy notes that any such assessment decision would be communicated via email in accordance with the procedure covering the assessment process. The DM Policy also specifies that a Clearing Member is liable for further assessments until the balance of OCC's losses are covered or the Clearing Member has withdrawn from membership as set forth in Article VIII, Sections 6 and 7 of OCC's By-Laws.

The DM Policy provides that, on at least an annual basis, OCC's default management working group will provide OCC's Management Committee with recommended areas for testing, including close-out procedures, and that the Management Committee is responsible for reviewing and ultimately

[20] See Rule 610(f) and (g).

[21] *See* OCC By-Law Article VIII, Section 5(d). In lieu of charging a loss or deficiency proportionately to the computed Clearing Fund contributions of non-defaulting Clearing Members, OCC may charge the loss or deficiency to current or retained earnings. This same discretion applies in connection with any loss by reason of the failure of a bank or securities or commodities clearing organization to perform an obligation to OCC.

[22] The DM Policy also provides that any determination to defer close-out or hedging transactions under the CAP would be reported to the Board and/or the Risk Committee, as required under OCC Rules 1106.

approving the overall test plan.[23] In addition, the DM Policy specifies that the default management working group maintains the authority to approve individual test plans and overall plan changes, but that any changes to the overall plan would be reported to and reviewed by OCC's Management Committee. The DM Policy further provides that testing is recommended and performed more frequently than annually if a material change is made to OCC's default management procedures or if it is deemed necessary by OCC's default management working group. These provisions are designed to ensure that OCC maintains policies and procedures reasonably designed to satisfy the requirements of Rule 17Ad–22(e)(13)[24] relating to the testing and review of its default procedures.

In addition, the DM Policy outlines the execution of the testing plan and the review of the results of the testing plan, including the production of annual reports to OCC's Management Committee and Risk Committee regarding the results of OCC's default tests to provide appropriate oversight over the default testing process.

(2) Statutory Basis

Section 17A(b)(3)(F) of the Act[25] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and, in general, protect investors and the public interest. The DM Policy focuses on the processes that OCC would use to take timely action to contain losses and liquidity demands in an event of default by a Clearing Member, such as closing out open positions and collateral of a defaulted Clearing Member, using alternate settlement bank procedures or relying on Clearing Fund contributions of Clearing Members under certain conditions. In this regard, the DM Policy is designed to ensure that OCC can maintain its resilience in the event of a default, thereby enabling OCC to continue to provide its clearance and settlement services to the public in such circumstances. Accordingly, OCC believes that the DM Policy is designed to (i) protect investors and the public interest, and (ii) promote the prompt and accurate clearance and settlement of securities transactions in a manner consistent with Section 17A(b)(3)(F) of the Act.[26]

Rules 17Ad–22(e)(4)(ix) and (e)(13) respectively require a covered clearing agency to, among other things, establish, implement, maintain, and enforce written policies and procedures reasonably designed to: (i) Effectively identify, measure, and manage its credit exposures to participants and those arising from its payment, clearing and settlement processes, including by describing its process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated[27] and (ii) ensure that it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring its participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedure, at least annually and following material changes thereto.[28] OCC believes that the proposed rule change is consistent with Rule 17Ad–22(e)(13)[29] because the DM Policy, among other things, sets forth OCC's authority and operational capabilities to take timely action to contain losses and liquidity demands and continue to meet its obligations. For example, the DM Policy sets forth the procedures by which OCC would suspend a Clearing Member as well as the waterfall of financial resources that OCC would use to contain losses arising from the Clearing Member's default. The DM Policy also sets forth, among other things, the various means by which OCC may close-out the positions of a suspended Clearing Member and the process it uses to make such determinations, which OCC believes helps ensure that OCC has sufficient operational capacity take timely action to contain losses and liquidity demands and continue to meet its obligations consistent with Rule 17Ad–22(e)(13).[30] In addition, OCC believes that the DM Policy is consistent with the testing requirement in Rule 17Ad–22(e)(13)[31] because the DM Policy sets forth OCC's processes for managing annual testing, or more frequent testing following a change to OCC's default management procedures.

OCC also believes that the DM Policy is consistent with Rule 17Ad–22(e)(4)(ix)[32] because the DM Policy describes the process by which OCC may initiate a Clearing Fund assessment to replenish financial resources that may be used following a default and attendant suspension of a Clearing Member. Specifically, the DM Policy provides that where the liquidation of a suspended Clearing Member results in a shortfall, certain officers of OCC may require that all Clearing Members be assessed an additional amount equal to the amount of their respective Clearing Fund deposits, consistent with OCC's By-Laws, and that a Clearing Member is liable for further assessments until the balance of OCC's losses are covered or the Clearing Member has withdrawn from membership as set forth in OCC's By-Laws. In addition, the DM Policy also provides that, pursuant to the waterfall of financial resources used in the event of a Clearing Member suspension, OCC could use current or retained earnings, consistent with OCC's By-Laws, to continue meeting its financial obligations.

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act[33] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition. As a general matter, the DM Policy describes the processes OCC would follow in a default that are already set forth in OCC's approved By-Laws and Rules. More specifically, the proposed rule change sets forth in a single document the framework OCC would use to manage the default primarily of a Clearing Member, as well as the default of a settlement bank or FMU. Because any individual Clearing Member, settlement bank, or FMU under the DM Policy is equally subject to the aspects of OCC's default management framework that apply to it, the proposed rule change would not provide any such entity with a competitive advantage over any other similar entity. OCC notes that, in managing any potential default, OCC focuses on the risk posed to OCC by such default. Accordingly, to the extent, for example, that OCC were to close-out the open positions of one suspended

[23] The DM Policy also provides that Clearing Members are required to participate in default management testing pursuant to OCC Rules 218(c) and (d). *See* Securities Exchange Act Release No. 80372 (April 4, 2017), 82 FR 17311 (April 10, 2017) (SR–OCC–2017–003).

[24] 17 CFR 240.17Ad–22(e)(13).

[25] 15 U.S.C. 78q–1(b)(3)(F).

[26] *Id.*

[27] 17 CFR 240.17Ad–22(e)(4)(ix).

[28] 17 CFR 240.17Ad–22(e)(13).

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] 17 CFR 240.17Ad–22(e)(4)(ix).

[33] 15 U.S.C. 78q–1(b)(3)(I).

Clearing Member in a different manner than it were to close-out the open positions of another Clearing Member, such differences result from the risks posed to OCC by each Clearing Member's respective positions. Moreover, the treatment of customer versus proprietary positions in a default scenario are not specifically addressed in the DM Policy, which as noted sets forth a general framework for managing defaults, but rather in OCC's existing By-Laws and Rules. Further, the proposed rule change would not affect Clearing Members' access to OCC's services or impose any direct burdens on Clearing Members.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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–OCC–2017–010 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–OCC–2017–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_010.pdf.*

All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2017–010 and should be submitted on or before November 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated Authority.[34]

Eduardo A. Aleman,

Assistant Secretary.

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[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81962; File No. SR–BatsBZX–2017–70]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect in the Exchange's Governing Documents, Rulebook and Fees Schedules, a Non-Substantive Corporate Branding Change, Including Changes to the Company's Name, the Intermediate's Name, and the Exchange's Name

October 26, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2017, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I 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 filed a proposed rule change with respect to amendments of the Second Amended and Restated Certificate of Incorporation (the ''Company's Certificate'') and Third Amended and Restated Bylaws (the '' Company's Bylaws'') of its parent corporation, CBOE Holdings, Inc. (''CBOE Holdings'' or the ''Company'') to change the name of the Company to Cboe Global Markets, Inc. With respect to CBOE V, LLC, an intermediate Holding Company of the Exchange (the ''Intermediate''), the Exchange proposes to amend the Certificate of Formation and Limited Liability Company Operating Agreement of CBOE V, LLC (the ''Operating Agreement''), in connection with a related name change for the Intermediate. The Exchange also proposes to amend its Amended and Restated Certificate of Incorporation (the ''Exchange Certificate''), Sixth Amended and Restated Bylaws of Bats BZX Exchange, Inc. (the ''Exchange Bylaws''), rulebook and fees schedules (collectively ''operative documents'') in connection with the name change of its parent Company, Intermediate, and the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 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

Background

The purpose of this filing is to reflect in the Exchange's governing documents (and the governing documents of its parent company, CBOE Holdings) and the Exchange's rulebook and fees schedules, a non-substantive corporate branding change, including changes to the Company's name, the Intermediate's name, and the Exchange's name. Particularly, references to Company's, Intermediate's and Exchange's names will be deleted and revised to state the new names, as described more fully below. No other substantive changes are being proposed in this filing. The Exchange represents that these changes are concerned solely with the administration of the Exchange and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons is any way. Accordingly, this filing is being submitted under Rule 19b–4(f)(3). In lieu of providing a copy of the marked name changes, the Exchange represents that it will make the necessary non-substantive revisions described below to the Exchange's corporate governance documents, rulebook, and fees schedules, and post updated versions of each on the Exchange's Web site pursuant to Rule 19b–4(m)(2).

The Company's Name Change

In connection with the corporate name change of its parent company, the Exchange is proposing to amend the Company's Certificate and Bylaws. Specifically, the Company is changing its name from ''CBOE Holdings, Inc.'' to ''Cboe Global Markets, Inc.''.

(a) Company's Certificate

The Exchange proposes to (i) delete the following language from Paragraph (1) of the introductory paragraph: ''The name of the Corporation is CBOE Holdings, Inc.'' and (ii) amend Article First of the Company's Certificate to reflect the new name, ''Cboe Global Markets, Inc.'' The Exchange also proposes to add clarifying language and cite to the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed name change. The Exchange notes that it is not amending the Company's name in the title or signature line as the name changes will not be effective until the Company, as currently named, files the proposed changes in Delaware. Thereafter, the Exchange will amend the Certificate to reflect the new name in the title and signature line. The Exchange also notes that although the name of ''Chicago Board Options Exchange, Incorporated'' is changing to ''Cboe Exchange Inc.'', it is not amending the name of Chicago Board Options Exchange, Incorporated (''CBOE'') referenced in Article Fifth(a)(iii) at this time. Particularly, the Exchange notes that unlike the exception applicable to proposed changes to the Company's name,[3] a vote of stockholders is required to adopt an amendment to the reference of CBOE's name. As such, the Exchange will submit a rule filing to amend the Certificate to reflect the new CBOE name at such time it is ready to obtain stockholder approval.

(b) Company's Bylaws

With respect to the Company's Bylaws, references to ''CBOE Holdings, Inc.'' will be deleted and revised to state ''Cboe Global Markets, Inc.'' The Exchange also proposes to eliminate the reference to ''Chicago Board Options Exchange, Incorporated'' in Article 10, Section 10.2. Particularly, Section 10.2 provides that ''for so long as the Corporation shall control, directly or indirectly, any national securities exchange, including, but not limited to Chicago Board Options Exchange, Incorporated (a ''Regulated Securities Exchange Subsidiary''), before any amendment, alteration or repeal of any provision of the Bylaws shall be effective, such amendment, alteration or repeal shall be submitted to the board of directors of each Regulated Securities Exchange Subsidiary, and if such amendment, alteration or repeal must be filed with or filed with and approved by the Securities and Exchange Commission, then such amendment, alteration or repeal shall not become effective until filed with or filed with and approved by the Securities and Exchange Commission, as the case may be.'' As the Company currently controls a number of Regulated Securities Exchange Subsidiaries, it does not believe it is necessary to explicitly reference only Chicago Board Options Exchange, Incorporated and therefore proposes to delete the following language: ''including, but not limited to Chicago Board Options Exchange, Incorporated''.

The Intermediate's Name Change

For purposes of consistency, certain of the Parent's subsidiaries have also undertaken to change their legal names. As a result, the Exchange also proposes to change the name of the Intermediate from ''CBOE V, LLC'' to ''Cboe Bats, LLC.''

(a) Certificate of Formation

As it relates to the Certificate of Formation of CBOE V, LLC, references to ''CBOE V, LLC'' will be deleted and revised to state its new name ''Cboe Bats, LLC''. The Exchange also proposes to add clarifying and conforming language in order to conform to, as well as cite to, the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed name change. The Exchange notes to conform with the revised language in the introductory paragraph, it also proposes to amend references to ''LLC'' to ''limited liability company''. The Exchange also notes that it is not amending the Intermediate's name in the title or signature line as the name changes will not be effective until the Intermediate, as currently named, files the proposed changes in Delaware.[4] Thereafter, the Exchange will amend the Certificate of Formation to reflect the new name in the title and signature line.

(b) Operating Agreement

As it relates to the Operating Agreement of the Intermediate,

[3] *See* Section 242(b) of the General Corporation Law of the State of Delaware.

[4] The Exchange notes that the current signature block of the Certificate of Formation references ''CBOE Holdings, Inc.'' instead of ''CBOE V, LLC''. The Exchange proposes to correct that reference and refer to ''CBOE V, LLC'', which as noted, will be changed to ''Cboe Bats, LLC'' at a later date.

references to ''CBOE V, LLC'' will be deleted and revised to state its new name ''Cboe Bats, LLC'' and references to ''CBOE Holdings, Inc.'' will be deleted and revised to state ''Cboe Global Markets, Inc.''. The Exchange also proposes to add clarifying and conforming language in connection with the proposed name change, including new Section 12.5 (''Effect of Amendment''), which provides that the ''Agreement amends, restates and supersedes the Original Agreement in all respects. From and after the date hereof, this Agreement shall be the limited liability company operating agreement of the Company for all purposes.''

The Exchange's Name Change

For purposes of consistency, certain of the Parent's subsidiaries have also undertaken to change their legal names. As a result, the Exchange also proposes to change its name from ''Bats BZX Exchange, Inc.'' to ''Cboe BZX Exchange, Inc.'' throughout its rules, fees schedules and corporate documents. Additionally, the Exchange notes that its affiliated exchanges Bats BYX Exchange, Inc., Bats EDGX Exchange, Inc., Bats EDGA Exchange, Inc., Chicago Board Options Exchange, Incorporated and C2 Options Exchange, Incorporated (collectively the ''affiliates'') have also proposed name changes to Cboe BYX Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe Exchange, Inc. and Cboe C2 Exchange, Inc., respectively. Lastly, the Exchange is changing the name of ''Bats Trading, Inc.'' to ''Cboe Trading, Inc.''

Therefore, the Exchange proposes to amend its: (i) Amended and Restated Certificate of Incorporation of Bats BZX Exchange, Inc., (ii) Sixth Amended and Restated Bylaws of Bats BZX Exchange, Inc., (iii) Rulebook and (iv) Exchange Fee Schedules (collectively, the ''Operative Documents'') to reflect the name changes.

(a) Exchange's Certificate

The Exchange proposes to (i) delete the following language from the introductory paragraph: ''The name of the Corporation is Bats BZX Exchange, Inc.'' and (ii) amend Article First of the Exchange's Certificate to reflect the new name, ''Cboe BZX Exchange, Inc.''. The Exchange also proposes to add clarifying language and cite to the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed name change. The Exchange notes that it is not amending the Exchange's name in the title or signature line as the name changes will not be effective until the Exchange, as currently named, files the proposed changes in Delaware. Thereafter, the Exchange will amend the Certificate to reflect the new name in the title and signature line.

(b) Exchange's Bylaws

For the Exchange's Bylaws, all references to ''Bats BZX Exchange, Inc.'' will be deleted and revised to state ''Cboe BZX Exchange, Inc.''.

(c) Exchange's Rulebook

For the Rules of Bats BZX Exchange, Inc., all references to ''Bats BZX Exchange, Inc.'' and ''Bats BZX Exchange'' will be deleted and revised to state ''Cboe BZX Exchange, Inc.'' and ''Cboe BZX Exchange'', respectively. All references to ''Bats BZX Options'' will be deleted and revised to state ''Cboe BZX Options''. Additionally, the Exchange's affiliates are also filing similar rule filings to change their names, as noted above. As such, all references to ''Bats BYX Exchange, Inc.'', ''Bats EDGA Exchange, Inc.'', ''Bats EDGX Exchange, Inc.'', ''C2 Options Exchange, Inc.'' and ''Chicago Board Options Exchange'' [5] in the BZX's rules will likewise be deleted and revised to state ''Cboe BYX Exchange, Inc.'', Cboe EDGA Exchange, Inc.'' and ''Cboe EDGX Exchange, Inc.'', ''Cboe C2 Exchange, Inc.'' and ''Cboe Exchange, Inc.'', respectively. The Exchange notes that references to ''CBOE'' will be deleted and revised to state ''Cboe Options''. The Exchange notes that references to ''Bats Exchange'' will be deleted and revised to state ''Cboe Bats Exchange''. Additionally, all references to ''CBOE Holdings, Inc.'' will be deleted and revised to state ''Cboe Global Markets, Inc.''

The Exchange will also delete references to ''Bats Trading, Inc.'' and ''Bats Trading'' and replace it with references to ''Cboe Trading, Inc.'' and ''Cboe Trading'', respectively. References to ''Bats One Feed'' will be deleted and revised to state ''Cboe One Feed'', all references to ''Bats Connect'' will be deleted and revised to state ''Cboe Connect'', all references to ''CBOE Volatility Index (VIX)'' will be deleted and revised to state ''Cboe Volatility Index (VIX)'', all references to ''CBOE S&P 500 BuyWrite Index(sm)'' will be deleted and revised to state ''Cboe S&P 500 BuyWrite Index(sm)'', all references to ''CBOE DJIA Buy Write Index(sm)'' will be deleted and revised to state ''Cboe DJIA Buy Write Index(sm)'', all references to ''CBOE Nasdaq-100 BuyWrite Index(sm)'' will be deleted and revised to state ''Cboe Nasdaq-100 BuyWrite Index(sm)'', and all references to ''CBOE Livevol, LLC'' will be deleted and revised to state ''Cboe Livevol, LLC''.

(d) Exchange's Fees Schedule

For the BZX Equities Fee Schedule, any reference to ''Bats BZX Exchange'' will be deleted and revised to state ''Cboe BZX Exchange'', ''Bats-listed'' will be deleted and revised to state ''Cboe listed''. Additionally, all references to ''Bats One'' will be deleted and revised to state ''Cboe One'' and all references to ''Bats Connect'' will be deleted and revised to state ''Cboe Connect''.

(e) BZX Options Fee Schedule

For the BZX Options Fee Schedule, all references to ''Bats BZX Options Exchange'' will be deleted and revised to state ''Cboe BZX Options Exchange'', all references to ''CBOE'' will be deleted and revised to state ''Cboe Options'' and lastly, all references to ''Bats Connect'' will be deleted and revised to state ''Cboe Connect''.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] 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.

In particular, the proposed change is a non-substantive change and does not impact the governance, ownership or operations of the Exchange. The Exchange believes that by ensuring that its parent company's governance documents and the Exchange's

[5] The Exchange notes that the BZX rules refer to ''C2 Options Exchange, Incorporated'' and ''Chicago Board Options Exchange, Incorporated'' as ''C2 Options Exchange, Inc.'' and ''Chicago Board Options Exchange''. *See* Rules 2.3, 18.7, 18.9, 28.3, 29.5, and 29.7.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

operative documents accurately reflect the new legal names, the proposed rule change would reduce potential investor or market participant confusion.

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 intended to address competitive issues but rather is concerned solely with updating the Company's and Exchange's governance and operative documents to reflect the abovementioned name changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(3) thereunder,[9] the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization, and therefore has become effective.

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–BatsBZX–2017–70 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–BatsBZX–2017–70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2017–70 and should be submitted on or before November 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

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BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81953; File No. SR–BX–2017–044]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Remove References To Surrender Feature for Auto-Match Submissions in the Price Improvement Auction

October 26, 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 October 16, 2017, NASDAQ BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify BX rules at Chapter VI, Section 9, entitled ''Price Improvement Auction (''PRISM'')'' to correct an error.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed a proposed rule change to establish a price improvement mechanism.[3] By way of background, this price improvement mechanism or ''PRISM'' includes auto-match functionality in which a Participant (an ''Initiating Participant'') may electronically submit for execution an order it represents as agent on behalf of a Public Customer, Professional customer, broker dealer, or any other entity (''PRISM Order'') against principal interest or against any other order it represents as agent (an ''Initiating Order'') provided it submits the PRISM Order for electronic execution into the PRISM Auction (''Auction'') pursuant to the proposed Rule.[4] To initiate the Auction, the Initiating Participant must mark the PRISM Order for Auction processing, and specify either: (a) A single price at which it seeks to execute the PRISM Order (a ''stop price''); (b) that it is willing to automatically match as principal or as agent on behalf of an Initiating Order the price and size of all PRISM Auction Notifications (''PAN'') responses, and trading interest (''auto-match'') in which case the PRISM Order will be stopped at the NBBO on the Initiating Order side;[5] or (c) that it is willing to either: (i) Stop the entire order at a single stop price and auto-match PAN responses and trading interest at a price or prices that improve the stop price to a specified price (a ''No Worse Than'' or ''NWT'' price); (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price; or (iii) stop the entire order at the NBBO on the Initiating Order side, and auto-match PAN responses and trading interest at a price or prices that improve the stop price up to the NWT price. In all cases, if the BX BBO on the same side of the market as the PRISM Order represents a limit order on the book, the stop price must be at least the Minimum Increment better than the booked limit order's limit price.

When starting an Auction, the Initiating Participant may submit the Initiating Order with a designation of ''surrender'' to other PRISM Participants (''Surrender''), which will result in the Initiating Participant forfeiting priority and trade allocation privileges. If Surrender is specified the Initiating Order will only trade if there is not enough interest available to fully execute the PRISM Order at prices which are equal to or improve upon the stop price.[6] At the time the Exchange filed to permit Surrender within the BX PRISM auction,[7] the rule text at Chapter VI, Section 9(ii)(A)(1) provided that, ''When starting an Auction, the Initiating Participant may submit the Initiating Order with a designation of ''surrender'' to the other PRISM Participants (''Surrender'') which will result in the Initiating Participant forfeiting the priority and trade allocation privileges which he is otherwise entitled to as per Section 9(ii)(E)(2)(a) and (b) and Section 9(ii)(F)(2)(a) and (b).'' Section 9(ii)(E)(2)(b) and Section 9(ii)(F)(2)(b) refer to the auto-match functionality. The Exchange has not offered Surrender with respect to auto-match. The Exchange does not believe that auto-match is suitable for Surrender. By definition the purpose of the auto-match feature is that the Initiating Participant is going to match all responses and seek a greater allocation. This language is at odds with the Surrender feature where the Initiating Participant is not seeking allocation. Depending on the option selected, the Initiating Participant may elect in the single stop option selection to give up the allocation priority, if Surrender is selected,[8] or with the auto-match option the Initiating Participant will only be allocated the remainder in accordance with the allocation percentages in Section 9(ii)(E)(2)(b).[9] This similarly applies to Section 9(ii)(F)(2)(b).[10]

The Exchange inadvertently included the references to Section 9(ii)(E)(2)(b) and Section 9(ii)(F)(2)(b) when discussing Surrender. Surrender only applies to the single stop price feature. The Exchange proposes to amend its rule text to update its rules to delete these references to make the rule text accurate.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by updating references in the PRISM rule which indicate Surrender applies to the auto-match feature. The Exchange inadvertently referenced the auto-match feature. The Surrender feature only applies to the single stop price feature. The Exchange does not believe that auto-match is suitable for Surrender. By definition the purpose of the auto-match feature is that the Initiating Participant is going to match all responses and seek a greater allocation. This language is at odds with the Surrender feature where the Initiating Participant is not seeking allocation. The Exchange believes that correcting the rule text to remove the references to auto-match will perfect the mechanism of a free and open market and a national market system, and, in

[3] *See* Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR–BX–2015–032).

[4] BX only conducts auctions for Simple Orders. Only one Auction may be conducted at a time in any given series. Once commenced, an Auction may not be cancelled.

[5] This is accomplished by marking the Initiating Order with a market (MKT) price.

[6] Surrender is not applied if both the Initiating Order and PRISM Order are Public Customer Orders.

[7] *See* note 3 above.

[8] *See* Chapter VI, Section 9(ii)(E)(2)(a) and Section 9(ii)(F)(2)(a).

[9] *See* Chapter VI, Section 9(ii)(E)(2)(b), which states, ''If the Initiating Participant selected the auto-match option of the PRISM Auction the Initiating Participant shall be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at each price point until a price point is reached where the balance of the order can be fully executed, except that the Initiating Participant shall be entitled to receive up to 40% (multiple competing quotes, orders or PAN responses) or 50% (one competing quote, order or PAN response) of the contracts remaining at the final price point (including situations where the stop price is the final price) after Public Customer interest has been satisfied but before remaining interest. If there are other quotes, orders and PAN responses at the final price point the contracts will be allocated to such interest pursuant to Chapter VI, Section 9(ii)(E)(3) through (5) below. Any remaining contracts shall be allocated to the Initiating Participant.'' There is no reference to the Surrender provision in this paragraph similar to reference at Chapter VI, Section 9(ii)(E)(2)(a).

[10] *See* Chapter VI, Section 9(ii)(F)(2)(b), which states, ''If the Initiating Participant selected the auto-match option of the PRISM Auction the Initiating Participant shall be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at each price point until a price point is reached where the balance of the order can be fully executed, except that the Initiating Participant shall be entitled to receive up to 40% (multiple competing quotes, orders or PAN responses) or 50% (one competing quote, order or PAN response) of the contracts remaining at the final price point (including situations where the stop price is the final price), after Public Customer interest has been satisfied but before remaining interest. If there are other quotes, orders and PAN responses at the final price point the contracts will be allocated to such interest pursuant to Chapter VI, Section 9(ii)(F)(3) through (4) below. Any remaining contracts shall be allocated to the Initiating Participant.'' There is no reference to the Surrender provision in this paragraph similar to reference at Chapter VI, Section 9(ii)(F)(2)(a).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

general to protect investors and the public interest, by updating these references to the BX PRISM rule. This amendment will correct the references within the BX PRISM rule to make clear the manner in which the auction operates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange inadvertently referenced the auto-match feature as applicable to Surrender provision. No BX Participant is able today to utilize the Surrender feature when selecting auto-match. This amendment will correct the references within the BX PRISM rule to make clear the manner in which the auction operates.

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 [13] and subparagraph (f)(6) of Rule 19b–4 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: (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.

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[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 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.

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–BX–2017–044 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–BX–2017–044. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2017–044 and should be submitted on or before November 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23734 Filed 10–31–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81957; File No. SR–BatsEDGA–2017–28]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect in the Exchange's Governing Documents, Rulebook and Fee Schedule, a Non-Substantive Corporate Branding Change, Including Changes to the Company's Name, the Intermediate's Name, and the Exchange's Name

October 26, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2017, Bats EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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 a rule change with respect to amendments of the Second Amended and Restated Certificate of Incorporation (the ''Company's Certificate'') and Third Amended and Restated Bylaws (the ''Company's Bylaws'') of its parent corporation, CBOE Holdings, Inc. (''CBOE Holdings'' or the ''Company'') to change the name of the Company to Cboe Global Markets, Inc. With respect to CBOE V, LLC, an intermediate Holding Company of the Exchange (the ''Intermediate''), the Exchange proposes to amend the Certificate of Formation and Limited Liability Company Operating Agreement of CBOE V, LLC (the ''Operating Agreement''), in connection with a related name change for the Intermediate. The Exchange also proposes to amend its Second Amended

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and Restated Certificate of Incorporation (the ''Exchange Certificate''), Seventh Amended and Restated Bylaws of Bats EDGA Exchange, Inc. (the ''Exchange Bylaws''), rulebook and fee schedule (collectively ''operative documents'') in connection with the name change of its parent Company, Intermediate, and the Exchange.

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 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

Background

The purpose of this filing is to reflect in the Exchange's governing documents (and the governing documents of its parent company, CBOE Holdings) and the Exchange's rulebook and fees schedules, a non-substantive corporate branding change, including changes to the Company's name, the Intermediate's name, and the Exchange's name. Particularly, references to Company's, Intermediate's and Exchange's names will be deleted and revised to state the new names, as described more fully below. No other substantive changes are being proposed in this filing. The Exchange represents that these changes are concerned solely with the administration of the Exchange and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons is any way. Accordingly, this filing is being submitted under Rule 19b–4(f)(3). In lieu of providing a copy of the marked name changes, the Exchange represents that it will make the necessary non-substantive revisions described below to the Exchange's corporate governance documents, rulebook, and fees schedules, and post updated versions of each on the Exchange's Web site pursuant to Rule 19b–4(m)(2).

The Company's Name Change

In connection with the corporate name change of its parent company, the Exchange is proposing to amend the Company's Certificate and Bylaws. Specifically, the Company is changing its name from ''CBOE Holdings, Inc.'' to ''Cboe Global Markets, Inc.''.

(a) Company's Certificate

The Exchange proposes to (i) delete the following language from Paragraph (1) of the introductory paragraph: ''The name of the Corporation is CBOE Holdings, Inc.'' and (ii) amend Article First of the Company's Certificate to reflect the new name, ''Cboe Global Markets, Inc.'' The Exchange also proposes to add clarifying language and cite to the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed name change. The Exchange notes that it is not amending the Company's name in the title or signature line as the name changes will not be effective until the Company, as currently named, files the proposed changes in Delaware. Thereafter, the Exchange will amend the Certificate to reflect the new name in the title and signature line. The Exchange also notes that although the name of ''Chicago Board Options Exchange, Incorporated'' is changing to ''Cboe Exchange Inc.'', it is not amending the name of Chicago Board Options Exchange, Incorporated (''CBOE'') referenced in Article Fifth(a)(iii) at this time. Particularly, the Exchange notes that unlike the exception applicable to proposed changes to the Company's name,[3] a vote of stockholders is required to adopt an amendment to the reference of CBOE's name. As such, the Exchange will submit a rule filing to amend the Certificate to reflect the new CBOE name at such time it is ready to obtain stockholder approval.

(b) Company's Bylaws

With respect to the Company's Bylaws, references to ''CBOE Holdings, Inc.'' will be deleted and revised to state ''Cboe Global Markets, Inc.'' The Exchange also proposes to eliminate the reference to ''Chicago Board Options Exchange, Incorporated'' in Article 10, Section 10.2. Particularly, Section 10.2 provides that ''for so long as the Corporation shall control, directly or indirectly, any national securities exchange, including, but not limited to Chicago Board Options Exchange, Incorporated (a ''Regulated Securities Exchange Subsidiary''), before any amendment, alteration or repeal of any provision of the Bylaws shall be effective, such amendment, alteration or repeal shall be submitted to the board of directors of each Regulated Securities Exchange Subsidiary, and if such amendment, alteration or repeal must be filed with or filed with and approved by the Securities and Exchange Commission, then such amendment, alteration or repeal shall not become effective until filed with or filed with and approved by the Securities and Exchange Commission, as the case may be.'' As the Company currently controls a number of Regulated Securities Exchange Subsidiaries, it does not believe it is necessary to explicitly reference only Chicago Board Options Exchange, Incorporated and therefore proposes to delete the following language: ''including, but not limited to Chicago Board Options Exchange, Incorporated''.

The Intermediate's Name Change

For purposes of consistency, certain of the Parent's subsidiaries have also undertaken to change their legal names. As a result, the Exchange also proposes to change the name of the Intermediate from ''CBOE V, LLC'' to ''Cboe Bats, LLC.''

(a) Certificate of Formation

As it relates to the Certificate of Formation of CBOE V, LLC, references to ''CBOE V, LLC'' will be deleted and revised to state its new name ''Cboe Bats, LLC''. The Exchange also proposes to add clarifying and conforming language in order to conform to, as well as cite to, the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed name change. The Exchange notes to conform with the revised language in the introductory paragraph, it also proposes to amend references to ''LLC'' to ''limited liability company''. The Exchange also notes that it is not amending the Intermediate's name in the title or signature line as the name changes will not be effective until the Intermediate, as currently named, files the proposed changes in Delaware.[4]

[3] *See* Section 242(b) of the General Corporation Law of the State of Delaware.

[4] The Exchange notes that the current signature block of the Certificate of Formation references ''CBOE Holdings, Inc.'' instead of ''CBOE V, LLC''. The Exchange proposes to correct that reference and

Continued

Thereafter, the Exchange will amend the Certificate of Formation to reflect the new name in the title and signature line.

(b) Operating Agreement

As it relates to the Operating Agreement of the Intermediate, references to ''CBOE V, LLC'' will be deleted and revised to state its new name ''Cboe Bats, LLC'' and references to ''CBOE Holdings, Inc.'' will be deleted and revised to state ''Cboe Global Markets, Inc.''. The Exchange also proposes to add clarifying and conforming language in connection with the proposed name change, including new Section 12.5 (''Effect of Amendment''), which provides that the ''Agreement amends, restates and supersedes the Original Agreement in all respects. From and after the date hereof, this Agreement shall be the limited liability company operating agreement of the Company for all purposes.''

The Exchange's Name Change

For purposes of consistency, certain of the Parent's subsidiaries have also undertaken to change their legal names. As a result, the Exchange also proposes to change its name from ''Bats EDGA Exchange, Inc.'' to ''Cboe EDGA Exchange, Inc.'' throughout its rules, fees schedules and corporate documents. Additionally, the Exchange notes that its affiliated exchanges Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, and ''CBOE Futures Exchange, LLC'' (collectively the ''affiliates'') have also proposed name changes to Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Cboe C2 Exchange, Inc. and Cboe Futures Exchange, LLC, respectively. Lastly, the Exchange is changing the name of ''Bats Trading, Inc.'' to ''Cboe Trading, Inc.''

Therefore, the Exchange proposes to amend its: (i) Second Amended and Restated Certificate of Incorporation of Bats EDGA Exchange, Inc., (ii) Seventh Amended and Restated Bylaws of Bats EDGA Exchange, Inc., (iii) Rulebook, (iv) Fee Schedule for EDGA Equities (collectively, the ''Operative Documents'') to reflect the name changes.

(a) Exchange's Certificate

The Exchange proposes to (i) delete the following language from the introductory paragraph: ''The name of the Corporation is Bats EDGA Exchange, Inc.'' and (ii) amend Article First of the Exchange's Certificate to reflect the new name, ''Cboe EDGA Exchange, Inc.''. The Exchange also proposes to add clarifying language and cite to the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed name change. The Exchange notes that it is not amending the Exchange's name in the title or signature line as the name changes will not be effective until the Exchange, as currently named, files the proposed changes in Delaware. Thereafter, the Exchange will amend the Certificate to reflect the new name in the title and signature line.

(b) Exchange's Bylaws

For the Exchange's Bylaws, all references to ''Bats EDGA Exchange, Inc.'' will be deleted and revised to state ''Cboe EDGA Exchange, Inc.''.

(c) Exchange's Rulebook

For the Rules of Bats EDGA Exchange, Inc., all references to ''Bats EDGA Exchange, Inc.'' will be deleted and revised to state ''Cboe EDGA Exchange, Inc.''. Additionally, the Exchange's affiliates are also filing similar rule filings to change their names, as noted above. As such, all references to ''Bats BYX Exchange, Inc.'', ''Bats EDGX Exchange, Inc.'', ''Bats BZX Exchange, Inc.'', ''C2 Options Exchange, Incorporated'',[5] ''Chicago Board Options Exchange, Incorporated'' and ''CBOE Futures Exchange, LLC'' in the EDGA's rules will likewise be deleted and revised to state ''Cboe BYX Exchange, Inc.'', ''Cboe EDGX Exchange, Inc.'', ''Cboe BZX Exchange, Inc.'', ''Cboe C2 Exchange, Inc.'', ''Cboe Exchange, Inc.'' and ''Cboe Futures Exchange, LLC'', respectively. The Exchange notes that references to ''Bats Exchange'' will be deleted and revised to state ''Cboe Bats Exchange''. Additionally, all references to ''CBOE Holdings, Inc.'' will be deleted and revised to state ''Cboe Global Markets, Inc.''. All references to ''Bats One'' will be deleted and revised to state ''Cboe One'' and all references to ''Bats Connect'' will be deleted and revised to state ''Cboe Connect''. The Exchange will also delete references to ''Bats Trading, Inc.'' and ''Bats Trading'' and replace it with references to ''Cboe Trading, Inc.'' and ''Cboe Trading'', respectively.

(d) Exchange's Fee Schedule

For the EDGA Equities Fee Schedule, any reference to ''Bats EDGA Exchange'' will be deleted and revised to state ''Cboe EDGA Exchange''. Additionally, all references to ''Bats One'' will be deleted and revised to state ''Cboe One'' and all references to ''Bats Connect'' will be deleted and revised to state ''Cboe Connect''.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] 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.

In particular, the proposed change is a non-substantive change and does not impact the governance, ownership or operations of the Exchange. The Exchange believes that by ensuring that its parent company's governance documents and the Exchanges operative documents accurately reflect the new legal names, the proposed rule change would reduce potential investor or market participant confusion.

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 intended to address competitive issues but rather is concerned solely with updating the Company's and Exchange's governance and operative documents to reflect the abovementioned name changes.

refer to ''CBOE V, LLC'', which as noted, will be changed to ''Cboe Bats, LLC'' at a later date.

[5] The Exchange notes that the EDGA rules refer to ''C2 Options Exchange, Incorporated'' as ''C2 Options Exchange, Inc.'' in Rule 2.3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(3) thereunder,[9] the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization, and therefore has become effective.

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–BatsEDGA–2017–28 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–BatsEDGA–2017–28. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGA–2017–28 and should be submitted on or before November 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81949; File No. SR–OCC–2017–009]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Related to The Options Clearing Corporation's Counterparty Credit Risk Management Policy

October 26, 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 October 12, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by OCC would formalize OCC's Counterparty Credit Risk Management Policy (''CCRM Policy'' or ''Policy''), which promotes compliance with multiple requirements applicable to OCC under Rule 17Ad–22, including Rules 17Ad–22(e)(3) concerning frameworks for the comprehensive management of risks, (e)(4) concerning credit risk management, (e)(16) concerning the safeguarding of assets, (e)(18) concerning risk-based participation criteria, (e)(19) concerning risks form indirect participants, and (e)(20) concerning linkages.[3] The CCRM Policy is included as confidential Exhibit 5.[4]

The proposed rule change does not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Background

As a central counterparty providing clearance, settlement, and risk management services, OCC is exposed to and must manage a range of risks, including credit risk. The purpose of the CCRM Policy is to outline OCC's overall approach to identify, measure, monitor, and manage its exposures to direct and indirect participants, Liquidity

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.17Ad–22(e)(3), (4), (16), (18), (19), and (20).

[4] The Commission notes that Exhibit 5 is included in the filing, not in this Notice.

[5] OCC's By-Laws and Rules can be found on OCC's public Web site: *http://optionsclearing.com/about/publications/bylaws.jsp.*

Providers,[6] asset custodians, settlement banks, letter of credit issuers, investment counterparties, other clearing agencies, and financial market utilities (''FMUs'')[7] (each a ''Counterparty'') arising from its payment, clearing, and settlement processes. OCC notes that the CCRM Policy is part of a broader framework used by OCC to manage credit risk, including OCC's By-Laws, Rules, and other policies and procedures that are designed collectively to ensure that OCC appropriately manages counterparty credit risk and to promote compliance with Rule 17Ad–22.[8]

The CCRM Policy would be maintained by OCC to promote compliance with a number of rules adopted under Section 17A of the Securities Exchange Act of 1934, as amended (''Act''),[9] and the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'').[10] In particular, the Policy is designed to address certain aspects of Rules 17Ad–22(e)(3) concerning frameworks for the comprehensive management of risks, (e)(4) concerning credit risk management, (e)(16) concerning the safeguarding of assets, (e)(18) concerning risk-based participation criteria, (e)(19) concerning risks form indirect participants, and (e)(20) concerning linkages.[11]

Counterparty Credit Risk Management Policy

OCC's CCRM Policy outlines the key components of OCC's framework for identifying, measuring, monitoring, and managing OCC's exposures to its Counterparties. This framework includes: (1) The identification of credit risk, (2) Counterparty access and participation standards, (3) the measurement of its Counterparty exposures, (4) the monitoring and managing of Counterparty exposures, and (5) voluntary termination of Counterparty relationships. Each of these components is described in more detail below.

Identification of Credit Risk

The CCRM Policy identifies various ways in which credit risk originates from the failure of a Counterparty to perform. With respect to a Clearing Member, the CCRM Policy details a number of different ways in which OCC may be exposed to credit risk. This includes the potential failure of a Clearing Member to pay for purchased options, to meet expiration-related settlement obligations, or to make certain mark-to-market variation payments or initial margin deposits. It also includes the potential insufficiency of a defaulting Clearing Member's margin and Clearing Fund deposits in a liquidation scenario. Other sources of credit risk identified in the CCRM Policy include the inability of OCC to access collateral (*e.g.,* cash or securities) from a custodian or investment counterparty that is needed to facilitate a liquidation, or a failure by an issuer of a letter of credit to honor its corresponding obligations. The CCRM Policy also identifies that certain relationships with other FMUs, such as cross-margining programs and cash market settlement services, represent critical linkages that may present certain degrees of credit exposure based on the terms and design of the linkage. The CCRM Policy also notes that OCC may face additional risks from Counterparties, such as the potential failure of a Liquidity Provider to honor a borrowing request.

Counterparty Access and Participation Standards

Under the CCRM Policy, OCC's management of Counterparty credit risks begins with an initial evaluation process intended to ascertain that Counterparties meet certain minimum financial and operational standards and are considered as having a low probability of defaulting on their obligations prior to engaging or effecting any new transactions or expansion of business with OCC. To accomplish this objective, OCC shall evaluate each Counterparty against established minimum standards of creditworthiness, overall financial condition, and operational capabilities. Pursuant to the Policy, the standards used to evaluate Counterparties shall be objective, risk-based, and publicly-disclosed in order to permit fair and open access. These standards shall be developed independently for Clearing Members, Commercial and Central Banks, investment counterparties, Liquidity Providers and FMUs, accounting for differences in their regulatory reporting and overall business operations.

Clearing Membership Standards

OCC's minimum participation standards for Clearing Member are found in Article V of OCC's By-Laws, Chapters II and III of OCC's Rules, and other publicly-disclosed supplemental documentation (together, ''Participation Standards Documentation''). Under the Policy, OCC's Credit Risk Management and Member Services departments shall evaluate each Clearing Member applicant against the minimum standards of creditworthiness and for its overall financial condition and operational capabilities as provided in the Participation Standards Documentation. Such evaluation shall also consider the Counterparty's aggregation of exposure on an individual and related-entities level, as applicable, as well as any material exposure that may arise from tiered participation arrangements. The Credit Risk Management and Member Services departments shall document the results of this evaluation in a memorandum, including the Clearing Member applicant's ability to meet relevant participation standards, and report those results to OCC's Executive Chairman, Chief Operating Officer or Chief Administrative Officer for review and approval, where appropriate, or for recommendation to the Risk Committee or Board of Directors.[12]

Commercial and Central Banks

OCC's minimum standards for asset custodians, settlement banks, letter of credit issuers and investment counterparties are found in OCC Rule 604 and relevant OCC procedures. The Credit Risk Management department shall coordinate with various

[6] Under the CCRM Policy, ''Liquidity Provider'' is defined as a Commercial Bank or a non-banking institution—generally a pension fund—that provides a committed liquidity facility to OCC.

[7] Under the CCRM Policy, ''Financial Market Utility'' is defined as a derivatives clearing organization partnering with OCC to provide a cross-margin program; a clearing agency providing settlement services of securities arising from the exercise, assignment or maturity of options or futures; or the Depository providing book-entry securities transfers and asset custodian services.

[8] 17 CFR 240.17Ad–22.

[9] 15 U.S.C. 78q–1.

[10] 12 U.S.C. 5461 et seq.

[11] 17 CFR 240.17Ad–22(e)(3), (4), (16), (18), (19), and (20).

[12] Pursuant to Article V, Section 2 of the By-Laws, the Executive Chairman, Chief Operating Officer and Chief Administrative Officer each have delegated authority to approve Clearing Member applicants provided that (1) there is no recommendation to impose additional membership criteria in accordance with Article V of the By-Laws and (2) the Risk Committee is given not less than five days to determine the application should be reviewed at a meeting of the Risk Committee. Pursuant to Interpretation and Policy .06 to Article V, Section 1 of the By-Laws, the Risk Committee has the authority to impose additional requirements on Clearing Member applicants, such as increased capital or margin requirements as well as restrictions on clearing activities. The Risk Committee also has the authority to approve waivers of certain clearing membership requirements under Article V, Section 1 of the By-Laws. Approvals of a Clearing Member business expansion by the Executive Chairman, Chief Operating Officer or Chief Administrative Officer are subsequently presented to the Risk Committee for ratification, except in limited circumstances detailed in Article V, Section 1.03(e) of the By-Laws.

departments (such as Collateral Services or Treasury) to evaluate each bank against the minimum standards of creditworthiness and for its overall financial condition and operational capabilities as provided in OCC Rule 604 and related OCC procedures. Such evaluation shall also consider the Counterparty's aggregation of exposure on an individual and related-entities level, as applicable, as well as whether OCC would be able to structure its custodial relationships in a manner that allows prompt access to its own and its Clearing Members' assets. The latter shall include holding assets at supervised and regulated institutions that adhere to generally accepted accounting practices, maintain safekeeping procedures, and have internal controls that fully protect these assets. Under the Policy, Credit Risk Management and either the Collateral Services or Treasury department, as applicable, shall document the results of its evaluation in a memorandum, including the bank's ability to meet relevant participation standards, and report those results to OCC's Executive Chairman, Chief Operating Officer or Chief Administrative Officer, each of which shall have the authority to approve new and expanded relationships with asset custodians, settlement banks, letter of credit issuers, investment counterparties, and Liquidity Providers.

Liquidity Providers

Under the Policy, OCC maintains internal procedures outlining the minimum standards for Commercial Banks [13] and non-bank institutions acting as Liquidity Providers. OCC's Credit Risk Management and Treasury departments would be responsible for evaluating each Liquidity Provider against the minimum standards of creditworthiness and for its overall financial condition and operational capabilities as provided in the procedures. Because Liquidity Providers present both credit and liquidity risk to OCC, the due diligence around such institutions shall include a review of each lender's ability to perform their commitments as well as understand and manage their liquidity risks. Pursuant to the Policy, Credit Risk Management and Treasury shall document the results of its evaluation in a memorandum, including the Liquidity Provider's ability to meet relevant participation standards, and report those results to the Executive Chairman, Chief Operating Officer or Chief Administrative Officer, each of which shall have the authority to approve new and expanded relationships with Liquidity Providers.

FMUs

Under the Policy, OCC maintains internal procedures outlining minimum standards for FMUs. OCC's Business Operations and Credit Risk Management departments shall evaluate each FMU for its overall financial condition and operational capabilities as provided in the procedure. Pursuant to the Policy, before entering into any link arrangement, the Legal department shall assist the aforementioned business units to identify legal risks relating to rights and interests, collateral arrangements, settlement finality and netting arrangements, and financial and custody risks. The Business Operations, Credit Risk Management and Legal departments shall document the results of its evaluation in a memorandum, including the FMU's ability to meet relevant standards. All new and expanded FMU relationships shall be reviewed and approved by the Risk Committee and subsequently recommended for approval to the Board of Directors.

Measuring Counterparty Credit Risk

The CCRM Policy describes various ways in which OCC measures the credit risk posed by different Counterparties. With respect to Clearing Members, the CCRM Policy provides that OCC measures its credit exposures to Clearing Members under normal market conditions through the calculation of margin requirements and its credit exposures to Clearing Members under extreme but plausible conditions through stress testing and the calculation of Clearing Fund requirements, in accordance with applicable OCC policies. Margin, Clearing Fund and stress test results may be used by OCC's Financial Risk Management department (''FRM'') to evaluate OCC's counterparty credit risk framework and inform Clearing Member surveillance processes.

With respect to Commercial Banks, Central Banks,[14] Liquidity Providers, and investment counterparties, OCC shall measure its credit exposures to these Counterparties by the balances generated from the various activities provided by these institutions in accordance with relevant internal procedures.

FMUs provide a range of services to OCC, including the Depository Trust Company (''DTC'') as collateral custodian and provider of book order entry of securities transfers, Chicago Mercantile Exchange Inc. (''CME'') and ICE Clear U.S. as cross-margin clearing organizations, and the National Securities Clearing Corporation (''NSCC'') as a provider of securities settlement. Under the Policy, DTC credit exposures shall be measured by the collateral balances held and the value of securities lending/borrowing transactions facilitated. CME and ICE Clear U.S. credit exposures shall be measured by the projected margin impact in the event of suspension of a cross-margin program and, therefore, the absence of risk reducing positions cleared away from OCC. NSCC exposure shall be measured by the value of securities and cash to be settled in connection with the delivery obligations settled through NSCC.

Monitoring and Managing Counterparty Credit Risk

The CCRM Policy also describes the manner in which OCC monitors and manages credit risk from its Counterparties. Under the Policy, OCC's monitoring and management of such risks is comprised of ''Watch Level Reporting'' processes in conjunction with other tools including margin adjustments, internal credit ratings, risk examinations, and monitoring of tiered participation arrangements and dormant Counterparties.

Watch Level Reporting Overview

Under the Policy, Counterparties are monitored by OCC's FRM, Business Operations, and Treasury departments for ongoing compliance with the minimum participation standards described above to identify any trends that might signal the deterioration of a Counterparty's ability to timely meet its obligations. When these trends are identified, Credit Risk Management shall report on a Counterparty through OCC's Watch Level Reporting processes, which are described in further detail

[13] Under the Policy, ''Commercial Bank'' is defined as a banking or depository institution that is not an operating arm of a Central Bank. Commercial bank relationships shall be governed by this Policy and all supporting bank-related procedures. Commercial Banks act as Liquidity Providers, asset custodians, settlement banks, letter of credit issuers, and investment counterparties on behalf of OCC.

[14] Under the Policy, ''Central Bank'' is defined as a bank serving as a bank for both depository institutions and a government, a regulator for financial institutions, and/or a nation's money manager. Central Banks act as asset custodians on behalf of OCC, and OCC uses access to accounts and services at a Central Bank, when available and where determined to be practical by the Board of Directors, to enhance its management of liquidity risk. Due to the inherently low credit risk presented by Central Banks, only limited monitoring activities would be performed pursuant to relevant OCC procedures.

below. As a Counterparty approaches or no longer meets minimum standards, FRM's monitoring heightens and, in the case of Commercial Banks and Clearing Members, increasingly rigorous protective measures may be imposed to limit or eliminate OCC's credit exposure.

Pursuant to the Policy, the Watch Level Reporting process shall be administered by OCC's Management Committee, which maintains approval authority of Watch Level parameter changes. The Watch Level Reporting process provides each of the Executive Chairman, Chief Operating Officer and Chief Administrative Officer with authority to take action to protect OCC given the facts and circumstances of the exposure presented by a Clearing Member or Commercial Bank. Under the Policy, Credit Risk Management shall provide monthly internal reporting to FRM summarizing the circumstances relating to a violation, additional risks observed and any corrective measure taken by any Clearing Member, Commercial Bank, or FMU at or above Watch Level II (described below); and monthly reporting to OCC's Credit and Liquidity Risk Working Group, Management Committee and the Risk Committee of any Clearing Member or Commercial Bank at or above Watch Level III (described below).

Clearing Member Watch Level Reporting and Bank Watch Level Reporting

Pursuant to the CCRM Policy, the Clearing Member Watch Level Reporting process and Bank Watch Level Reporting process shall support initial and on-going participation standards by allowing OCC's Credit Risk Management department, with the support of other FRM business units, Business Operations and Treasury, to detect business-related concerns and/or financial or operational deterioration of a Counterparty in order to protect OCC and its Clearing Members against the potential default of a Clearing Member or Commercial Bank. Pursuant to the Policy, the Clearing Member Watch Level Reporting process and Bank Watch Level Reporting process shall be organized into four-tiered surveillance structures.

1. *Watch Level I.* Watch Level I is the lowest tier of severity and shall be used to categorize Clearing Members and Commercial Banks presenting minimal to very low credit risk. This level of violation shall be identified but not reported.

2. *Watch Level II.* This tier shall be used to categorize Clearing Members and Commercial Banks presenting low to lower moderate credit risk. This level of violation shall be identified and reported to internal personnel pursuant to FRM procedures.

3. *Watch Level III.* This tier shall be used to categorize Clearing Members and Commercial Banks potentially presenting upper moderate to substantial credit risk. Violations in this tier may indicate a Clearing Member or Commercial Bank that is below early warning participation thresholds and may soon become non-compliant with OCC's minimum participation standards, as specified in Article V of OCC's By-Laws, Chapters II and III of OCC's Rules, and internal OCC procedures. This level of violation shall be identified and reported to the Executive Chairman, Chief Operating Officer or Chief Administrative Officer, who shall have the authority to approve the imposition or waiver of protective measures. The Risk Committee shall be informed of these violations on a monthly basis.

4. *Watch Level IV.* Watch Level IV is the highest tier of severity and shall be used to categorize Clearing Members and Commercial Banks potentially presenting high to very high credit risk with a heightened probability of default. Violations in this tier may indicate a Clearing Member or Commercial Bank may imminently become or has already become non-compliant with OCC's minimum participation standards, as specified in Article V of OCC's By-Laws, Chapters II and III of OCC's Rules, and internal OCC procedures. This level of violation shall be identified and reported to OCC's Credit and Liquidity Risk Working Group, with subsequent reporting to the Executive Chairman, Chief Operating Officer or Chief Administrative Officer, who shall have the authority to approve the imposition or waiver of protective measures, including the option to restrict business of or suspend the Clearing Member or Commercial Bank. The Risk Committee shall be promptly informed of these violations and a meeting of the Risk Committee may occur to discuss the event.

In addition, under the Policy, a Clearing Member reporting (1) aggregate uncollateralized stress test exposure under normal market conditions less (2) the sum of base expected shortfall and stress test charges as computed under OCC's margin methodology, exceeding 75% of the Clearing Member's excess net capital shall be identified and reported on Watch Level II. When this exposure exceeds 100% of net capital, a Clearing Member shall be identified and reported on Watch Level III and shall be subject to a margin call for the amount of exposure exceeding net capital. A margin call shall be the standard form of protective measures for position risk monitoring and shall not require officer approval or further prompt escalation. However, Clearing Members may be reported to the Executive Chairman, Chief Operating Officer or Chief Administrative officer for consideration of additional protective measures.

FMU Watch Level Reporting

The FMU Watch Level Reporting process allows Credit Risk Management, with the support of other FRM business units and Business Operations, to detect business-related concerns and/or financial or operational deterioration of a FMU. Pursuant to the CCRM Policy, the FMU Watch Level Reporting process is organized into a two-tiered surveillance structure.

1. *Watch Level I.* Watch Level I is the lowest tier of severity and shall be used to categorize FMUs presenting minimal to very low credit risk. This level of violation shall be identified but not reported.

2. *Watch Level II.* Watch Level II is the highest tier of severity and shall be used to categorize FMUs presenting low to lower moderate credit risk. This level of violation shall be identified and reported.

Other Tools for Monitoring and Managing Credit Risk

In addition to the Watch Level Reporting processes discussed above, the CCRM Policy discusses other tools and processes used by OCC to monitor and manage credit risks arising from its Counterparties. For example, in cases where ongoing monitoring of Clearing Members identifies circumstances impacting margin levels due to changing portfolio characteristics, market conditions, elevated Clearing Fund stress test results, upcoming holidays where trading is allowed but OCC is unable to call for additional margin deposits, and certain other situations, OCC shall have the authority to call for additional margin deposits or otherwise adjust margin requirements as further detailed in OCC's margin and Clearing Fund-related policies.

Under the Policy, OCC's Credit Risk Management department also maintains Internal Credit Ratings (''ICRs'') which shall be incorporated into the Watch Level Reporting process and shall be designed to identify quarterly creditworthiness scores of Clearing Members and Commercial Banks. ICR reporting shall summarize the underlying cause of the ICR score, recent scoring trend and exposure introduced by a Clearing Member or Commercial Bank.

In addition, the Policy provides that Credit Risk Management shall perform examinations of the risk management frameworks, policies, procedures and practices of each Clearing Member no less than once in a three calendar year period focusing on the risks posed to OCC. For certain exams, Credit Risk Management may coordinate with external parties to realize operational efficiencies for both the Clearing Member and OCC.

The CCRM Policy also provides that OCC's Counterparty monitoring includes managing the material risks that arise from indirect participants through tiered participation arrangements. In particular, Credit Risk Management, supported by other FRM business units and Business Operations, shall monitor the material risks that arise from indirect participants through tiered participation arrangements. Credit Risk Management (or other FRM business units, as appropriate) shall identify these tiered participation arrangements through standard monitoring processes when they present elevated risk to the Clearing Member or OCC. Furthermore, Clearing Member risk examinations shall seek to understand how direct participants identify, measure and manage the risks posed to OCC from indirect participants. In this regard, the CCRM Policy is designed to promote compliance with Rule 17Ad–22(e)(19) by addressing the material risks that may arise from indirect participants.[15]

Additionally, under the CCRM Policy, OCC shall monitor Clearing Members, Commercial Banks and investment counterparties during prolonged periods of inactivity, and Clearing Members shall be allowed to voluntarily enter a dormant state in order to reduce credit risk originating from unexpected trading activity. A dormant Clearing Member shall continuously adhere to all operational and financial standards and may reactivate its membership after submitting to an operational and financial review. OCC shall maintain sole discretion to terminate inactive Commercial Banks and investment counterparties in order to reduce credit risk.

Counterparty Credit Risk Termination

Finally, the CCRM Policy addresses the voluntary off-boarding of Counterparties. Under the Policy, voluntary off-boarding shall be performed in a manner designed to wind down all credit exposures in an orderly fashion before a relationship is terminated.[16]

(2) Statutory Basis

Section 17A(b)(3)(F) of the Act[17] requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible and, in general, to protect investors and the public interest. Through each of its respective sections, the CCRM Policy provides a framework that is designed to enable OCC to identify, evaluate, measure, monitor and manage potential credit risks posed by its Counterparties. In identifying these credit risks, the CCRM Policy details various ways in which OCC may be exposed to such risks. In evaluating counterparty credit risks, the CCRM Policy states that OCC evaluates each Counterparty against objective and risk-based minimum standards of creditworthiness, overall financial condition and operational capabilities. The Policy also provides detail on how OCC structures its custodial relationship to ensure it has prompt access to its own assets and Clearing Members' assets. In measuring counterparty credit risk, the CCRM Policy describes various ways in which OCC measures credit risk posed by different Counterparties, as well as the three main tools for managing credit risk posed by Clearing Members. In monitoring and managing counterparty credit risk, the CCRM Policy specifies the steps taken by OCC's internal units to monitor Counterparties, including by conducting examinations of Clearing Members' risk management frameworks and performing monthly Watch Level Reporting. The CCRM Policy's promotion of each aforementioned activity ultimately inures to the protection of investors and the public interest, as well as the safeguarding of securities and funds in OCC's custody or control[18] in a manner consistent with Section 17A(b)(3)(F) of the Act.[19]

OCC also believes that that the CCRM Policy is consistent with several requirements under Rule 17Ad–22. For example, Rules 17Ad–22(e)(3) and (e)(4)[20] require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, maintain a sound risk management framework for addressing credit risk, to effectively identify, measure, monitor, and manage credit risks that arise in or are borne by the covered clearing agency, including its credit exposures to participants and those arising from its payment, clearing, and settlement processes. OCC believes that the CCRM Policy is consistent with Rules 17Ad–22(e)(3) and (4)[21] because the CCRM Policy describes OCC's framework for comprehensively managing its credit risks. Specifically, the CCRM Policy describes the various processes by which OCC identifies, measures, monitors, and manages its credit exposures to participants and exposures arising from its payment, clearing, and settlement processes, including the Counterparty access and participation standards used by OCC to evaluate potential Counterparties, OCC's processes for measuring its Counterparty exposures, and OCC's processes for monitoring and managing Counterparty exposures (particularly through the use of its Watch Level Reporting processes).

In addition, Rule 17Ad–22(e)(16)[22] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, safeguard the covered clearing agency's own and its participants' assets and minimize the risk of loss and delay in access to these assets. OCC believes that the access and participation requirements for Commercial and Central Banks outlined in the CCRM Policy enable it to appropriately evaluate each bank against relevant minimum standards of creditworthiness and for its overall financial condition and operational capabilities, and are therefore designed to minimize the risk of loss and delay in access to OCC's assets and its participants' assets in a manner consistent with Rule 17Ad–22(e)(16).[23]

Rule 17Ad–22(e)(18)[24] further requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access and require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor

[15] 17 CFR 240.17Ad–22(e)(19).

[16] 17 CFR 240.17Ad–22(e)(19).

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] These activities, in turn, help ensure that OCC remains capable of continuing its operations and services in a manner that promotes the prompt and accurate clearance and settlement of securities transactions.

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 17 CFR 240.17Ad–22(e)(3) and (4).

[21] *Id.*

[22] 17 CFR 240.17Ad–22(e)(16).

[23] *Id.*

[24] 17 CFR 240.17Ad–22(e)(18).

compliance with such participation requirements on an ongoing basis. OCC believes the CCRM Policy promotes compliance with Rule 17Ad–22(e)(18) [25] by ensuring that OCC has objective, risk-based and publicly disclosed criteria for participation and requiring Clearing Members to have sufficient financial resources to meet their obligations to OCC. Moreover, the Policy outlines the Watch Level Reporting process used by OCC to monitor compliance with such participation requirements on an ongoing basis.

Rule 17Ad–22(e)(19) [26] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities. OCC believes the Policy is designed to comply with Rule 17Ad–22(e)(19) [27] because it outlines the process by which OCC identifies and monitors the material risks arising from indirect participants through tiered participation arrangements, including through the use of risk examinations of its Clearing Members.

Finally, Rule 17Ad–22(e)(20) [28] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies or FMUs. OCC believes that the Policy promotes compliance with Rule 17Ad–22(e)(20) [29] because it outlines the standards OCC uses to evaluate FMU Counterparties prior to entering into any link arrangement (including the evaluations OCC would perform relating to rights and interests, collateral arrangements, settlement finality and netting arrangements, and financial and custody risks that may arise due to such link arrangement) and the processes by which OCC measures and monitors the risks arising from such FMU Counterparties (including its FMU Watch Level Reporting process).

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act [30] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition. The proposed rule change addresses the framework by which OCC manages counterparty credit risk arising from its business, as set forth in the CCRM Policy. Because any individual Counterparty under the CCRM Policy is equally subject to the aspects of the counterparty credit risk framework that apply to it based on the type of Counterparty that it represents (*i.e.,* direct and indirect participants, Liquidity Providers, asset custodians, settlement banks, letter of credit issuers, investment counterparties, clearing agencies and FMUs) and the related counterparty credit risks that are posed to OCC by that type of Counterparty, the proposed rule change would not provide any Counterparty with a competitive advantage over any other similar Counterparty. Further, the proposed rule change would not affect Clearing Members' or other Counterparties' existing access to OCC's services or impose any new or different direct burdens on Clearing Members or other Counterparties.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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–OCC–2017–009 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–OCC–2017–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_009.pdf.*

All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from

[25] *Id.*

[26] 17 CFR 240.17Ad–22(e)(19).

[27] *Id.*

[28] 17 CFR 240.17Ad–22(e)(20).

[29] *Id.*

[30] 15 U.S.C. 78q–1(b)(3)(I).

comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2017–009 and should be submitted on or before November 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated Authority.[31]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23731 Filed 10–31–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81952; File No. SR–BatsBYX–2017–27]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect in the Exchange's Governing Documents, Rulebook and Fee Schedule, a Non-Substantive Corporate Branding Change, Including Changes to the Company's Name, the Intermediate's Name, and the Exchange's Name

October 26, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2017, Bats BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 a proposed rule change with respect to amendments of the Second Amended and Restated Certificate of Incorporation (the ''Company's Certificate'') and Third Amended and Restated Bylaws (the ''Company's Bylaws'') of its parent corporation, CBOE Holdings, Inc. (''CBOE Holdings'' or the ''Company'') to change the name of the Company to Cboe Global Markets, Inc. With respect to CBOE V, LLC, an intermediate Holding Company of the Exchange (the ''Intermediate''), the Exchange proposes to amend the Certificate of Formation and Limited Liability Company Operating Agreement of CBOE V, LLC (the ''Operating Agreement''), in connection with a related name change for the Intermediate. The Exchange also proposes to amend its Amended and Restated Certificate of Incorporation (the ''Exchange Certificate''), Sixth Amended and Restated Bylaws of Bats BYX Exchange, Inc. (the ''Exchange Bylaws''), rulebook and fee schedule (collectively ''operative documents'') in connection with the name change of its parent Company, Intermediate, and the Exchange.

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 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

Background

The purpose of this filing is to reflect in the Exchange's governing documents (and the governing documents of its parent company, CBOE Holdings) and the Exchange's rulebook and fees schedules, a non-substantive corporate branding change, including changes to the Company's name, the Intermediate's name, and the Exchange's name. Particularly, references to Company's, Intermediate's and Exchange's names will be deleted and revised to state the new names, as described more fully below. No other substantive changes are being proposed in this filing. The Exchange represents that these changes are concerned solely with the administration of the Exchange and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons is any way. Accordingly, this filing is being submitted under Rule 19b–4(f)(3). In lieu of providing a copy of the marked name changes, the Exchange represents that it will make the necessary non-substantive revisions described below to the Exchange's corporate governance documents, rulebook, and fees schedules, and post updated versions of each on the Exchange's Web site pursuant to Rule 19b–4(m)(2).

The Company's Name Change

In connection with the corporate name change of its parent company, the Exchange is proposing to amend the Company's Certificate and Bylaws. Specifically, the Company is changing its name from ''CBOE Holdings, Inc.'' to ''Cboe Global Markets, Inc.''.

Company's Certificate

The Exchange proposes to (i) delete the following language from Paragraph (1) of the introductory paragraph: ''The name of the Corporation is CBOE Holdings, Inc.'' and (ii) amend Article First of the Company's Certificate to reflect the new name, ''Cboe Global Markets, Inc.'' The Exchange also proposes to add clarifying language and cite to the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed name change. The Exchange notes that it is not amending the Company's name in the title or signature line as the name changes will not be effective until the Company, as currently named, files the proposed changes in Delaware. Thereafter, the Exchange will amend the Certificate to reflect the new name in the title and signature line. The Exchange also notes that although the name of ''Chicago Board Options Exchange, Incorporated'' is changing to ''Cboe Exchange Inc.'', it is not amending the name of Chicago Board Options Exchange, Incorporated (''CBOE'') referenced in Article Fifth(a)(iii) at this time. Particularly, the Exchange notes that unlike the exception applicable to proposed changes to the Company's name,[3] a vote of stockholders is required to adopt an amendment to the reference of CBOE's name. As such, the Exchange will submit a rule filing to amend the Certificate to reflect the new CBOE name at such time it is ready to obtain stockholder approval.

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Section 242(b) of the General Corporation Law of the State of Delaware.

(a) Company's Bylaws

With respect to the Company's Bylaws, references to ''CBOE Holdings, Inc.'' will be deleted and revised to state ''Cboe Global Markets, Inc.'' The Exchange also proposes to eliminate the reference to ''Chicago Board Options Exchange, Incorporated'' in Article 10, Section 10.2. Particularly, Section 10.2 provides that ''for so long as the Corporation shall control, directly or indirectly, any national securities exchange, including, but not limited to Chicago Board Options Exchange, Incorporated (a ''Regulated Securities Exchange Subsidiary''), before any amendment, alteration or repeal of any provision of the Bylaws shall be effective, such amendment, alteration or repeal shall be submitted to the board of directors of each Regulated Securities Exchange Subsidiary, and if such amendment, alteration or repeal must be filed with or filed with and approved by the Securities and Exchange Commission, then such amendment, alteration or repeal shall not become effective until filed with or filed with and approved by the Securities and Exchange Commission, as the case may be.'' As the Company currently controls a number of Regulated Securities Exchange Subsidiaries, it does not believe it is necessary to explicitly reference only Chicago Board Options Exchange, Incorporated and therefore proposes to delete the following language: ''including, but not limited to Chicago Board Options Exchange, Incorporated''.

The Intermediate's Name Change

For purposes of consistency, certain of the Parent's subsidiaries have also undertaken to change their legal names. As a result, the Exchange also proposes to change the name of the Intermediate from ''CBOE V, LLC'' to ''Cboe Bats, LLC.''

(a) Certificate of Formation

As it relates to the Certificate of Formation of CBOE V, LLC, references to ''CBOE V, LLC'' will be deleted and revised to state its new name ''Cboe Bats, LLC''. The Exchange also proposes to add clarifying and conforming language in order to conform to, as well as cite to, the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed name change. The Exchange notes to conform with the revised language in the introductory paragraph, it also proposes to amend references to ''LLC'' to ''limited liability company''. The Exchange also notes that it is not amending the Intermediate's name in the title or signature line as the name changes will not be effective until the Intermediate, as currently named, files the proposed changes in Delaware.[4] Thereafter, the Exchange will amend the Certificate of Formation to reflect the new name in the title and signature line.

(b) Operating Agreement

As it relates to the Operating Agreement of the Intermediate, references to ''CBOE V, LLC'' will be deleted and revised to state its new name ''Cboe Bats, LLC'' and references to ''CBOE Holdings, Inc.'' will be deleted and revised to state ''Cboe Global Markets, Inc.''. The Exchange also proposes to add clarifying and conforming language in connection with the proposed name change, including new Section 12.5 (''Effect of Amendment''), which provides that the ''Agreement amends, restates and supersedes the Original Agreement in all respects. From and after the date hereof, this Agreement shall be the limited liability company operating agreement of the Company for all purposes.''

The Exchange's Name Change

For purposes of consistency, certain of the Parent's subsidiaries have also undertaken to change their legal names. As a result, the Exchange also proposes to change its name from ''Bats BYX Exchange, Inc.'' to ''Cboe BYX Exchange, Inc.'' throughout its rules, fees schedules and corporate documents. Additionally, the Exchange notes that its affiliated exchanges Bats BZX Exchange, Inc., Bats EDGX Exchange, Inc., Bats EDGA Exchange, Inc., and C2 Options Exchange, Inc. (collectively the ''affiliates'') have also proposed name changes to Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc. respectively. Lastly, the Exchange is changing the name of ''Bats Trading, Inc.'' to ''Cboe Trading, Inc.''

Therefore, the Exchange proposes to amend its: (i) Amended and Restated Certificate of Incorporation of Bats BYX Exchange, Inc., (ii) Sixth Amended and Restated Bylaws of Bats BYX Exchange, Inc., (iii) Rulebook, (iv) Fee Schedule for BYX Equities (collectively, the ''Operative Documents'') to reflect the name changes.

(a) Exchange's Certificate

The Exchange proposes to (i) delete the following language from the introductory paragraph: ''The name of the Corporation is Bats BYX Exchange, Inc.'' and (ii) amend Article First of the Exchange's Certificate to reflect the new name, ''Cboe BYX Exchange, Inc.''. The Exchange also proposes to add clarifying language and cite to the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed name change. The Exchange notes that it is not amending the Exchange's name in the title or signature line as the name changes will not be effective until the Exchange, as currently named, files the proposed changes in Delaware. Thereafter, the Exchange will amend the Certificate to reflect the new name in the title and signature line.

(b) Exchange's Bylaws

For the Exchange's Bylaws, all references to ''Bats BYX Exchange, Inc.'' will be deleted and revised to state ''Cboe BYX Exchange, Inc.''.

(c) Exchange's Rulebook

For the Rules of Bats BYX Exchange, Inc., all references to ''Bats BYX Exchange, Inc.'' and ''Bats BYX Exchange'' will be deleted and revised to state ''Cboe BYX Exchange, Inc.'' and ''Bats [sic] BYX Exchange'', respectively. Additionally, the Exchange's affiliates are also filing similar rule filings to change their names, as noted above. As such, all references to ''Bats BZX Exchange, Inc.'', ''Bats EDGA Exchange, Inc.'', ''Bats EDGX Exchange, Inc.'' and ''C2 Options Exchange, Inc.''[5] in the BYX's rules will likewise be deleted and revised to state ''Cboe BYX Exchange, Inc.'', Cboe EDGA Exchange, Inc.'' and ''Cboe EDGX Exchange, Inc.'' and ''Cboe C2 Exchange, Inc.'', respectively. All references to ''CBOE Holdings, Inc.'' will be deleted and revised to state ''Cboe Global Markets, Inc.'', all references to ''Bats One'' will be deleted and revised to state ''Cboe One'', and all references to ''Bats Connect'' will be deleted and revised to state ''Cboe Connect''. The Exchange will also delete references to ''Bats Trading, Inc.'' and ''Bats Trading'' and replace it with references to ''Cboe Trading, Inc.'' and ''Cboe Trading'', respectively.

[4] The Exchange notes that the current signature block of the Certificate of Formation references ''CBOE Holdings, Inc.'' instead of ''CBOE V, LLC''. The Exchange proposes to correct that reference and refer to ''CBOE V, LLC'', which as noted, will be changed to ''Cboe Bats, LLC'' at a later date.

[5] The Exchange notes that the BYX rules refer to ''C2 Options Exchange, Incorporated'' as ''C2 Options Exchange, Inc.'' *See* Rule 2.3.

(d) Exchange's Fees Schedule

For the BYX Equities Fee Schedule, any reference to ''Bats BYX Exchange'' will be deleted and revised to state ''Cboe BYX Exchange''. Additionally, all references to ''Bats One'' will be deleted and revised to state ''Cboe One'' and all references to ''Bats Connect'' will be deleted and revised to state ''Cboe Connect''.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] 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.

In particular, the proposed change is a non-substantive change and does not impact the governance, ownership or operations of the Exchange. The Exchange believes that by ensuring that its parent company's governance documents and the Exchanges operative documents accurately reflect the new legal names, the proposed rule change would reduce potential investor or market participant confusion.

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 intended to address competitive issues but rather is concerned solely with updating the Company's and Exchange's governance and operative documents to reflect the abovementioned name changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(3) thereunder,[9] the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization, and therefore has become effective.

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–BatsBYX–2017–27 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–BatsBYX–2017–27. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBYX–2017–27 and should be submitted on or before November 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23733 Filed 10–31–17; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 10183]

Review of the Designation as a Foreign Terrorist Organization of Haqqani Network (and Other Aliases)

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of

the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: October 11, 2017.

Rex W. Tillerson,

Secretary of State.

[FR Doc. 2017–23792 Filed 10–31–17; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 10185]

Review of the Designation as a Foreign Terrorist Organization of Jaish-e-Mohammed (and Other Aliases)

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: October 11, 2017.

Rex W. Tillerson,

Secretary of State.

[FR Doc. 2017–23790 Filed 10–31–17; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10184]

Review of the Designation as a Foreign Terrorist Organization of Islamic Jihad Union (and Other Aliases)

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: October 11, 2017.

Rex W. Tillerson,

Secretary of State .

[FR Doc. 2017–23791 Filed 10–31–17; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10182]

Department of State Performance Review Board Members

In accordance with section 4314(c)(4) of 5 United States Code, the Department of State has appointed the following individuals to the Department of State Performance Review Board for Senior Executive Service members: James Walsh, Chairperson, Deputy Assistant Secretary, Bureau of International Narcotics and Law Enforcement, Department of State; Lisa Grosh, Assistant Legal Adviser, Office of the Legal Adviser, Department of State; Nancy Jackson, Deputy Assistant Secretary, Bureau of Population, Refugees and Migration, Department of State; Eliot Kang, Deputy Assistant Secretary, Bureau of International Security and Nonproliferation, Department of State; and, Gail Neelon, Associate Dean, Foreign Service Institute, Department of State.

Dated: October 20, 2017.

William Todd,

Acting, Director General of the Foreign Service and Director of Human Resources, Department of State.

[FR Doc. 2017–23796 Filed 10–31–17; 8:45 am]

BILLING CODE 4710–15–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36152]

Ohio River Partners Shareholders LLC—Exemption for Intra-Corporate Family Transaction—Ohio River Partners LLC

Ohio River Partners Shareholder LLC (ORPS) and Ohio River Partners LLC (ORP) (collectively, the Parties) have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for an intra-corporate family transaction. ORP is a Delaware limited liability company, and in 2016 the Board authorized it to acquire and operate a 12.2-mile rail line between milepost 60.5 at or near Powhatan Point, Ohio, and milepost 72.2 at or near Hannibal, Ohio (the Omal Line).[1] ORPS, a Delaware limited liability company, owns 100% of the member interests of ORP.[2]

According to the Parties, the purpose of this transaction is to vest both fee title to the Omal Line and the right (and common carrier obligation) to operate the Omal Line in a single entity (ORPS).[3] They state that the transaction will streamline administration and enhance corporate efficiency for the Parties, which are already closely integrated. They note, for example, that the proposed merger will eliminate the need for ORP and ORPS to prepare separate tax returns and maintain separate corporate records.

The Parties state that the transaction does not impose or involve any interchange commitment by, or affecting, the Parties.[4]

Unless stayed, the exemption will be effective on November 15, 2017 (30 days after the verified notice was filed). The Parties state that they intend to consummate the proposed transaction as soon as practicable after the effective date of the exemption.

This is a transaction within a corporate family of the type specially exempted from prior review and approval under 49 CFR 1180.2(d)(3). The Parties state that the transaction will not result in any adverse change in service levels or significant operational changes because ORP has not yet commenced operations over the Omal Line. Nor will the merger of ORP with and into ORPS result in any change in

[1] *See Ohio River Partners LLC—Acquis. & Operation Exemption—Hannibal Development, LLC,* FD 35984 (STB served Apr. 1, 2016).

[2] ORPS is indirectly owned and controlled by Fortress Transportation and Infrastructure Investors LLC, which is managed by an affiliate of Fortress Investment Group LLC (Fortress).

[3] The Parties state that the Omal Line acquisition was part of a broader real estate transaction pursuant to which ORPS acquired certain industrial property (including the land upon which the Omal Line is located) from Hannibal Development LLC (Hannibal Development). The parties originally contemplated that ORP would acquire and operate the Omal Line, while ORPS would acquire the other real property from Hannibal Development. However, as consummated, the transaction resulted in ORPS becoming the owner of all the property conveyed by Hannibal Development, including the Omal Line.

[4] An unexecuted draft copy of the Parties' agreement was filed with the verified notice of exemption.

the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under Sections 11324 and 11325 that involve only Class III rail carriers. The exemption here was filed by ORP and ORPS. Only Class III carriers are involved. Accordingly, labor protective conditions will not be imposed.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the exemption. Petitions for stay must be filed no later than November 8, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36152, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Terrence M. Hynes, Sidley Austin LLP, 1501 K Street NW., Washington, DC 20005.

According to the Parties, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at *WWW.STB.GOV*.

Decided: October 27, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2017–23766 Filed 10–31–17; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 33 (Sub-No. 327X)]

Union Pacific Railroad Company—Abandonment and Discontinuance of Service Exemption—in Cerro Gordo County, Iowa

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuance of Service* for UP to: (1) Abandon a 2.0-mile portion of UP's Rockwell Industrial Lead in Mason City, Iowa, between milepost 155.5 near Elm Street and milepost 157.5 near 19th Street; and (2) discontinue service over a 0.5-mile portion of UP's Rockwell Industrial Lead near Swifts, Iowa, between milepost 157.5 and milepost 158.0, near Swifts, Iowa (the Line).[1] The Line is entirely within Cerro Gordo County, Iowa, and traverses United States Postal Service Zip Code 50401.

UP has certified that: (1) No local or overhead traffic has moved over the Line for at least two years; (2) there is no need to reroute any traffic over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will become effective on December 1, 2017, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 9, 2017. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 21, 2017, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Jeremy M. Berman, General Attorney, 1400 Douglas Street, Stop 1580, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void ab initio.

UP has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by November 6, 2017. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by UP's filing of a notice of consummation by November 1, 2018, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV*.''

Decided: October 26, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2017–23765 Filed 10–31–17; 8:45 am]

BILLING CODE 4915–01–P

[1] In the verified notice, UP states that after the proposed abandonment, UP will continue to provide rail service from the remaining portion of the Rockwell Industrial Lead, as well as the Mason City and Albert Lea Subdivisions of the Spine Line, which lie within one mile of the Line.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,800. *See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2017 Update,* EP 542 (Sub-No. 25), slip op. App. C at 20 (STB served July 28, 2017).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2017–0046]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 2, 2018.

ADDRESSES: You may submit comments identified by DOT Docket ID 2017–0046 by any of the following methods:

Web site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carolyn Winbourn-James, 202–493–0353, Department of Transportation, Federal Highway Administration, Office of Real Estate Services, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: FHWA Excellence in Right-of-Way Awards.

Background: In 1995, the Federal Highway Administration established the biennial Excellence in Right-of-Way Awards Program to recognize partners, projects, and processes that use FHWA funding sources to go beyond regulatory compliance and achieve Right-of-Way excellence. Excellence in Right-of-Way awardees have contributed to outstanding innovations that enhance the right-of-way professional's ability to meet the challenges associated with acquiring real property for Federal-aid projects.

Similarly, FHWA established the Excellence in Right-of-Way Awards Program to honor the use of innovative practices and outstanding achievements associated with highway improvement projects as it relates to the Right-of-Way program. The goal of the program is to showcase exemplary and innovative projects, programs, initiatives, and practices that successfully integrate the consideration of the Right-of-Way program along with the association of the acquisition of land required to construct transportation facilities.

Award*:* Anyone can nominate a project, process, person or group that has used Federal Highway Administration funding sources to make an outstanding contribution to transportation and the Right-of-Way field. The nominator is responsible for submitting an application form that summarizes the outstanding accomplishments of the entry. FHWA will use the collected information to evaluate, showcase, and enhance the public's knowledge on addressing right-of-way challenges on transportation projects. Nominations will be reviewed by an independent panel of judges from varying backgrounds. It is anticipated that awards will be given every two years. The winners are presented plaques at an awards ceremony.

Respondents: Anyone who has used Federal Highway funding sources in the fifty states, the District of Columbia and Puerto Rico.

Frequency: The information will be collected biennially.

Estimated Average Burden per Response: 6 hours per respondent per application.

Estimated Total Annual Burden Hours: It is expected that the respondents will complete approximately 50 applications for an estimated total of 600 annual burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: October 27, 2017.

Michael Howell,

Information Collection Officer.

[FR Doc. 2017–23757 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2017–0045]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that FHWA will submit the collection of information described below to the Office of Management and Budget (OMB) for review and comment. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 1, 2017. The PRA submission describes the nature of the information collection and its expected cost and burden.

DATES: Please submit comments by December 1, 2017.

ADDRESSES: You may submit comments identified by DOT Docket ID 2017–0045 by any of the following methods:

Web site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov* . Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rochelle Zellars-Crawford, (202) 366–2862, Office of the Chief Financial

Officer, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Voucher for Federal-aid Reimbursements.

OMB Control Number: 2125–0507.

Background: The Federal-aid Highway Program provides for the reimbursement to States for expenditure of State funds for eligible Federal-aid highway projects. The Voucher for Work Performed under Provisions of the Federal Aid and Federal Highway Acts as amended is utilized by the States to provide project financial data regarding the expenditure of State funds and to request progress payments from the FHWA. Title 23 U.S.C. 121(b) requires the submission of vouchers. The specific information required on the voucher is contained in 23 U.S.C. 121 and 117. Two types of submissions are required by recipients. One is a progress voucher where the recipient enters the amounts claimed for each FHWA appropriation, and the other is a final voucher where project costs are classified by work type. An electronic version of the Voucher for Work Performed under Provisions of the Federal Aid Highway Acts, as amended, Form PR–20, is used by all recipients to request progress and final payments.

Respondents: 50 State Transportation Departments, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

Frequency: Annually.

Estimated Average Burden per Response: The respondents electronically submit an estimated total of 12,900 vouchers each year. Each voucher requires an estimated average of 30 minutes to complete.

Estimated Total Annual Burden Hours: 6,450 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: October 27, 2017.

Michael Howell,

Information Collection Officer.

[FR Doc. 2017–23755 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD 2017–0169]

Request for Comments on the Renewal of a Previously Approved Information Collection: Cruise Vessel Security and Safety Training Provider Certification

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on July 6, 2017 (**Federal Register** 31388, Vol. 82, No. 128).

DATES: Comments must be submitted on or before December 1, 2017.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Quinton Ellis, Telephone: 202–366–5906; Office of Security, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W25–305, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Cruise Vessel Security and Safety Training Provider Certification.

OMB Control Number: 2133–0547.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: Section 3508 of the Cruise Vessel Security and Safety Act of 2010, Public Law 111–207 (July 27, 2010, as codified at 46 U.S.C. 3507–3508 (CVSSA)) provides the Maritime Administrator with the discretionary authority to certify cruise vessel training providers that comply with training standards developed by the USCG, FBI and the Maritime Administration (MARAD). The certification process necessarily requires applicants to provide supporting information to evidence their compliance with the CVSSA training standards.

Respondents: Cruise line companies and maritime industry training providers.

Affected Public: Passengers and crew onboard cruise lines.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Estimated Hours per Response: 40.

Annual Estimated Total Annual Burden Hours: 800.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

By Order of the Maritime Administrator.

Dated: October 27, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–23750 Filed 10–31–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5305A–SEP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The

IRS is soliciting comments concerning Form 5305A–SEP, Salary Reduction Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before January 2, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317–5753 or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Salary Reduction Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545–1012.

Form Number: 5305A–SEP.

Abstract: Form 5305A–SEP is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS, but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions made to the SEP.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Responses: 100,000.

Estimated Time per Respondent: 9 hr., 43 min.

Estimated Total Annual Burden Hours: 972,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 25, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–23715 Filed 10–31–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the requirements relating to the information reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans.

DATES: Written comments should be received on or before January 2, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Tuawana Pinkston, at (202) 317–6038 or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Tuawana.Pinkston@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 1094–C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, and 1095–C, Employer-Provided Health Insurance Offer and Coverage, and Form 4423, Application for Filing Affordable Care Act (ACA) Information Returns.

OMB Number: 1545–2251.

Form Numbers: Forms 1094–C, 1095–C, and 4423.

Abstract: This program contains regulations providing guidance to employers that are subject to the information reporting requirements under section 6056 of the Internal Revenue Code, enacted by the Patient Protection and Affordable Care Act (Pub. L. 111–148 (124 Stat.119 (2010))). Section 6056 requires those employers to report to the IRS information about their compliance with the employer shared responsibility provisions of section 4980H of the Code and about the health care coverage, if any, they have offered employees. Section 6056 also requires those employers to furnish related statements to employees in order that employees may use the statements to help determine whether, for each month of the calendar year, they can claim on their tax returns a premium tax credit under section 36B of the Code (premium tax credit).

Title: Form 1094–C.

Current Actions: There is no change to this existing regulation. However, the agency has updated the number of respondents to reflect the most recent data available.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit, and not-for-profit entities.

Estimated Number of Respondents: 400,000.

Estimated Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 1,600,000.

Title: Form 1095–C.

Current Actions: There is no change to this existing collection. However, the agency has updated the number of respondents to reflect the most recent data available.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit, and not-for-profit entities.

Estimated Number of Respondents: 105,000,000.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 21,000,000.

Title: Form 4423.

Current Actions: There is no change to this existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit, and not-for-profit entities.

Estimated Number of Respondents: 6.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 2 hours.

The following paragraph applies to all the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments. We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Approved: October 25, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–23714 Filed 10–31–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Acting Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, William M. Paul, Acting Chief Counsel
2. Scott Dinwiddie, Associate Chief Counsel (Income Tax and Accounting)
3. Bruce Meneely, Division Counsel (Small Business & Self Employed)
4. Mark Kaizen, Associate Chief Counsel (General Legal Services)
5. Marjorie Rollinson, Associate Chief Counsel (International)

Alternate—Joseph Spires, Deputy Division Counsel (Small Business & Self Employed)

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: October 20, 2017.

William M. Paul,

Acting Chief Counsel, Internal Revenue Service.

[FR Doc. 2017–23717 Filed 10–31–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple IRS Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before December 1, 2017 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Leonard by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Claim for Refund of Excise Taxes.

OMB Control Number: 1545–1420.

Type of Review: Revision of a currently approved collection.

Abstract: IRC sections 6402, 6404, 6511 and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations, allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Forms: Schedule 1 (Form 8849), Schedule 2 (Form 8849), Schedule 3 (Form 8849), Schedule 5 (Form 8849), Schedule 6 (Form 8849), Schedule 8 (Form 8849), Form 8849.

Affected Public: Individuals or Households, Businesses or other for-profits.

Estimated Total Annual Burden Hours: 942,860.

Title: Form 945/945V: Annual Return of Withheld Federal Income Tax/Voucher; Form 945–A: Annual Record of Federal Tax Liability; Form 945–X Annual Return of Withheld Federal Income Tax, Claim, Refund; TD8672.

OMB Control Number: 1545–1430.

Type of Review: Revision of a currently approved collection.

Abstract: Form 945 is used to report income tax withholding on non-payroll payments including backup withholding and withholding on pensions, annuities, IRA's, military retirement and gambling winnings. Form 945–V, Payment Voucher, is used if you are making a payment with Form 945, Annual Return of Withheld Federal Income Tax. Form 945–A is used to report non payroll tax liabilities. Form 945–X is used to correct errors made on Form 945, Annual Return of Withheld Federal Income Tax, for one year only. TD 8672, these final regulations require

a person to file form 945, Annual Return of Withheld Federal Income Tax, only for the calendar year in which the person is required to withhold Federal income tax from non-payroll payments.

Forms: 945, 945–V, 945–A, 945–X.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 1,509,590.

Title: W–8 BEN, W–8BEN–E, W–8EIC, W–8EXP, W–8IMY, W–8 MOU Program.

OMB Control Number: 1545–1621.

Type of Review: Revision of a currently approved collection.

Abstract: Regulations under Section 1441, 1442, and 1443 of the Internal Revenue Code have changed the manner in which foreign persons (individuals, businesses and other for-profit organizations, foreign governments, international organizations, partnerships, and tax-exempt organizations) must submit certifications to a withholding agent for reduction of, or exemption from, U.S. tax withholding.

Forms: W–8BEN, W–8SECI, W–8EXP, W–8IMY, W–8–BEN–E.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 25,125,680.

Title: Payments From Qualified Education Programs (Under Sections 529 and 530).

OMB Control Number: 1545–1760.

Type of Review: Extension without change of a currently approved collection.

Abstract: Form 1099–Q, Payments From Qualified Education Programs (Under Sections 529 and 530), is used to report distributions from private and state qualified tuition programs as required under Internal Revenue Code sections 529 and 530. A Form 1099–Q is filed if you (a) are an officer or an employee, or the designee of an officer or employee, having control of a program established by a state or eligible educational institution; and (b) made a distribution from a qualified tuition program (QTP). A trustee of a Coverdell education savings account (ESA) must file Form 1099–Q to report distributions made from Coverdell ESAs. To lessen the burden for payers, Form 1099–Q was developed to report distributions from private and state qualified tuition programs. A copy of the Form 1099–Q must be furnished to the recipient.

Form: 1099–Q.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 530,090.

Title: Extensions of Time to Elect Method for Determining Allowable Loss.

OMB Control Number: 1545–1774.

Type of Review: Extension without change of a currently approved collection.

Abstract: The regulations disallow certain losses recognized on sales of subsidiary stock by members of a consolidated group and apply to corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The information is necessary to allow the taxpayer to make certain elections to determine the amount of allowable loss under sec. 1.337(d)–2 and under sec. 1.1502–32(b)(4), to amend its waiver so that it may use its acquired subsidiary's losses.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 7,700.

Title: Election Out of GST Deemed Allocations.

OMB Control Number: 1545–1892.

Type of Review: Extension without change of a currently approved collection.

Abstract: The information collected will be used by the IRS to identify the trusts to which the election or termination of election will apply. The collection of information in this regulation is in sections 26.2632–1(b)(2)(ii), 26.2632–1(b)(2)(iii), and 26.2632–1(b)(2). This information is required by the IRS for taxpayers who elect to have the automatic allocation rules not apply to the current transfer and/or to future transfers to the trust or to terminate such election. This information is also required by the IRS for taxpayers who elect to treat trusts described in section 2632(c)(3)(B)(i) through (vi) as GST trusts or to terminate such election.

Form: None.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 12,500.

Title: PTIN Supplemental Application for U.S. Citizens Without a Social Security Number Due to Conscientious Religious Objection.

OMB Control Number: 1545–2188.

Type of Review: Extension without change of a currently approved collection.

Abstract: Most individuals applying for a preparer tax identification number (PTIN) will have a social security number (SSN), which will be used to help establish their identity. However, there exists a population of U.S. residents that have a conscientious religious objection to obtaining a social security card and do not have social security numbers. Form 8945 is being created to assist that population in establishing their identity while applying for a PTIN. Form 8945 will establish a vehicle for establishing their identity in lieu of providing a social security number.

Form: 8945.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 3,590.

Title: Forms 8944 & 8948—Tax Returns or Statements; Specified tax return preparers required to file individual income tax returns using magnetic media, waiver requests.

OMB Control Number: 1545–2200.

Type of Review: Extension without change of a currently approved collection.

Abstract: Specified tax return preparers use Form 8944 to request an undue hardship waiver from the section 6011(e)(3) requirement to electronically file returns of income tax imposed by subtitle A on individuals, estates, or trusts. A specified tax return preparer may be required by law to e-file certain covered returns that can be filed electronically. There are exceptions to this requirement. Form 8948 is used to explain which exception applies when a covered return is prepared and filed on paper.

Forms: 8944, 8948.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 18,270,900.

Title: Form 8971—Information Regarding Beneficiaries Acquiring Property from a Decedent.

OMB Control Number: 1545–2264.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract: The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 requires executors of an estate and other persons who are required to file a Form 706, Form 706–NA, or Form 706–A, to report to the Internal Revenue Service (IRS) and to each beneficiary receiving property from an estate the estate tax value of the property, if the return is filed after July 31, 2015. Form 8971 is used to report to the IRS and a Schedule A will be sent to each beneficiary and a copy of each Schedule A will be attached to the Form 8971. Some property received by a beneficiary may

have a consistency requirement, meaning that the beneficiary must use the value reported on Schedule A as the beneficiary's initial basis the property.

Form: 8971.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 200,000.

Title: Certified Professional Employee Organization.

OMB Control Number: 1545–2266.

Type of Review: Extension without change of a currently approved collection.

Abstract: Information is being collected as a result of legislation (section 206 of the ABLE Act passed Dec. 19, 2014) creating the Certified Professional Employer Organization (CPEO) designation. This new collection information consists of creation of new applications; Request for Voluntary IRS Certification of a Professional Employer (Application and CPEO Responsible Individual Personal Attestation Form. The applications will only be used by program applicants and related responsible individuals. The accompanying Regulations and Revenue Procedures are currently in draft form and are schedule to be published in the near future.

Forms: 14737, 14737–A, 14751, 8973.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 90,830.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: October 27, 2017.

Jennifer P. Leonard,

Treasury PRA Clearance Officer.

[FR Doc. 2017–23783 Filed 10–31–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Acting Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Brian Callanan, Deputy General Counsel
2. Mary Beth Murphy, Commissioner (Small Business/Self Employed), IRS
3. Donna C. Hansberry, Chief (Appeals), IRS

Alternate—Doug W. O'Donnell, Commissioner (Large Business & International), IRS

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: October 20, 2017.

William M. Paul,

Acting Chief Counsel, Internal Revenue Service.

[FR Doc. 2017–23719 Filed 10–31–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Advisory Committee on Homeless Veterans will be held on December 1, 2017. On December 1, the Committee will meet via conference call at 1–800–767–1750; Access Code: 53308# from 2:00 p.m.–5:00 p.m. (EST). The meeting will be open to the public.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of VA in assisting Veterans at-risk and experiencing homelessness. The Committee shall assemble and review information related to the needs of homeless Veterans and provide advice on the most appropriate means of providing assistance to that subset of the Veteran population. The Committee will make recommendations to the Secretary regarding such activities.

The agenda will include briefings from officials at VA regarding services for homeless Veterans and a discussion regarding VA budgetary support to homeless programs.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments on issues affecting homeless Veterans for review by the Committee to Mr. Anthony Love, Designated Federal Officer, VHA Homeless Programs Office (10NC1), Department of Veterans Affairs, 811 Vermont Ave. NW., Washington, DC 20571 or via email at *Anthony.Love@va.gov.*

Members of the public who wish to attend may call-in, using the following number: 1–800–767–1750; Access Code: 53308#. Attendees who require reasonable accommodation should contact Charles Selby and Alexandra Logsdon of the Veterans Health Administration, Homeless Programs Office no later than November 17, 2017, at *Charles.Selby@va.gov* (202) 632–8593 or *Alexandra.Logsdon@va.gov* (202)–632–7146 and describe the type of accommodation needed.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–23741 Filed 10–31–17; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 413 and 414

Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, and End-Stage Renal Disease Quality Incentive Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413 and 414

[CMS–1674–F]

RIN 0938–AT04

Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, and End-Stage Renal Disease Quality Incentive Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This rule updates and makes revisions to the end-stage renal disease (ESRD) prospective payment system (PPS) for calendar year (CY) 2018. It also updates the payment rate for renal dialysis services furnished by an ESRD facility to individuals with acute kidney injury (AKI). This rule also sets forth requirements for the ESRD Quality Incentive Program (QIP), including for payment years (PYs) 2019 through 2021.

DATES: These regulations are effective January 1, 2018.

FOR FURTHER INFORMATION CONTACT:

ESRDPayment@cms.hhs.gov, for issues related to the ESRD PPS and coverage and payment for renal dialysis services furnished to individuals with AKI.

Delia Houseal, (410) 786–2724, for issues related to the ESRD QIP.

Joel Andress, (410) 786–5237, for measure related issues with ESRD QIP.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also available from the **Federal Register** online database through *Federal Digital System (FDsys),* a service of the U.S. Government Printing Office. This database can be accessed via the internet at *http://www.gpo.gov/fdsys/*.

Addenda Are Only Available Through the Internet on the CMS Web site

In the past, a majority of the Addenda referred to throughout the preamble of our proposed and final rules were available in the **Federal Register**. However, the Addenda of the annual proposed and final rules will no longer be available in the **Federal Register**. Instead, these Addenda to the annual proposed and final rules will be available only through the Internet on the CMS Web site. The Addenda to the end-stage renal disease (ESRD) prospective payment system (PPS) rules are available at: *http://www.cms.gov/ESRDPayment/PAY/list.asp*. Readers who experience any problems accessing any of the Addenda to the proposed and final rules of the ESRD PPS that are posted on the CMS Web site identified above should contact *ESRDPayment@cms.hhs.gov*.

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To assist readers in referencing sections contained in this preamble, we are providing a Table of Contents. Some of the issues discussed in this preamble affect the payment policies, but do not require changes to the regulations in the Code of Federal Regulations (CFR).

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Acronyms

Because of the many terms to which we refer by acronym in this final rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

Affordable Care Act the Patient Protection and Affordable Care Act
ABLE Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014
AKI Acute Kidney Injury
AMP Average Manufacturer Price
ASP Average Sales Price
ASPE Office of the Assistant Secretary for Planning and Evaluation
ATRA American Taxpayer Relief Act of 2012
AV Arterial Venous
BLS Bureau of Labor Statistics
BSI Bloodstream Infection
CBSA Core Based Statistical Area
CCN CMS Certification Number
CDC Centers for Disease Control and Prevention
CEO Chief Executive Officer
CFR Code of Federal Regulations
CMS Centers for Medicare & Medicaid Services
CROWNWeb Consolidated Renal Operations in a Web-Enabled Network
CY Calendar Year
DFC Dialysis Facility Compare
DFR Dialysis Facility Report
ECE Extraordinary Circumstances Exception
EPO Epoetin
ESA Erythropoiesis Stimulating Agent
ESRD End-Stage Renal Disease
ESRDB End-Stage Renal Disease Bundled
ESRD PPS End-Stage Renal Disease Prospective Payment System
ESRD QIP End-Stage Renal Disease Quality Incentive Program
FFS Fee-For-Service
FDA Food and Drug Administration
FDL Fixed-Dollar Loss
HCPCS Healthcare Common Procedure Coding System
ICD International Classification of Diseases
ICH CAHPS In-Center Hemodialysis Consumer Assessment of Healthcare Providers and Systems
IGI IHS Global Inc.
IPPS Inpatient Prospective Payment System
IQR Interquartile Range
IUR Inter-unit Reliability
Kt/V A measure of dialysis adequacy where K is dialyzer clearance, t is dialysis time, and V is total body water volume
MAP Medicare Allowable Payment
MFP Multifactor Productivity
MIPPA Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110–275)
NHSN National Healthcare Safety Network
NQF National Quality Forum
OMB Office of Management and Budget
PAMA Protecting Access to Medicare Act of 2014
PD Peritoneal Dialysis
PPS Prospective Payment System
PY Payment Year
QIP Quality Incentive Program
RFA Regulatory Flexibility Act
SBA Small Business Administration
SHR Standardized Hospitalization Ratio
SRR Standardized Readmission Ratio
STrR Standardized Transfusion Ratio
TCV Truncated Coefficient of Variation
TDAPA Transitional Drug Add-on Payment Adjustment
TEP Technical Expert Panel
The Act Social Security Act
The Secretary Secretary of the Department of Health and Human Services
TPEA Trade Preferences Extension Act of 2015
TPS Total Performance Score
UFR Ultrafiltration Rate
VAT Vascular Access Type
WAMP Widely Available Market Price

I. Executive Summary

A. Purpose

1. End-Stage Renal Disease (ESRD) Prospective Payment System (PPS)

On January 1, 2011, we implemented the end-stage renal disease (ESRD) prospective payment system (PPS), a case-mix adjusted, bundled prospective payment system for renal dialysis services furnished by ESRD facilities. This rule updates and makes revisions to the ESRD PPS for calendar year (CY) 2018. Section 1881(b)(14) of the Social Security Act (the Act), as added by section 153(b) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275), and section 1881(b)(14)(F) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111–148), established that beginning CY 2012, and each subsequent year, the Secretary of the Department of Health and Human Services (the Secretary) shall annually increase payment amounts by an ESRD market basket increase factor, reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act.

2. Coverage and Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury (AKI)

On June 29, 2015, the President signed the Trade Preferences Extension Act of 2015 (TPEA) (Pub. L. 114–27). Section 808(a) of TPEA amended section 1861(s)(2)(F) of the Act to provide coverage for renal dialysis services furnished on or after January 1,

2017, by a renal dialysis facility or a provider of services paid under section 1881(b)(14) of the Act to an individual with AKI. Section 808(b) of TPEA amended section 1834 of the Act by adding a new subsection (r) that provides for payment for renal dialysis services furnished by renal dialysis facilities or providers of services paid under section 1881(b)(14) of the Act to individuals with AKI at the ESRD PPS base rate beginning January 1, 2017.

3. End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP)

This rule also finalizes requirements for the end-stage renal disease (ESRD) quality incentive program (QIP), including for payment years (PYs) 2019, 2020, and 2021. The program is authorized under section 1881(h) of the Social Security Act (the Act). The ESRD QIP is the most recent step in fostering improved patient outcomes by establishing incentives for dialysis facilities to meet or exceed performance standards established by the Centers for Medicare & Medicaid Services (CMS).

B. Summary of the Major Provisions

1. ESRD PPS

• *Update to the ESRD PPS base rate for CY 2018:* The CY 2018 ESRD PPS base rate is $232.37. This amount reflects a reduced market basket increase as required by section 1881(b)(14)(F)(i)(I) of the Act (0.3 percent), and application of the wage index budget-neutrality adjustment factor (1.000531), equaling $232.37 ($231.55 × 1.003 × 1.000531 = $232.37).

• *Annual update to the wage index:* We adjust wage indices on an annual basis using the most current hospital wage data and the latest core-based statistical area (CBSA) delineations to account for differing wage levels in areas in which ESRD facilities are located. For CY 2018, we did not propose any changes to the application of the wage index floor and we will continue to apply the current wage index floor (0.4000) to areas with wage index values below the floor.

• *Update to the outlier policy:* Consistent with our policy to annually update the outlier policy using the most current data, we are updating the outlier services fixed-dollar loss (FDL) amounts for adult and pediatric patients and Medicare Allowable Payment (MAP) amounts for adult and pediatric patients for CY 2018 using CY 2016 claims data. Based on the use of more current data, the FDL amount for pediatric beneficiaries would decrease from $68.49 to $47.79 and the MAP amount would decrease from $38.29 to $37.31, as compared to CY 2017 values. For adult beneficiaries, the FDL amount would decrease from $82.92 to $77.54 and the MAP amount would decrease from $45.00 to $42.41. The 1 percent target for outlier payments was not achieved in CY 2016. Outlier payments represented approximately 0.78 percent of total payments rather than 1.0 percent. We believe using CY 2016 claims data to update the outlier MAP and FDL amounts for CY 2018 will increase payments for ESRD beneficiaries requiring higher resource utilization in accordance with a 1 percent outlier percentage.

• *Update to the pricing of drugs and biologicals under the outlier policy:* We are finalizing a change to the ESRD PPS outlier policy to allow the use of any pricing methodology available under section 1847A of the Act to determine the cost of certain eligible outlier service drugs and biologicals in computing outlier payments when average sales price (ASP) data is not available.

2. Payment for Renal Dialysis Services Furnished to Individuals With AKI

We are updating the AKI payment rate for CY 2018. The final CY 2018 payment rate is $232.37, which is equal to the CY 2018 ESRD PPS base rate.

3. ESRD QIP

This rule sets forth requirements for the ESRD QIP, for payment years (PYs) 2019, 2020 and 2021 as follows:

• *Updating the Performance Score (PSC) Certificate Beginning in PY 2019:* We are updating the Performance Score Certificate (PSC) beginning in PY 2019 by shortening and simplifying it.

• *Changes to the Extraordinary Circumstances Exception (ECE) Policy:* In an effort to align our policy with the Extraordinary Circumstances Exception (ECE) policy adopted by other quality reporting and value-based purchasing programs, we are updating the ECE Policy for the ESRD QIP. Specifically, we are updating this policy to (1) allow the facility to submit a form signed by the facility's CEO or designated personnel; (2) expand the reasons for which an ECE can be requested to include an unresolved issue with a CMS data system which affected the ability of the facility to submit data; and (3) specify that a facility does not need to be closed in order to request and receive consideration for an ECE, as long as the facility can demonstrate that its normal operations have been significantly affected by an extraordinary circumstance outside of its control.

• *PY 2021 Measure Set:* Beginning with PY 2021, we are updating the Standardized Transfusion Ratio (STrR) Clinical Measure to align the measure specifications used in the ESRD QIP with those endorsed by the National Quality Forum (NQF), and replacing the two existing Vascular Access Type (VAT) measures with newly NQF-endorsed vascular access measures that address long-held concerns of the ESRD community. Specifically, we are replacing the VAT measures with the Hemodialysis Vascular Access: Standardized Fistula Rate Clinical Measure and the Hemodialysis Vascular Access: Long-Term Catheter Rate Clinical Measure.

• *Data Validation:* For PY 2020, we are continuing the pilot validation study for validation of Consolidated Renal Operations in a Web-Enabled Network (CROWNWeb) data. Under this continued pilot validation study, we will continue using the same methodology used for the PY 2018 and PY 2019 ESRD QIP. Under this methodology, we will sample approximately 10 records per facility from 300 facilities during CY 2018.

For PY 2020, we are also continuing the National Healthcare Safety Network (NHSN) Bloodstream Infection (BSI) Data Validation study that we finalized in the CY 2017 ESRD PPS final rule (81 FR 77894 through 77896), with a minor update to the sampling methodology. Under the updated sampling methodology, we will incorporate a targeted sample to select 35 facilities to participate in an NHSN dialysis event validation study for two quarters of data reported in CY 2018.

C. Summary of Costs and Benefits

In section VII of this final rule, we set forth a detailed analysis of the impacts of the finalized changes for affected entities and beneficiaries. The impacts include the following:

1. Final Impacts of the ESRD PPS

The impact chart in section VII of this final rule displays the estimated change in payments to ESRD facilities in CY 2018 compared to estimated payments in CY 2017. The overall impact of the CY 2018 changes is projected to be a 0.5 percent increase in payments. Hospital-based ESRD facilities have an estimated 0.7 percent increase in payments compared with freestanding facilities with an estimated 0.5 percent increase.

We estimate that the aggregate ESRD PPS expenditures will increase by approximately $60 million from CY 2017 to CY 2018. This reflects a $40 million increase from the payment rate update and a $20 million increase due to the updates to the outlier threshold amounts. We note that the decrease in the projection of aggregate ESRD PPS

expenditures from the figure in the CY 2018 ESRD PPS proposed rule ($100 million) is due to the decrease in the ESRD PPS base rate update factor (that is, from 0.7 percent to 0.3 percent). As a result of the projected 0.5 percent overall payment increase, we estimate that there will be an increase in beneficiary co-insurance payments of 0.5 percent in CY 2018, equivalent to approximately $10 million.

2. Final Impacts of Payment for Renal Dialysis Services Furnished to Individuals With AKI

We anticipate an estimated $20 million will be paid to ESRD facilities in CY 2018 as a result of AKI patients receiving renal dialysis services in the ESRD facility at the ESRD PPS base rate versus receiving those services in the hospital outpatient setting. In the CY 2018 ESRD PPS proposed rule, we estimated $2 million would be paid to ESRD facilities in CY 2018 for AKI patients. Based on actual preliminary ESRD facility claims data available after publication of the CY 2018 ESRD PPS proposed rule, we have updated this estimate for the final rule.

3. Final Impacts of the ESRD QIP

The impact chart in section VII of this final rule displays estimated impacts of the ESRD QIP for payment year (PY) 2021. The overall impact is an expected reduction in payment to all facilities of $29 million. The PY 2021 estimated total facility burden for the collection of data is $91 million, which represents a zero net increase from PY 2020.

II. Calendar Year (CY) 2018 End-Stage Renal Disease (ESRD) Prospective Payment System (PPS)

A. Background

1. Statutory Background

On January 1, 2011, we implemented the end-stage renal disease (ESRD) prospective payment system (PPS), a case-mix adjusted bundled PPS for renal dialysis services furnished by ESRD facilities as required by section 1881(b)(14) of the Social Security Act (the Act), as added by section 153(b) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275). Section 1881(b)(14)(F) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111–148), established that beginning with calendar year (CY) 2012, and each subsequent year, the Secretary of the Department of Health and Human Services (the Secretary) shall annually increase payment amounts by an ESRD market basket increase factor, reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act.

Section 632 of the American Taxpayer Relief Act of 2012 (ATRA) (Pub. L. 112–240) included several provisions that apply to the ESRD PPS. Section 632(a) of ATRA added section 1881(b)(14)(I) to the Act, which required the Secretary, by comparing per patient utilization data from 2007 with such data from 2012, to reduce the single payment for renal dialysis services furnished on or after January 1, 2014 to reflect the Secretary's estimate of the change in the utilization of ESRD-related drugs and biologicals (excluding oral-only ESRD-related drugs). Consistent with this requirement, we finalized $29.93 as the total drug utilization reduction and finalized a policy to implement the amount over a 3- to 4-year transition period in the CY 2014 ESRD PPS final rule (78 FR 72161 through 72170).

Section 632(b) of ATRA prohibited the Secretary from paying for oral-only ESRD-related drugs and biologicals under the ESRD PPS prior to January 1, 2016. And section 632(c) of ATRA required the Secretary, by no later than January 1, 2016, to analyze the case-mix payment adjustments under section 1881(b)(14)(D)(i) of the Act and make appropriate revisions to those adjustments.

On April 1, 2014, the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) was enacted. Section 217 of PAMA included several provisions that apply to the ESRD PPS. Specifically, sections 217(b)(1) and (2) of PAMA amended sections 1881(b)(14)(F) and (I) of the Act and replaced the drug utilization adjustment that was finalized in the CY 2014 ESRD PPS final rule (78 FR 72161 through 72170) with specific provisions that dictated the market basket update for CY 2015 (0.0 percent) and how the market basket should be reduced in CYs 2016 through CY 2018.

Section 217(a)(1) of PAMA amended section 632(b)(1) of ATRA to provide that the Secretary may not pay for oral-only ESRD-related drugs under the ESRD PPS prior to January 1, 2024. Section 217(a)(2) of PAMA further amended section 632(b)(1) of ATRA by requiring that in establishing payment for oral-only drugs under the ESRD PPS, the Secretary must use data from the most recent year available. Section 217(c) of PAMA provided that as part of the CY 2016 ESRD PPS rulemaking, the Secretary shall establish a process for (1) determining when a product is no longer an oral-only drug; and (2) including new injectable and intravenous products into the ESRD PPS bundled payment.

Finally, on December 19, 2014, the President signed the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE) (Pub. L. 113–295). Section 204 of ABLE amended section 632(b)(1) of ATRA, as amended by section 217(a)(1) of PAMA, to provide that payment for oral-only renal dialysis services cannot be made under the ESRD PPS bundled payment prior to January 1, 2025.

2. Description of the System for Payment of Renal Dialysis Services

Under the ESRD PPS, a single, per-treatment payment is made to an ESRD facility for all of the renal dialysis services defined in section 1881(b)(14)(B) of the Act and furnished to individuals for the treatment of ESRD in the ESRD facility or in a patient's home. We have codified our definitions of renal dialysis services at 42 CFR 413.171, which is in subpart H of 42 CFR part 413. Our other payment policies are also included in regulations in subpart H of 42 CFR part 413. The ESRD PPS base rate is adjusted for characteristics of both adult and pediatric patients and accounts for patient case-mix variability. The ESRD PPS provides for the following adult and pediatric patient-level adjustments: The adult patient-level adjusters include five age categories, body surface area, low body mass index, onset of dialysis, and four co-morbidity categories; while the pediatric patient-level adjusters include two age categories and two dialysis modalities (§§ 413.235(a) and (b)).

The ESRD PPS provides for three facility-level adjustments. The first payment adjustment accounts for ESRD facilities furnishing a low volume of dialysis treatments (§ 413.232). The second adjustment reflects differences in area wage levels developed from Core Based Statistical Areas (CBSAs) (§ 413.231). The third payment adjustment accounts for ESRD facilities furnishing renal dialysis services in a rural area (§ 413.233).

The ESRD PPS allows for a training add-on for home and self-dialysis modalities (§ 413.235(c)) and an additional payment for high cost outliers due to unusual variations in the type or amount of medically necessary care when applicable (§ 413.237).

The ESRD PPS also provides for a transitional drug add-on payment adjustment (TDAPA) to pay for a new injectable or intravenous product that is not considered included in the ESRD PPS base rate, meaning a product that is used to treat or manage a condition for

which there is not an existing ESRD PPS functional category (§ 413.234). The ESRD PPS functional categories represent distinct groupings of drugs or biologicals, as determined by CMS, whose end action effect is the treatment or management of a condition or conditions associated with ESRD. New injectable or intravenous products that are not included in a functional category in the ESRD PPS base rate are paid for using the TDAPA for a minimum of 2 years, until sufficient claims data for rate setting analysis is available. At that point, utilization would be reviewed and the ESRD PPS base rate modified, if appropriate, to account for these products. The TDAPA is based on pricing methodologies under section 1847A of the Act (§ 413.234(c)).

3. Updates to the ESRD PPS

Policy changes to the ESRD PPS are proposed and finalized annually in the **Federal Register**. The CY 2011 ESRD PPS final rule was published on August 12, 2010 in the **Federal Register** (75 FR 49030 through 49214). That rule implemented the ESRD PPS beginning on January 1, 2011 in accordance with section 1881(b)(14) of the Act, as added by section 153(b) of MIPPA, over a 4-year transition period. Since the implementation of the ESRD PPS, we have published annual rules to make routine updates, policy changes, and clarifications.

On November 4, 2016, we published in the **Federal Register** a final rule (81 FR 77384 through 77969) entitled, ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Coverage and Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics and Supplies Competitive Bidding Program Bid Surety Bonds, State Licensure and Appeals Process for Breach of Contract Actions, Durable Medical Equipment, Prosthetics, Orthotics and Supplies Competitive Bidding Program and Fee Schedule Adjustments, Access to Care Issues for Durable Medical Equipment; and the Comprehensive End-Stage Renal Disease Care Model; Final Rule'' (hereinafter referred to as the CY 2017 ESRD PPS final rule). In that rule, we updated the ESRD PPS base rate for CY 2017, the wage index and wage index floor, the outlier policy, and the home and self-dialysis training add-on payment adjustment. For further detailed information regarding these updates, see 81 FR 77384.

B. Summary of the Proposed Provisions, Public Comments, and Responses to Comments on the Calendar Year (CY) 2018 ESRD PPS

The proposed rule, entitled ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals with Acute Kidney Injury, and End-Stage Renal Disease Quality Incentive Program'' (82 FR 31190 through 31233), hereinafter referred to as the CY 2018 ESRD PPS proposed rule, was published in the **Federal Register** on July 5, 2017, with a comment period that ended on August 28, 2017. In that proposed rule, for the ESRD PPS, we proposed to make a number of annual updates for CY 2018, including updates to the ESRD PPS base rate, wage index and outlier thresholds, and to update the pricing of certain drugs and biologicals under the outlier policy. We received approximately 58 public comments on our proposals, including comments from ESRD facilities; national renal groups, nephrologists and patient organizations; patients and care partners; manufacturers; health care systems; and nurses.

In this final rule, we provide a summary of each proposed provision, a summary of the public comments received and our responses to them, and the policies we are finalizing for the CY 2018 ESRD PPS.

1. Pricing Eligible Outlier Drugs and Biologicals That Were or Would Have Been, Prior to January 1, 2011, Separately Billable Under Medicare Part B

a. Summary of Outlier Calculation

Our regulations at 42 CFR 413.237 specify the methodology used to calculate outlier payments. Under the ESRD PPS outlier policy, an ESRD facility is eligible for an outlier payment when the facility's per treatment imputed Medicare Allowable Payment (MAP) amount for ESRD outlier services furnished to a beneficiary exceeds the predicted ESRD outlier services MAP amount for outlier services plus the fixed-dollar loss (FDL) amount, as specified in § 413.237(b). In the CY 2011 ESRD PPS final rule (75 FR 49134 through 49147), we discussed the details of establishing the outlier policy under the ESRD PPS, including determining eligibility for outlier payments. We discussed the proposed CY 2018 updates to the outlier policy in the CY 2018 ESRD PPS proposed rule (82 FR 31198 through 31200).

Under § 413.237(a)(1), ESRD outlier services include (1) certain items and services included in the ESRD PPS bundle that were or would have been separately billable under Medicare Part B prior to the implementation of the ESRD PPS, including ESRD-related drugs and biologicals, ESRD-related laboratory tests, and other ESRD-related medical/surgical supplies; and (2) certain renal dialysis service drugs included in the ESRD PPS bundle that were covered under Medicare Part D prior to the implementation of the ESRD PPS. For the Centers for Medicare & Medicaid Services (CMS) to calculate outlier eligibility and payments, ESRD facilities must identify on the monthly claim which outlier services have been furnished. CMS provides a list of outlier services on the CMS Web site, *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/Outlier_Services.html*, which is subject to certain additions and exclusions as discussed in the CY 2012 ESRD PPS final rule (76 FR 70246) and Chapter 8, Section 20.1 of CMS Publication 100–04 (*https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/clm104c08.pdf*).

It is important for ESRD facilities to report the outlier services on the claim because imputed outlier service MAP amounts for a beneficiary are based on the actual utilization of outlier services. Specifically, we estimate an ESRD facility's imputed costs for ESRD outlier services based on available pricing data. In the CY 2011 ESRD PPS final rule we finalized the pricing data that we use to estimate imputed outlier services MAP amounts for the different categories of outlier services (75 FR 49141). With regard to Part B ESRD-related drugs and biologicals that were separately billable prior to implementation of the ESRD PPS, we finalized a policy to base the prices for these items on the most current average sales price (ASP) data plus 6 percent. Our rationale for this decision was that ASP data for ESRD-related drugs and biologicals is updated quarterly and was the basis for payment of these drugs and biologicals prior to the implementation of the ESRD PPS.

b. Use of ASP Methodology Under the ESRD PPS

Since the implementation of the ESRD PPS, we have referred to the use of the ASP methodology when we needed to price ESRD-related drugs and biologicals previously paid separately under Part B (prior to the ESRD PPS) for purposes of ESRD PPS policies or calculations. For example, in the CY 2011 ESRD PPS final rule, we finalized the use of the ASP plus 6 percent methodology for pricing Part B ESRD-related drugs and biologicals under the

outlier policy (75 FR 49141). In the CY 2012 ESRD PPS final rule (76 FR 20244), we stated that under the outlier policy we use the ASP methodology.

In the CY 2013 ESRD PPS final rule (77 FR 67463), we finalized that for CY 2013 and subsequent years we would continue to use the ASP methodology, including any modifications finalized in the Physician Fee Schedule final rules, to compute outlier MAP amounts. (We referred to the Physician Fee Schedule since this is typically the rulemaking vehicle CMS uses for provisions related to covered Part B drugs and biologicals, however, we note that other vehicles such as standalone rules or the outpatient prospective payment system rules, are used as well.) In the CY 2013 ESRD PPS final rule, we also finalized the use of the ASP methodology for any other policy that requires the use of payment amounts for drugs and biologicals that, absent the ESRD PPS, would be paid separately.

In accordance with this policy, in the CY 2016 ESRD PPS proposed rule (80 FR 37829 through 37833), we proposed to use ASP methodology for purposes of two policies (pricing new injectable and intravenous products included in the ESRD PPS bundled payment amount for outlier payments and determining the TDAPA under the ESRD PPS drug designation process. A detailed discussion of our proposals can be found in the CY 2016 ESRD PPS proposed rule (80 FR 37831 through 37833).

As we discussed in the CY 2016 ESRD PPS final rule (80 FR 69023 through 69024), commenters expressed concern regarding the availability of ASP data when including new injectable or intravenous products into the ESRD PPS bundled payment, for purposes of both the outlier calculation and TDAPA. A commenter pointed out that under the proposal, new products would qualify as outlier services, and if we fail to allow separate payment at launch, there would be no ASP upon which to base an outlier payment. That commenter recommended that we consider how to avoid jeopardizing beneficiary access by implementing an outlier payment based on wholesale acquisition cost (WAC) or another readily available price. We agreed with the commenter, and stated that in the event we do not establish an ASP, WAC could be used. We explained that we consider WAC pricing to be a part of the pricing methodologies specified in section 1847A of the Act, and we would use the methodologies available to us under that authority in order to accurately determine a price for the calculation of outlier payments for new injectable and intravenous drugs that fit into one of the existing ESRD PPS functional categories. However, we did not address extending this policy to Part B ESRD-related drugs and biologicals that are currently eligible for outlier consideration that may not have ASP data.

Also, in the CY 2016 ESRD PPS final rule (80 FR 69024), other commenters expressed concern regarding the use of ASP data for purposes of the TDAPA. The commenters suggested that ASP would not be truly reflective of the actual cost of the drugs. One commenter pointed out that there is often a data lag between ASP and the actual cost of the drugs and as a result, the TDAPA may not reflect the actual cost of the drug. We responded that the ASP methodology is a part of the pricing methodologies specified in section 1847A of the Act, which may also include WAC pricing during the first quarter of sales as specified in section 1847A(c)(4) of the Act. We agreed with commenters that ASP pricing may not always be the most appropriate way to calculate the TDAPA. Therefore, we revised the regulation text at § 413.234(c)(1) to refer to the pricing methodologies under section 1847A of the Act, rather than ASP pricing methodology, because these methodologies include ASP as well as WAC.

c. Pricing Methodologies Under Section 1847A of the Act

Medicare Part B follows the provisions under section 1847A of the Act for purposes of determining the payment amounts for drugs and biologicals that are described in section 1842(o)(1)(C) of the Act and that are furnished on or after January 1, 2005. While most Part B drugs (excluding those paid on a cost or prospective payment basis) are paid at ASP plus 6 percent, there are cases where ASP is unavailable. For example, when a new drug or biological is brought to market, sales data is not sufficiently available for the manufacturer to compute an ASP. In these cases, the payment amount for these drugs could be determined using WAC (as specified in section 1847A(c)(4) of the Act) or, when WAC is not available, the Medicare Administrative Contractor has discretion in determining the payment amount. Under section 1847A(d) of the Act, CMS also has the authority to substitute an Average Manufacturer Price (AMP) or Widely Available Market Price (WAMP)-based payment amount for the ASP-based payment amount when the ASP exceeds the AMP or WAMP by a threshold amount. As discussed in the CY 2013 Physician Fee Schedule final rule (77 FR 69140 through 69141), published in the **Federal Register** on November 1, 2012, the AMP price substitution policy is not utilized frequently and WAMP-based price substitutions are not currently implemented. CMS also uses a carryover pricing policy in the very rare situations when a manufacturer's ASP data for a multiple source drug product is missing, as discussed in the CY 2011 Physician Fee Schedule final rule (75 FR 73461 through 73462).

For newly approved drugs, ASP-based payment limits typically become effective two quarters after the drug's first quarter of sales (a discussion about the use of partial quarter ASP data is available in the CY 2012 Physician Fee Schedule final rule, 75 FR 73465). We note that if WAC-based partial quarter payment amounts are used, such payment amounts will typically exceed payments based on ASP. Thus, there may be circumstances where WAC-based partial quarter pricing of the drug increases the beneficiary's cost sharing payment. In order to minimize financial impact on beneficiaries, in situations where less than a quarter's worth of ASP data is available, an ASP-based payment limit will be used, if it is available.

d. Pricing Eligible Outlier Drugs and Biologicals That Were or Would Have Been, Prior to January 1, 2011, Separately Billable Under Medicare Part B

As we have described above, section 1847A of the Act provides methods that are used to determine payment amounts for most separately paid Part B drugs, that is, drugs and biologicals that are not paid on a cost or PPS basis (see section 1842(o)(1) of the Act). We are aware of several circumstances in which an ASP-based payment amount is not available. For example, an ASP-based payment amount is not available when drugs or biologicals are new to market and manufacturers have not yet reported ASP data. Based on CMS' experience with determining Part B drug payment limits under section 1847A of the Act, we believe the instances are limited when ASP data would not be available for drugs or biologicals that could qualify for the ESRD outlier calculation. Nevertheless, we believe that these drugs and biologicals, when they are determined to be an ESRD outlier service, should count toward the outlier calculation, regardless of the limited frequency.

In the CY 2018 ESRD PPS proposed rule, we proposed to extend the use of all pricing methodologies under section 1847A of the Act for purposes of the ESRD PPS outlier policy, specifically for

current ESRD-related drugs and biologicals that were or would have been separately billable under Part B prior to the implementation of the ESRD PPS and are outlier eligible for CY 2018 and subsequent years. As we noted in the CY 2018 ESRD PPS proposed rule, we have already established a policy under the drug designation process in the CY 2016 ESRD PPS final rule (80 FR 69023), whereby we use the pricing methodologies specified in section 1847A of the Act to determine the TDAPA for a new injectable or intravenous product that is not considered included in the ESRD PPS base rate (§ 413.234(c)). In addition, we have established that we use these methodologies to determine a price for the calculation of outlier payments for new injectable and intravenous drugs that fit into one of the existing the functional categories (80 FR 69023).

We explained in the CY 2018 ESRD PPS proposed rule that we believe using the pricing methodologies under section 1847A of the Act is consistent with the ESRD PPS drug designation process, including TDAPA, and how covered drugs and biologicals are paid under Medicare Part B. We stated that we believe consistency with Medicare Part B payment for drugs and biologicals would be beneficial to ESRD facilities because this is the way CMS pays for injectable drugs and biologicals reported on the ESRD claim with the AY modifier; and therefore facilities would be able to predict outlier payments. Therefore, we proposed to apply any pricing methodology available under section 1847A of the Act as appropriate when ASP pricing is unavailable for eligible drugs and biologicals under the outlier policy that were or would have been separately billable under Part B prior to the implementation of the ESRD PPS.

We noted in the CY 2018 ESRD PPS proposed rule that, in situations in which ASP data is not available and other methodologies under section 1847A of the Act do not apply (including but not limited to AMP price substitution or carryover pricing), we believe that a WAC-based payment amount can be determined instead. Based on our experience with determining Part B drug payments under section 1847A of the Act, we stated, we believe that drugs and biologicals that are approved by the Food and Drug Administration and are being sold in the United States nearly always have WAC amounts published in pricing compendia. We noted that we believe this proposal is consistent with the intent of the ESRD PPS outlier policy, which is to provide a payment adjustment for high cost patients due to unusual variations in the type or amount of medically necessary care. If there are drugs and biologicals that ESRD facilities furnish for the treatment of ESRD that qualify as ESRD outlier services and do not have ASP data, we stated that we would want these items counted toward an outlier payment since they are a part of the cost the facility is incurring. When a drug or biological does not have ASP data or WAC data or cannot otherwise be priced under section 1847A of the Act, we proposed that it would not count toward the outlier calculation. When the utilization of a drug or biological is not counted toward the outlier calculation, it may result in a lower outlier payment or no outlier payment to the ESRD facility.

We solicited comment on our proposal to use any pricing methodology available under section 1847A of the Act for purposes of the ESRD PPS outlier policy. We also solicited comment on our proposal that when pricing methodologies are not available under section 1847A of the Act, the drug or biological would not count toward the outlier calculation.

The comments and our responses to the comments on our outlier proposals are set forth below.

Comment: Most commenters on this proposal, including national dialysis provider organizations, several large dialysis organizations, a patient advocacy organization, a drug manufacturer, a health system and a professional association expressed support for the proposal to use the pricing methodologies available under section 1847A of the Act to price drugs and biologicals for the outlier policy.

Commenters noted that, historically, new drugs and biologicals used in the treatment of ESRD that come to market can be expensive and not having access to outlier payments may create an unintended barrier. While they believe that it is unlikely a new drug or biological will not have an ASP or WAC, they indicated that it is important to ensure that payment policies do not disincentivize the use of drugs and biologicals. Another commenter stated patients who require outlier drugs should not be denied the individualized care they need and deserve due to revisions to the pricing methodology.

Response: We appreciate the commenters' support for our outlier proposal. We also agree with the importance of beneficiary access to new therapies when they come to market and, as discussed more fully below, we believe the policy we are finalizing ensures that every drug and biological within an ESRD PPS functional category, except for drugs that are eligible for the TDAPA, is included in the outlier calculation.

Comment: Several commenters expressed concern about the availability of an outlier payment in the event there is no pricing data available for drugs and biologicals. The commenters offered alternative pricing approaches that would be applied when no price is available using the methods described in section 1847A of the Act to ensure that all drugs and biologicals could be priced for the outlier calculation. Several commenters urged CMS to rely upon contract pricing rather than not include a new drug in the outlier calculation. One commenter asked that CMS provide an analysis of the proposal to clarify the impact on the ESRD PPS.

Another commenter recommended pricing the drug or biological by the hospital's cost-to-charge ratio for Cost Center 7300, Drugs Charged to Patients, for hospital-based ESRD facilities or the hospital-specific Reasonable Cost Factor that is currently used for payment of vaccines and blood products on ESRD claims from hospital-based facilities. Since this Reasonable Cost Factor is already used in the ESRD PPS, the commenter stated that applying it to this category of drugs and biologicals should be relatively easy administratively. The commenter indicated that adding an additional last resort pricing method would allow for hospital-based ESRD facilities to receive outlier payments or payments for non-ESRD related services (meaning, we believe, separately billable items and services reported with the AY modifier) that reflect the costs of drugs or biologicals for which no other pricing method is possible.

Response: We agree with the commenters that all eligible drugs and biologicals should be counted in the outlier calculation, to maintain consistency in the policies under the ESRD PPS and to ensure patient access to necessary medications. Also, while we appreciate the commenters' suggestions for alternative pricing methodologies, none of the suggestions fall under the pricing methodologies in section 1847A of the Act. Since our goal is to ensure all eligible drugs and biologicals are counted in the outlier calculation, while maintaining consistency with the drug pricing policies under the ESRD PPS, we believe adopting any of the suggested alternatives would make drug pricing policies under the ESRD PPS inconsistent.

As we stated in the CY 2018 ESRD PPS proposed rule (82 FR 31196), we believe that using the pricing

methodologies under section 1847A of the Act is consistent with the ESRD PPS drug designation process for new injectable and intravenous drugs, and how covered drugs and biologicals are paid under Medicare Part B. We continue to believe that consistency with Medicare Part B payment for drugs and biologicals is beneficial to ESRD facilities because, as mentioned above, this is the way CMS pays for injectable drugs and biologicals on the ESRD claim with the AY modifier; and therefore, facilities would be able to predict outlier payments. We continue to believe it is preferable to have one pricing policy for Part B drugs and biologicals under the ESRD PPS applicable to both the drug designation process, including TDAPA, and outlier policy. Therefore, we are not adopting the commenters' suggestions at this time.

Upon further review and discussion, while we believe the ASP and WAC pricing methodologies under section 1847A of the Act are sufficient to price most eligible drugs and biologicals for the purposes of outlier payment, we note that Medicare Administrative Contractors are authorized to use invoice pricing in scenarios in which neither ASP nor WAC data is available. This is consistent with chapter 17, section 20.1.3 of the Medicare Claims Processing Manual, which directs the Medicare Administrative Contractors to develop payment allowance limits for covered drugs and biologicals that are not included in the ASP Medicare Part B Drug Pricing File or Not Otherwise Classified Pricing File based on the published WAC or invoice pricing. Invoice pricing is not as robust a measure of actual sales price as ASP, but it is nearly universally available. Therefore, as we now believe the pricing methodologies under section 1847A of the Act and related guidance are sufficiently comprehensive, we are not finalizing the proposal to not count certain drugs and biologicals toward the outlier calculation when pricing methodologies are not available under section 1847A of the Act.

We intend to analyze the utilization of drugs and biologicals and how they are priced on a consistent basis to monitor the use of those methodologies described in section 1847A of the Act.

With regard to the comment that we provide an analysis of the impact of this proposal, currently we are aware of only 2 drugs with low utilization that were unable to be priced using ASP for outlier purposes. Those particular drugs had WAC prices and thus could be priced using the pricing methods under section 1847A of the Act; therefore, we believe the impact is negligible.

Comment: MedPAC commented that CMS should rely on ASP data when pricing drugs and biologics under the ESRD PPS outlier policy and drug designation process, including TDAPA, with one exception: New, single-source drugs and biologics, and the first biosimilar to reference a biologic (that lacks ASP data). MedPAC recommended that new single-source drugs and biologics, and the first biosimilar to a reference biologic (that lack ASP data), should be priced using WAC data only for 2 to 3 calendar quarters to permit time for manufacturers to report sales data to CMS and for the agency to calculate an ASP. If at the end of 2 to 3 calendar quarters, ASP data are not available, MedPAC recommended CMS should not use WAC for purposes of calculating outlier payments.

MedPAC referred to its June 2017 report to the Congress, entitled ''Medicare and the Health Care Delivery System,'' which raised concerns about the accuracy of WAC data. MedPAC stated that unlike an ASP, a product's WAC does not incorporate prompt-pay or other discounts. If discounts are available, then a product's WAC price would be greater than it otherwise would be under the ASP-based formula. Consequently, MedPAC noted that using WAC data to determine payments under the outlier policy could result in higher spending for beneficiaries and taxpayers.

MedPAC further commented that, to reduce the need to use less accurate prices, such as WAC, and to improve the accuracy of ASP data, it recommended in the June 2017 report that Congress improve ASP data reporting by requiring all manufacturers of Part B drugs and biologics to report ASP and impose civil monetary penalties for failure to report. As noted by MedPAC, under current policy, not all manufacturers of Part B drugs are required to submit their ASP data. Section 1927(b)(3) of the Act requires only manufacturers with Medicaid drug rebate agreements in place to report their sales data to calculate ASP for each of their Part B drugs.

Response: Our intent for the outlier proposal was to have a consistent drug pricing policy under the ESRD PPS with respect to Part B drugs and to protect beneficiary access to renal dialysis services. We believe that our proposal achieves those goals. We further believe that a change as substantial as relying only on ASP data for TDAPA pricing, as suggested by MedPAC, is out of scope for this rulemaking because we did not propose any changes to the TDAPA. Therefore, we are not adopting the MedPAC recommendation for TDAPA in this final rule. We share MedPAC's concern that ongoing reliance on the use of WAC pricing under the ESRD PPS could result in higher payments and will consider limiting the use of the other non-ASP pricing methods available under section 1847A of the Act in the future if our monitoring indicates they are used for an extended period of time and manufacturers are not reporting ASP data.

Final Rule Action: We are finalizing our proposal to use the pricing methodologies in section 1847A of the Act, as appropriate, to price drugs and biologicals for the outlier calculation when ASP pricing data is not available. We are not finalizing the proposal to not count certain drugs and biologicals toward the outlier calculation when pricing methodologies are not available under section 1847A of the Act.

2. CY 2018 ESRD PPS Update

a. CY 2018 ESRD Bundled Market Basket Update, Productivity Adjustment, and Labor-Related Share for the ESRD PPS

In accordance with section 1881(b)(14)(F)(i) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Affordable Care Act, beginning in 2012, the ESRD PPS payment amounts are required to be annually increased by an ESRD market basket increase factor and reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. The application of the productivity adjustment may result in the increase factor being less than 0.0 for a year and may result in payment rates for a year being less than the payment rates for the preceding year. The statute also provides that the market basket increase factor should reflect the changes over time in the prices of an appropriate mix of goods and services used to furnish renal dialysis services.

Section 1881(b)(14)(F)(i)(I) of the Act, as added by section 217(b)(2)(A) of PAMA, provides that in order to accomplish the purposes of subparagraph (I) with respect to 2016, 2017, and 2018, after determining the market basket percentage increase factor for each of 2016, 2017, and 2018, the Secretary shall reduce such increase factor by 1.25 percentage points for each of 2016 and 2017 and by 1.0 percentage point for 2018. Accordingly, for CY 2018, we proposed to reduce the amount of the market basket percentage increase by 1.0 percent and to further reduce it by the productivity adjustment.

We proposed to use the CY 2012-based ESRDB market basket as finalized and described in the CY 2015 ESRD PPS final rule (79 FR 66129 through 66136) to compute the CY 2018 ESRDB market basket increase factor and labor-related share based on the best available data. Consistent with historical practice, we estimate the ESRDB market basket update based on the IHS Global Inc. (IGI) forecast using the most recently available data. IGI is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

As a result of these provisions, and using the IGI forecast for the first quarter of 2017 of the CY 2012-based ESRDB market basket (with historical data through the 4th quarter of 2016), the proposed CY 2018 ESRD market basket increase was 0.7 percent. This market basket increase was calculated by starting with the proposed CY 2018 ESRDB market basket percentage increase factor of 2.2 percent, reducing it by the mandated legislative adjustment of 1.0 percent (required by section 1881(b)(14)(F)(I)(i) of the Act), and reducing it further by the multifactor productivity (MFP) adjustment (the 10-year moving average of MFP for the period ending CY 2018) of 0.5 percent. As is our general practice, we proposed that if more recent data are subsequently available (for example, a more recent estimate of the market basket or MFP adjustment), we will use such data to determine the CY 2018 market basket update and MFP adjustment in the CY 2018 ESRD PPS final rule.

The IGI 3rd quarter 2017 forecast of the CY 2018 ESRDB market basket update is 1.9 percent. The decrease from the 1st quarter 2017 forecast (2.2 percent) to the 3rd quarter 2017 forecast (1.9 percent) is mostly attributable to a decrease in the projected growth of the series ''Producer Price Index: Commodity Data—Biological products excluding diagnostic, for human use.'' This series is used as the price proxy to estimate the ''erythropoiesis-stimulating agent (ESAs)'' cost category. The IGI 3rd quarter 2017 forecast of the MFP adjustment is 0.6 percent. The increase from the 1st quarter 2017 MFP forecast (0.5 percent) to the 3rd quarter 2017 MFP forecast (0.6) is mainly attributable to the incorporation of upward revisions of historical data by the Bureau of Labor Statistics (BLS), as well as slower projected labor input growth and capital input growth. Slower growth in labor and capital inputs result in a faster growth in topline MFP since MFP is measured as the change in outputs divided by the change in inputs.

For the CY 2018 ESRD payment update, we proposed to continue using a labor-related share of 50.673 percent for the ESRD PPS payment, which was finalized in the CY 2015 ESRD PPS final rule (79 FR 66136).

We did not receive any comments on the proposed CY 2018 market basket update, MFP adjustment, or labor-related share.

Final Rule Action: As noted above, the final CY 2018 market basket update and MFP adjustment in the ESRD PPS final rule will be based on the most recent forecast of data available. Therefore, using the IGI 3rd quarter 2017 forecast with historical data through the 2nd quarter 2017, the final CY 2018 ESRDB update is 0.3 percent. This is based on a 1.9 percent market basket update, less a 1.0 percent adjustment as required by section 1881(b)(14)(F)(i)(I) of the Act, as amended by section 217(b)(2)(A)(ii) of PAMA, and further reduced by a 0.6 percent MFP update.

b. Final CY 2018 ESRD PPS Wage Indices

i. Annual Update of the Wage Index

Section 1881(b)(14)(D)(iv)(II) of the Act provides that the ESRD PPS may include a geographic wage index payment adjustment, such as the index referred to in section 1881(b)(12)(D) of the Act, as the Secretary determines to be appropriate. In the CY 2011 ESRD PPS final rule (75 FR 49117), we finalized the use of the Office of Management and Budget's (OMB's) CBSAs-based geographic area designations to define urban and rural areas and their corresponding wage index values. OMB publishes bulletins regarding CBSA changes, including changes to CBSA numbers and titles. The latest bulletin, as well as subsequent bulletins, is available online at *https://www.whitehouse.gov/omb/information-for-agencies/bulletins*.

For CY 2018, we stated that we would continue to use the same methodology as finalized in the CY 2011 ESRD PPS final rule (75 FR 49117) for determining the wage indices for ESRD facilities. Specifically, we are updating the wage indices for CY 2018 to account for updated wage levels in areas in which ESRD facilities are located. We use the most recent pre-floor, pre-reclassified hospital wage data collected annually under the inpatient prospective payment system. The ESRD PPS wage index values are calculated without regard to geographic reclassifications authorized under sections 1886(d)(8) and (d)(10) of the Act and utilize pre-floor hospital data that are unadjusted for occupational mix. The final CY 2018 wage index values for urban areas are listed in Addendum A (Wage Indices for Urban Areas) and the final CY 2018 wage index values for rural areas are listed in Addendum B (Wage Indices for Rural Areas). Addenda A and B are located on the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/End-Stage-Renal-Disease-ESRD-Payment-Regulations-and-Notices.html*.

In the CY 2011 and CY 2012 ESRD PPS final rules (75 FR 49116 through 49117 and 76 FR 70239 through 70241, respectively), we also discussed and finalized the methodologies we use to calculate wage index values for ESRD facilities that are located in urban and rural areas where there is no hospital data. For urban areas with no hospital data, we compute the average wage index value of all urban areas within the State and use that value as the wage index. For rural areas with no hospital data, we compute the wage index using the average wage index values from all contiguous CBSAs to represent a reasonable proxy for that rural area.

We apply the wage index for Guam (0.9611) to American Samoa and the Northern Mariana Islands as established in the CY 2014 ESRD PPS final rule (78 FR 72172). We apply the statewide urban average based on the average of all urban areas within the state (78 FR 72173) (0.8472) to Hinesville-Fort Stewart, Georgia. We note that if hospital data becomes available for these areas, we will use that data for the appropriate CBSAs instead of the proxy.

A wage index floor value has been used instead of the calculated wage index values below the floor in making payment for renal dialysis services under the ESRD PPS. Currently, all areas with wage index values that fall below the floor are located in Puerto Rico. However, the wage index floor value is applicable for any area that may fall below the floor. A detailed description of the history of the wage index floor under the ESRD PPS can be found in the CY 2018 ESRD PPS proposed rule (82 FR 31198).

In the proposed rule, for CY 2018 and subsequent years, we proposed to maintain the current wage index floor of 0.4000 for CBSAs that have wage index values that fall below the floor. We stated that the cost report analyses that we have conducted over the years are inconclusive and have not convinced us that an increase in the wage index floor is warranted at this time. We explained that we continued to believe maintaining the current wage index

floor value of 0.4000 is appropriate as it continues to provide additional payment support to the lowest wage areas and avoids the need for an additional budget-neutrality adjustment that would reduce the ESRD PPS base rate, beyond the adjustment needed to reflect updated hospital wage data, in order to maintain budget neutrality for wage index updates. We noted that we would continue to monitor and analyze ESRD facility cost reports and projected impacts to guide future rulemaking with regard to the wage index floor (82 FR 31198).

The comments and our responses to the comments on our wage index proposals are set forth below.

Comment: A national dialysis organization and a large dialysis organization support the methodology for determining the wage indices and the continued application of the wage index floor. However, they asked that CMS consider how the current policy could be modified to adjust wage index values to account for laws requiring wage increases. They noted that under the current methodology for determining the wage indices for ESRD facilities, there can be a lag of several years with the wage index recognizing these changes.

Response: We agree with commenters that there is a data lag that occurs when a State changes its minimum wage or staffing requirements and when it is reflected in the hospital-reported wage data. We also believe it is more prudent to base the wage index on actual reported data rather than anticipated changes and the uncertainty of what may or may not be reported. For this reason, we are retaining the current methodology for determining wage indices.

Comment: Although we did not propose to change the wage index floor, we received comments from the major dialysis providers in Puerto Rico and a coalition of healthcare stakeholders in Puerto Rico. The commenters described the economic and healthcare crisis in Puerto Rico and recommended that CMS should use the United States Virgin Islands wage index for payment rate calculations in Puerto Rico as a proxy for CY 2018, given disadvantages recognized by CMS analysis, the unreliability of hospital-reported data in Puerto Rico and the inconsistencies with the wage indices used for other Territories. One commenter indicated that making this change for CY 2018 is similar to the CMS policy established in the CY 2017 Physician Fee Schedule final rule (81 FR 80261 through 80265) about the applicable geographic practice cost index (GPCI) factors and would be a natural ''outgrowth'' policy to define as a temporary measure derived from analysis and language presented in the CY 2017 ESRD PPS final rule and the CY 2018 ESRD PPS proposed rule, as well as from other previous regulatory cycles.

Commenters indicated that the primary issue is that Puerto Rico hospitals report comparatively lower wages that are not adjusted for occupational mix and, as CMS indicates in the CY 2017 ESRD PPS proposed rule (81 FR 42817), in Puerto Rico, only registered nurses (RNs) can provide dialysis therapy in the outpatient setting. This staffing variable artificially lowers the reportable index values even though the actual costs of dialysis service wages in Puerto Rico are much higher than the data CMS is relying upon. In addition, several commenters stated that non-labor costs, including utilities and shipping costs and the CY 2015 change in the labor-share based on the rebased and revised ESRDB market basket compound the issue even further. One organization stated that it does not believe maintaining the current wage index for Puerto Rico for CY 2018 is enough to offset the poor economic conditions, high operational costs and epidemiologic burden of ESRD on the island.

Response: We did not propose to change the wage index floor or otherwise change the wage indexes for Puerto Rico and will maintain the current wage index floor of 0.4000 for CY 2018. We note that the current wage index floor and labor-related share have been in effect since CY 2015 and neither the floor nor the labor share has been reduced since then. More importantly, the wage index is solely intended to reflect differences in labor costs and not to account for non-labor cost differences, such as utilities or shipping costs.

With regard to staffing in Puerto Rico facilities, we have learned that ESRD facilities there utilize RNs similarly to ESRD facilities on the mainland, that is, facilities utilize dialysis technicians and aides to provide dialysis services with oversight by an RN. In addition, hourly wages for RNs and dialysis support staff were approximately half of those salaries in mainland ESRD facilities. For these reasons, we do not agree that the hospital-reported data is unreliable, and we believe using that data is more appropriate than applying the wage index value for the Virgin Islands where salaries are considerably higher.

Final Rule Action: After considering the public comments we received regarding the wage index, we are finalizing the CY 2018 ESRD PPS wage indices based on the latest hospital wage data as proposed. In addition, we are maintaining a wage index floor of 0.4000.

ii. Application of the Wage Index Under the ESRD PPS

A facility's wage index is applied to the labor-related share of the ESRD PPS base rate. In the CY 2015 ESRD PPS final rule (79 FR 66136), we finalized the labor-related share of 50.673 percent, which is based on the 2012-based ESRDB market basket. Thus, for CY 2018, the labor-related share to which a facility's wage index would be applied is 50.673 percent.

c. CY 2018 Update to the Outlier Policy

Section 1881(b)(14)(D)(ii) of the Act requires that the ESRD PPS include a payment adjustment for high cost outliers due to unusual variations in the type or amount of medically necessary care, including variability in the amount of ESAs necessary for anemia management. Some examples of the patient conditions that may be reflective of higher facility costs when furnishing dialysis care would be frailty, obesity, and comorbidities such as cancer. The ESRD PPS recognizes high cost patients, and we have codified the outlier policy in our regulations at 42 CFR 413.237. The policy provides the following ESRD outlier items and services are included in the ESRD PPS bundle: (1) ESRD-related drugs and biologicals that were or would have been, prior to January 1, 2011, separately billable under Medicare Part B; (2) ESRD-related laboratory tests that were or would have been, prior to January 1, 2011, separately billable under Medicare Part B; (3) medical/surgical supplies, including syringes, used to administer ESRD-related drugs that were or would have been, prior to January 1, 2011, separately billable under Medicare Part B; and (4) renal dialysis services drugs that were or would have been, prior to January 1, 2011, covered under Medicare Part D, including ESRD related oral-only drugs effective January 1, 2025.

In the CY 2011 ESRD PPS final rule (75 FR 49142), we stated that for purposes of determining whether an ESRD facility would be eligible for an outlier payment, it would be necessary for the facility to identify the actual ESRD outlier services furnished to the patient by line item (that is, date of service) on the monthly claim. Renal dialysis drugs, laboratory tests, and medical/surgical supplies that are recognized as outlier services were originally specified in Attachment 3 of Change Request 7064, Transmittal 2033

issued August 20, 2010, rescinded and replaced by Transmittal 2094, dated November 17, 2010. Transmittal 2094 identified additional drugs and laboratory tests that may also be eligible for ESRD outlier payment. Transmittal 2094 was rescinded and replaced by Transmittal 2134, dated January 14, 2011, which was issued to correct the subject on the Transmittal page and made no other changes.

Furthermore, we use administrative issuances and guidance to continually update the renal dialysis service items available for outlier payment via our quarterly update CMS Change Requests, when applicable. We use this separate guidance to identify renal dialysis service drugs that were or would have been covered under Medicare Part D for outlier eligibility purposes and in order to provide unit prices for calculating imputed outlier services. In addition, we identify through our monitoring efforts items and services that are either incorrectly being identified as eligible outlier services or any new items and services that may require an update to the list of renal dialysis items and services that qualify as outlier services, which are made through administrative issuances.

Our regulations at 42 CFR 413.237 specify the methodology used to calculate outlier payments. An ESRD facility is eligible for an outlier payment if its actual or imputed MAP amount per treatment for ESRD outlier services exceeds a threshold. The MAP amount represents the average incurred amount per treatment for services that were or would have been considered separately billable services prior to January 1, 2011. The threshold is equal to the ESRD facility's predicted ESRD outlier services MAP amount per treatment (which is case-mix adjusted) plus the FDL amount. In accordance with § 413.237(c) of our regulations, facilities are paid 80 percent of the per treatment amount by which the imputed MAP amount for outlier services (that is, the actual incurred amount) exceeds this threshold. ESRD facilities are eligible to receive outlier payments for treating both adult and pediatric dialysis patients.

In the CY 2011 ESRD PPS final rule, using 2007 data, we established the outlier percentage at 1.0 percent of total payments (75 FR 49142 through 49143). We also established the FDL amounts that are added to the predicted outlier services MAP amounts. The outlier services MAP amounts and FDL amounts are different for adult and pediatric patients due to differences in the utilization of separately billable services among adult and pediatric patients (75 FR 49140). As we explained in the CY 2011 ESRD PPS final rule (75 FR 49138 through 49139), the predicted outlier services MAP amounts for a patient are determined by multiplying the adjusted average outlier services MAP amount by the product of the patient-specific case-mix adjusters applicable using the outlier services payment multipliers developed from the regression analysis to compute the payment adjustments.

For the CY 2018 outlier policy, we used the existing methodology for determining outlier payments by applying outlier services payment multipliers that were developed for the CY 2016 ESRD PPS final rule (80 FR 68993 through 68994, 69002). We used these outlier services payment multipliers to calculate the predicted outlier service MAP amounts and projected outlier payments for CY 2018.

For CY 2018, we proposed that the outlier services MAP amounts and FDL amounts would be derived from claims data from CY 2016. As we stated in the CY 2018 ESRD PPS proposed rule, we believe that any adjustments made to the MAP amounts under the ESRD PPS should be based upon the most recent data year available in order to best predict any future outlier payments. Therefore, we proposed the outlier thresholds for CY 2018 would be based on utilization of renal dialysis items and services furnished under the ESRD PPS in CY 2016. We stated that we recognize that the utilization of ESAs and other outlier services have continued to decline under the ESRD PPS, and that we have lowered the MAP amounts and FDL amounts every year under the ESRD PPS.

In the CY 2017 ESRD PPS final rule (81 FR 77860), we stated that based on the CY 2015 claims data, outlier payments represented approximately 0.93 percent of total payments. In the CY 2018 ESRD PPS proposed rule (82 FR 31199), we discussed that the CY 2016 claims data show outlier payments represented approximately 0.78 percent of total payments. We explained that data indicates that trends in the utilization of the ESAs could be a reason for the decrease. Beginning in 2015 and continuing into 2016, there were large shifts in the composition of the utilization of ESA drugs. Specifically, utilization of Epoetin (EPO) alfa decreased and utilization of the longer-acting ESA drugs, darbepoetin and EPO beta, increased, based on estimates of average ESA utilization per session. As EPO alfa is measured in different units than both darbepoetin and EPO beta, it is difficult to compare the overall utilization of ESAs between 2014 and 2016 by units alone.

As we stated in the CY 2018 ESRD PPS proposed rule, in examining the claims data, we find that compositional shift away from use of EPO alfa to the longer acting darbepoetin and EPO beta was a significant factor in the decrease in total ESA costs in 2016. We first calculated the actual cost for ESAs administered during 2016. We then calculated the projected cost of ESAs that was used for the CY 2016 ESRD PPS final rule, using total utilization from 2014 and drug prices the from 3rd quarter 2015 inflated to 2016 prices. The actual costs of ESAs administered in 2016 were roughly 20 percent lower than the value projected in the CY 2016 ESRD PPS final rule. We then calculated the projected cost of ESAs assuming that the utilization of various ESAs per dialysis session in 2014 and 2016 were similar and also used the prices and total dialysis session count from 2016. The projected costs from these two scenarios were similar and suggest that compositional change in ESA utilization was likely a significant factor in the decrease in the total cost of ESAs between 2014 and 2016. We noted that we continue to believe that the decline is leveling off and that 1.0 percent is an appropriate threshold for outlier payments.

i. CY 2018 Update to the Outlier Services MAP Amounts and FDL Amounts

For CY 2018, we did not propose any changes to the methodology used to compute the MAP or FDL amounts. Rather, we proposed to update the outlier services MAP amounts and FDL amounts to reflect the utilization of outlier services reported on 2016 claims. For this final rule, the outlier services MAP amounts and FDL amounts were updated using the latest available 2016 claims data. The impact of this update is shown in Table 1, which compares the outlier services MAP amounts and FDL amounts used for the outlier policy in CY 2017 with the updated estimates for this rule. The estimates for the CY 2018 outlier policy, which are included in Column II of Table 1, were inflation-adjusted to reflect projected 2018 prices for outlier services.

TABLE 1—OUTLIER POLICY: IMPACT OF USING UPDATED DATA TO DEFINE THE OUTLIER POLICY

	Column I final outlier policy for CY 2017 (based on 2015 data, price inflated to 2017)*		Column II final outlier policy for CY 2018 (based on 2016 data, price inflated to 2018)	
	Age < 18	Age >= 18	Age < 18	Age >= 18
Average outlier services MAP amount per treatment	$38.77	$47.00	$37.41	$44.27
Adjustments				
Standardization for outlier services	1.0078	0.9770	1.0177	0.9774
MIPPA reduction	0.98	0.98	0.98	0.98
Adjusted average outlier services MAP amount	$38.29	$45.00	$37.31	$42.41
Fixed-dollar loss amount that is added to the predicted MAP to determine the outlier threshold	$68.49	$82.92	$47.79	$77.54
Patient-months qualifying for outlier payment	4.6%	6.7%	9.0%	7.4%

* Note that Column I was obtained from Column II of Table 1 from the CY 2017 ESRD PPS final rule.

As demonstrated in Table 1, the estimated FDL amount per treatment that determines the CY 2018 outlier threshold amount for adults (Column II; $77.54) is lower than that used for the CY 2017 outlier policy (Column I; $82.92). The lower threshold is accompanied by a decrease in the adjusted average MAP for outlier services from $45.00 to $42.41. For pediatric patients, there is a decrease in the FDL amount from $68.49 to $47.79. There is a slight decrease in the adjusted average MAP for outlier services among pediatric patients, from $38.29 to $37.31.

We estimate that the percentage of patient-months qualifying for outlier payments in CY 2018 will be 7.4 percent for adult patients and 9.0 percent for pediatric patients, based on the 2016 claims data. The pediatric outlier MAP amount continues to be lower for pediatric patients than adults due to the continued lower use of outlier services (primarily reflecting lower use of ESAs and other injectable drugs).

ii. Outlier Percentage

In the CY 2011 ESRD PPS final rule (75 FR 49081), under § 413.220(b)(4), we reduced the per treatment base rate by 1 percent to account for the proportion of the estimated total payments under the ESRD PPS that are outlier payments as described in § 413.237. Based on the 2016 claims, outlier payments represented approximately 0.78 percent of total payments, below the 1 percent target due to small overall declines in the use of outlier services. Recalibration of the thresholds using 2016 data is expected to result in aggregate outlier payments close to the 1 percent target in CY 2018. We believe the update to the outlier MAP and FDL amounts for CY 2018 will increase payments for ESRD beneficiaries requiring higher resource utilization and move us closer to meeting our 1 percent outlier policy. We note that recalibration of the FDL amounts in this final rule will result in no change in payments to ESRD facilities for beneficiaries with renal dialysis items and services that are not eligible for outlier payments, but will increase payments to ESRD facilities for beneficiaries with renal dialysis items and services that are eligible for outlier payments. Therefore, beneficiary coinsurance obligations will also increase for renal dialysis services eligible for outlier payments.

The comments and our responses to the comments on the proposal to update the outlier thresholds using CY 2016 data are set forth below:

Comment: A national dialysis organization and a large dialysis organization expressed concern about the statement made in the CY 2018 ESRD PPS proposed rule (82 FR 31199) that ESAs administered in 2016 were roughly 20 percent lower than the value we projected in the CY 2016 ESRD PPS final rule. They do not disagree with the conclusion that there should be no change in the threshold for outlier payments. However, they indicated that understanding the cost and utilization of drugs generally, and ESAs in particular, is important to understanding the adequacy of the payment system. They expressed concern that the preamble of the CY 2018 ESRD PPS proposed rule does not describe how CMS determined this value and it seems inconsistent with trends that some ESRD facilities see in their own data.

Response: In the CY 2017 ESRD PPS final rule (81 FR 77860), we stated that based on the CY 2015 claims data, outlier payments represented approximately 0.93 percent of total payments. For this final rule, CY 2016 claims data show outlier payments representing approximately 0.78 percent of total payments. To address the commenters' concern regarding how we determined that the actual costs of ESAs administered in 2016 were roughly 20 percent lower than the value projected in the CY 2016 ESRD PPS final rule, we have included more detail of the analysis here. As we discussed above, beginning in 2015 and continuing into 2016, there were large shifts in the composition of the utilization of ESA drugs in the claims data. Specifically, estimates of average ESA utilization of EPO alfa (Healthcare Common Procedure Coding System (HCPCS) Q4081) per dialysis session decreased from 28.54 units in 2014 to 13.73 units in 2016, and utilization of the longer-acting ESA drugs, darbepoetin (HCPCS J0886) and EPO beta (HCPCS Q9972/J0887), increased, from 0.75 and 0.001 mcg in 2014 to 2.13 and 3.01 mcg in 2016, respectively. As EPO alfa is measured in different units than both darbepoetin and EPO beta, it is difficult to compare the overall utilization of ESAs between 2014 and 2016 by units alone.

In examining the claims data, we continue to find that the compositional shift away from use of EPO alfa to the longer acting darbepoetin and EPO beta was a significant factor in explaining why total ESA costs actually incurred in 2016 were lower than the total ESA costs projected for 2016 using 2014 data. We first calculated the actual cost for ESAs administered during 2014 and 2016. We found shifts in the composition of costs per dialysis session associated with each ESA that were proportional to changes in utilization per session. Specifically, estimates of average ESA cost of EPO alfa per dialysis session decreased from $32.50 in 2014 to $17.19 in 2016, and average cost per session of darbepoetin and EPO beta increased from $2.79 and $0.00 in 2014 to $8.53 and $5.08 in 2016, respectively. Total calculated costs of ESAs in 2014 and 2016 were $1.6 billion and $1.4 billion. We then

calculated the projected cost of ESAs that was used for the CY 2016 ESRD PPS final rule, using total utilization from 2014 and drug prices from the 3rd quarter 2015 inflated to 2016 prices, to be $1.7 billion. The actual costs of ESAs administered in 2016 were roughly 20 percent lower than this value projected in the CY 2016 ESRD PPS final rule (80 FR 68974).

In order to understand the reason for this difference, we created a projected 2016 value using an alternative scenario. In this scenario, we calculated the projected cost of ESAs assuming that the utilization of various ESAs per dialysis session in 2016 was equivalent to that in 2014, but instead we used the prices and total dialysis session count from 2016. The projected costs from these two scenarios were similar and suggest that neither the difference in the projected (3rd quarter 2015 prices inflated to 2016) versus actual ESA prices for 2016 nor changes in the number of dialysis sessions between 2014 and 2016 explain the difference between the projected and actual cost of ESAs in 2016. Therefore, the residual factor indicates that compositional changes in ESA utilization were the most likely factor in the decrease in the total cost of ESAs between 2014 and 2016. We continue to believe that the decline is leveling off and that 1.0 percent is an appropriate target for outlier payments.

Comment: Although we did not propose changes to the outlier target percentage or update methodology, we received many comments regarding the difference between estimated outlier payments and the 1.0 percent outlier target. A national kidney organization and a large dialysis organization expressed support for CMS' proposal to refine the outlier pool so that the dollars paid out more closely align with the estimated amount used to create the outlier pool. However, they expressed concern that CMS has not yet addressed the fact that the outlier pool is consistently paying out less than the amount removed from the base rate. Both organizations referenced an analysis that estimated the outlier pool underpaid $0.46 per treatment in 2016 and that, cumulatively since 2011, $4.97 has been removed by the underpayment of the outlier pool. They asked that CMS further refine the outlier policy so that it is more consistent with how outlier policies in other Medicare payment systems work.

A patient advocacy organization expressed strong support for CMS having an outlier payment policy as the organization believes it is a helpful policy for ensuring that costlier patients receive the care they need. However, the organization recommended that CMS revisit the calculation and application of the outlier payment policy to ensure that total amount of payments withheld are paid back to facilities for patient care.

An organization representing non-profit facilities and a large dialysis organization urged CMS to reconsider the 1 percent outlier policy first implemented in 2011, stating that while an outlier adjustment is required under the statute, a 0.5 percent outlier target percentage would reduce the offset to the base payment and still provide for payment in the case of extraordinary costs.

A large dialysis organization stated that despite CMS's efforts to equalize payment made into and out of the outlier pool, limited progress toward that goal has been achieved. The commenter recommended that CMS should address this problem by paying out any remaining outlier pool dollars to providers in the subsequent year. A professional association agreed, expressing concern about the ongoing leakage of funds withheld, but not paid out as outlier payments. Although the professional association agreed the rationale provided for the anticipated increase in outlier payments may be accurate, it noted that in calculating these estimates, CMS is adjusting for input costs but not for changes in provider behavior, including a substantial shift to other ESAs that are similarly expensive. The commenter stated that in a fixed bundled payment environment, there is an incentive to continually find ways to reduce costly practices—an unaccounted-for factor that will likely contribute to the continued under-projection of outlier payouts.

The professional association offered two alternate paths to addressing the gap between outlier withholds and outlier payments for CMS' consideration: (1) Revise the withhold on an annual basis so that only the exact necessary amount is withheld to meet payouts (likely, retrospectively); or (2) reinvest the difference between actual outlier costs incurred and the funds withheld to support research and other patient-focused initiatives within CMS' scope, such as: Analyzing data to better understand aspects of dialysis care related to improved patient outcomes; developing a demonstration project or pilot focused on covering the cost of care for vascular access payment in the first 90 days prior to new ESRD patient eligibility; or supporting other initiatives to improve the value of ESRD care provided, in partnership with the kidney community.

Response: We appreciate the continued support for the outlier policy and the suggestions provided. We continue to believe that 1.0 percent is an appropriate target for outlier payments given that using more recent claims data to update the outlier MAP and FDL amounts for CY 2018 will increase outlier payments for ESRD beneficiaries. A 1.0 percent outlier target percentage is a modest amount in comparison to other Medicare prospective payment systems and helps to ensure that high cost patients receive the individualized services they need. We will, however, take the commenters' views into consideration as we explore ways to enhance and update the outlier policy in future rulemaking.

Comment: A professional association noted the decreases in the pediatric MAP and FDL amounts to reflect the utilization of services in 2016 and expressed concern about the greater than 25 percent decrease in the pediatric FDL amount. While the commenter recognizes that this is the first proposed decrease in several years, the commenter believes that it could negatively impact the delivery of care in pediatric facilities.

Response: The reduction in the pediatric outlier threshold amounts indicates that the cost of caring for pediatric ESRD patients was lower in 2016 than in 2015. The decrease in the pediatric FDL amount makes exceeding the amount for pediatric facilities easier to achieve. Therefore, we believe this update will improve payments to facilities serving pediatric patients and will not negatively impact the delivery of care.

Final Rule Action: After considering the public comments, we are finalizing the updated outlier thresholds based on CY 2016 data.

d. Final Impacts to the CY 2018 ESRD PPS Base Rate

i. ESRD PPS Base Rate

In the CY 2011 ESRD PPS final rule (75 FR 49071 through 49083), we discussed the development of the ESRD PPS per treatment base rate that is codified in the Medicare regulations at 42 CFR 413.220 and 42 CFR 413.230. The CY 2011 ESRD PPS final rule also provides a detailed discussion of the methodology used to calculate the ESRD PPS base rate and the computation of factors used to adjust the ESRD PPS base rate for projected outlier payments and budget neutrality in accordance with sections 1881(b)(14)(D)(ii) and 1881(b)(14)(A)(ii) of the Act,

respectively. Specifically, the ESRD PPS base rate was developed from CY 2007 claims (that is, the lowest per patient utilization year as required by section 1881(b)(14)(A)(ii) of the Act), updated to CY 2011, and represented the average per treatment MAP for composite rate and separately billable services. In accordance with section 1881(b)(14)(D) of the Act and regulations at § 413.230, the ESRD PPS base rate is adjusted for the patient specific case-mix adjustments, applicable facility adjustments, geographic differences in area wage levels using an area wage index, as well as applicable outlier payments, training add-on payments, and transitional drug add-on payment adjustments.

ii. Annual Payment Rate Update for CY 2018

The ESRD PPS base rate for CY 2018 is $232.37. This update reflects several factors, described in more detail as follows:

• *Wage Index Budget-Neutrality Adjustment Factor:* We compute a wage index budget-neutrality adjustment factor that is applied to the ESRD PPS base rate. For CY 2018, we did not propose any changes to the methodology used to calculate this factor, which is described in detail in the CY 2014 ESRD PPS final rule (78 FR 72174). The final CY 2018 wage index budget-neutrality adjustment factor is 1.000531, based on the updated wage index data. Therefore, the final ESRD PPS base rate for CY 2018 before application of the payment rate update is $232.24 ($231.55 × 1.000531 = $231.67).

• *Market Basket Increase:* Section 1881(b)(14)(F)(i)(I) of the Act provides that, beginning in 2012, the ESRD PPS payment amounts are required to be annually increased by the ESRD market basket percentage increase factor. The latest CY 2018 projection for the ESRDB market basket is 1.9 percent. In CY 2018, this amount must be reduced by 1.0 percentage point as required by section 1881(b)(14)(F)(i)(I) of the Act, as amended by section 217(b)(2)(A) of PAMA, which is calculated as 1.9 − 1.0 = 0.9 percent. This amount is then reduced by the MFP adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act, as required by section 1881(b)(14)(F)(i)(II) of the Act. The final MFP adjustment for CY 2018 is 0.6 percent, thus yielding a final update to the base rate of 0.3 percent for CY 2018 (0.9 − 0.6 = 0.3 percent). This application yields a CY 2018 ESRD PPS final base rate of $232.37 ($231.67 × 1.003 = $232.37).

The comments and our responses to the comments on our proposals to update the payment rate for CY 2018 are set forth below.

Comment: One commenter expressed concern about the application of section 1877 of the Act (the physician self-referral law) to dialysis facilities that, under the TDAPA policy, would furnish and be reimbursed for outpatient dialysis-related drugs that are not yet considered ''part of the bundle.'' The commenter noted that outpatient prescription drugs are designated health services for purposes of the physician self-referral law and urged us to add outpatient dialysis-related drugs furnished by a dialysis facility under the TDAPA policy to the list of codes that are eligible for the exception for EPO and other dialysis-related drugs furnished by an ESRD facility (42 CFR 411.355(g)), which would avoid the application of the physician self-referral law to the referral of and billing for such drugs. The commenter also urged us to confirm that any new drugs added to the ''bundle'' (such as calcimimetics after the TDAPA period) would fall within the exclusion from the definition of ''designated health services'' for outpatient prescription drugs reimbursed as part of a composite rate. The commenter suggested that these steps would help avoid confusion in the provider community and remove any potential barriers to beneficiary access to dialysis drugs that might otherwise occur in an environment in which there are perceived uncertainties about compliance with the physician self-referral law.

Response: As the commenter noted, under section 1877 of the Act and our regulations at 42 CFR 411.351, outpatient prescription drugs are designated health services. However, services that are reimbursed by Medicare as part of a ''composite rate'' are not included in the definition of ''designated health services'' (unless the services are specifically identified in § 411.351 and are themselves payable through a composite rate, such as inpatient and outpatient hospital services). For purposes of the physician self-referral law, ''composite rate'' refers to payments made under a distinct payment methodology (66 FR 868). With respect to ESRD services, for purposes of the physician self-referral law, we interpret the ''composite rate'' as the per-treatment payment amount. As described in our TDAPA implementation guidance issued August 4, 2017, available on the CMS Web site at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2017Downloads/R1889OTN.pdf*, the methodology used to calculate the per-treatment payment amount incorporates the cost of the drugs that are paid for using a TDAPA. Thus, the commenter incorrectly presumes that outpatient prescription drugs furnished and reimbursed under the TDAPA policy are not considered part of the ESRD ''composite rate'' for purposes of the physician self-referral law when, in fact, they are included in this ''composite rate.'' As requested by the commenter, we confirm that, after the TDAPA period under § 413.234(c)(2), calcimimetics will be part of the ESRD PPS ''composite rate'' for purposes of the physician self-referral law.

We note that the payment methodology for calculating the ESRD PPS per-treatment amount is unique to ESRD services, and our determination regarding outpatient prescription drugs furnished and reimbursed under the TDAPA policy does not apply to ambulatory surgical center services, hospice services, skilled nursing facility Part A services, or any other services that are reimbursed by Medicare as part of a composite rate. We also note that our treatment of TDAPA drugs as part of the ESRD PPS ''composite rate'' is consistent with our treatment of EPO and other dialysis-related outpatient prescription drugs as excluded from the ESRD PPS ''composite rate'' prior to January 1, 2011. In our January 4, 2001 rulemaking interpreting section 1877 of the Act (Phase I), we defined ''designated health services'' to exclude services that are reimbursed by Medicare as part of a composite rate (66 FR 924). In contrast to drugs that are paid for using a TDAPA, at the time of our Phase I rulemaking, EPO and other dialysis-related outpatient drugs were not included in the methodology used to calculate the per-treatment payment amount; that is, for purposes of the physician self-referral law, they were not paid as part of the ESRD PPS ''composite rate'' and remained ''designated health services.'' Therefore, a physician owner of an ESRD facility that did not qualify as a ''rural provider'' (for purposes of the physician self-referral law) would have been precluded from ordering EPO and other dialysis-related outpatient prescription drugs for his or her Medicare patients and the ESRD facility would have been precluded from submitting claims to Medicare for the drugs ordered by the physician owner. Because of our belief that the Congress did not intend to preclude physician ownership of ESRD facilities when enacting section 1877 of the Act, we established a separate exception to the physician self-referral

law at § 411.355(g) for EPO and other dialysis-related outpatient prescription drugs (66 FR 938). As of January 1, 2011, EPO and other anemia management outpatient prescription drugs (as well as access management, bone and mineral metabolism, cellular management, antiemetic, anti-infectives, antipruritic, anxiolytic, excess fluid management, fluid and electrolyte management including volume expanders, and pain management outpatient prescription drugs) are included in the ESRD PPS ''composite rate'' (that is, the ESRD per-treatment payment amount) and no longer qualify as ''designated health services'' for purposes of the physician self-referral law. Because drugs that are paid for using a TDAPA are included in the ESRD PPS ''composite rate'' and not considered ''designated health services,'' they need not be included on the list of Current Procedural Terminology (CPT)/HCPCS codes that are eligible for use with the exception at § 411.355(g).

Comment: Several organizations expressed support for the proposed increase to the ESRD PPS base rate and for the consistent and the predictable approach to updating the base rate.

An organization representing dialysis patients expressed appreciation that this year's ESRD PPS rulemaking extends a period of relative stability in Federal support for dialysis; however, that organization and a large dialysis organization indicated that the success of the ESRD PPS depends, by design, on cross subsidization from private coverage and that any action that constrains private coverage for ESRD patients will exacerbate policies that have resulted in consistent ESRD PPS underpayments and destabilize the nation's care delivery system for all ESRD patients. Given CMS's role in overseeing the ESRD PPS and the Health Insurance Marketplaces, they urged CMS to work to preserve the long-standing public-private ESRD partnership and work with the kidney care community to address policies that have resulted in chronic underpayments through the ESRD PPS.

A professional association noted MedPAC's previous findings that the margins in Medicare dialysis care are extremely thin or negative and asked CMS to bear in mind, to the extent possible, when determining the overall base rate that many aspects of care that dialysis facilities provide are not covered by the elements used to calculate the base rate. The professional association stated that this means that any new unfunded mandates (for example, requirements to use pre-filled syringes and follow more time-consuming disinfection processes) must be offset elsewhere in the context of the fixed payment environment. While these new mandates could have patient benefits, they also may come at the expense of other activities that also have patient benefits. The professional association urged CMS to move cautiously and transparently in implementing such new policies, both to promote community understanding and buy-in and to avoid the unintended consequence of effectively mandating new actions that might adversely impact care elsewhere. The professional association stated that any new requirements selected must provide the greatest value to patients in the context of a fixed, bundled payment environment.

Response: We appreciate the commenters' support for the increase to the ESRD PPS base rate and will take into consideration the concerns regarding ESRD facility profit margins.

Final Rule Action: We are finalizing a CY 2018 ESRD PPS base rate of $232.37.

C. Miscellaneous Comments

We received many comments from beneficiaries, physicians, professional organizations, renal organizations, and manufacturers related to issues that were not specifically addressed in the CY 2018 ESRD PPS proposed rule. These comments are discussed below.

Comment: A national kidney organization and a patient advocacy organization requested that the rate setting file released with each proposed and final ESRD PPS rule include specific flags for each payment adjuster that is applied and all modifiers on claims, particularly the ''AY'' modifier which is used for billing items and services that are not furnished for the treatment of ESRD and are therefore separately payable. They noted that the outpatient prospective payment system rate setting file format that is the template for the ESRD PPS rate setting file normally includes all modifiers, and there are a number of ways that adjuster variable flags could be added to that file. These data are necessary to engage in a timely discussion of the impact of the adjusters on accurate estimates of payment and impact analyses.

Response: We appreciate the commenter's thoughts with regard to the rate setting file and we will consider this suggestion for future updates.

Comment: A national kidney organization and a national dialysis provider organization thanked CMS for eliminating the medical director fee limitation that had been a policy left over from before dialysis facilities were paid on a prospective payment system basis. However, they expressed concern that some of the contractors overseeing the cost report submissions are requiring facilities to submit detailed physician logs describing the hours worked and tasks performed and still applying the limitation. The commenters stated there may be confusion because the most recent edition of the Medicare Claims Processing Manual, Chapter 8, section 40.6.C.2, updated November 10, 2016 continues to include instructions that do not reflect the policy changes made in previous rulemakings.

Therefore, they requested that CMS revise the instructions in the Medicare Claims Processing Manual to align with the policy finalized in previous rulemaking that eliminates the limitation on medical director fees. They also requested that we clarify that detailed physician logs not be required, consistent with the elimination of the limitation and the requirements (such as providing an invoice) applied to other health care providers and suppliers with regard to establishing medical director fees.

A dialysis organization requested more information related to items included in the ESRD PPS bundle and requested that CMS create separate lists of what they can include on Medicare claims, which items and services are subject to consolidated billing and whether or not they can bill for these items and services, as well as what is not included in the bundle.

Response: We appreciate the commenter's suggestions regarding claims processing guidance and we will consider them for future updates.

Comment: Although we did not include any proposals regarding the TDAPA, we received many comments from dialysis provider and patient advocacy organizations, professional associations and drug manufacturers covering payment, coverage, and clinical issues surrounding the implementation of the two new HCPCS J-codes for oral and IV calcimimetics that will become renal dialysis services and paid for using a TDAPA beginning on January 1, 2018.

There were several comments regarding timing, including comments expressing that implementation on January 1, 2018 took CMS too long and other comments indicating that this is a complex change for ESRD facilities and they will need time after CMS issues guidance to incorporate that guidance into their billing systems and care planning. In addition, commenters urged us to coordinate with Medicare Advantage as well as Part D to ensure

a seamless conversion of calcimimetics from Part D to Part B. Commenters requested that we closely monitor patient access and outcomes related to calcimimetics, and expressed concern about coinsurance and the need to support innovation, especially for new drugs within the existing ESRD PPS functional categories. They also raised issues regarding refills, CMS reimbursing for shipping and dispensing costs, and reporting the drug dispensed rather than the amount used by patients. Lastly, a national dialysis provider association commented that nephrologists have voiced concerns about the potential implications of CMS reimbursement policies relating to calcimimetics under the physician self-referral law.

Response: We plan to issue guidance soon that will address the issues raised by commenters. We do not understand some of the commenters' concerns because oral equivalents of IV medications currently in the ESRD PPS bundled payment and other oral medications used for the treatment of ESRD (that is, oral drugs that fit into the established ESRD PPS functional categories) have been covered under the ESRD PPS since 2011 when the ESRD PPS bundled system was first implemented. Because of this, we believe that ESRD facilities would have existing relationships with pharmacies that could provide oral drugs to ESRD patients and these pharmacies could also furnish the oral calcimimetics.

Comment: MedPAC commented that section 217(e) of PAMA required the Secretary to conduct audits of Medicare cost reports beginning in 2012 for a representative sample of freestanding and hospital-based facilities furnishing dialysis services. To support this effort, the law authorized the Secretary to transfer $18 million (in fiscal year 2014) from the Federal Supplementary Medical Insurance Trust Fund to CMS's program management. In September 2015, CMS awarded a contract to conduct the audit. MedPAC strongly encouraged CMS to accelerate the audit's completion and release its final results, and emphasized the importance of auditing the cost reports that dialysis facilities submit to CMS to ensure the data are accurate.

An organization of small and independent dialysis facilities agreed, stating that standardized cost reports can improve payment accuracy in the ESRD PPS and thus the organization seeks to partner with CMS to develop standardized cost reports and reporting guidance for ESRD facilities. The organization indicated that the current reporting structure lacks the detail necessary to assist providers in proper cost allocation, and leads to significant inconsistency in cost reporting.

In addition, a patient advocacy organization noted that CMS previously stated that it would review cost reports to better understand the costs of home dialysis training. The organization inquired about CMS's progress towards this goal.

Response: We appreciate the commenters' thoughts and suggestions on the CMS cost reports and audits. The audit process is underway, but not complete at this time. We will take commenters' views into consideration for future cost report updates.

Comment: Although CMS did not propose any changes to the case-mix and facility-level adjustments under the ESRD PPS, we received many comments from national dialysis provider organizations, large dialysis organizations, and patient advocacy organizations expressing concern about the payment adjustments under the ESRD PPS, specifically the use of cost reports for patient-level adjustments. They recommended that CMS update the standardization factor using the most current data available.

The commenters stated that they have recommended several steps that CMS should take to address shortcomings with the case-mix adjusters' validity and accuracy. Until those steps are taken, the organizations asserted that CMS should not apply the case-mix adjustments and restore the dollars historically removed from the base rate to reflect the frequency and size of the revised adjusters. They also recommended that CMS have an independent, third-party perform a peer review of the research methodology employed within the ESRD PPS and asked that CMS consider the comments regarding methodology submitted by the public and provide substantive responses on the record to address concerns. Commenters also asked that CMS provide more detailed data to allow for a complete analysis of the ESRD PPS. For example, commenters requested a comprehensive list of variables, descriptions, and analyses that could resolve the variances identified in the dialysis industry's analysis of the ESRD PPS methodology. They also stated that a more comprehensive list of data elements would clarify the CMS contractor's conclusions and allow them to better address the underpayment of the ESRD PPS.

Response: We appreciate the commenters' thoughts with regard to the ESRD PPS case-mix adjustments and research methodology and will consider the suggestions for future updates.

Comment: We received many other comments that were beyond the scope of the CY 2018 ESRD PPS proposed rule including the following suggestions: Develop a renal-specific productivity factor; require the sharing of dialysis patient information with the treating ESRD facility after a hospitalization to promote health information technology initiatives; allow ESRD facilities to include the 50 cents per treatment Network Fee on their cost reports; encourage home dialysis by consistently covering the costs of home training and more frequent treatments by home patients; and preserve the public-private partnership for ESRD care and ensure that private insurers are incentivized to cover 30 months of dialysis or transplantation services as well as preventive care for patients with diabetes and hypertension to slow the progression of chronic kidney disease to ESRD.

Response: We appreciate receiving these comments so that we are aware of issues impacting ESRD facilities and beneficiaries. However, we did not include any proposals regarding these topics in the CY 2018 ESRD PPS proposed rule, and therefore we consider these suggestions to be beyond the scope of this rule.

Comment: A national dialysis provider association and a national dialysis organization recommended clarification regarding patients with AKI who do not recover kidney function and transition to become ESRD patients. Specifically, these commenters requested guidance related to Medicare eligibility, transplant wait list, and incident patient modifier.

Response: We appreciate the feedback on this issue and we will consider this topic for future guidance.

III. Calendar Year (CY) 2018 Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury (AKI)

A. Background

On June 29, 2015, the Trade Preferences Extension Act of 2015 (TPEA) (Pub. L. 114–27) was enacted. In the TPEA, the Congress amended the Social Security Act (the Act) to include coverage and provide for payment for dialysis furnished by an ESRD facility to an individual with acute kidney injury (AKI). Specifically, section 808(a) of the TPEA amended section 1861(s)(2)(F) of the Act to provide coverage for renal dialysis services furnished on or after January 1, 2017, by a renal dialysis facility or a provider of services paid

under section 1881(b)(14) of the Act to an individual with AKI. Section 808(b) of the TPEA amended section 1834 of the Act by adding a new subsection (r) to the Act. Subsection (r)(1) of section 1834 of the Act provides for payment, beginning January 1, 2017, for renal dialysis services furnished by renal dialysis facilities or providers of services paid under section 1881(b)(14) of the Act to individuals with AKI at the end-stage renal disease (ESRD) prospective payment system (PPS) base rate, as adjusted by any applicable geographic adjustment applied under section 1881(b)(14)(D)(iv)(II) of the Act and may be adjusted by the Secretary of the Department of Health and Human Services (the Secretary) (on a budget neutral basis for payments under section 1834(r) of the Act) by any other adjustment factor under section 1881(b)(14)(D) of the Act.

In the calendar year (CY) 2017 ESRD PPS final rule, we finalized several coverage and payment policies in order to implement subsection (r) of section 1834 of the Act and the amendments to section 1881(s)(2)(F) of the Act, including the payment rate for AKI dialysis (81 FR 77866 through 77872). We interpret section 1834(r)(1) of the Act to mean the amount of payment for AKI dialysis services is the base rate for renal dialysis services determined for such year under the ESRD base rate as set forth in 42 CFR 413.220, updated by the ESRD bundled market basket percentage increase factor minus a productivity adjustment as set forth in 42 CFR 413.196(d)(1), adjusted for wages as set forth in 42 CFR 413.231, and adjusted by any other amounts deemed appropriate by the Secretary under 42 CFR 413.373. We codified this policy in § 413.372.

B. Summary of the Proposed Provisions, Public Comments, and Responses to Comments on CY 2018 Payment for Renal Dialysis Services Furnished to Individuals With AKI

The proposed rule, entitled ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals with Acute Kidney Injury, and End-Stage Renal Disease Quality Incentive Program'' (82 FR 31190 through 31233), hereinafter referred to as the CY 2018 ESRD PPS proposed rule, was published in the **Federal Register** on July 5, 2017, with a comment period that ended on August 28, 2017. In that proposed rule, we proposed to update the AKI dialysis payment rate. We received approximately 9 public comments on our proposal, including comments from ESRD facilities; national renal groups, nephrologists and patient organizations; patients and care partners; manufacturers; health care systems; and nurses.

In this final rule, we provide a summary of the proposed provision, a summary of the public comments received and our responses to them, and the policies we are finalizing for CY 2018 payment for renal dialysis services furnished to individuals with AKI.

1. Annual Payment Rate Update for CY 2018

a. CY 2018 AKI Dialysis Payment Rate

The payment rate for AKI dialysis is the ESRD PPS base rate determined for a year under section 1881(b)(14) of the Act, which is the finalized ESRD PPS base rate. We note that ESRD facilities have the ability to bill Medicare for non-renal dialysis items and services and receive separate payment in addition to the payment rate for AKI dialysis.

As discussed in the CY 2018 ESRD PPS proposed rule (82 FR 31201), the CY 2018 proposed ESRD PPS base rate was $233.31, which reflected the proposed ESRD bundled market basket and multifactor productivity adjustment. Therefore, we proposed a CY 2018 per treatment payment rate of $233.31 for renal dialysis services furnished by ESRD facilities to individuals with AKI.

b. Geographic Adjustment Factor

Section 1834(r)(1) of the Act further provides that the amount of payment for AKI dialysis services shall be the base rate for renal dialysis services determined for a year under section 1881(b)(14) of the Act, as adjusted by any applicable geographic adjustment factor applied under section 1881(b)(14)(D)(iv)(II) of the Act. We interpret the reference to ''any applicable geographic adjustment factor applied under subparagraph (D)(iv)(II) of such section'' to mean the geographic adjustment factor that is actually applied to the ESRD PPS base rate for a particular facility. Accordingly, we apply the same wage index that is used under the ESRD PPS, as discussed in the CY 2018 ESRD PPS proposed rule (82 FR 31201). In the CY 2017 ESRD PPS final rule (81 FR 77868), we finalized that the AKI dialysis payment rate will be adjusted for wage index for a particular ESRD facility in the same way that the ESRD PPS base rate is adjusted for wage index for that facility. Specifically, we apply the wage index to the labor-related share of the ESRD PPS base rate that we utilize for AKI dialysis to compute the wage adjusted per-treatment AKI dialysis payment rate. We proposed a CY 2018 AKI dialysis payment rate of $233.31, adjusted by the ESRD facility's wage index.

The comments and our responses to the comments on this AKI payment proposal are set forth below.

Comment: We received a comment from MedPAC stating that the AKI payment policy should be site-neutral for all settings, including hospital outpatient departments and ESRD facilities. MedPAC stated that this policy would lower spending for beneficiaries and taxpayers and reduce incentives to provide service in a higher paid sector since payment rates should be based on the setting where beneficiaries have adequate access to good quality care at the lowest cost to beneficiaries and the program, adjusting for differences in patient severity. MedPAC suggested that the Centers for Medicare & Medicaid Services (CMS) should pursue legislative authority to implement such a policy.

Response: We appreciate MedPAC's comment with regard to site-neutrality and pursuing legislative authority. We did not propose any specific changes to our AKI payment policies in the CY 2018 ESRD PPS proposed rule, and therefore we consider this comment to be outside the scope of this rule. As we noted in the CY 2017 ESRD PPS final rule (81 FR 77868), section 808(b) of TPEA did not address payments to hospital outpatient departments for dialysis services furnished to beneficiaries with AKI.

Comment: Two national dialysis organizations and a large dialysis organization asked that we affirm the distinction between AKI patients and ESRD beneficiaries, ensure sufficient funds are available to meet the utilization of AKI services by Medicare beneficiaries since the Congress did not mandate that CMS implement the provisions of TPEA in a budget-neutral manner, and also affirm that the ESRD Network fee does not apply to AKI treatments. The commenters noted that the ESRD Networks are charged with focusing on patients with ESRD, and therefore, the Network fee should not be applied to AKI payments.

A professional association, clinician's group, and a national dialysis provider association commented that CMS did not fully reflect the nuances of the distinctly different needs of AKI patients from ESRD patients in the AKI coverage and payment policy implemented in the CY 2017 ESRD PPS final rule. Specifically, the association noted the time and cost of educating staff about AKI dialysis and extra attention required by AKI patients and

more frequent laboratory monitoring of blood and urine. The commenters urged CMS to closely track utilization of items and services that are included in the ESRD PPS bundled payment to ensure that payment is appropriate for AKI dialysis.

The provider association also stated that as we learn more about the provision of services to these patients, it may become apparent that an *AKI adjustment* to the payment rate is necessary to address the differences in the services provided to AKI patients. The commenter was pleased that CMS recognized in the CY 2017 ESRD PPS final rule that adjustments may be necessary in the future, as well as the need to bill certain services separately.

Response: We agree with the commenters that care for AKI patients is different from the care provided to individuals with ESRD. With respect to the comment about ensuring sufficient funds are available for AKI payments, we note that AKI treatments administered in an ESRD facility represent a shift in service from the hospital outpatient department to the ESRD facility and therefore represent a savings to the Medicare Trust Fund, since reimbursement for services provided in an ESRD facility is lower than services provided in a hospital setting. As we stated in the CY 2017 ESRD PPS final rule (81 FR 77867), we believe the definition of an individual with AKI set forth in TPEA provides an appropriate way to distinguish patients with AKI from patients with ESRD. Additionally, the TPEA did not mandate implementation on a budget-neutral basis.

As we discussed in the CY 2017 ESRD PPS final rule (81 FR 77868), we finalized a policy that the AKI dialysis payment rate is the final ESRD PPS base rate adjusted by the wage index that is used under the ESRD PPS. We stated that we are not adjusting the payment amount by any other factors at this time, but may do so in future years. To address the higher costs associated with AKI patients as compared to ESRD patients, we finalized a policy of paying for all AKI dialysis treatments provided to a patient, without applying the monthly treatment limits applicable under the ESRD PPS. We also finalized a policy to pay separately for all items and services that are not part of the ESRD PPS base rate. We have created the ability through our claims processing systems to identify individuals with AKI in order to track the utilization of services and their health outcomes to ensure these patients are receiving the care they require. Once we have substantial data related to the AKI population and its associated utilization, we will determine the appropriate steps toward further developing the AKI payment rate.

Finally, regarding the comment about the applicability of the ESRD Network fee to AKI treatments, we note that we discussed that issue in detail in the CY 2017 ESRD PPS final rule (81 FR 77867 through 77678). We explained that after considering comments and reviewing the applicable statutory provision, we will not apply the ESRD Network fee to the AKI dialysis payment rate.

Comment: We received comments from national provider organizations, large dialysis organizations, and a drug manufacturer providing evidence that the AKI utilization estimates included in the CY 2018 ESRD PPS proposed rule may be inaccurate. These organizations indicated that the outpatient data used to estimate the shift in services from the outpatient hospital setting to the ESRD facility may underestimate the number of beneficiaries that received treatment for AKI. The organizations stated this underestimation could be due to hospitals not consistently billing for dialysis treatments administered to beneficiaries with AKI.

Response: We agree that the estimates used in the CY 2018 ESRD PPS proposed rule underestimated the number of beneficiaries receiving treatments for AKI. When the CY 2018 ESRD PPS proposed rule was developed, we used the best available information, which was information regarding treatments provided in a hospital outpatient setting. In the time between the publication of the CY 2018 ESRD PPS proposed rule and the CY 2018 ESRD PPS final rule, data regarding actual ESRD facility utilization of treatments provided to beneficiaries with AKI has become available. As a result, CMS has revised the impact analysis for AKI payment from $2 million to $20 million for CY 2018.

Comment: National provider organizations, a large dialysis organization, and a patient advocacy organization requested that CMS explain the AKI monitoring program and the transparent provision of data related to the program. These commenters noted that historic utilization may not be representative of the actual prevalence of AKI patients requiring dialysis due to operational models used by hospital outpatient departments and suggested that current data be used to develop an AKI adjustment as necessary to address the differences in the services provided to AKI patients.

Response: We appreciate the feedback on historic utilization and agree that current data is the most appropriate for use with regard to the AKI population. The AKI monitoring program will include current data and will be used to inform future payment policy, including any potential adjustments to the AKI payment rate. As we stated in the CY 2017 ESRD PPS final rule (81 FR 77871), we will develop public use files for the utilization of these services, but we do not anticipate that this data will be available until we have at least 1 full year of claims data. If stakeholders have additional clinical data regarding utilization and the treatments administered to AKI patients, we would welcome the receipt of that data in de-identified form.

Comment: National provider organizations suggested that an AKI specific modifier should be identified for laboratory tests and drugs used by AKI patients and should allow separate payment. Commenters suggested that CMS issue guidance defining the utilization of this modifier, for example, for laboratory tests repeated more frequently for AKI patients than for ESRD patients. These organizations also believe that the AY modifier should not be used on AKI claims. Rather, they recommended that CMS identify a new AKI-specific modifier, which would allow CMS and providers to track utilization of key products and services by AKI patients to better inform policy in future rulemaking. One commenter asked that such modifiers be appropriately flagged in both the rate setting and standard analytic data files to ensure transparency to the public for the purpose of analysis.

Another dialysis organization stated that with regard to AKI and billing, it is still not clear which claim modifiers are required for Medicare claims for AKI patients. They requested that CMS provide specific clarification on this issue.

Response: We appreciate the feedback on the operationalization of AKI claim submission. As we noted in the CY 2017 ESRD PPS final rule (81 FR 77867), the TPEA requires that we pay ESRD facilities for renal dialysis services furnished to beneficiaries with AKI in the amount of the wage-adjusted ESRD PPS base rate. In addition, we stated there is no weekly limit on the number of treatments that will be paid. ESRD facilities will receive payment based on the applicable Part B fee schedules for other items and services that are not considered to be renal dialysis services. As we stated in the CY 2017 ESRD PPS final rule, we continue to believe that these payment considerations are

sufficient for Medicare payment of renal dialysis services furnished to beneficiaries with AKI. As these services evolve in ESRD facilities, we can address any changes in future rulemaking. We will also provide billing guidance as necessary to address updates to modifier rules and claims submission.

Comment: A software vendor requested that we clarify whether the TDAPA applies to AKI services.

Response: We will issue additional program guidance that will address the application of the TDAPA to AKI services and other billing guidance. If we determine that it is appropriate for the TDAPA to apply to AKI services, we would consider that to be a substantive payment policy which would be established through notice and comment rulemaking.

Comment: A health system and a provider organization commented that including AKI treatments in the count to determine eligibility for the low-volume payment adjustment (LVPA) is inappropriate. The commenters believe that including these treatments in that count could discourage facilities from accepting AKI patients if their treatment jeopardizes their low volume status. The commenters also believe that including AKI treatments in the LVPA count, but not applying the LVPA to those treatments, is an inconsistent application of the LVPA policy.

An industry organization urged CMS to include the rural adjustment in the AKI payment to reflect the increased cost necessary to provide high-quality care since rural facilities face all of the same challenges in the providing dialysis treatment to AKI patients as they do to ESRD patients.

Response: We appreciate the commenters' feedback on the application of the LVPA to AKI dialysis treatments as well as their inclusion toward a facility's eligibility. Since the policy regarding eligibility for the LVPA is based on all treatments provided by a facility, including non-Medicare treatments, we determined that the policy should also include AKI dialysis treatments, not just ESRD treatments at this time (81 FR 77869). In the CY 2017 ESRD PPS final rule (81 FR 77868), we discussed not applying the case-mix adjusters to the payment for AKI treatments because those adjusters were developed based on ESRD treatments, and we continue to believe this is the most appropriate policy. As we continue to monitor data, we will review the efficacy of our LVPA and rural policies to determine if modification is required.

Comment: A patient advocacy organization expressed support for our proposal to adjust the AKI payment rate by only the geographic and wage indices. This commenter further noted that, for some patients, peritoneal dialysis (PD) is the most appropriate modality. Additionally, some AKI patients can safely dialyze at home and have their urine and blood tests performed for the assessment of kidney function in a location closer to home. The commenter recommended that home training be paid separately, without dollars removed from the base rate.

Response: We appreciate the commenter's support for our AKI payment rate proposal. With regard to PD, we agree that it is an appropriate modality for some beneficiaries, however, in the CY 2017 ESRD PPS final rule, we stated that we do not expect that AKI beneficiaries will dialyze at home (81 FR 77870 through 77871). We continue to believe that this is a population that requires close medical supervision by qualified staff during their dialysis treatment. We affirm in this final rule that payment will only be made for in-center PD or hemodialysis treatments for AKI beneficiaries. We will monitor this policy to determine if changes are necessary in the future, understanding that there may be a subset of patients for whom AKI dialysis at home is an appropriate treatment. We appreciate the commenter's insight on the home training add-on payment.

Comment: One industry organization urged CMS to adopt a pediatric adjustment for facilities that treat pediatric AKI patients, while another industry organization recognized that pediatric patients are only covered for ESRD and expressed support for our payment policy and appreciation that CMS recognizes the treatment differences in the ESRD and AKI populations.

Response: We appreciate the support and comments with regard to our AKI payment policy, especially for pediatric patients. As we evaluate and monitor the payments for AKI treatments, we will continue to evaluate the appropriateness of the ESRD case-mix adjustments, including the pediatric adjustment. The current clinical literature (*Walters, Scott & Porter, Craig & Brophy, Patrick. (2008). Dialysis and pediatric acute kidney injury: Choice of renal support Modality. Pediatric nephrology (Berlin, Germany). 24. 37–48. 10.1007/s00467–008–0826–x*) indicates that pediatric treatment for AKI is most commonly done in an intensive care unit, not an ESRD facility due to access site difficulties and fluid overload. In a review of data, we have found very few claims for pediatric AKI patients.

Comment: A national dialysis provider association and a national dialysis organization recommended modifying cost reports to separately capture certain AKI costs. Specifically, they recommended that new rows should be added to Worksheet D for AKI hemodialysis treatments and PD treatments. They stated the instructions should explain that AKI treatments are to be reported separately from all other ESRD dialysis treatments.

Response: We agree that updates will need to be made to the dialysis facility cost report in order to differentiate costs of AKI dialysis treatments from treatments provided for the treatment of ESRD. We are currently developing the transmittal that will update the cost report to allow for the differentiation between AKI treatments and treatments for ESRD.

Final Rule Action: We are finalizing the AKI payment rate as proposed, that is, based on the finalized ESRD PPS base rate. Specifically, the final CY 2018 ESRD PPS base rate is $232.37. Accordingly, we are finalizing a CY 2018 payment rate for renal dialysis services furnished by ESRD facilities to individuals with AKI as $232.37.

IV. End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP) for Payment Year (PY) 2021

A. Background

For over 30 years, monitoring the quality of care provided to end-stage renal disease (ESRD) patients by dialysis providers or facilities (hereinafter referred to collectively as ''facility'' or ''facilities'') has been an important component of the Medicare ESRD payment system. The ESRD quality incentive program (QIP) is the most recent step in fostering improved patient outcomes by establishing incentives for dialysis facilities to meet or exceed performance standards established by the Centers for Medicare & Medicaid Services (CMS).

Under the ESRD QIP, payments made to a dialysis facility by Medicare under section 1881(b)(14) of the Social Security Act (the Act) for a year are reduced by up to 2 percent if the facility does not meet or exceed the total performance score (TPS) with respect to performance standards established by the Secretary of the Department of Health and Human Services (the Secretary) with respect to certain specified measures.

In the calendar year (CY) 2012 ESRD PPS final rule (76 FR 70228), published in the **Federal Register** on November 10, 2011, we set forth certain requirements for the ESRD QIP for payment years (PYs) 2013 and 2014.

In the CY 2013 ESRD PPS final rule (77 FR 67450), published in the **Federal Register** on November 9, 2012, we set forth requirements for the ESRD QIP, including for payment year 2015 and beyond. In that rule, we added several new measures to the ESRD QIP's measure set and expanded the scope of some of the existing measures. We also established CY 2013 as the performance period for the PY 2015 ESRD QIP, established performance standards and adopted scoring and payment methodologies similar to those finalized for the PY 2014 ESRD QIP.

In the CY 2014 ESRD PPS final rule (78 FR 72156), published in the **Federal Register** on December 2, 2013, we set forth requirements for the ESRD QIP, including for PY 2016 and beyond. In that rule, we added several new measures to the ESRD QIP's measure set, established the performance period for the PY 2016 ESRD QIP, established performance standards for the PY 2016 measures, and adopted scoring and payment reduction methodologies that were similar to those finalized for the PY 2015 ESRD QIP.

In the CY 2015 ESRD PPS final rule (79 FR 66120), published in the **Federal Register** on November 6, 2014, we finalized requirements for the ESRD QIP, including for PYs 2017 and 2018. In that rule, we finalized the measure set for both PY 2017 and PY 2018, revised the In-Center Hemodialysis Consumer Assessment of Healthcare Providers System (ICH CAHPS) Reporting Measure, revised the Mineral Metabolism Reporting Measure, finalized the Extraordinary Circumstances Exemption (ECE) policy, and finalized a new scoring methodology beginning with PY 2018.

In the CY 2016 ESRD PPS final rule (80 FR 68968), published in the **Federal Register** on November 6, 2015, we set forth requirements for the ESRD QIP, including for PY 2017 through PY 2019. In that rule, we finalized the PY 2019 measure set, reinstated the ICH CAHPS Reporting Measure attestation beginning with PY 2017, and revised the small facility adjuster (SFA) beginning with PY 2017.

In the CY 2017 ESRD PPS final rule (81 FR 77834), published in the **Federal Register** on November 4, 2016, we set forth new requirements for the ESRD QIP, including new quality measures beginning with PY 2019 and PY 2020, and updated other policies for the program.

The ESRD QIP is authorized by section 1881(h) of the Act, which was added by section 153(c) of Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). Section 1881(h) of the Act requires the Secretary to establish an ESRD QIP by (1) selecting measures; (2) establishing the performance standards that apply to the individual measures; (3) specifying a performance period with respect to a year; (4) developing a methodology for assessing the total performance of each facility based on the performance standards with respect to the measures for a performance period; and (5) applying an appropriate payment reduction to facilities that do not meet or exceed the established Total Performance Score (TPS).

B. Summary of the Proposed Provisions, Public Comments, Responses to Comments, and Newly Finalized Policies for the End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP)

The proposed rule, entitled ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals with Acute Kidney Injury, and End-Stage Renal Disease Quality Incentive Program'' (82 FR 31190 through 31233), hereinafter referred to as the CY 2018 ESRD PPS proposed rule, was published in the **Federal Register** on July 5, 2017, with a comment period that ended on August 28, 2017. In that proposed rule, we proposed updates to the ESRD QIP, including for PY 2019 through PY 2021. We received approximately 58 public comments on our proposals, including comments from large dialysis organizations, renal dialysis facilities, national renal groups, nephrologists, patient organizations, patients and care partners, manufacturers, health care systems; nurses, and other stakeholders.

In this final rule, we provide a summary of each proposed provision, a summary of the public comments received and our responses to them, and the policies we are finalizing for the ESRD QIP, including for PYs 2019 through 2021.

1. Accounting for Social Risk Factors in the ESRD QIP.

In the CY 2018 ESRD PPS proposed rule (82 FR 31202), we discussed the issue of accounting for social risk factors in the ESRD QIP. We understand that social risk factors such as income, education, race and ethnicity, employment, disability, community resources, and social support (certain factors of which are also sometimes referred to as socioeconomic status factors or socio-demographic status factors), play a major role in health. One of our core objectives is to improve beneficiary outcomes, including reducing health disparities, and we want to ensure that all beneficiaries, including those with social risk factors, receive high quality care. In addition, we seek to ensure that the quality of care furnished by facilities is assessed as fairly as possible under our programs while ensuring that beneficiaries have adequate access to high quality care.

We have reviewed reports prepared by the Office of the Assistant Secretary for Planning and Evaluation (ASPE) [1] and the National Academies of Sciences, Engineering, and Medicine on the issue of accounting for social risk factors in CMS' value-based purchasing and quality reporting programs, and considered options on how to address the issue in these programs. On December 21, 2016, ASPE submitted a Report to Congress on a study it was required to conduct under section 2(d) of the Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014. The study analyzed the effects of certain social risk factors in Medicare beneficiaries on quality measures and measures of resource use that are used in one or more of nine Medicare value-based purchasing programs, including the ESRD QIP.[2] The report also included considerations for strategies to account for social risk factors in these programs. In a January 10, 2017 report released by The National Academies of Sciences, Engineering, and Medicine, that body provided various potential methods for measuring and accounting for social risk factors, including stratified public reporting.[3]

As noted in the fiscal year (FY) 2017 Inpatient Prospective Payment System/Long-Term Care Hospital Prospective Payment System (IPPS/LTCH PPS) final rule (81 FR 56762 through 57345), the National Quality Forum (NQF) undertook a 2-year trial period in which

[1] Office of the Assistant Secretary for Planning and Evaluation. 2016. Report to Congress: Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Programs. Available at: *https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-value-based-purchasing-programs.*

[2] Office of the Assistant Secretary for Planning and Evaluation. 2016. Report to Congress: Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Programs. Available at: *https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-value-based-purchasing-programs.*

[3] National Academies of Sciences, Engineering, and Medicine. 2017. Accounting for social risk factors in Medicare payment. Washington, DC: The National Academies Press.

certain new measures, measures undergoing maintenance review, and measures endorsed with the condition that they enter the trial period could be assessed to determine whether risk adjustment for selected social risk factors would be appropriate for these measures. This trial entailed temporarily allowing inclusion of social risk factors in the risk-adjustment approach for these measures. Recently, the NQF concluded this trial (*http://www.qualityforum.org/Publications/2017/07/Social_Risk_Trial_Final_Report.aspx*), and based on its findings, the NQF will continue its work to evaluate the impact of social risk factor adjustment on intermediate outcome and outcome measures for an additional 3 years. The extension of this work will allow the NQF to determine further how to effectively account for social risk factors through risk adjustment and other strategies in quality measurement.

As we consider the analyses and recommendations from the ASPE report and the NQF trial on risk adjustment for quality measures, we are continuing to work with stakeholders. As we have previously communicated, we are concerned about holding facilities to different standards for the outcomes of their patients with social risk factors because we do not want to mask potential disparities or minimize incentives to improve the outcomes for disadvantaged populations. Keeping this concern in mind, we will continue to seek public comment on whether we should account for social risk factors in the ESRD QIP, and if so, what method or combination of methods would be most appropriate for accounting for social risk factors. Examples of potential methods include: Adjustment of the payment adjustment methodology under the ESRD QIP; adjustment of provider performance scores (for instance, stratifying facilities based on the proportion of their patients who are dual eligible); confidential reporting of stratified measure rates to facilities; public reporting of stratified measure rates; risk adjustment of a particular measure as appropriate based on data and evidence; and redesigning payment incentives (for instance, rewarding improvement for facilities caring for patients with social risk factors or incentivizing facilities to achieve health equity). In the CY 2018 ESRD PPS proposed rule (82 FR 31202 through 31203), we requested comment on whether any of these methods should be considered, and if so, which of these methods or combination of methods would best account for social risk factors in the ESRD QIP.

We note that in section V.I.9 of the FY 2018 IPPS/LTCH PPS final rule (82 FR 38229 through 38231), we finalized an approach for stratifying hospitals into peer groups for purposes of assessing payment adjustments under the Hospital Readmissions Reduction Program, as required under the 21st Century Cures Act of 2016 (Pub. L. 114–255). We refer readers to that section for a detailed discussion of the final policy; while this discussion is specific to the Hospital Readmissions Reduction Program, it reflects the level of analysis we would undertake when evaluating methods and combinations of methods for accounting for social risk factors in CMS' other value-based purchasing programs, such as ESRD QIP. In addition, in the CY 2018 ESRD PPS proposed rule (82 FR 31202), we requested public comment on which social risk factors might be most appropriate for stratifying measure scores and/or potential risk-adjustment of a particular measure. Examples of social risk factors include, but are not limited to, dual eligibility/low-income subsidy, race and ethnicity, and geographic area of residence. We also requested comments on which of these factors, including current data sources where this information would be available, could be used alone or in combination, and whether other data should be collected to better capture the effects of social risk. We will take commenters' input into consideration as we continue to assess the appropriateness and feasibility of accounting for social risk factors in the ESRD QIP. We note that any such changes would be proposed through future notice-and-comment rulemaking.

We look forward to working with stakeholders as we consider the issue of accounting for social risk factors and reducing health disparities in CMS programs. Of note, implementing any of the above methods would be taken into consideration in the context of how this and other CMS programs operate (for example, data submission methods, availability of data, statistical considerations relating to reliability of data calculations, among others), so we also welcomed comment on operational considerations. CMS is committed to ensuring beneficiaries have access to and receive high quality care, and the quality of care furnished by providers and suppliers is assessed fairly in CMS programs.

We requested comments on accounting for social risk factors in the ESRD QIP. The comments and our responses are set forth below.

Comment: Many commenters expressed appreciation to CMS for requesting comments on how to account for social risk factors in the ESRD QIP. They argued that beneficiaries with ESRD are disproportionately affected by social risk factors and stressed that in considering factors, CMS must strike the correct balance to ensure it meets the goals of assessing providers and suppliers in a fair manner while not masking disparities or dis-incentivizing the provision of care to more medically complex patients. Commenters added that CMS should continue to support further research to examine the costs of caring for beneficiaries with social risk factors and to determine whether current payments adequately account for these differences in care needs. Some of the factors commenters recommended for consideration by CMS include: (1) Functional status, because there is evidence that those from lower socioeconomic and minority groups have poorer functional status and that this affects both their medical care and quality of life; (2) poverty and education, because dialysis facilities take care of a higher number of patients in poverty with lower levels of education and these patients tend to be less adherent to medications, diet and fluid restrictions; (3) geography, because regional variation in transplantation access is significant, as is regional differences in waitlist times, which ultimately could change the percentage of patients on the waitlist and impact a performance measure score; (4) family support; (5) ability to adhere to medication regimens; (6) capacity for follow-up; (7) insurance status; (8) income; (9) race and ethnicity; (10) disability; and (11) community resources.

One commenter pointed out the importance of accounting for risk factors that affect both pediatric patients and those caring for pediatric patients because some of these risk factors, in particular those present among the parents and caregivers of pediatric patients, may affect their ability to properly care for those patients. Commenters urged CMS to consider a more robust set of social risk factors to meet the needs of the pediatric patient population. They added that there must be an accounting not only of race and ethnicity, insurance status, and other socioeconomic factors, but also their school attendance and performance, and peer interactions. Factors to consider for parents and other primary caregivers include their employment status, fatigue, and financial strains among others. One commenter argued that dual-eligible status is the most consistent of all social risk factors in

predicting which patients will have the worst outcomes.

A few commenters expressed concerns with our desire to look at social risk factor adjustments. One commenter expressed concerns that there is already an issue with small sample sizes in the QIP, which would likely be aggravated by dividing the measure population into smaller subsets. The same commenter stated that small sample sizes disproportionately affect facilities that only furnish ESRD care to patients in their homes or those that care for a small number of pediatric ESRD patients because those facilities tend to be small and are often scored only on a few measures. To collect this data, one commenter argued that it should be straightforward for CMS to use its data to identify dual eligibility/low-income subsidy data, as well as geographic area of residence. Another commenter added that it could be difficult to collect race/ethnicity data but that patient self-reporting may be the most appropriate way to collect such data.

Response: We appreciate all the comments and interest in this topic. As we have previously stated, we are concerned about holding providers to different standards for the outcomes of their patients with social risk factors, because we do not want to mask potential disparities or minimize incentives to improve outcomes for disadvantaged populations. We believe that the path forward should incentivize improvements in health outcomes for disadvantaged populations while ensuring that beneficiaries have access to excellent care. We intend to consider all suggestions as we continue to assess each measure and the overall program. We appreciate that some commenters recommended risk adjustment as a strategy to account for social risk factors, while others stated a concern that risk adjustment could minimize incentives and reduce efforts to address disparities for patients with social risk factors. We intend to conduct further analyses on the impact of strategies such as measure-level risk adjustment and stratifying performance scoring to account for social risk factors. In addition, we appreciate the recommendations from the commenters about consideration of specific social risk factor variables and will examine these variables and the feasibility of collecting one or more of these patient-level variables. As we consider the feasibility of collecting patient-level data and the impact of strategies to account for social risk factors through further analysis, we will continue to evaluate the reporting burden on providers. Future proposals would follow further research and continued stakeholder engagement.

2. Changes to the Performance Score Certificate (PSC) Beginning With the PY 2019 ESRD QIP

In the ESRD QIP final rule, which published in the **Federal Register** on January 5, 2011 (76 FR 628 through 646), we finalized a policy for informing the public of facility performance through facility-posted certificates (76 FR 637). Specifically, we finalized that these PSCs would include the following information: (1) The TPS achieved by the facility under the ESRD QIP with respect to the payment year involved; (2) comparative data that shows how well the facility's TPS compares to the national TPS; (3) the performance result that the facility achieved on each individual measure with respect to the year involved; and (4) comparative data that shows how well the facility's individual quality measure performance scores compare to the national performance result for each quality measure (76 FR 637). As the ESRD QIP has become more complex over the years and as new measures have been added to the program, the PSC has become a lengthy document that facilities are required to print and post in both English and Spanish for their patients to view (77 FR 67517). We have received feedback from the community about the difficulty patients and their families have with interpreting and understanding the information contained on the PSC due to its sheer volume and complexity.

Section 1881(h)(6)(c) of the Act only requires that the PSC indicate the TPS achieved by the facility with respect to a program year. Therefore, to make the PSC a more effective and understandable document for the community, we proposed to shorten the PSC by removing some of the information that is currently included on it. We proposed that beginning in PY 2019, and continuing in future years, the PSC would indicate the facility's TPS, as required under section 1881(h)(6)(C) of the Act, as well as information sufficient to identify the facility (for example, name, address, etc.). Additionally, we proposed to include information showing how the facility's TPS compared to the national average TPS for that specific payment year. We did not propose any other changes to the requirements we previously finalized for the PSC.

We requested comments on this proposal, and were particularly interested in comments on whether the reduced amount of information on the PSC would both benefit facilities and enhance the public's understanding of the TPS.

Comment: Several commenters supported CMS's proposed simplification of the PSC and agreed that the changes would make it easier for patients to understand the facility's performance score. One commenter recommended that CMS review the white papers commissioned by Agency for Healthcare Research and Quality on ''Best Practices in Public Reporting,'' which the commenter believes provide a good overview of principles for presenting health care quality information to consumers.

Response: We thank the commenters for their support. Our proposal was intended, in part, to address feedback we obtained during two patient engagement sessions that were open to the public.[4] The majority of patients who took part in these sessions reported that they felt overwhelmed by the amount of information that we currently include on the PSC, did not understand all of the information, and that they focused mainly on specific data such as the facility scores or the comparison of facility scores with the national median. Patients also requested that the information be simplified and translated into plain language. We believe that our changes to the PSC will make it easier for patients and their caregivers to understand how facilities perform under the ESRD QIP.

We will review the recommended reports and determine the feasibility of incorporating some of these suggestions.

Comment: Several commenters did not support CMS's proposals to simplify the PSC, stating that the PSC should provide more rather than fewer details and that the current PSC helps patients make informed decisions about their care. One commenter pointed out that section 1881(h)(6)(C) of the Act only refers to the TPS, but that section 1881(h)(6)(A) of the Act calls upon the Secretary to make information available to the public including the total score, comparisons to the national average, and performance on individual measures.

Response: We thank commenters for sharing their concerns. Our proposal was intended to make the PSC easier to understand while still conveying important information about facility performance under the ESRD QIP. However, we agree that the data we are

[4] ''Executive Summary of the December 13 DFC–ESRD QIP Patient Listening Session at the CMS Quality Conference,'' December 20, 2016.

''Dialysis Facility Compare Patient Engagement Session Debrief,'' April 3, 2017, NORC at the University of Chicago.

removing, as well as other ESRD QIP related data, should continue to be publicly available. We intend to report these data on Dialysis Facility Compare (DFC) and cms.gov.

Comment: A patient advocacy organization recommended that the PSC be simplified by including just a simple cumulative number, such as the TPS, because it believed that this number would be most useful, and would be something that most people would likely look at. This organization also believed that it is potentially confusing to have the national average presented along with the national median given that very few people understand what a median is. The organization additionally thought that the phrases for each row would be more understandable and helpful if they were worded in a simpler manner, decimals and percentages should be presented consistently, and that the language around scores could be simplified.

Response: We thank the commenter for sharing these recommendations for ways to improve the PSC. We believe the revised PSC will address the commenter's recommendations. The revised PSC contains a more simply displayed TPS for each facility as well as the national average, but no national median. We are excluding the national median because it does not increase understanding of facility performance and may cause unnecessary confusion. The new PSC also does not contain decimals or percentages unless the average is a decimal, and it directs those viewing the document to review additional information on the *CMS.gov* Web site and on Dialysis Facility Compare. We are still considering the best format for display and we intend to make the explanations on the PSC as plan language as possible to increase understanding of the document.

Final Rule Action: After careful consideration of the comments received, we are finalizing our proposal, as proposed, to update the PSC. We believe these changes will help make the document more easily readable and understandable by the community. The information being removed from the PSC will still be available in other locations and we encourage beneficiaries and their families to use all the resources currently available to them to make informed decisions about the care they receive.

3. Requirements Beginning With the PY 2020 ESRD QIP

a. Clarification of the Minimum Data Policy for Scoring Measures Finalized for the PY 2020 ESRD QIP

Under our current policy, we begin counting the number of months in which a facility is open on the first day of the month after the facility's CMS certification number (CCN) Open Date. In the CY 2017 ESRD PPS final rule (81 FR 77926), we inadvertently made errors in finalizing how we intended this policy to apply to a number of measures in the PY 2020 ESRD QIP.

Table 19 finalized in the CY 2017 ESRD PPS final rule (81 FR 77926) has been duplicated here, as Table 2(a):

TABLE 2(a)—PREVIOUSLY FINALIZED MINIMUM DATA REQUIREMENTS FOR THE PY 2020 ESRD QIP

Measure	Minimum data requirements	CCN open date	Small facility adjuster
Dialysis Adequacy (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Vascular Access Type: Catheter (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Vascular Access Type: Fistula (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Hypercalcemia (Clinical)	11 qualifying patients	N/A	11–25 qualifying patients.
NHSN Bloodstream Infection (Clinical).	11 qualifying patients	On or before January 1, 2018.	11–25 qualifying patients.
NHSN Dialysis Event (Reporting).	11 qualifying patients	On or before January 1, 2018.	N/A.
SRR (Clinical)	11 index discharges	N/A	11–41 index discharges.
STrR (Clinical)	10 patient-years at risk	N/A	10–21 patient-years at risk.
SHR (Clinical)	5 patient-years at risk	N/A	5–14 patient-years at risk.
ICH CAHPS (Clinical)	Facilities with 30 or more survey-eligible patients during the calendar year preceding the performance period must submit survey results. Facilities will not receive a score if they do not obtain a total of at least 30 completed surveys during the performance period.	On or before January 1, 2018.	N/A.
Anemia Management (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.
Serum Phosphorus (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.
Depression Screening and Follow-Up (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.
Pain Assessment and Follow-Up (Reporting).	11 qualifying patients	Before July 1, 2017	N/A.
NHSN Healthcare Personnel Influenza Vaccination (Reporting).	N/A	Before January 1, 2018	N/A.
Ultrafiltration Rate (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.

In the CY 2018 ESRD PPS proposed rule (82 FR 31203), we proposed the intended application of this policy for PY 2020. We did not propose to make any changes to the methodology we use to count the number of months for which a facility is open for purposes of scoring facilities on clinical and reporting measures, or to the minimum number of cases (qualifying patients, survey-eligible patients, index discharges, or patient-years at risk) that

applies to each measure. Table 2(b) displays the proposed revised patient minimum requirements for each of the measures finalized for PY 2020, as well as the proposed revised CCN Open Dates after which a facility would not be eligible to receive a score on a reporting measure.

TABLE 2(b)—PROPOSED REVISED MINIMUM DATA REQUIREMENTS FOR THE PY 2020 ESRD QIP

Measure	Minimum data requirements	CCN open date	Small facility adjuster
Dialysis Adequacy (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Vascular Access Type: Catheter (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Vascular Access Type: Fistula (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Hypercalcemia (Clinical)	11 qualifying patients	N/A	11–25 qualifying patients.
NHSN Bloodstream Infection (Clinical).	11 qualifying patients	Before January 1, 2018	11–25 qualifying patients.
NHSN Dialysis Event (Reporting).	11 qualifying patients	Before January 1, 2018	N/A.
SRR (Clinical)	11 index discharges	N/A	11–41 index discharges.
STrR (Clinical)	10 patient-years at risk	N/A	10–21 patient years at risk.
SHR (Clinical)	5 patient-years at risk	N/A	5–14 patient-years at risk.
ICH CAHPS (Clinical)	Facilities with 30 or more survey-eligible patients during the calendar year preceding the performance period must submit survey results. Facilities will not receive a score if they do not obtain a total of at least 30 completed surveys during the performance period.	Before January 1, 2018	N/A.
Anemia Management (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.
Serum Phosphorus (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.
Depression Screening and Follow-Up (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.
Pain Assessment and Follow-Up (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.
NHSN Healthcare Personnel Influenza Vaccination (Reporting).	N/A	Before January 1, 2018	N/A.
Ultrafiltration Rate (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.

We requested comments on this proposal.

Comment: Commenters were appreciative of the clarification CMS provided on the minimum number of cases.

Response: We thank commenters for their support.

Comment: Several commenters expressed concern with using sample sizes as small as 11 and argued that the small sample size exposes the ESRD QIP scores to random results that are not fully compensated by the SFA. One commenter urged CMS to adopt a minimum sample size of 26 patients and to eliminate the SFA altogether. The commenters suggested that there are many ways in which small facilities can be included while avoiding random results.

Response: We appreciate the commenters' concerns. However, because we did not propose to change the minimum number of cases that apply to each measure, or to revisit the SFA, we consider these comments to be outside the scope of the proposed rule and are not addressing them in this final rule.

Final Rule Action: Based on the comments received, we are finalizing the proposed minimum data requirements for the PY 2020 ESRD QIP, as described in Table 2(b) above.

b. Changes to the Extraordinary Circumstances Exception (ECE) Policy

Many of our quality reporting and value-based purchasing programs share a common process for requesting an exception from program reporting due to an extraordinary circumstance not within a facility's control. The Hospital Inpatient Quality Reporting, Hospital Outpatient Quality Reporting, Inpatient Psychiatric Facility Quality Reporting, Ambulatory Surgical Center Quality Reporting, PPS-Exempt Cancer Hospital Quality Reporting, the Hospital Acquired Condition Reduction Program, and the Hospital Readmissions Reduction Program all share common processes for Extraordinary Circumstances Exception (ECE) requests. In reviewing the policies for these programs, we recognized that there are five areas in which these programs have variance in comparison to the policy within the ESRD QIP regarding ECE requests. These are: (1) Allowing the facilities or hospitals to submit a form signed by the facility's or hospital's chief executive officer (CEO) versus CEO or designated personnel; (2) requiring the form be submitted within 30 days following the date that the extraordinary circumstance occurred, versus within 90 days following the date the extraordinary circumstance occurred; (3) inconsistency regarding specification of a timeline for us to provide our response notifying the facility or hospital of our decision; (4) inconsistency regarding whether we would grant ECEs based on a facility's inability to timely and completely report data due to CMS data system issues; and (5) referring to this policy as ''extraordinary extensions/exemptions'' versus as ''extraordinary circumstances exceptions''. We believe that aligning the way the ECE policy is implemented in our program, with the way it is implemented in the programs listed

above, can improve the overall administrative efficiencies for affected facilities or hospitals.

In the CY 2015 ESRD PPS final rule (79 FR 66120 through 66265), we finalized that to receive consideration for an exception from the ESRD QIP requirements in effect during the time period that a facility is affected by an extraordinary circumstance, facilities would need to be closed and provide CMS with a CMS Disaster Extension/Exception Request Form within 90 calendar days of the date of the disaster or extraordinary circumstance (79 FR 66190). We finalized that the facility would need to provide the following information on the form:

- Facility CCN.
- Facility name.
- CEO name and contact information.
- Additional contact name and contact information.
- Reason for requesting an exception.
- Dates affected.
- Date facility will start submitting data again, with justification for this date.
- Evidence of the impact of the extraordinary circumstances, including but not limited to photographs, newspaper, and other media articles.

We also finalized that we would consider granting an ECE to facilities absent a request, if we determine that an extraordinary circumstance affected an entire region or locale (79 FR 66190).

We proposed to update these policies by: (1) Allowing the facility to submit a form signed by the facility's CEO or designated personnel; (2) expanding the reasons for which an ECE can be requested to include an unresolved issue with a CMS data system, which affected the ability of the facility to submit data (an unresolved data system issue would be one which did not allow the facility to submit data by the data submission deadline and which was unable to be resolved with a work-around), and (3) specifying that a facility does not need to be closed in order to request and receive consideration for an ECE, as long as the facility can demonstrate that its normal operations have been significantly affected by an extraordinary circumstance outside of its control. We stated that these proposed policies generally align with policies in the Hospital Inpatient Quality Reporting Program (76 FR 51651 through 51652), (78 FR 50836 through 50837) and (81 FR 57181 through 57182), Hospital Outpatient Quality Reporting Program (77 FR 68489 and 81 FR 79795), as well as ECE policies we have finalized for other quality reporting and value-based purchasing programs. We proposed that these policies would apply beginning with the PY 2020 ESRD QIP, as related to extraordinary circumstance events that occur on or after January 1, 2018.

We also noted that there may be circumstances in which it is not feasible for a facility's CEO to sign the ECE request form. In these circumstances, we believe that facilities affected by such circumstances should be able to submit an ECE request regardless of the CEO's availability to sign. This proposed change would allow facilities to designate an appropriate, non-CEO contact for this purpose. We would accept ECE forms which have been signed by designated personnel.

Although we do not anticipate that unresolved issues with CMS data systems will happen on a regular basis, we also stated that we recognized that there may be times when CMS experiences issues with its data systems that inhibits facilities' ability to submit data. We are often able to resolve such issues and allow facilities an extended period of time to report the data. However, in the case that the issue inhibits the complete reporting of data (even under an extended deadline), we stated that we believed it would be inequitable to take the absence of such unreported data into account when computing a facility's TPS for a payment year. Therefore, we proposed to address these situations in one of two ways. In some cases, CMS would issue a blanket exception to facilities that have been affected by an unresolved technical issue. In such cases, facilities would not be required to submit an ECE request to CMS, and CMS would send communications about the blanket exception to the affected facilities using routine communication channels. In other cases, CMS would not issue a blanket exception to facilities. In these cases, facilities would be required to submit an ECE request to CMS using the regular ECE request process, and would need to indicate how they were directly affected by the technical issue.

Furthermore, we stated our belief that it is important for facilities to receive timely feedback regarding the status of ECE requests. We strive to complete our review of each ECE request as quickly as possible. However, we recognize that the number of requests we receive, and the complexity of the information provided impacts the actual timeframe to make ECE determinations. To improve the transparency of our process, we stated that we would strive to complete our review of each request within 90 days of receipt.

We requested comments on these proposals.

Comment: Commenters supported CMS's proposed modifications to the ECE policy in the ESRD QIP, and urged CMS to finalize the proposal. One commenter requested that CMS issue clear guidance on the criteria used to deny or approve an ECE to ensure that approvals and denials are made consistently, uniformly, and in a manner that ensures that dialysis facilities can rely on such guidance from CMS as they make determinations about whether to submit an ECE request.

Response: We thank commenters for their support of our proposals to update the ECE policy in the ESRD QIP. When considering ECE requests that we receive from facilities, we consider all information provided by the facility. We consider whether the facility submitted the request in a timely manner and included all required information on its ECE request form. We consider the reason for the closure and the strength of the supporting documentation provided. We take each request under consideration and decide based on all the evidence provided.

Comment: One commenter recommended that CMS add a separate exclusion for dialysis camps, given their very limited operating schedules. Another commenter recommended that CMS grant ECEs to camps that request them. According to these commenters, these camps, which operate for short, well-defined periods during the year, make it possible for ESRD pediatric patients to have a traditional camp experience but are often penalized under the ESRD QIP.

Response: We appreciate commenter's concerns. However, the camps referred to by the commenters furnish renal dialysis services (as defined in section 1881(b)(14)(B)) and, for that reason, we have no discretion to exclude them from the ESRD QIP, if they otherwise meet the program's eligibility requirements (such as the minimum data requirements, CCN open date, etc.). We also see no basis to grant ECEs to facilities that otherwise meet the program's eligibility requirements simply because they are not open for the entire year. The ECE policy was designed to provide relief to renal dialysis facilities that experience extraordinary circumstances outside of their control. Although we recognize the role that these camps may play in improving the quality of life for pediatric ESRD patients, we do not view their partial year operating status as a circumstance outside of their control. We also see no reason for not holding these facilities accountable to the same quality standards of care that apply to other facilities under the ESRD QIP.

Comment: One commenter requested clarification of the term ''designated personnel'', and asked for information about how someone would be designated as such.

Response: We expect that each facility will have its own process for designating personnel with appropriate authority to sign an ECE request on behalf of the facility, and we will accept an ECE request signed either by the facility's CEO or such designated personnel.

Final Rule Action: After careful consideration of the comments received, we are finalizing the updates to the ECE policy as proposed.

c. Solicitation of Comments on the Inclusion of Acute Kidney Injury (AKI) Patients in the ESRD QIP

The services for which quality is measured under the ESRD QIP are renal dialysis services defined in section 1881(b)(14)(B) of the Act. Prior to January 1, 2017, these services could only be covered and reimbursed under Medicare if they were furnished to individuals with ESRD, but they are now also covered and reimbursed if they are furnished by renal dialysis facilities or providers of services paid under section 1881(b)(14) of the Act to individuals with acute kidney injury (AKI) (see sections 1861(s)(2)(F) and 1834(r) of the Act).

We currently do not require facilities to report AKI patient data for any of our measures in the ESRD QIP, including the National Healthcare Safety Network (NHSN) Bloodstream infection (BSI) Clinical and Reporting Measures.[5] However, we now have the authority to collect data on this patient population and believe that it is vitally important to monitor and measure the quality of care furnished to these patients.

In the future, we intend to require facilities to report data on AKI patients under the ESRD QIP. We requested comments on whether and how to adapt any of our current measures to include this population, as well as the type of measures that might be appropriate to develop for future inclusion in the program that would address the unique needs of beneficiaries with AKI.

Comment: Several commenters supported the inclusion of those with AKI into the ESRD QIP. One commenter stated that because the incidence of AKI is increasing, and is estimated to double over the next decade, it's important to collect data on this population and to include them in performance calculations.

Response: We agree that the quality of care afforded to AKI patients by dialysis facilities is an emergent issue in dialysis care, and collecting data on that care is important. Including AKI patients in the ESRD QIP will require careful consideration of the clinical appropriateness of including them in each measure.

Comment: Many commenters did not support the inclusion of AKI patients in the ESRD QIP. They stressed that CMS should continue to gather and evaluate AKI data before proposing to include AKI patient outcomes in any QIP measure and expressed concerns regarding the appropriateness of including AKI patients in any of the measures currently included in the program. Several commenters made measure-specific recommendations about why AKI patients should not be included in the NHSN BSI measures, the Vascular Access measures, and the Dialysis Adequacy measures. Many commenters stressed that if AKI patients are included in the QIP, then the program should use quality measures based solely on data from AKI patients, which are supported by AKI care guidelines.

Response: We thank the commenters for sharing their concerns regarding the inclusion of AKI patients in the ESRD QIP generally, and for their recommendations regarding the inclusion of AKI patients in specific quality measures. We intend to systematically evaluate the appropriateness of including AKI patients in our existing quality measures through our measure maintenance process, and in new measures that could be focused specifically on that subset of patients treated by facilities. In considering the inclusion of AKI patients in our measures, we intend to apply the same standards that we use to determine the applicability of our measures to specific patient populations, which include seeking input from clinical experts and other stakeholders. We would also consider the clinical differences between ESRD dialysis patients and AKI patients, as well as the relatively small number of AKI patients currently being treated by dialysis facilities.

Comment: A few commenters argued that while monitoring AKI patients is important and supported CMS' efforts to do so, CMS only has statutory authority to apply the QIP to beneficiaries with ESRD. Commenters argued that the statute establishing and governing the ESRD QIP is limited to ''individuals who have been determined to have end-stage renal disease as determined in section 226A of the Act,'' and that this limitation excludes AKI patients from the ESRD benefit and programs. Commenters pointed out that the ESRD QIP statutory language further defines the quality incentive as avoiding a payment reduction to the rates paid under section 1881(b)(14) of the Act and noted that facilities that provide services to AKI patients are paid under section 1834(r) of the Act.

Response: We continue to believe that we have authority to collect data on the AKI patient population from facilities under the ESRD QIP and that it is important to hold facilities accountable for the quality of renal dialysis services furnished to those patients. We appreciate the feedback we received on this issue and we will take it into account as we consider whether to make proposals related to this population in future rulemaking.

d. Estimated Performance Standards, Achievement Thresholds, and Benchmarks for the Clinical Measures Finalized for the PY 2020 ESRD QIP

In the CY 2017 ESRD PPS final rule (81 FR 77834 through 77969), we finalized that for PY 2020, the performance standards, achievement thresholds, and benchmarks for the clinical measures would be set at the 50th, 15th and 90th percentile, respectively, of national performance in CY 2016, because this will give us enough time to calculate and assign numerical values to the proposed performance standards for the PY 2020 program prior to the beginning of the performance period (81 FR 77915). We stated in the CY 2018 ESRD PPS proposed rule that we did not have the necessary data to assign numerical values to those performance standards, achievement thresholds, and benchmarks because we did not yet have complete data from CY 2016. Nevertheless, we could estimate these numerical values based on the most recent data available at the time we issued the CY 2018 ESRD PPS proposed rule, and we have since updated those values based on more recently available data. For the vascular access type (VAT), Hypercalcemia, NHSN BSI, In-Center Hemodialysis Consumer Assessment of Healthcare Providers and Systems (ICH CAHPS), Standardized Readmission Ratio (SRR), Standardized Hospitalization Ratio (SHR), Kt/V Dialysis Adequacy, and Standardized Transfusion Ratio (STrR) clinical measures, this data came from the period of January through December 2015. In Table 3, we provided the

[5] To the extent that the CDC requests facilities to report AKI patient data under its own, separate, statutory authority, data on these patients are not shared with CMS or used in the calculation of any ESRD QIP measures, including the NHSN Clinical and Reporting Measures.

estimated numerical values for all finalized PY 2020 ESRD QIP clinical measures (these are the values we estimated in the proposed rule). In Table 4, we have provided updated values for the clinical measures, using data from the first part of CY 2017.

TABLE 3—ESTIMATED NUMERICAL VALUES FOR THE PERFORMANCE STANDARDS FOR THE PY 2020 ESRD QIP CLINICAL MEASURES

Measure	Achievement threshold	Benchmark	Performance standard
VAT:			
%Fistula	53.66%	79.62%	65.93%
%Catheter	17.20%	2.95%	9.19%
Kt/V Dialysis Adequacy Comprehensive	87.37%	97.74%	93.20%
Hypercalcemia	4.24%	0.32%	1.85%
STrR	1.488	0.421	0.901
SRR	1.271	0.624	0.998
NHSN BSI	1.738	0	0.797
Standardized Hospitalization Ratio measure (SHR)	1.244	0.672	0.970
ICH CAHPS: Nephrologists' Communication and Caring	56.41%	77.06%	65.89%
ICH CAHPS: Quality of Dialysis Center Care and Operations	52.88%	71.21%	60.75%
ICH CAHPS: Providing Information to Patients	72.09%	85.55%	78.59%
ICH CAHPS: Overall Rating of Nephrologists	49.33%	76.57%	62.22%
ICH CAHPS: Overall Rating of Dialysis Center Staff	48.84%	77.42%	62.26%
ICH CAHPS: Overall Rating of the Dialysis Facility	51.18%	80.58%	65.13%

Data sources: VAT measures: 2015 CROWNWeb; SRR, STrR, SHR: 2015 Medicare claims; Kt/V: 2015 CROWNWeb; Hypercalcemia: 2015 CROWNWeb; NHSN: 2015 CDC, ICH CAHPS: CMS 2015.

Our current policy generally is that if final numerical values for the performance standard, achievement threshold, and/or benchmark are worse than they were for that measure in the previous year of the ESRD QIP, then we will substitute the previous year's performance standard, achievement threshold, and/or benchmark for that measure. We adopted this policy because we believe that the ESRD QIP should not have lower performance standards than in previous years. In the CY 2017 ESRD PPS final rule, we finalized an update to that policy because in certain cases, it may be appropriate to re-baseline the NHSN BSI Clinical Measure, such that expected infection rates are calculated based on a more recent year's data (81 FR 77886). In such cases, numerical values assigned to performance standards may appear to decline, even though they represent higher standards for infection prevention. For PY 2020 and future payment years, we proposed to continue use of this policy for the reasons explained above. Under that policy, except for the NHSN BSI Clinical Measure, we would substitute the PY 2019 performance standard, achievement threshold, and/or benchmark for any measure that has a final numerical value for a performance standard, achievement threshold, and/or benchmark that is worse than it was for that measure in the PY 2019 ESRD QIP. We would also substitute the PY 2019 values for two CAHPS measures: (1) ICH CAHPS: Overall Rating of Nephrologists and (2) ICH CAHPS: Overall Rating of Dialysis Center Staff because the final numerical values for those measures were worse for PY 2020 than they were for PY 2019.

Final Rule Action: We did not receive comments on our proposal to continue our policies for substituting the performance standard, achievement threshold and benchmark in appropriate cases. We are therefore, finalizing our proposal to continue use of these policies for PY 2020 and future payment years, as proposed. We are also updating the performance standards, achievement thresholds, and benchmarks for the finalized PY 2020 ESRD QIP clinical measures as shown in Table 4, using the most recently available data.

TABLE 4—FINALIZED PERFORMANCE STANDARDS FOR THE PY 2020 ESRD QIP CLINICAL MEASURES USING THE MOST RECENTLY AVAILABLE DATA

Measure	Achievement threshold	Benchmark	Performance standard
Vascular Access Type (VAT):			
%Fistula	53.95%	79.90%	65.98%
%Catheter	17.22%	3.11%	9.40%
Kt/V Dialysis Adequacy Comprehensive	91.09%	98.56%	95.64%
Hypercalcemia	2.41%	0.00%	0.86%
Standardized Transfusion Ratio (STrR)	1.444	0.429	0.889
Standardized Readmission Ratio (SRR)	1.273	0.629	0.998
NHSN Bloodstream Infection	1.598	0	0.740
Standardized Hospitalization Ratio measure (SHR)	1.249	0.670	0.967
ICH CAHPS: Nephrologists' Communication and Caring	57.36%	78.09%	67.04%
ICH CAHPS: Quality of Dialysis Center Care and Operations	53.14%	71.52%	61.22%
ICH CAHPS: Providing Information to Patients	73.31%	86.83%	79.79%
ICH CAHPS: Overall Rating of Nephrologists	49.33%	76.57%	62.22%
ICH CAHPS: Overall Rating of Dialysis Center Staff	48.84%	77.42%	62.26%

TABLE 4—FINALIZED PERFORMANCE STANDARDS FOR THE PY 2020 ESRD QIP CLINICAL MEASURES USING THE MOST RECENTLY AVAILABLE DATA—Continued

Measure	Achievement threshold	Benchmark	Performance standard
ICH CAHPS: Overall Rating of the Dialysis Facility	52.24%	82.48%	66.82%

Data sources: VAT measures: 2016 CROWNWeb; SRR, STrR, SHR: 2016 Medicare claims; Kt/V: 2016 CROWNWeb; Hypercalcemia: 2016 CROWNWeb; NHSN: 2016 CDC, ICH CAHPS: CMS 2016.

e. Policy for Weighting the Clinical Measure Domain for PY 2020

In the CY 2017 ESRD PPS final rule, we finalized our policy for weighting the Clinical Measure Domain for PY 2020. With the addition of the Safety Measure Domain to the ESRD QIP, we finalized that the Clinical Measure Domain would comprise 75 percent of the TPS, the Safety Measure Domain would comprise 15 percent of the TPS and the Reporting Measure Domain would comprise 10 percent of the TPS. Table 5 shows the weights finalized for PY 2020 for the Clinical Measure Domain.

TABLE 5—FINALIZED CLINICAL MEASURE DOMAIN WEIGHTING FOR THE PY 2020 ESRD QIP

Measures/measure topics by subdomain	Measure weight in the clinical domain score (percent)	Measure weight as percent of TPS (updated)
Patient and Family Engagement/Care Coordination Subdomain.	40	
ICH CAHPS measure	25	18.75
SRR Measure	15	11.25
Clinical Care Subdomain	60	
STrR measure	11	8.25
Dialysis Adequacy measure	18	13.5
VAT measure topic	18	13.5
Hypercalcemia measure	2	1.5
SHR measure	11	8.25
Total	100% (of Clinical Measure Domain)	75% (of TPS)

Note: The percentages listed in this Table represent the measure weight as a percent of the Clinical Domain Score for PY 2020.

We did not propose any changes to these weights, but we received a few comments.

Comment: Some commenters recommended that we increase the weight of the VAT Catheter Measure and decrease the weight of the VAT Fistula Measure to emphasize the clinical benefits of eliminating catheters. Additionally, a commenter recommended that CMS adopt a set of global exclusions that would consistently apply to all measures, which would be automatically applied unless there is a specific clinical or operational reason they should not be.

Response: We appreciate the commenters' recommendations. However, because we did not make any proposals related to these specific policy areas, we consider these comments to be out of the scope of the proposed rule. Therefore, we have not addressed them in this final rule.

f. Payment Reductions for the PY 2020 ESRD QIP

Section 1881(h)(3)(A)(ii) of the Act requires the Secretary to ensure that the application of the ESRD QIP scoring methodology results in an appropriate distribution of payment reductions across facilities, such that facilities achieving the lowest TPS receive the largest payment reductions. In the CY 2017 ESRD PPS final rule, we finalized our proposal for calculating the minimum TPS for PY 2020 and future payment years (81 FR 77927). Under our current policy, a facility will not receive a payment reduction if it achieves a minimum TPS that is equal to or greater than the total of the points it would have received if: (1) It performs at the performance standard for each clinical measure; and (2) it receives the number of points for each reporting measure that corresponds to the 50th percentile of facility performance on each of the PY 2018 reporting measures (81 FR 77927).

We were unable to calculate a minimum TPS for PY 2020 in the CY 2017 ESRD PPS final rule because we did not yet have the data to calculate the performance standards for each of the clinical measures. We therefore stated that we would publish the minimum TPS for the PY 2020 ESRD QIP in the CY 2018 ESRD PPS final rule (81 FR 77927). We estimated the minimum TPS for PY 2020, along with the updated payment reduction scale, in Table 5 in the proposed rule (renumbered as Table 6 in this final rule). Based on the estimated performance standards which we provided in the CY 2018 ESRD PPS proposed rule (82 FR 31207) and listed above, we estimated that a facility would need to meet or exceed a minimum TPS of 61 for PY 2020. For all the clinical measures, these data came from CY 2015. We proposed that a facility failing to meet the minimum TPS, would receive a payment reduction based on the estimated TPS ranges indicated in Table 6.

TABLE 6—ESTIMATED PAYMENT REDUCTION SCALE FOR PY 2020

Total performance score	Reduction (%)
100–61	0
60–51	0.5
50–41	1.0
40–31	1.5
30–21	2.0

The comments and our responses to the comments on our proposal are set forth below.

Comment: One commenter asked CMS to fix an error in the CY 2018 ESRD PPS proposed rule, Table 5 (Table

6 in this final rule), titled ''Estimated Payment Reduction Scale for PY 2020 Based on the Most Recently Available Data,'' stating that the last line should be corrected to read ''30–0''. The commenter stated that the table, as published in the proposed rule, does not include the TPS range between 0 and 20.

Response: We thank the commenter for pointing out this error. We inadvertently neglected to include in Table 5 (Table 6 in this final rule) of the proposed rule that the payment reduction would be 2.0 percent for facilities that achieve a TPS between 30–0. We have included the final TPS ranges in Table 7 based on the most recently available data.

Final Rule Action: After consideration of the comments received and an analysis of the most recently available data, we are finalizing that the minimum TPS for PY 2020 will be 59. We are also finalizing the payment reduction scale shown in Table 7.

TABLE 7—FINALIZED PAYMENT REDUCTION SCALE FOR PY 2020 BASED ON THE MOST RECENTLY AVAILABLE DATA

Total performance score	Reduction (%)
100–59	0
58–49	0.5
48–39	1.0
38–29	1.5
28–0	2.0

g. Data Validation

One of the critical elements of the ESRD QIP's success is ensuring that the data submitted to calculate measure scores and TPSs are accurate. We began a pilot data validation program in CY 2013 for the ESRD QIP, and procured the services of a data validation contractor that was tasked with validating a national sample of facilities' records as reported to CROWNWeb. For validation of CY 2014 data, our priority was to develop a methodology for validating data submitted to Consolidated Renal Operations in a Web-Enabled Network (CROWNWeb) under the pilot data validation program. In the CY 2014 ESRD PPS final rule (78 FR 72223 through 72224), we finalized a requirement to sample approximately 10 records from 300 randomly selected facilities; these facilities had 60 days to comply once they received requests for records. We continued this pilot for the PY 2017, PY 2018 and PY 2019 ESRD QIP, and proposed to continue doing so for the PY 2020 ESRD QIP. Using the data collected thus far, we are exploring options for refining the methodology used to improve the effectiveness and reliability of the data collected. For future payment years, we will consider whether this validation effort should continue in pilot status or as a permanent feature of the ESRD QIP. Under the continued validation study, we will sample the same number of records (approximately 10 per facility) from the same number of facilities, which totaled 300 facilities during CY 2018. If a facility is randomly selected to participate in the pilot validation study but does not provide us with the requisite medical records within 60 calendar days of receiving a request, then we proposed to deduct 10 points from the facility's TPS.

In the CY 2015 ESRD PPS final rule (79 FR 66120 through 66265), we finalized a feasibility study for validating data reported to the CDC's NHSN Dialysis Event Module for the NHSN BSI Clinical Measure (OMB #0938–NEW). Healthcare-acquired infections are relatively rare, and we finalized that the feasibility study would target records with a higher probability of including a dialysis event, because this would enrich the validation sample while reducing the burden on facilities. This methodology resembles the methodology we use in the Hospital Inpatient Quality Reporting Program to validate the central line-associated BSI measure, the catheter-associated urinary tract infection measure, and the surgical site infection measure (77 FR 53539 through 53553).

For the PY 2020 ESRD QIP, we proposed to continue conducting the same NHSN dialysis event validation study, that we finalized in the CY 2017 ESRD PPS final rule for PY 2019 (81 FR 77894). For PY 2020, we would continue to select 35 facilities to participate in an NHSN dialysis event validation study by submitting 10 patient records covering two quarters of data reported in CY 2018. However, for PY 2020, the sampling method used to select the 35 facilities would be adjusted such that a more representative sample of facility data can be analyzed, including data from high performing facilities as well as facilities identified as being at risk of underreporting. A CMS contractor would send these facilities requests for medical records for all patients with ''candidate events'' during the evaluation period; that is, patients who had any positive blood cultures; received any intravenous antimicrobials; had any pus, redness, or increased swelling at a vascular access site; and/or were admitted to a hospital during the evaluation period. Facilities would have 60 calendar days to respond to the request for medical records based on candidate events either electronically or on paper. If the contractor determines that additional medical records are needed to reach the 10-record threshold from a facility to validate whether the facility accurately reported the dialysis events, then the contractor would send a request for additional, randomly selected patient records from the facility. The facility would have 60 calendar days from the date of the letter to respond to the request. With input from the CDC, the CMS contractor would use a methodology for reviewing and validating records from selected patients, to determine whether the facility reported dialysis events for those patients in accordance with the NHSN Dialysis Event Protocol. If a facility is selected to participate in the validation study but does not provide CMS with the requisite lists of information or medical records within 60 calendar days of receiving a request, then we proposed to deduct 10 points from the facility's TPS. We stated that information from the validation study may be used in future years of the program to inform our consideration of future policies that would incorporate NHSN data accuracy into the scoring process. In future years of the program we may also look to improve the NHSN dialysis event validation study by validating records from a greater number of facilities or by validating a larger sample of records from each facility participating in the study.

The comments and our responses to the comments on our proposals are set forth below.

Comment: Several commenters supported CMS's efforts to continue the NHSN BSI Data Validation Study and supported the efforts of CDC around BSI prevention. One commenter specifically supported CMS's efforts to include both high performing facilities and those at risk of under-reporting. Another commenter expressed that a larger, more representative sample is needed for validation. A few commenters applauded CMS for working with CDC on the proposed methodology for data validation and recommended that the sample size of facilities be increased to 5 percent, consistent with the dialysis facility validation sample size for CROWNWeb data. One commenter pointed out that CMS should include a diverse group of facilities to ensure that the major providers are not over-represented in the sample. The commenter encouraged CMS to use lessons learned from the CY 2017 data validation study when conducting the CY 2018 validation survey.

Response: We thank the commenters for sharing their recommendations, and we appreciate their support. We agree that it's important to monitor and prevent infections and that it's important to continue conducting validation to ensure that the data received on infections is accurate and complete so that CMS and CDC can continue in their efforts to help facilities with infection prevention. We also agree that an increase in the sample size of the NHSN validation study will allow us to more comprehensively validate the BSI data. We are currently working closely with CDC to determine whether we should propose in future rulemaking to change the current sample size, and as part of that analysis, we are considering how to best ensure that the sample size includes a diverse group of facilities that does not over or under-represent any particular type of facilities.

Comment: One commenter expressed concerns with the accuracy of NHSN Data and recommended that CMS mandate reporting of culture results to NHSN by the lab processing the specimen, and when Regional Health Information Exchanges become operational in all communities, mandate participation in an Exchange by all laboratories processing blood cultures. The commenter also recommended that there should be an ongoing auditing of at least 10 percent of facilities to provide an incentive for diligent data collection and honest and accurate reporting. Additionally, the commenter recommended that the NHSN BSI Clinical Measure remain in the program as a reporting measure only until such an ongoing audit can be put in place.

Response: We thank the commenter for their recommendations and will continue working with CDC to identify ways to assess and strengthen the overall accuracy of NSHN BSI data. We remind commenters that the overall purpose of the validation under the ESRD QIP is to ensure that renal dialysis facilities are reporting accurate and complete information to CMS for purposes of calculating their TPSs. While we agree that one way to encourage all facilities to report accurate BSI data would be to require a larger number of facilities to participate in a given year, we are also examining whether we can achieve the same goal of accurate reporting in other ways that may be less burdensome and more cost-efficient.

Comment: One commenter requested that CMS make the results of the CROWNWeb validation publicly available. Another commenter questioned whether CMS has not released any validation results because those results would show that CROWNWeb is not a reliable data collection tool and that the NHSN BSI Measure is not valid.

Response: We thank the commenter for sharing this recommendation. However, one of our main goals for validation is to give feedback that the selected facility can use to make internal improvements to its reporting processes, and we do not think it would be beneficial to make this feedback public. Further, given the small sample size, we are concerned that publicly releasing the information would threaten the confidentiality and privacy of facilities that are chosen to participate in the validation study. To date, our validation studies have not shown any concerns with the reliability of data reported to CROWNWeb or NHSN. In fact, our most recent CROWNWeb Validation Study found an overall error rate of 3.4 percent (95 percent confidence interval of 1.3 percent to 5.5 percent) for the CROWNWeb system. Given stakeholders continued concerns, we will consider providing a national summary report, validation fact sheet, or similar document that summarizes high-level aggregate results from each validation study.

Comment: Several commenters expressed concerns that the Data Validation Study is actually an audit and suggested that a true audit process would provide appropriate due process, including the right to appeal adverse decisions. One commenter argued that the timeframe for response is inadequate and that the penalty for failing to comply with it is disproportionately severe when compared to the problem being identified. The same commenter also recommended that while the validation ''study'' is taking place, CMS should not reduce a facility's ESRD QIP score because the purpose of the study is to assess future policies to ensure the accuracy of NHSN data. One commenter asked CMS to clearly state in the final rule the reason why the validation studies are necessary and, if the purpose is to audit facilities, the commenter asked that CMS provide appropriate due process. Another commenter acknowledged that CMS has an interest in auditing quality data submissions to ensure their accuracy at the individual facility level, but questioned why CMS continues to refer in the ESRD QIP to a ''validation study'' rather than an audit program of CROWNWeb data submissions and the NHSN BSI Clinical Measure.

Response: We thank commenters for sharing their concerns. As we stated in the CY 2016 ESRD PPS final rule (80 FR 69049), the data validation studies are not designed to be an audit, but rather to assess the capacity of renal dialysis facilities to provide accurate and complete data on performance measures, and to find ways to assist them in improving their data reporting. It is meant to be a collaborative effort between CMS and the facilities selected for validation with the goal of determining ways to improve the process for all facilities. An audit, by contrast, would be a more directed search for errors and punitive in nature. We are also using the validation data to improve the integrity of data reported to CROWNWeb and NHSN; whereas we would use the data collected through an audit to detect inaccuracies in reported data and reconcile those differences. Additionally, information gathered from the validation studies is used to develop training and/or education modules to assist facilities that may be having trouble with reporting complete and accurate data to CROWNWeb or NHSN.

Final Rule Action: After carefully considering the comments received, we are finalizing our data validation studies for PY 2020 as proposed.

4. Requirements for the PY 2021 ESRD QIP

a. Measures for the PY 2021 ESRD QIP

We previously finalized 16 measures in the CY 2017 ESRD PPS final rule for the PY 2020 ESRD QIP. Our policy is to continue using measures unless we propose to remove or replace them, (77 FR 67477), therefore, we will continue to use all but two of these measures in the PY 2021 ESRD QIP. In the CY 2018 ESRD PPS proposed rule, we proposed to replace the two VAT Clinical Measures with the Hemodialysis Vascular Access: Standardized Fistula Rate Clinical Measure and the Hemodialysis Vascular Access: Long-Term Catheter Rate Clinical Measure beginning with PY 2021. The measures being continued in PY 2021 are summarized in Table 8.

TABLE 8—PY 2020 ESRD QIP MEASURES BEING CONTINUED IN PY 2021

NQF Number	Measure title and description
0258	ICH CAHPS Survey Administration, a clinical measure. Measure assesses patients' self-reported experience of care through percentage of patient responses to multiple testing tools.
2496	SRR, a clinical measure. Ratio of the number of observed unplanned 30-day hospital readmissions to the number of expected unplanned 30-day readmissions.
2979	STrR, a clinical measure. Risk-adjusted standardized transfusion ratio for all adult Medicare dialysis patients. Number of observed eligible red blood cell transfusion events occurring in patients dialyzing at a facility to the number of eligible transfusions that would be expected.
N/A	Kt/V Dialysis Adequacy Comprehensive, a clinical measure. Percentage of all patient months for patients whose delivered dose of dialysis (either hemodialysis or peritoneal dialysis) met the specified threshold during the reporting period.
1454	Hypercalcemia, a clinical measure. Proportion of patient-months with 3-month rolling average of total uncorrected serum or plasma calcium greater than 10.2 mg/dL.
1463*	SHR, a clinical measure. Risk-adjusted SHR of the number of observed hospitalizations to the number of expected hospitalizations.
0255	Serum Phosphorus, a reporting measure. Percentage of all adult (≥18 years of age) peritoneal dialysis and hemodialysis patients included in the sample for analysis with serum or plasma phosphorus measured at least once within month.
N/A	Anemia Management Reporting, a reporting measure. Number of months for which facility reports erythropoiesis-stimulating agent (ESA) dosage (as applicable) and hemoglobin/hematocrit for each Medicare patient, at least once per month.
Based on NQF #0420	Pain Assessment and Follow-Up, a reporting measure. Facility reports in CROWNWeb one of six conditions for each qualifying patient once before August 1 of the performance period and once before February 1 of the year following the performance period.
Based on NQF #0418	Clinical Depression Screening and Follow-Up, a reporting measure. Facility reports in CROWNWeb one of six conditions for each qualifying patient once before February 1 of the year following the performance period.
Based on NQF #0431	NHSN Healthcare Personnel Influenza Vaccination, a reporting measure. Facility submits Healthcare Personnel Influenza Vaccination Summary Report to CDC's NHSN system, according to the specifications of the Healthcare Personnel Safety Component Protocol, by May 15 of the performance period.
N/A	Ultrafiltration Rate, a reporting measure. Number of months for which a facility reports elements required for ultrafiltration rates for each qualifying patient.
Based on NQF #1460	NHSN BSI in Hemodialysis Patients, a clinical measure. The Standardized Infection Ratio (SIR) of BSIs will be calculated among patients receiving hemodialysis at outpatient hemodialysis centers.
N/A	NHSN Dialysis Event Reporting Measure. Number of months for which facility reports NHSN Dialysis Event data to CDC.

*We note that the complete lists of ICD–10 codes associated with the Standardized Readmission Ratio Clinical Measure and the Standardized Hospitalization Ratio Clinical Measure included in the ESRD QIP for PY 2020 are included in the Measure Technical Reports, available here: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_TechnicalSpecifications.html*.

We did not propose any changes to the measures previously finalized and continuing for PY 2021, however we received two comments requesting clarification on measures continuing in PY2021 and a number of comments on ways to improve those measures in the ESRD QIP. Those comments and our responses are set forth below.

Comment: One commenter asked why CMS removed transient patients from the set of exclusions for the Serum Phosphorus Reporting Measure.

Response: The measure specification language was changed from excluding transient patients to needing to be in the facility for the entire month as an inclusion criterion. This was done to clarify how we identify eligible patients for the measure, and aligns the measure more closely with how CROWNWeb (the data source) attributes patients to a facility. There is essentially no difference in application between the previous and updated specification. The updated specification also makes the Serum Phosphorus Reporting Measure that we use in the ESRD QIP more consistent with the specifications for the Serum Phosphorus Reporting Measure that is endorsed by the NQF (NQF #0255), and which evaluates the extent to which facilities monitor and report patient phosphorus levels.

Comment: One commenter asked about the Standardized Readmission Ratio (SRR) Clinical Measure, inquiring why CMS removed amputation status and added functional disability to the list of past-year comorbidity adjustments in the risk model.

Response: We used the term ''functional disability'' in a measure methodology report that lists the coefficients for the past year comorbidity adjustments but defined that term to mean hierarchical condition groupers (177 and 178) which describe amputation status (the measure Methodology report is available here: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_TechnicalSpecifications.html*). Moving forward, we will use the term ''Amputation,'' because that term more correctly describes the comorbidity being risk adjusted under the measure.

Comment: Regarding the Serum Phosphorus Reporting Measure, one commenter expressed concerns that requiring facilities to report phosphorus results from the first month that a patient is on home hemodialysis represents a barrier to home dialysis. We understood this to be a reference to concerns about the complexity of transitioning into home hemodialysis as a treatment modality, and the timing of obtaining the blood draw necessary for the data.

Regarding the Comprehensive Dialysis Adequacy measure, commenters expressed concerns that Kt/V is an outdated measure of dialysis adequacy and shared that there are other tests which would indicate optimal dialysis such as the Beta-2 microglobulin or a 24-hour urine test. One commenter stressed that it's important to include a measure of residual kidney function, particularly for peritoneal dialysis patients.

Regarding the ICH CAHPS measure, commenters argued that the measure should be included in the program as a reporting measure rather than as a clinical measure, that the survey should only be conducted once a year because twice-yearly administration leads to patient fatigue, limiting feedback on patient experiences, and that the survey should be split into three separate and independently tested sections rather than requiring the entire survey twice a year. Commenters also stressed the need for a separate survey for home hemodialysis patients.

Regarding the NHSN BSI Clinical and Reporting Measures, commenters pointed out flaws with the measures, including the fact that dialysis facilities cannot report information if they are not receiving infection information from hospitals. Several commenters urged CMS to include only the NHSN Dialysis Event reporting measure and to remove the NHSN BSI clinical measure from the program. Two other concerns were that blood cultures obtained in hospitals are not systematically captured in the Reporting Measure and that there is incomplete antibiotic susceptibility data in NHSN.

Regarding the Standardized Hospitalization Ratio Clinical Measure, one commenter argued that the SHR should not be included in the program until its reliability at the facility size used in the measure has been demonstrated because for small facilities, more than half of a facility's score is due to random noise and is not an accurate signal of quality. Another commenter asked CMS to include an exclusion in the measure for hospitalizations that occur within 29 days of the index discharge because this would avoid a readmission being captured as a hospitalization by the SHR but it would still be captured as a readmission by the SRR.

Regarding the Ultrafiltration Rate (UFR) Reporting measure, several commenters recommended that CMS require January 2018 UFR rates to be reported on or before March 31, 2018 rather than February 28, 2018, to align with the reporting of other clinical values for January 2018. Another commenter recommended that CMS define ''treatment week'' or ''collection period'' for the UFR measure in a way that takes into consideration operational details such as lab draws early in the month or the unavailability of a UFR prior to the Kt/V draw for other reasons. Alternatively, the commenter suggested that any three contiguous UFRs should provide an accurate estimate of UFR to accomplish the measure goals and asked CMS to adopt this position and define the collection period as ''any three contiguous UFRs during a calendar month.'' Several commenters expressed concerns about the measure specifications for the measure, including that a treatment preceding the Kt/V but that falls within the prior calendar month may not meet the reporting requirement. These commenters requested that CMS revise the measure specifications so that the UFR reporting requirement can be independent of the Kt/V measurement because, they argued, there is no rationale for tying the two measures to one another.

Regarding the Anemia Management Measure, one commenter urged CMS to restore a measure establishing a minimal standard for anemia management and another requested a separate anemia management measure for home dialysis patients.

One commenter requested that CMS differentiate within the Pain Measure between chronic and immediate pain, and another commenter requested that a pain assessment be required at every treatment rather than merely twice a year. A few commenters recommended that CMS develop a standardized ESRD-specific tool for depression.

Regarding the Hypercalcemia Clinical measure, one commenter asked CMS to remove the measure from the program entirely because it's challenging for patients who continue to experience difficulties with access to medications and the health outcomes related to surgery for hyperparathyroidism and hypercalcemia.

Response: We appreciate commenters' thoughtful comments about the measures continuing for PY 2021. However, as we did not propose any changes to these measures which were previously finalized and are continuing into PY 2021, we consider these comments to be outside the scope of the CY 2018 ESRD PPS proposed rule. We continue to believe that the measures previously finalized for inclusion in the program represent the most appropriate way to assess quality of care in dialysis facilities. As we continue to assess the existing measures in the program, we will take these recommendations into consideration. However as mentioned above, we are not making updates to these measures at this time. For a more thorough discussion of the concerns raised at the time we introduced each of these measures into the ESRD QIP, please review the following rules where each of these measures was finalized: ICH CAHPS (77 FR 67480 through 67481, and 78 FR 72193), NHSN Dialysis Event Reporting Measure (77 FR 67484), NHSN BSI Clinical Measure (78 FR 72204), Anemia Management Reporting Measure (77 FR 67491 through 67495, and 78 FR 72198), Comprehensive Dialysis Adequacy Clinical Measure (80 FR 69043–69057), Ultrafiltration Rate Reporting Measure (81 FR 77912 through 77915), Standardized Hospitalization Rate Reporting Measure (81 FR 77906 through 77911), Serum Phosphorus Reporting Measure (81 FR 77911 through 77912), Mineral Metabolism Reporting Measure (78 FR 72197), Hypercalcemia Clinical Measure (78 FR 72203).

Comment: Commenters made several recommendations regarding measures we should consider for future inclusion in the program. Commenters recommended a measure for referrals for transplantation, more measures that focus on pediatric patients, an advanced care planning measure, and a standardized mortality ratio measure.

Response: We thank commenters for these recommendations and we will consider them as we continue to assess measures for future inclusion in the ESRD QIP.

b. Replacement of the Vascular Access Type (VAT) Clinical Measures Beginning With the PY 2021 Program Year

We consider a quality measure for removal or replacement if: (1) Measure performance among the majority of ESRD facilities is so high and unvarying that meaningful distinctions in improvements or performance can no longer be made (in other words, the measure is topped-out); (2) performance or improvement on a measure does not result in better or the intended patient outcomes; (3) a measure no longer aligns with current clinical guidelines or practice; (4) a more broadly applicable (across settings, populations, or conditions) measure for the topic becomes available; (5) a measure that is more proximal in time to desired patient outcomes for the particular topic becomes available; (6) a measure that is more strongly associated with desired patient outcomes for the particular topic becomes available; or (7) collection or public reporting of a measure leads to negative or unintended consequences (77 FR 67475). In the CY 2015 ESRD PPS final rule, we adopted statistical criteria for determining whether a clinical measure is topped out, and adopted a policy under which we could retain an otherwise topped-out measure if we determined that its continued inclusion in the ESRD QIP measure set would address the unique needs of a specific subset of the ESRD population (79 FR 66174).

After publication of the CY 2017 ESRD PPS final rule (81 FR 77834 through 77969), we evaluated the finalized PY 2020 ESRD QIP measures that would be continued in PY 2021 against these criteria. We determined that none of these measures met criterion (1), (2), (3), (4), (5) or (7). As part of this evaluation for criterion one, we performed a statistical analysis of the PY 2020 measures we plan to continue using for PY 2021 and future payment years to determine whether any measures were ''topped out.'' The full results of this analysis can be found at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_TechnicalSpecifications.html* and a summary of our topped-out analysis results appears in Table 9.

As Table 9 illustrates, the distributions of the PY 2020 clinical measures were assessed to determine if any measures were ''topped out.'' For a measure to be considered topped out, two conditions had to be met. First, a measure was considered topped out if the 75th percentile, or 25th percentile for measures where lower percentiles indicate better performance, was statistically indistinguishable from the 90th (or 10th) percentile, and second, the truncated coefficient of variation (TCV) was less than or equal to 10 percent, or 0.10. We note that the percentiles were considered statistically indistinguishable if the 75th/25th percentile was within two standard errors of the 90th/10th percentile. Additionally, for each measure the TCV was calculated by first removing the lower and upper 5th percentiles, then dividing the standard deviation by the mean of this truncated distribution ($SD_{truncated}/Mean_{truncated}$). The TCV was then converted to a decimal by dividing the TCV by 100.

The measures we evaluated were the comprehensive Dialysis Adequacy measure, Hypercalcemia (referred to in the table as ''Serum Calcium >10.2''), NHSN Standardized Infection Ratio (SIR), SRR, STrR, and SHR clinical measures, and 6 individual components of the CAHPS clinical measure. The Vascular Access measures were not included in this evaluation because they will not be continuing from PY 2020 to PY 2021. CROWNWeb data from 2015 were used for Hypercalcemia, the combination of 2015 CROWNWeb data and 2015 Medicare claims data were used for Kt/V measure, and the SRR, STrR, and SHR measures were based on both combination of 2014 CROWNWeb data and 2014 Medicare claims data. The NHSN BSI Clinical Measure was calculated using the CY 2015 NHSN data from the CDC, and the six components of the ICH–CAHPS measure were calculated using the CY 2015 ICH–CAHPS data.

Table 9 presents the percentiles, standard error, and TCV for each measure. In this analysis, all facilities with the minimum eligible patient requirement per measure were included. The results indicate none of the PY 2020 clinical measures met both ''topped out'' conditions. Therefore, we did not propose to remove any of these measures from the ESRD QIP for PY 2021 for being topped out.

TABLE 9—PY 2020 CLINICAL MEASURES CONTINUING IN PY 2021 INCLUDING FACILITIES WITH MINIMUM ELIGIBLE PATIENT REQUIREMENT PER MEASURE

Measure	N	75th/25th percentile	90th/10th percentile	Std error	Statistically indistinguishable	Truncated mean	Truncated SD	TCV	TCV ≤0.10
Kt/V delivered dose above minimum (%)	6101	96.0	97.7	0.084	No	92.6	3.88	0.04	Yes
Serum Calcium >10.2	6258	0.91	0.32	0.050	No	[a] 97.8	1.49	<0.01	Yes
ICH–CAHPS: Nephrologists Communication and Caring (%)	3349	71.8	77.1	0.159	No	65.7	7.11	0.11	No
ICH–CAHPS: Quality of Dialysis Center Care and Operations (%)	3349	66.2	71.2	0.134	No	60.9	6.20	0.10	No
ICH–CAHPS: Providing Information to Patients (%)	3349	82.4	85.6	0.101	No	78.4	4.61	0.06	Yes
ICH–CAHPS: Percent, Rating of Nephrologist	3349	69.9	76.6	0.204	No	62.0	9.29	0.15	No
ICH–CAHPS: Percent, Rating of Dialysis Facility Staff	3349	70.9	77.4	0.215	No	62.0	9.92	0.16	No
ICH–CAHPS: Percent, Rating of Dialysis Center	3349	73.8	80.6	0.221	No	64.8	10.18	0.16	No
NHSN-SIR	5805	0.40	0.00	0.011	No	0.964	0.57	<0.01	Yes
SRR	6178	0.78	0.63	0.003	No	0.969	0.21	<0.01	Yes
STrR	5742	0.63	0.42	0.007	No	0.955	0.39	<0.01	Yes
SHR	6298	0.81	0.67	0.004	No	0.978	0.20	<0.01	Yes

[a] Truncated mean for percentage is reversed (100 percent-truncated mean) for measures where lower score = better performance.

Over the past few years, we have received numerous public comments regarding the two VAT measures included in the ESRD QIP's measure set. Specifically, commenters have recommended that CMS adjust the weights of the VAT measures to place more emphasis on reducing catheters to encourage the use of fistulas and grafts (81 FR 77904). Another commenter specifically supported CMS' submission of new VAT Measures to the NQF Renal Standing Committee to address the small number of patients for whom a catheter may be the most appropriate vascular access type when life expectancy is limited (81 FR 77905). We also note that the VAT measures currently used in the ESRD QIP measure set are calculated using claims data. This limits the applicability of the measures to Medicare Fee-For-Service (FFS) patients, while excluding all others.

Although there is no evidence to suggest that the current VAT measures are leading to negative or unintended consequences, we proposed to remove both from the ESRD QIP measure set beginning with the PY 2021 program based on criterion (6) listed earlier because measures that are more strongly associated with desired patient outcomes for the particular topic are now available. We proposed to replace the VAT measures with the Hemodialysis Vascular Access: Standardized Fistula Rate Clinical Measure (NQF #2977) and the Hemodialysis Vascular Access: Long-Term Catheter Rate Clinical Measure (NQF #2978). We believe these

measures will address the methodological concerns the community has shared regarding the existing measures. Additionally, both measures have been endorsed by the NQF, are supported by the Measures Application Partnership, and can be calculated using data that facilities are already required to report in CROWNWeb to meet 42 CFR 494.180(h) of the Conditions for Coverage for ESRD Dialysis Facilities. Because CROWNWeb collects data on all patients, we believe that the adoption of these measures will enable us to more accurately assess the quality of care furnished by facilities.

We requested comments on our proposal to remove the current VAT measures from the ESRD QIP measure set beginning with the PY 2021 program year. The comments and our responses are set forth below.

Comment: Commenters were generally supportive of CMS's proposed replacement of the VAT measures with the proposed Hemodialysis Vascular Access measures, pointing out that the new fistula measure adds adjustment for factors associated with illness severity and comorbid conditions, while the catheter measure excludes patients who may be more appropriately treated with a catheter. Commenters also appreciated efforts made by CMS over the last few years to convene a Technical Expert Panel (TEP) and to assess best practices in Vascular Access. They added that CMS should continue reviewing and revisiting these measures when necessary to account for factors that may warrant further refinement.

Response: We appreciate commenters' support for our efforts to ensure our measures reflect best practices in providing quality care to ESRD dialysis patients. We believe that the new Hemodialysis Vascular Access measures have several advantages: (1) They address long-standing concerns with the previous VAT measures that were included in the program, (2) they take into consideration the important clinical differences between patients, and (3) they are reflective of the importance of patient choice in their own clinical care.

c. Revision of the Standardized Transfusion Ratio (STrR) Clinical Measure Beginning With the PY 2021 Program Year

We believe that changes during the past several years to the way ESRD services are reimbursed under Medicare, as well as changes to how ESRD care is measured under the ESRD QIP and through other quality reporting initiatives, may have impacted how anemia is clinically managed. Some of these changes include the identification of safety concerns associated with aggressive erythropoiesis-stimulating agent (ESA) use, the expansion of the ESRD PPS bundled payment methodology to include ESAs, and the continued growth and expansion of the ESRD QIP. There are concerns that these changes could result in the underutilization of ESAs, with lower achieved hemoglobin values that may increase the frequency of red blood cell transfusion in the United States chronic dialysis population.

Excessive rates of blood transfusion may be an indicator for underutilization of clinical treatments to increase endogenous red blood cell production (for example, ESA and iron). Dialysis patients who are eligible for kidney transplant and have received transfusions are at increased risk of becoming sensitized to the donor pool thereby making transplant more difficult to accomplish. Blood transfusions carry a small risk of transmitting blood borne infections and/or the development of a transfusion reaction, and using infusion centers or hospitals to transfuse patients is expensive, inconvenient, and could compromise future vascular access.[6]

Monitoring the risk-adjusted transfusion rate at the dialysis facility level, relative to national standards, allows for detection of treatment patterns in dialysis-related anemia management. This is of importance due to recommendations by the Food and Drug Administration regarding more conservative ESA dosing.[7] As providers use less ESAs in an effort to minimize the risks associated with aggressive anemia treatment, it becomes more important to monitor for an overreliance on transfusions. Beginning with PY 2017, we adopted the STrR to address gaps in the quality of anemia management. We also submitted that measure to the NQF for consensus endorsement, but the Renal Standing Committee did not recommend it for endorsement, in part due to concerns that variability in hospital coding practices with respect to the use of 038 and 039 revenue codes might unduly bias the measure rates. Upon reviewing the committee's feedback, we revised the STrR measure to address these concerns. Following this revision, we resubmitted the STrR (NQF #2979) to NQF for consensus endorsement, and the NQF endorsed it in 2016. The proposed change to the STrR beginning with the PY 2021 ESRD QIP will align the measure specifications we use for the ESRD QIP with the measure specifications that the NQF endorsed in 2016 (NQF #2979).

Summary of Change

The proposed updated specifications to the STrR measure contain a more restricted definition of transfusion events than is used in the current STrR measure. Specifically, the revised definition excludes inpatient transfusion events for claims that include only 038 or 039 revenue codes without an accompanying International Classification of Diseases–9 (ICD–9) or ICD–10 procedure code or value code. As a result of requiring that all inpatient transfusion events include an appropriate ICD–9 or ICD–10 procedure code or value code, the measure will identify transfusion events more specifically and with less bias related to regional coding variation. As a result, it will assess a smaller number of events as well as a smaller range of total events.

2016 Measures Application Partnership Review

We determined that the proposed revision to the STrR (NQF #2979) constituted a substantive change to the measure, and we submitted that revision to the Measures Application Partnership for consideration as part of the pre-rulemaking process. The Measures Application Partnership recommended that this measure be refined and resubmitted due to concerns that measuring transfusions in dialysis facilities may not be feasible.[8] The Measures Application Partnership also expressed concern that the decision to administer a blood transfusion may be outside of the dialysis facility's control because in general, clinicians in hospitals make the decisions about blood transfusions. The Measures Application Partnership also expressed concern that variability in blood transfusion coding practices could inadvertently affect a dialysis facility's performance on this measure.

[6] FDA Drug Safety Communication: Modified dosing recommendations to improve the safe use of Erythropoiesis-Stimulating Agents (ESAs) in chronic kidney disease. *http://www.fda.gov/Drugs/DrugSafety/ucm259639.htm.*

Kidney Disease: Improving Global Outcome (KDIGO) Anemia Work Group. KDIGO Clinical Practice Guideline for Anemia in Chronic Kidney Disease. Kidney inter., Suppl. 2012; 2: 279–335. *http://www.kdigo.org/clinical_practice_guidelines/pdf/KDIGO-Anemia%20GL.pdf.*

Obrador and Macdougall. Effect of Red Cell Transfusions on Future Kidney Transplantation. Clin J Am Soc Nephrol 8: 852–860, 2013.

Ibrahim, et al. Blood transfusions in kidney transplant candidates are common and associated with adverse outcomes. Clin Transplant 2011: 25: 653–659.

[7] *https://www.fda.gov/Drugs/DrugSafety/ucm259639.htm.*

[8] *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=84452.*

Although we acknowledge that the Measures Application Partnership recommended that we refine and resubmit the updated version of the STrR measure, we note that the Measures Application Partnership's recommendation is at odds with the earlier conclusion of the NQF to endorse this change. On the issue of whether it is feasible to measure transfusions in dialysis facilities, the NQF concluded that these events can be identified using the same Medicare claims code algorithm that we use to identify transfusion events in other outpatient settings. The STrR measure identifies transfusion events during at-risk periods for patients cared for in a dialysis facility.

With respect to the Measures Application Partnership's concern that the decision to administer a blood transfusion might be outside of the dialysis facility's control, we note that the issue of whether anemia management practices in a dialysis facility can be linked to transfusion risk was specifically considered by the NQF during the endorsement process.

The NQF Renal Standing Committee concluded that this transfusion avoidance measure would incentivize facilities to properly manage anemia, with the result of lowering the patient's transfusion risk. The NQF Renal Standing Committee also found that although the decision to transfuse might ultimately be made by a hospital, the need to do so is dictated not only by clinical circumstances observed by the hospital, but also by the way the patient's anemia was managed by the facility.

Although the Measures Application Partnership was concerned that variability in blood transfusion coding practices could inadvertently affect a dialysis facility's performance on this measure, we note that the definition of transfusion events used in the revised STrR measure is consistent with the definition used in numerous scientific publications, including several peer reviewed publications.[9] Under this definition, transfusion events are included in the measure only if they are coded with specific transfusion procedure or value codes. We believe this coding requirement reduces the potential for inadvertently capturing non-transfusion events in the measure. In addition, the exclusion of revenue code only transfusion events from the measure decreases the potential that the measure results would be influenced by differences in hospital coding practices.

We agree with the NQF Standing Committee's assessment that the STrR (NQF #2979) is an appropriate measure of quality for dialysis facilities. We further believe that the measure is appropriate for the ESRD QIP because the measure (1) Demonstrates variation in performance among facilities, (2) is an outcome of care that is modifiable by dialysis providers through effective management of anemia in patients, and (3) is a valid and reliable indicator of quality at the facility level. Proper management of anemia is an important quality of care issue for dialysis patients, and a topic for which the ESRD QIP must include measures (see section 1881(h)(2)(A)(i)).

For these reasons, we proposed the revision to the STrR measure be reflected in the ESRD QIP, and beginning with the PY 2021 program year, we proposed to use the updated version of the STrR (NQF #2979). Full measure specifications and testing data are available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_TechnicalSpecifications.html*. The complete list of ICD–10 codes that would be included in the measure is included in the Technical Report for the measure and can also be found in that link.

We requested comments on this proposal. The comments received and our responses are set forth below.

Comment: Several commenters supported CMS's proposal to update the STrR measure because they support CMS's efforts to ensure that the QIP measures remain current with NQF standards.

Response: We thank the commenters for their support and we agree that in general it is best to maintain the QIP measures current with NQF standards.

Comment: One commenter generally supported the concept of a transfusion measure, but suggested possible adjustments, which the commenter believes will improve the proposed standardized transfusion ratio measure. The commenter added that the goal of comparing transfusion rates across facilities is to identify those facilities that are systematically allowing hemoglobin values to fall, presumably by limiting ESA administration. However, transfusions occur in two situations: (1) In the setting of chronically low hemoglobin values which the facility could arguably have influenced, and (2) in the setting of an acutely low hemoglobin value, over which the facility has little control. To distinguish these two situations, the commenter recommended that CMS look at the last outpatient hemoglobin value reported on an ESRD claim before the transfusion, or at the 3-month rolling average. According to the commenter, if the hemoglobin value was greater than a set cutoff value, the transfusion would be included in the measure. In addition, the commenter stated that the measure could exclude conditions other than cancers not amenable to ESA based anemia treatment correction.

Response: We thank the commenter for these suggested improvements to the STrR. The STrR measure evaluates risk-adjusted blood transfusion ratios at the dialysis facility level, comparing dialysis facilities' relative success in transfusion avoidance. Its goal is not limited to reducing transfusion risk associated with chronic severe anemia as suggested by the commenter. Several dialysis facility practices can influence patient risk for transfusion, including anemia management decisions, as well as dialysis prescription and delivery practices. Furthermore, the consequences of these practices can result in acute increased transfusion risk or chronic increased risk for transfusion, depending on the clinical situation. Limiting identification of transfusion events to only those scenarios associated with chronic anemia and transfusion risk would inappropriately result in a less impactful transfusion avoidance measure. For these reasons, we believe that it is appropriate not to limit our assessment of transfusions to those with a prior hemoglobin level reported to CROWNWeb.

Comment: One commenter expressed concern that the STrR measure has inappropriately low reliability and pointed out that when the measure was considered for NQF endorsement, it was

[9] Hirth, Turenne, Wilk et al. Blood transfusion practices in dialysis patients in a dynamic regulatory environment. Am J Kidney Dis. 2014 Oct;64(4):616–21. Doi: 10.1053/j.ajkd.2014.01.011. Epub 2014 Feb 19.

Gilbertson, Monda, Bradbury & Collins. RBC Transfusions Among Hemodialysis Patients (1999–2010): Influence of Hemoglobin Concentrations Below 10 g/dL. Am J Kidney Dis. 2013; Volume 62, Issue 5, 919–928.

Collins et al. Effect of Facility-Level Hemoglobin Concentration on Dialysis Patient Risk of Transfusion. Am J Kidney Dis. 2014; 63(6):997–1006.

Cappell et al. Red blood cell (RBC) transfusion rates among US chronic dialysis patients during changes to Medicare end-stage renal disease (ESRD) reimbursement systems and erythropoiesis stimulating agent (ESA) labels. BMC Nephrology 2014, 15:116.

Ibrahim, et al. Blood transfusions in kidney transplant candidates are common and associated with adverse outcomes. Clin Transplant 2011: 25: 653–659.

Molony, et al. Effects of epoetin alfa titration practices, implemented after changes to product labeling, on hemoglobin levels, transfusion use, and hospitalization rates. Am J Kidney Dis 2016: epub before print (published online March 12, 2016).

found to have very low reliability, particularly for small facilities. Another commenter pointed to an analysis, which suggested that longer look-back periods would result in a significant increase in reliability for both the SHR and the STrR measures. The commenter stated that for small facilities, the inter-unit reliability (IUR) for the 1-year measures is low, and that for small facilities in the STrR measure, the 1-year IUR for 0.36 means that nearly two-thirds of the variance in the measure is due to random noise rather than real differences between facilities. Commenter added that with a 4-year look-back period, the IURs for small facilities are similar to the IURs for large facilities in the 1-year look-back period. According to the commenter, these results suggest, that with a 4-year look-back period, a minimum of two-thirds of the variance in both measures in all three subgroups would be due to actual differences between facilities. Additionally, the commenter believed that using a 4-year look-back period would align these measures with the Standardized Mortality Ratio measure used in the DFC program, creating consistency across the measures used in the ESRD QIP and DFC.

Another commenter pointed out that the IUR for facilities with sample sizes below 46 patients was about 0.4, suggesting that 60 percent of inter-facility difference was due to random noise and not underlying performance. The commenter stated that IURs increase as a function of sample size. Therefore, commenter argued, smaller samples would be associated with lower IURs. Based on the NQF documentation submitted by CMS, the commenter stated that one would expect the vast majority of STrR variation to be due to random variation across the 10–21 patient-years at risk that CMS has proposed for the small facility adjustment for STrR. While the small facility adjustment would raise scores for small facilities, the commenter argued that it would not adequately offset the substantial effect of random variation for small sample sizes. The commenter recommended that CMS set the minimum data requirement for each measure at the sample size at which the IUR reaches 0.70, the value commonly used at NQF. That is, the minimum sample size would be set at the point where at least 70 percent of the observed result would be driven by actual performance. Anything below that, commenter argued, means that too high a proportion of the observed result is simply due to chance.

Response: We thank commenters for sharing these concerns regarding the reliability of the STrR. Given the established effect of sample size on IUR calculations, we generally expect, based on statistical modeling, that large facilities will have higher IUR values and small facilities will have lower IUR values for any given measure. Reliability is fundamentally associated with the size of a facility: A larger denominator leads to more precise assessments. Regardless of a measure's IUR, it will be higher for larger facilities and lower for smaller facilities. The dependence of reliability on facility size is understood when IUR is considered as a standard of reliability by NQF.

In response to commenter's suggestion above about requiring an IUR of 0.70, we are not aware of any formal and prescriptive NQF guideline or standard that sets or requires this test result value as a minimum threshold for passing reliability. Additionally, there is no formal required threshold set by NQF, as demonstrated in the endorsement of other quality metrics that have a range of reliability statistics, several of which are below the threshold of 0.7. The STrR and SHR reliability results are comparable to the reliability test results for other NQF-endorsed risk adjusted outcome measures used in public reporting, for example, four NQF endorsed cause-specific hospital mortality measures demonstrated similar levels of reliability (#0229 Heart failure measure, ICC: 0.55; #0468 Pneumonia mortality measure, Intraclass Correlation Coefficient: 0.79; #1893 Chronic Obstructive Pulmonary Disease mortality measure, ICC: 0.51; #2558 Coronary Artery Bypass Grafting mortality measure, ICC: 0.32). The 2013 NQF Task Force on Evaluating Evidence and Testing also acknowledged that although the ''Consensus Standards Approval Committee and subcommittee would like to have provided some guidance regarding minimum thresholds, they repeatedly noted the difficulties in determining such thresholds and the need for steering committees to have flexibility to make judgments.'' (Page 13; Review and Update of Guidance for Evaluating Evidence and Measure Testing. Technical Report. Approved by CSAC on October 8, 2013: *http://www.qualityforum.org/Publications/2013/10/Review_and_Update_of_Guidance_for_Evaluating_Evidence_and_Measure_Testing_-_Technical_Report.aspx*).

Aside from considering the appropriateness of limiting assessment as the commenters suggested, we believe setting a sample size threshold to reach 0.7 IUR for each measure is not feasible. As has been shown, large facilities tend to obtain IUR of 0.7 or greater. Setting the range for the SFA based on this approach would result in: (1) Applying the SFA for a larger portion of facilities, depending on the measure; or (2) potentially excluding those facilities, and limiting the value of the measure to the program. Finally, setting consistent minimum data requirements and ranges would be challenging because the frequency of events varies in these measures (for example, hospitalizations are more frequent than transfusion events). Incorporating multiple years of data also has potential consequences for implementation. As a practical matter, it would be difficult to provide performance standards in advance of 4-year performance period. Doing so would also limit the degree to which providers could be assessed on improvement from year to year, since only one quarter of the data would change from payment year to payment year.

Comment: One commenter did not support the proposed modifications to the STrR measure because it differs from the NQF-endorsed version (#2979). Commenter argued that since the statute requires CMS to use NQF-endorsed measures if available, CMS should comply with the statutory requirement and use the actual NQF-endorsed measure.

Response: The modifications to the STrR proposed for PY 2021 of the ERSD QIP will align the measure used in the ESRD QIP with the NQF-endorsed version of that measure.

Comment: One commenter recommended that CMS adopt true risk-standardized rate measures, which would be more transparent and useable by all stakeholders. The commenter added that risk standardized rates are easier to understand and that the current ratio measures have a wide range of uncertainty that does not provide an accurate view of a facility's performance when the ratio is reduced to a single number. Rather than continuing to use a confusing set of measures, the commenter urged CMS to replace the standardized ratio measures with the year-over-year difference between normalized (per 100 patient years) rates (for example, for hospitalization) currently available from Dialysis Facility Reports until they can be replaced by true risk-standardized rate measures.

Another commenter noted that moving to rates, while an important step forward, would also create issues that CMS would need to carefully address. The commenter believed that choosing a methodology to convert ratios to rates

would be a challenge and did not believe that a conversion approach would produce a true risk-standardized rate measure. The commenter believed that under a conversion approach, the use of the national median rate as the conversion factor for ratios may be misleading in regions of the country where typical performance varies significantly from the national rate. According to this commenter, the goal of using rates instead of ratios is to make the measure results more meaningful to patients, providers, and other stakeholders by expressing measure results in terms that are both valid and have intrinsic meaning, rather than the abstract meaning expressed by ratios.

Response: The risk-adjustment approach currently used for the StrR measure is based on indirect standardization which also forms the basis of many measures implemented in the ESRD QIP and other CMS quality reporting and value-based purchasing programs, and we believe that this approach leads naturally to a standardized ratio. This ratio compares the rate for this facility with the national rate, having adjusted for the patient mix and as such is relatively straightforward. We are unclear on why the commenter believes that rates are more easily understood than ratios. Similarly to ratios, risk-adjusted rates are not the same as actual rates and require a consideration of the patient mix adjustment for interpretation. We do agree that any conversion to rates would require careful consideration of the measure methodology and implications for assessing facility performance prior to implementation.

Final Rule Action: After carefully considering the comments received, we are finalizing the changes to the Standardized Transfusion Ratio Clinical Measure as proposed.

d. New Vascular Access Measures Beginning With the PY 2021 ESRD QIP

As discussed in the CY 2018 ESRD PPS proposed rule (82 FR 31212), for PY 2021, we proposed to remove the two VAT measures from the ESRD QIP and to replace them with two Vascular Access measures that were recently endorsed by the NQF. We proposed to score these measures the same way that we score the current VAT measures, and to include them within the Vascular Access Measure Topic.

Background

Beginning with the PY 2015 ESRD QIP, we adopted the Minimizing Catheter Use as Chronic Dialysis Access (NQF #0256) and Maximizing Placement of Arterial Venous (AV) Fistula (NQF #0257) measures, which are paired measures of the rate of catheter and fistula placement for chronic dialysis access, respectively, for the ESRD QIP (77 FR 67479). These measures were developed in accordance with the National Kidney Foundation Kidney Disease Outcomes Quality Initiative Guidelines that state the following: (1) AV fistulas have the lowest rate of thrombosis and require the fewest interventions, (2) cost of AV fistula use and maintenance is the lowest, (3) fistulas have the lowest rates of infection, and (4) fistulas are associated with the highest survival and lowest hospitalization rates. Several epidemiologic studies consistently demonstrate the reduced morbidity and mortality associated with greater use of AV fistulas for vascular access in maintenance hemodialysis.

Based upon data we collected during the CMS Fistula First/Catheter Last Initiative,[10] a gradual trend towards lower catheter use has been observed among prevalent maintenance hemodialysis patients in the United States, declining from approximately 28 percent in 2006 to approximately 18 percent by August 2015. Furthermore, the percentage of maintenance HD patients using a catheter for at least 3 months has declined during this time period from nearly 12 percent to 10.8 percent. Continued monitoring of chronic catheter use is needed to sustain this trend.

Since the Maximizing Placement of AV Fistula Measure (NQF #0257) was first implemented, we have received public comments expressing concerns that in certain cases, such as patients with a low life expectancy, placement of a fistula may not be appropriate. A growing number of studies report that creating AV fistulas in some patients is less likely to be successful in the presence of certain comorbidities. In addition, certain patient groups may have less incremental benefit from an AV fistula relative to an AV graft.

Since the implementation of Minimizing Catheter Use as Chronic Dialysis Access Measure (NQF #0256), we have received comments from stakeholders raising concerns about its inability to account for patients with a limited life expectancy, for whom a fistula, with its extended maturation period, may not represent an improved quality of life.

In 2015, we convened a TEP to review the existing vascular access measures to consider how best to address these concerns. A copy of the summary TEP report is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_Technical Specifications.html*. The TEP made the following recommendations:

- The fistula measure should be risk-adjusted for factors that are associated with decreased likelihood of AV fistula success, including:
  - ++ Diabetes.
  - ++ Heart diseases.
  - ++ Peripheral vascular disease.
  - ++ Cerebrovascular disease.
  - ++ Chronic obstructive pulmonary disease.
  - ++ Anemia (unrelated to ESRD/Chronic Kidney Disease).
  - ++ Non-Vascular Access-Related Infections.
  - ++ Drug Dependence.
- The measures should include all eligible hemodialysis patients, not just Medicare beneficiaries.
- The measures should include patients in the first 90 days of dialysis because this is a critical time for access planning/placement.
- The measures should include in the numerator only patients with an AV fistula using 2 needles (or an approved single needle device).
- The measures should exclude conditions associated with a limited life expectancy where an AV fistula may not be the appropriate choice for access (for example, hospice, metastatic cancer, end stage liver disease, and coma/brain injury).

We responded to the TEP's recommendations by developing two new VAT measures intended to be jointly reported to assess the placement of vascular access among ESRD dialysis patients. These two vascular access quality measures, when used together, consider AV fistula use as a positive outcome and prolonged use of a tunneled catheter as a negative outcome. With the growing recognition that some patients have exhausted options for an AV fistula or have comorbidities that may limit the success of AV fistula creation, joint reporting of the measures accounts for all three vascular access options. This paired incentive structure that relies on both measures (standardized fistula rate and long-term catheter rate) reflects consensus-based best practice, and supports maintenance of the gains in vascular access success achieved via the Fistula First/Catheter Last Project over the last decade.

We received general comments on our proposal to include two new Vascular Access measures in the ESRD QIP beginning in PY 2021. The comments and our responses are set forth below:

[10] Fistula First Catheter Last Dashboard August 2015 *http://fistulafirst.esrdncc.org/ffcl/for-ffcl-professionals/archive/*.

Comment: Several commenters recommended that CMS combine the fistula and catheter rates into a single quality measure to avoid double counting. Specifically, these commenters argued that if fistulas and grafts are both counted, then using the catheter rate as a quality measure is virtually a duplication of the fistula/graft rate as a quality measure since the catheter percentage would equal 100 percent less the total of fistulas and grafts. Even if grafts are not included, commenters argued, there is still a large overlap of the fistula and catheter rates, giving a double penalizing effect of using both the fistula and catheter rates as two quality measures.

Response: The two vascular access measures, when used together, consider AV fistula use as a positive outcome and prolonged use of a tunneled catheter as a negative outcome. With the growing recognition that some patients have exhausted options for an arteriovenous fistula, or have comorbidities that may limit the success of AV fistula creation, pairing the measures accounts for all three vascular access options. The standardized fistula rate measure includes risk adjustment for patient factors where fistula placement may be either more difficult or not appropriate and acknowledges that in certain circumstances an AV graft may be the best access option. This paired incentive structure that relies on both measures reflects consensus best practice, and supports maintenance of the gains in vascular access success achieved via the Fistula First/Catheter Last Project over the last decade. Additionally, the fistula and catheter measures apply exclusions for certain conditions recognizing that catheter placement may be the only means of vascular access for these patient sub-populations. Specifically, both measures exclude patients with a catheter that have limited life expectancy defined as being under hospice care in the current reporting month, or with metastatic cancer, end stage liver disease, coma or anoxic brain injury in the past 12 months. In this way, the combination of risk adjustment for the standardized fistula rate measure and the application of the exclusions to both measures does not result in doubly penalizing facilities and instead is intended to incentivize best practices for vascular access. Finally, the standardized fistula rate measure is a risk adjusted standardized rate, and contains exclusions, therefore the standardized fistula rate cannot be directly added/subtracted from a raw percentage of grafts and catheters.

Comment: One commenter expressed concerns about CMS's proposal to use CROWNWeb as the data source for the proposed Vascular Access measures and added that it is not clear how ''life expectancy'' will be calculated. Commenter recommended that based on the proposal to use CROWNWeb as the primary data source for numerator and denominator, CMS should consider delaying the implementation of these two measures until CROWNWeb can be shown to be a reliable data source.

Another commenter noted that for the two vascular access measures, there are patient-level exclusions for patients with a catheter but with limited life expectancy, and asked for clarification regarding the 4 criteria used to determine limited life expectancy and how this information is intended to be documented.

Response: Collection of vascular access data through CROWNWeb has been ongoing for 5 years. When analyzing the concordance of CROWNWeb vascular access data with that of Medicare claims, which have been used in the ESRD QIP VAT measures since PY 2015, we found a high level of agreement for the AV fistula (kappa = .89) and catheter (kappa = .73) data. We believe the data fidelity is sufficient to merit the use of CROWNWeb data for measurement in the ESRD QIP.

Regarding life expectancy, both the standardized fistula rate and the catheter measures exclude patients with a catheter as their vascular access and who meet one of the following conditions below that are identified through Medicare claims. No additional documentation (that is, attestation) is required from the facility. Specifically, limited life expectancy is defined as follows:

- Patients under hospice care in the current reporting month.
- Patients with metastatic cancer in the past 12 months.
- Patients with end-stage liver disease in the past 12 months.
- Patients with coma or anoxic brain injury in the past 12 months.

These conditions were reviewed and supported by the 2015 Vascular Access TEP and all of them are associated with a very high mortality rate in the 6-month period after they first appear in Medicare claims.

Comment: Many commenters supported the inclusion of the new Vascular Access measures as endorsed by NQF in the QIP because this ensures patient safety while recognizing the needs of the individual patient. One commenter noted that CMS indicated in the proposed rule that it concurred with the recommendation of the 2015 Vascular Access TEP that the fistula measure under development specify that the AV fistula must use 2 needles (or an approved single-needle device). The commenter noted that this revision is reflected in the methodology report, but not in the specifications. Another commenter was pleased to see that the flowchart in the methodology report specifies AV fistula only with 2 needles or an approved single-needle device, but recommended that the numerator specifications should also explicitly state that the patient must be on maintenance HD ''using an AV fistula with 2 needles and without a dialysis catheter present'' to emphasize clarity and avoid ambiguity. The commenter also recommended that the specifications address how a patient with a co-existing AV graft should be handled. Given that removal of an AV graft is complex and not without risk of complications, the commenter stated that the presence of a graft is acceptable even when using a fistula. As this is not the case when a catheter is present, the commenter agreed that the continued presence of a catheter when a fistula is being used should not constitute success on the measure. Finally, a commenter recommended that CMS redefine the denominator as it mistakenly uses the construction ''patients'' when it should use the term ''patient-months'' to be consistent with the numerator.

Response: Both the flowchart and the numerator details in the NQF measure specifications include language for the use of 2 needles or an approved single-needle device. We intend to provide clarifying language in the published technical specifications to make this clear. Regarding the revision recommended by commenter to specify in the measure technical specifications how a patient with a co-existing AV graft should be handled, we thank commenter for their recommendation and we will make any necessary updates to the measure technical specifications as necessary to ensure clarity. With regard to the recommendation that the technical specifications explicitly state that the patient must be on maintenance HD ''using an AV fistula with 2 needles and without a dialysis catheter present'' to emphasize clarity and avoid ambiguity, CROWNWeb did not support this level of granularity during the development of this measure, and so it is not reflected in the NQF-endorsed measure specifications. We agree that this is an appropriate enhancement to consider for future measure maintenance and system development. We confirm that

the denominator is constructed using patient-months, which is consistent with the NQF-endorsed specifications.

Comment: One commenter agreed with the proposed exclusion from the Vascular Measures of conditions associated with a limited life expectancy where an AV fistula may not be the appropriate choice for access, but argued that any exclusions or risk-adjustments that are calculated based on Medicare claims will not capture patients who do not have Medicare. These commenters urged CMS to clarify whether the proposed new vascular access measures would accurately measure the care furnished to the facility's total ESRD population (including Medicare beneficiaries and patients with other payers).

Response: We will calculate the comorbidity risk adjustment using ICD diagnostic codes reported on Medicare claims or, if the patient is not a Medicare beneficiary, information in incident comorbidities reported on the CMS Form 2728. This provides a method for application of comorbidity risk adjustment to patients that do not have Medicare claims and allows the measure to be applied to all patients regardless of payer type.

The additional exclusion criteria for the proposed vascular access measures are captured using Medicare claims data only. These measures were recommended by the Vascular Access TEP in 2015 with the expectation that considering the exclusions is appropriate. We conducted sensitivity analyses regarding the application of these measures and found that the exclusions are relatively rare and do not substantially bias the measure assessment.

Comment: Commenter recommended that rather than using fistulas alone, CMS should consider including arteriovenous grafts with AV fistula for several reasons: (1) While overall fistulas are slightly superior to grafts, there is virtually no difference in the elderly, (2) grafts are as long-lasting as fistulas if primary failures are included, (3) grafts may be placed shortly before dialysis to avoid unnecessary fistulas that aren't used, (4) grafts are more successful than fistulas as a second access, (5) grafts help avoid catheters, and (6) inclusion of both fistulas and grafts may minimize or eliminate the need for a complex adjustment in the fistula rate as is proposed.

Response: We thank the commenter for its comments on the vascular access measures. The two vascular access measures, when used together, consider AV fistula use as a positive outcome and prolonged use of a tunneled catheter as a negative outcome. With the growing recognition that some patients have exhausted options for an arteriovenous fistula, or have comorbidities that may limit the success of AV fistula creation, pairing the measures accounts for all three vascular access options. The standardized fistula rate measure includes risk adjustment for patient factors where fistula placement may be either more difficult or not appropriate and acknowledges that in certain circumstances an AV graft may be the best access option. This paired incentive structure that relies on both measures reflects consensus best practice, and supports maintenance of the gains in vascular access success achieved via the Fistula First/Catheter Last Project over the last decade. Additionally, the fistula and catheter measures apply exclusions for certain conditions recognizing catheter may be the only means of vascular access for these patient sub-populations. Specifically, both measures exclude patients with a catheter that have limited life expectancy defined as being under hospice care in the current reporting month, or with metastatic cancer, end stage liver disease, coma or anoxic brain injury in the past 12 months.

i. New Hemodialysis Vascular Access: Standardized Fistula Rate Clinical Measure (NQF #2977)

Summary of Changes

This proposed measure replaces NQF #0257, Maximizing Placement of AV fistula, and it incorporates changes that reflect input from the 2015 Vascular Access TEP:

- Risk Adjustment for the following conditions that affect the success of fistula placement:
  - ++ Diabetes.
  - ++ Heart diseases.
  - ++ Peripheral vascular disease.
  - ++ Cerebrovascular disease.
  - ++ Chronic obstructive pulmonary disease.
  - ++ Anemia (unrelated to ESRD/Chronic Kidney Disease).
  - ++ Non-Vascular Access-Related Infections.
  - ++ Drug Dependence.
- Inclusion of all eligible hemodialysis patients, not just Medicare beneficiaries.
- Inclusion of patients in the first 90 days of dialysis because this is a critical time for access planning/placement.
- Inclusion in the numerator of only patients with an AV fistula using 2 needles (or an approved single needle device).
- Exclusion of conditions associated with a limited life expectancy where an AV fistula may not be the appropriate choice for access (for example, hospice, metastatic cancer, end-stage liver disease, and coma/brain injury).

Data Sources

CROWNWeb, Medicare claims and the CMS Medical Evidence form 2728 (OMB No. 0938–0046) are used as the data sources for establishing the denominator. CROWNWeb is the data source for establishing the numerator. Medicare claims and the CMS Medical Evidence form 2728 are data sources for the risk adjustment factors. Medicare claims and CROWNWeb are used for the exclusion criteria. Using CROWNWeb as the primary data source allows us to expand the Standardized Fistula Rate to include all ESRD dialysis patients, rather than only Medicare FFS patients, providing a more complete quality assessment for dialysis facilities. This was a key consideration by the TEP that recommended the development of this measure.

Outcome

The outcome of the Standardized Fistula Rate is the use of an AV fistula as the sole means of vascular access as of the last hemodialysis treatment session of the month.

Cohort

The cohort includes adult ESRD dialysis patients who are determined to be maintenance hemodialysis patients (in-center or home) for the entire reporting month at the same facility.

Inclusion and Exclusion Criteria

The Standardized Fistula Rate excludes pediatric patients (<18 years old), patients on peritoneal dialysis, and patient-months where the patient was not on hemodialysis (in-center or home) at the same facility for the entire reporting month. The measure additionally excludes patients with a catheter who have a limited life expectancy.

Risk Adjustment

The Standardized Fistula Rate is a directly standardized percentage, with each facility's percentage of fistula use adjusted by a series of risk factors, including patient demographic and clinical characteristics based on a logistic regression model. The demographic and clinical characteristics were chosen in order to adjust for factors outside the control of a facility that are associated with a decreased likelihood of AV fistula success.

We submitted the measure to NQF, where the Renal Standing Committee recommended it for consensus

endorsement, and the NQF endorsed the measure in December 2016. The Standardized Fistula Rate (NQF #2977) was submitted to the Measure Applications Partnership in 2016, which supported the measure for implementation in the ESRD QIP.

We proposed implementing Hemodialysis Vascular Access: Standardized Fistula Rate (NQF #2977) beginning with the PY 2021 program year. Detailed measure specifications and testing data are available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_TechnicalSpecifications.html*. We requested comments on these proposals.

Comment: One commenter recommended that CMS expand the exclusion criteria for the Vascular Access measures to include the following: (1) Steal syndrome that required ligation of AV fistula or arteriovenous graft, (2) Patients who have had multiple failed AV fistula or arteriovenous graft attempts and have no suitable sites left to create AV fistula or arteriovenous graft, and (3) Patients who have medical contraindications to AV fistula surgery including severe congestive heart failure, and high output cardiac failure from previous AV fistula.

Commenter also recommended that if patients choose to have neither a fistula nor a graft placed, after adequate education by their physician, then the patients should be excluded from the denominator. Commenter added that while overall, fistulas are slightly superior to grafts, there is virtually no difference in the elderly. The commenter also added that some of the benefits of grafts are that they are as long-lasting as fistulas if primary failures are included, they may be placed shortly before dialysis to avoid unnecessary fistulas that aren't used, they are more successful than fistulas as a second access, they help to avoid central venous catheters, and they may minimize or eliminate the need for a complex risk adjustment in the fistula rate as is proposed.

Response: The TEP that developed this measure in 2015 discussed at length the proposed exclusion for patients who have exhausted anatomic options for permanent access. The TEP agreed that this was an important exclusion, but they also recognized that it would be difficult to implement. A major concern was also that there are not currently data sources or infrastructure in place that would allow identification of patients who have no further surgical options for vascular access. There would also need to be strong consensus on what determines whether patients do not meet criteria for successful fistula placement. We intend to evaluate this criterion and data availability to determine feasibility of adding this exclusion in a future iteration of this measure.

Many of the exclusion criteria based on comorbidities suggested by commenters are either associated with shortened life expectancy or low likelihood of successful fistula placement. In some situations, the severity of the underlying diagnosis is difficult to ascertain from claims data, although like heart failure, we anticipate this will improve over time with the change to and availability of ICD–10 codes. Therefore, other comorbidities will be evaluated as part of future measure maintenance. Lastly, multiple prior failed vascular access attempts were considered by the TEP as an exclusion criterion to address the exhaustion of vascular sites or failed attempts to create a fistula or graft, however consensus was not reached within the TEP on how best to implement this exclusion. At the present time, historical vascular access data in CROWNWeb are limited, but this exclusion criterion will be evaluated when more historical vascular access data are available.

The two vascular access measures, when used together, consider AV fistula use as a positive outcome and prolonged use of a tunneled catheter as a negative outcome. With the growing recognition that some patients have exhausted options for an arteriovenous fistula, or have comorbidities that may limit the success of AV fistula creation, pairing the measures accounts for all three vascular access options. The standardized fistula measure adjusts for patient factors where fistula placement may be either more difficult or not appropriate and acknowledges that in certain circumstances an AV graft may be the best access option. This paired incentive structure that relies on both measures reflects consensus best practice, and supports maintenance of the gains in vascular access success achieved via the Fistula First/Catheter Last Project over the last decade. Finally, it would be difficult to ascertain what constitutes adequate education by a nephrologist from the patient's perspective as well as how to validate informed patient choice not to have an AV fistula or arteriovenous graft, and this may be particularly a concern for vulnerable patients.

Final Rule Action: After consideration of the comments received, we are finalizing our proposal to include the Hemodialysis Vascular Access: Standardized Fistula Rate Clinical Measure in the ESRD QIP measure set beginning with the PY 2021 program.

ii. New Hemodialysis Vascular Access: Long-Term Catheter Rate (NQF #2978) Beginning With the PY 2021 ESRD QIP

Summary of Changes

This proposed measure replaces NQF #0256, Minimizing Use of Catheters as Chronic Dialysis Access, and it incorporates the following changes that reflect input from the 2015 Vascular Access TEP:

- Inclusion of all eligible hemodialysis patients, not just Medicare beneficiaries, since the measure is now specified to be calculated from CROWNWeb.
- Patients using a catheter continuously for 3 months or longer, even if combined with an AV fistula (or graft), are now counted in the numerator. The current measure does not count patients in the numerator if they have a catheter combined with an AV fistula or graft.
- Patients with missing VAT are counted in both the denominator and the numerator. That is, ''missing'' access type is considered a ''failure'' and therefore counts against the facility.
- Exclusion criteria have been added to the measure for conditions associated with a limited life expectancy where a catheter may be an appropriate choice for access. These are the same exclusions applied to the Standardized Fistula Rate measure (for example, hospice, metastatic cancer, end stage liver disease, and coma/brain injury).

Data Sources

CROWNWeb, Medicare Claims and the CMS Medical Evidence form 2728 are used as the data sources for establishing the denominator. CROWNWeb is the data source for establishing the numerator. Medicare claims and CROWNWeb are used for the exclusion criteria. Medicare claims and the CMS Medical Evidence Form 2728 are used for risk adjustment. Using CROWNWeb as the primary data source allows us to expand the Long-Term Catheter Rate to include all ESRD dialysis patients, rather than only Medicare FFS patients, providing a more complete quality assessment for dialysis facilities. This was a key consideration by the TEP that recommended the development of this measure.

Outcome

The outcome of the Long-Term Catheter Rate is the use of a catheter continuously for 3 months or longer as of the last hemodialysis treatment session of the month.

Cohort

The cohort includes adult ESRD dialysis patients who are determined to be maintenance hemodialysis patients (in-center or home) for the entire reporting month at the same facility.

Inclusion and Exclusion Criteria

The Long-Term Catheter Rate excludes pediatric patients (<18 years old), patients on peritoneal dialysis, and patient-months not on hemodialysis (in-center or home) for the entire reporting month at the same facility. The measure additionally excludes patients with a catheter who have a limited life expectancy.

We submitted the Long-Term Catheter Rate (NQF #2978) to NQF, where the Renal Standing Committee recommended it for consensus endorsement, and the NQF endorsed the measure in December 2016. The measure was submitted to the Measure Application Partnership in 2016, which supported it for implementation in the ESRD QIP.

We proposed to introduce the Long-Term Catheter Rate (NQF #2978) into the ESRD QIP beginning with the PY 2021 program year. Full measure specifications and testing data are available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_TechnicalSpecifications.html*.

We requested comments on this proposal.

Comment: One commenter supported the inclusion of the NQF-endorsed catheter measure in the program but asked that CMS provide some additional clarifications. The commenter asked that CMS clarify how data with missing access type will be handled.

Response: We thank commenter for its support. The NQF-endorsed measure specifications we have adopted for the measure state that the measure counts patient-months with missing vascular access type in both the denominator and the numerator. Therefore, missing vascular access type is counted as a catheter.

Comment: Two commenters recommended that the catheter rate be adjusted for the following: (1) Arterial steal syndromes or other medical contraindications to a fistula or graft, for example, severe congestive heart failure; (2) extensive arm swilling from a fistula or graft; (3) co-morbidities with short predicted survivals and patients over 90 years old; (4) exhausted vascular sites or multiple failed attempts to create a fistula or graft; (5) prolonged access hemorrhaging post-dialysis from a fistula or graft (over 30 minutes on average) that decreases patient quality of life enough for access ligation; and (6) patient preference. If patient preference cannot be fully considered by CMS, commenter recommended that an adjustment be included at least for those patients on hemodialysis 4–6 times per week or with needle phobia. A patient preference adjustment or exception, the commenter suggested, could be evaluated by signed patient forms and statistics with inspections of outlier facilities. Commenter further argued that for most of the patients with these conditions, a catheter is the appropriate vascular access and facilities should not be penalized for those patients. The commenter stated that there are some dialysis facilities that don't accept patients with catheters in an effort to avoid CMS penalties and this ''cherry-picking'' concern would be eliminated by including an exception for patient preferences.

Commenter suggested that while these additional exclusion criteria could open the door to gaming the system, signed patient forms and statistics with inspections of outlier facilities could handle that issue. If a patient chooses to have long-term catheter after adequate education from their Nephrologist and care team, then the commenter believes that the patient should be excluded. Commenter added that most patients with these conditions have a catheter that is clinically appropriate. If the catheter is the best medical access for that patient, then the commenter believes that the facility should not be penalized.

Response: Many of the comorbidities suggested by commenters are either associated with shortened life expectancy or low likelihood of successful fistula placement. In some situations, the severity of the underlying diagnosis is difficult to ascertain from claims data, although like heart failure, we anticipate this will improve over time with the change to and availability of ICD–10 codes. Therefore, we anticipate other comorbidities will be evaluated as part of future measure maintenance. Regarding the 4th suggestion of commenter, regarding ''exhausted vascular sites or multiple failed attempts to create a fistula or graft,'' multiple prior failed vascular access attempts were considered by the TEP as an exclusion criterion, however consensus was not reached within the TEP on how best to implement this exclusion. At the present time, historical vascular access data in CROWNWeb are limited, but we anticipate evaluating this exclusion criterion when more historical vascular access data are available. Finally, as the commenter stated, applying patient consent could be subject to gaming and would be difficult to validate, particularly for vulnerable patients.

Comment: One commenter argued that without including AV Grafts in the measure, there's a portion of the patient population being excluded. Also, if the facility does not meet the AV fistula threshold, then the commenter believes that the long-term catheter rate is directly impacted and facilities are at risk for losing points in two measures. The proposed risk adjustments for the standardized fistula rate, commenter argued, should also be applied to the long-term catheter rate. Also, the commenter stated that the exclusion criteria for this measure should be expanded to incorporate patient choice, and those appropriate medical and surgical exclusions, so that this measure reflects the quality of care being delivered at the facility. Even with the addition of the proposed exclusion criteria, the commenter stated that it's still possible for the QIP score to penalize facilities for recommending the most clinically appropriate access for their patients.

Response: The fistula and catheter measures apply exclusions for certain conditions recognizing that catheter placement may be the only means of vascular access for these patient sub-populations. Specifically, both measures exclude patients with a catheter that have limited life expectancy defined as being under hospice care in the current reporting month, or with metastatic cancer, end stage liver disease, coma or anoxic brain injury in the past 12 months. In this way, the combination of risk adjustment for the SFR and the application of the exclusions to both measures does not result in doubly penalizing facilities and instead is intended to incentivize best practices for vascular access.

Final Rule Action: After consideration of the comments received, we are finalizing our proposal to include the Hemodialysis Vascular Access: Long-Term Catheter Rate Clinical Measure in the ESRD QIP measure set beginning with the PY 2021 program.

e. Performance Period for the PY 2021 ESRD QIP

We proposed to establish CY 2019 as the performance period for the PY 2021 ESRD QIP for all but the NHSN Healthcare Personnel Influenza Vaccination reporting measure because it is consistent with the performance periods we have historically used for these measures and accounts for seasonal variations that might affect a facility's measure score.

We proposed that the performance period for the NHSN Healthcare Personnel Influenza Vaccination reporting measure will be from October 1, 2018 through March 31, 2019, because this period spans the length of the 2018–2019 influenza season.

We requested comments on these proposals.

Comment: Two commenters supported setting CY 2019 as the performance period for PY 2021 generally but did not support the proposed performance period for the NHSN Healthcare Personnel Influenza Vaccination Reporting Measure as being from October 1, 2018 through March 31, 2019. They argued that the dates of vaccine availability do not coincide with the dates for the measure and encouraged CMS to modify the measure to align with the CDC's guidelines for immunization, which define the performance period as October 1 or ''whenever the vaccine became available.''

Response: We thank the commenters for sharing their concerns, however as we have explained in previous rules, the performance period for this measure defines the flu season during which healthcare personnel must be protected against influenza. The performance period is only used to identify personnel who have physically worked at the facility for at least 1 day between October 1 and March 31. These are employees that are considered eligible for inclusion in the measure denominator. The performance period does not indicate when the influenza vaccination should be administered. Therefore, any personnel who are employed for at least 1 day during the flu season, may be vaccinated as soon as the vaccine becomes available for that respective season. Facilities should report influenza vaccinations given to all healthcare personnel whether they are vaccinated prior to or during the denominator reporting period to receive full credit for the measure; therefore, there is no penalty for early vaccination built into the NHSN measure (81 FR 77901).

Comment: One commenter supported the influenza vaccination reporting measure performance period of October 1 through March 31 because it is consistent with other quality reporting and value-based purchasing programs.

Response: We thank commenter for their support of the proposed performance period for the Healthcare Personnel Influenza Vaccination Reporting Measure.

Final Rule Action: After consideration of the comments received, we are finalizing the performance period for the PY 2021 ESRD QIP as proposed.

f. Performance Standards, Achievement Thresholds, and Benchmarks for the PY 2021 ESRD QIP

Section 1881(h)(4)(A) of the Act provides that ''the Secretary shall establish performance standards with respect to measures selected . . . for a performance period with respect to a year.'' Section 1881(h)(4)(B) of the Act further provides that the ''performance standards . . . shall include levels of achievement and improvement, as determined appropriate by the Secretary.'' We use the performance standards to establish the minimum score a facility must achieve to avoid a Medicare payment reduction.

i. Performance Standards, Achievement Thresholds, and Benchmarks for the Clinical Measures in the PY 2021 ESRD QIP

For the same reasons stated in the CY 2013 ESRD PPS final rule (77 FR 67500 through 76502), we proposed for PY 2021 to set the performance standards, achievement thresholds, and benchmarks for the clinical measures at the 50th, 15th, and 90th percentile, respectively, of national performance in CY 2017, because this will give us enough time to calculate and assign numerical values to the proposed performance standards for the PY 2021 program prior to the beginning of the performance period. We continue to believe these standards will provide an incentive for facilities to continuously improve their performance, while not reducing incentives to facilities that score at or above the national performance rate for the clinical measures.

We requested comments on our proposal to continue this policy for PY 2021. The comments and our responses are set forth below.

Comment: One commenter stated that it supports CMS's reliance on the same basic methodology year-over-year for the ESRD QIP and therefore supports the continuation of the previous policy of setting the performance standard, achievement threshold, and benchmark at the 50th, 15th, and 90th percentiles respectively, in PY 2021. The commenter also stated that it supports the policy for determining payment reductions, including the process for setting the minimum TPS.

Response: We thank the commenter for their support and we agree that consistency in program implementation is an important consideration in selecting a methodology for scoring performance under the ESRD QIP.

Final Rule Action: After consideration of the comments received, we are finalizing our proposal to continue our methodology for setting the performance standards, achievement thresholds, and benchmarks for the PY 2021 ESRD QIP.

ii. Performance Standards, Achievement Thresholds, and Benchmarks for the Clinical Measures Proposed for the PY 2021 ESRD QIP

We do not currently have the necessary data to assign numerical values to the proposed performance standards for the clinical measures, because we do not yet have data from CY 2017 or the first portion of CY 2018. We will publish values for the clinical measures, using data from CY 2017 and the first portion of CY 2018 in the CY 2019 ESRD PPS final rule.

iii. Performance Standards for the PY 2021 Reporting Measures

In the CY 2014 ESRD PPS final rule, we finalized performance standards for the Anemia Management and Mineral Metabolism reporting measures (78 FR 72213). In the CY 2016 ESRD PPS final rule, we finalized performance standards for the Screening for Clinical Depression and Follow-Up, Pain Assessment and Follow-Up, and NHSN Healthcare Provider Influenza Vaccination reporting measures (79 FR 66209). In the CY 2017 ESRD PPS final rule, we finalized performance standards for the Ultrafiltration Rate Reporting Measure (81 FR 77916), the Serum Phosphorus Reporting measure (81 FR 77916), and the NHSN Dialysis Event Reporting measure (81 FR 77916).

We proposed to continue use of these performance standards for the Reporting Measures included in the PY 2021 ESRD QIP.

We did not receive any comments on our proposed use of these performance standards for the Reporting Measures included in the PY 2021 ESRD QIP and we are therefore finalizing these standards as proposed.

g. Scoring the PY 2021 ESRD QIP

i. Scoring Facility Performance on Clinical Measures Based on Achievement

In the CY 2014 ESRD PPS final rule, we finalized a policy for scoring performance on clinical measures based on achievement (78 FR 72215). Under this methodology, facilities receive points along an achievement range based on their performance during the performance period for each measure, which we define as a scale between the achievement threshold and the benchmark. In determining a facility's achievement score for each clinical

measure under the PY 2021 ESRD QIP, we proposed to continue using this methodology for all clinical measures.

We also proposed to use this same methodology for scoring the two new Vascular Access measures.

Aside from the proposed addition of the two Vascular Access measures, we did not propose any changes to this policy. We proposed to continue use of this policy for the PY 2021 ESRD QIP.

We did not receive any comments on our continued use of this policy for PY 2021. Accordingly, we are finalizing this policy as proposed.

ii. Scoring Facility Performance on Clinical Measures Based on Improvement

In the CY 2014 ESRD PPS final rule, we finalized a policy for scoring performance on clinical measures based on improvement (78 FR 72215 through 72216). In determining a facility's improvement score for each measure under the PY 2021 ESRD QIP, we proposed to continue using this methodology for all clinical measures. Under this methodology, facilities receive points along an improvement range, defined as a scale running between the improvement threshold and the benchmark. We proposed to define the improvement threshold as the facility's performance on the measure during CY 2018. The facility's improvement score would be calculated by comparing its performance on the measure during CY 2019 (the performance period) to the improvement threshold and benchmark.

We also proposed to use this same methodology for scoring the two new Vascular Access measures.

Aside from the proposed addition of the two new Vascular Access measures, we did not propose any other changes to this policy. We proposed to continue use of this policy for the PY 2021 ESRD QIP.

The comments and our responses to the comments on our proposals are set forth below.

Comment: Commenters expressed concerns with the current policy for scoring the ESRD QIP and suggested that it could be a barrier to home dialysis uptake at small facilities or stand-alone ''home only'' programs because a small sample size can put a facility at risk for a payment reduction due to one or two low scores on a measure.

Regarding the clinical measure domain score, which is worth 75 percent of the TPS and only comprises 2–3 measures for most home programs, commenter suggested that one way to mitigate this effect would be to apply the current low volume scoring adjustment to a facility's home dialysis population, should they meet the rest of the criteria. The commenter stated that this adjustment was originally designed to be applied facility-wide to facilities having only 11–25 eligible cases for a given clinical measure, and the commenter was unsure whether this approach would adequately compensate for the disadvantage of being scored on a small number of measures.

Another commenter argued that the measures should reflect the unique nature of each modality and should be developed based on data specific to that modality, recommending that CMS improve Peritoneal Dialysis adequacy scoring within the scoring methodology because PD therapy is inherently different from Hemodialysis and outcomes should be measured accordingly. According to the commenter, many PD patients experience residual renal function, which is not captured by the QIP and this is a particularly significant scoring limitation with respect to the pediatric PD population. Commenter urged CMS to revise the dialysis adequacy targets downward to more accurately capture and reflect the actual experiences of PD patients.

Response: We thank commenters for sharing their concerns. While we recognize there are differences in the achievement of adequate dialysis by modality and age, all ESRD dialysis patients require adequate dialysis, and it is reasonable to expect providers to provide adequate dialysis to all patients, regardless of modality or age. CMS continues to believe that facilities should strive to provide the best quality care, regardless of a patient's modality or age. We will consider these concerns and evaluate the issue further.

Comment: One commenter supported the proposal to use the existing methodology for scoring in PY 2021.

Response: We appreciate the support.

Final Rule Action: After consideration of the comments received, we are finalizing our proposals for scoring facilities on clinical measures based on the improvement and achievement methodologies as proposed for the PY 2021 ESRD QIP.

iii. Scoring the ICH CAHPS Clinical Measure

In the CY 2015 ESRD PPS final rule, we finalized a policy for scoring performance on the ICH CAHPS clinical measure based on both achievement and improvement (79 FR 66209 through 66210). We proposed to use this scoring methodology for the PY 2021 ESRD QIP. Under this methodology, facilities will receive an achievement score and an improvement score for each of the three composite measures and three global ratings in the ICH CAHPS survey instrument. A facility's ICH CAHPS score will be based on the higher of the facility's achievement or improvement score for each of the composite measures and global ratings, and the resulting scores on each of the composite measures and global ratings will be averaged together to yield an overall score on the ICH CAHPS clinical measure. For PY 2021, the facility's achievement score would be calculated by comparing where its performance, on each of the three composite measures and three global ratings during CY 2019 falls, relative to the achievement threshold and benchmark for that measure and rating based on CY 2017 data. The facility's improvement score would be calculated by comparing its performance on each of the three composite measures and three global ratings during CY 2019 to its performance rates on these items during CY 2018.

We requested comments on this proposal. We did not receive any comments on this proposal. We are therefore finalizing this policy as proposed.

iv. Scoring the Proposed Hemodialysis Vascular Access: Standardized Fistula Rate and Long-Term Catheter Rate Measures and the Vascular Access Measure Topic

In the CY 2013 ESRD PPS final rule we established a methodology for deriving the overall scores for measure topics (77 FR 67507). We proposed to use the same methodology described in the CY 2013 ESRD PPS to calculate the VAT Measure Topic Score.

We requested comments on this proposal. We did not receive any comments on this proposal. We are therefore finalizing this policy as proposed.

v. Calculating Facility Performance on Reporting Measures

In the CY 2013 ESRD PPS final rule, we finalized policies for scoring performance on the Anemia Management and Mineral Metabolism reporting measures in the ESRD QIP (77 FR 67506). In the CY 2015 ESRD PPS final rule, we finalized policies for scoring performance on the Clinical Depression Screening and Follow-Up, Pain Assessment and Follow-Up, and NHSN Healthcare Provider Influenza Vaccination reporting measures (79 FR 66210 through 66211). In the CY 2017 ESRD PPS final rule, we finalized policies for scoring performance on the

Ultrafiltration Rate, Serum Phosphorus, and NHSN Dialysis Event reporting measures (81 FR 77917).

We proposed to continue use of these policies for the PY 2021 ESRD QIP.

We did not receive any comments on this proposal. We are therefore finalizing these policies as proposed.

h. Weighting the Measure Domains, and Weighting the TPS for PY 2021

In the CY 2017 ESRD PPS final rule, we discussed our policy priorities for quality improvement for patients with ESRD (81 FR 77887). These priorities have not changed since that time. Accordingly, in an effort to remain consistent in the weighting of measures included in the program, we proposed to weight the following measures in the following subdomains of the three individual measure domains (see Table 10):

TABLE 10—PROPOSED MEASURE DOMAIN WEIGHTING FOR THE PY 2021 ESRD QIP

Measures/measure topics by subdomain	Measure weight within the domain (proposed for PY 2021)	Measure weight as percent of TPS (proposed for PY 2021)
Clinical Measure Domain		
Patient and Family Engagement/Care Coordination Subdomain	40%	30.
ICH CAHPS Measure	25%	18.75.
SRR Measure	15%	11.25.
Clinical Care Subdomain	60%	45.
STrR measure	11%	8.25.
Kt/V Dialysis Adequacy Comprehensive Measure	18%	13.5.
Vascular Access Type Measure Topic	18%	13.5.
Hypercalcemia measure	2%	1.5.
SHR Measure	11%	8.25.
Total: Clinical Measure Domain	100% of Clinical Measure Domain.	75% of Total Performance Score.
Reporting Measure Domain		
Serum Phosphorus reporting measure	20%	2.
Anemia Management reporting measure	20%	2.
Pain Assessment and Follow-Up reporting measure	20%	2.
Clinical Depression Screening and Follow-Up reporting measure	20%	2.
Healthcare Personnel Influenza Vaccination reporting measure	20%	2.
Total: Reporting Measure Domain	100% of Reporting Measure Domain.	10% of Total Performance Score.
Safety Measure Domain		
NHSN BSI Clinical Measure	60%	9.
NHSN Dialysis Event Reporting Measure	40%	6.
Total: Safety Measure Domain	100% of Safety Measure Domain.	15% of Total Performance Score.

For PY 2021 we proposed to maintain the weight of the Safety Measure Domain at 15 percent of a facility's TPS without raising it further, in light of validation concerns discussed in the CY 2017 ESRD PPS final rule (81 FR 77887). Specifically, we identified two distinct types of accidental or intentional under-reporting. First, there is a belief that many facilities do not consistently report monthly dialysis event data for the full 12-month performance period. Second, even with respect to the facilities that do report monthly dialysis event data, there is a concern that many of those facilities do not consistently report all of the dialysis events that they should be reporting (81 FR 77879). Although we did not propose to change the total number of measures in the ESRD QIP's measure set for PY 2021, we proposed to replace the existing Vascular Access measures with the proposed Standardized Fistula and Catheter Clinical measures. We believe these measures hold the same importance and value as the measures they are replacing and therefore did not propose any changes to the weights finalized for PY 2020 in the CY 2017 ESRD PPS final rule (81 FR 77887). We stated that we may, in future years of the program, consider increasing the weight of the NHSN BSI Clinical Measure and/or the NHSN BSI Measure Topic once we see that facilities are completely and accurately reporting to NHSN and once we have analyzed the data from the recently updated NHSN Data Validation Study.

We continue to believe that while the reporting measures are valuable, the clinical measures assess facility performance on actual patient care processes and outcomes, and therefore, justify a higher combined weight (78 FR 72217). In the CY 2017 ESRD PPS final rule, we finalized that for PY 2020, the weight of the Safety Measure Domain would be 15 percent of a facility's TPS, the weight of the Clinical Measure Domain would be 75 percent of a facility's TPS and the weight of the Reporting Measure Domain would be 10 percent of a facility's TPS. We did not propose any changes to the weights assigned to these domains and proposed to apply the same weights to the three scoring domains for the PY 2021 program year.

In the CY 2017 ESRD PPS final rule, we also finalized that, to be eligible to receive a TPS, a facility must be eligible to be scored on at least one measure in the Clinical Measure Domain and at least one measure in the Reporting Measure Domain. We did not propose

any changes to this policy for the PY 2021 ESRD QIP.

We requested comments on these proposals.

Comment: Commenters urged CMS to re-weight the Vascular Access measures within the Clinical Measure Domain, assigning ⅔ of the weight of that measure topic to the Catheter Measure and ⅓ to the Fistula. Commenters argued that with a differential weighting of the two measures, a facility that scores especially well on the catheter measure (that is, low numbers of catheters) compared to the fistula measure could achieve an increase of about 2 points in its TPS. Conversely, these commenters stated that a facility that scores especially well on the fistula measure but still has high numbers of catheters could see its TPS decrease by approximately 2 points. Commenters argued that these differences could be meaningful for facilities that are near the TPS cut-off points for payment reduction levels. Commenters also stated that facilities that score about the same on the two measures would not see a notable change in their TPS.

Response: We conducted an analysis to determine how the Vascular Access Measure Topic Scores, TPS, and estimated payment reductions would be impacted if we were to assign ⅔ of the weight of the measure topic to the Catheter Measure, and ⅓ of the weight of the measure topic to the Fistula Measure. Results (shown in Table 11), suggest that although some facilities would benefit from this policy change, a larger percentage would not.

TABLE 11—ANALYSIS OF THE EFFECTS OF RE-WEIGHTING THE VASCULAR ACCESS MEASURES

	N	%
Difference in Payment Reduction		
Lower Payment Reduction	328	5.82
Higher Payment Reduction	417	7.40
No Change	4890	86.78
Difference in TPS		
Lower TPS	2373	42.10
Higher TPS	2004	35.56
No Change	1258	22.30

As shown in Table 11, under this re-weighting approach for the Vascular Access Measures, approximately 36 percent of facilities would receive a higher VAT Topic Score and TPS, but 42 percent would receive lower scores. Additionally, under this weighting policy recommended by commenters, 5.8 percent would receive a lower payment reduction, but 7.4 percent would receive a higher payment reduction. While the recommendation to re-weight the VAT Measure topic fits with the overall goal of the ESRD QIP to increase performance on the catheter measure, we believe that some facilities would be adversely impacted were we to adopt this weighting structure.

Comment: One commenter requested clarification on the weight of the Ultrafiltration Rate Reporting Measure for PY 2021 because no weight was included for that measure in the proposed rule.

Response: We thank the commenter for pointing out the error. Although we inadvertently did not include the proposed numerical weight for the UFR Reporting Measure for PY 2021 in Table 8 of the proposed rule, we proposed to weight the reporting measures and the Reporting Measure Domain consistent with how we have weighted them in previous years of the program (79 FR 66217, 79 FR 66219). Under that weighting scheme, which is reflected in Table 8 of the proposed rule, each reporting measure is weighted equally within the Reporting Domain, and the Reporting Domain, as a whole, comprises 10 percent of the TPS. Application of that policy to the PY 2021 reporting measures, which includes the UFR Reporting Measure, results in each measure being weighted at 16.66 percent of the Reporting Measure Domain, or 1.66 percent of the TPS. Table 12 reflects these values.

Final Rule Action: After considering the comments we received, we are finalizing our domain weighting policy for PY 2021. The final weights are reflected in Table 12.

TABLE 12—FINALIZED MEASURE DOMAIN WEIGHTING FOR THE PY 2021 ESRD QIP

Measures/measure topics by subdomain	Measure weight within the domain (proposed for PY 2021)	Measure weight as percent of TPS (proposed for PY 2021)
Clinical Measure Domain		
Patient and Family Engagement/Care Coordination Subdomain	40%	30.
ICH CAHPS Measure	25%	18.75.
SRR Measure	15%	11.25.
Clinical Care Subdomain	60%	45.
STrR measure	11%	8.25.
Kt/V Dialysis Adequacy Comprehensive Measure	18%	13.5.
Vascular Access Type Measure Topic	18%	13.5.
Hypercalcemia measure	2%	1.5.
SHR Measure	11%	8.25.
Total: Clinical Measure Domain	100% of Clinical Measure Domain.	75% of Total Performance Score.
Reporting Measure Domain		
Serum Phosphorus reporting measure	16.66%	1.66.
Anemia Management reporting measure	16.66%	1.66.
Pain Assessment and Follow-Up reporting measure	16.66%	1.66.
Clinical Depression Screening and Follow-Up reporting measure	16.66%	1.66.
Healthcare Personnel Influenza Vaccination reporting measure	16.66%	1.66.
Ultrafiltration Rate Reporting Measures	16.66%	1.66.
Total: Reporting Measure Domain	100% of Reporting Measure Domain.	10% of Total Performance Score.

TABLE 12—FINALIZED MEASURE DOMAIN WEIGHTING FOR THE PY 2021 ESRD QIP—Continued

Measures/measure topics by subdomain	Measure weight within the domain (proposed for PY 2021)	Measure weight as percent of TPS (proposed for PY 2021)
Safety Measure Domain		
NHSN BSI Clinical Measure	60%	9.
NHSN Dialysis Event Reporting Measure	40%	6.
Total: Safety Measure Domain	100% of Safety Measure Domain.	15% of Total Performance Score.

i. Example of the PY 2021 ESRD QIP Scoring Methodology

In this section, we provide an example to illustrate the scoring methodology for PY 2021. Figures 1 through 4 illustrate how to calculate the Clinical Measure Domain score, the Reporting Measure Domain score, the Safety Measure Domain score, and the TPS. Figure 5 illustrates the full scoring methodology for PY 2021. Note that for this example, Facility A, a hypothetical facility, has performed very well.

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Figure 1 illustrates the methodology used to calculate the Clinical Measure Domain score for Facility A.

FIGURE 1:

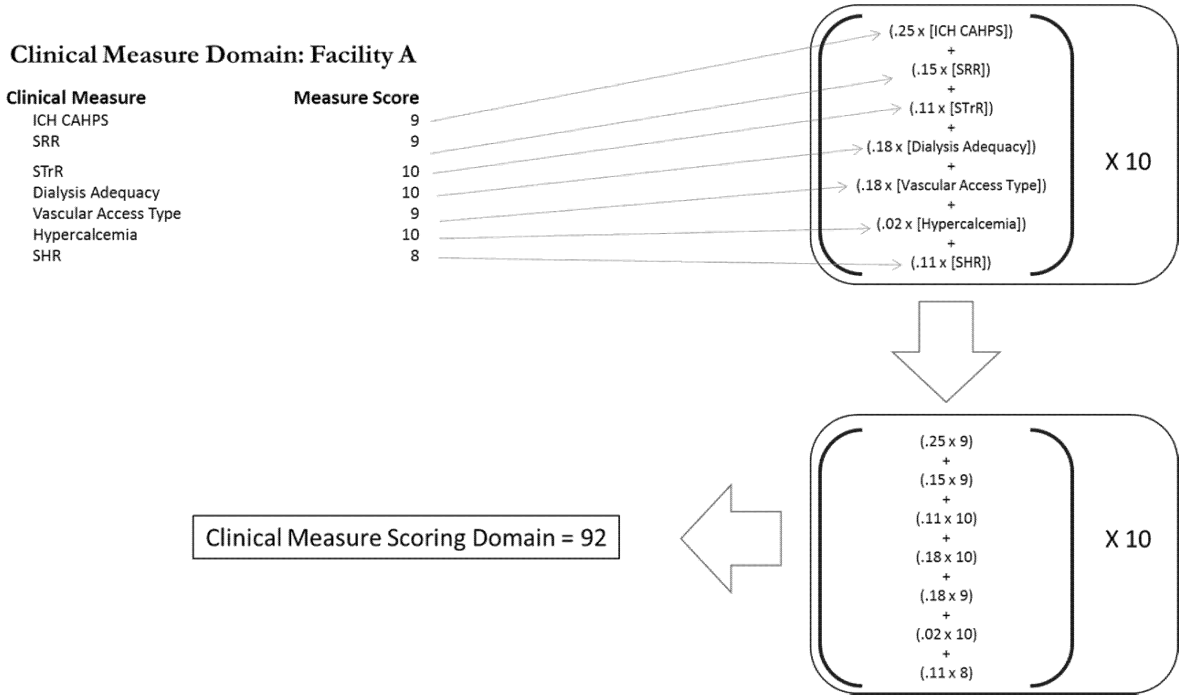


Figure 2 illustrates the general methodology for calculating the Reporting Measure Domain score for Facility A.

FIGURE 2:

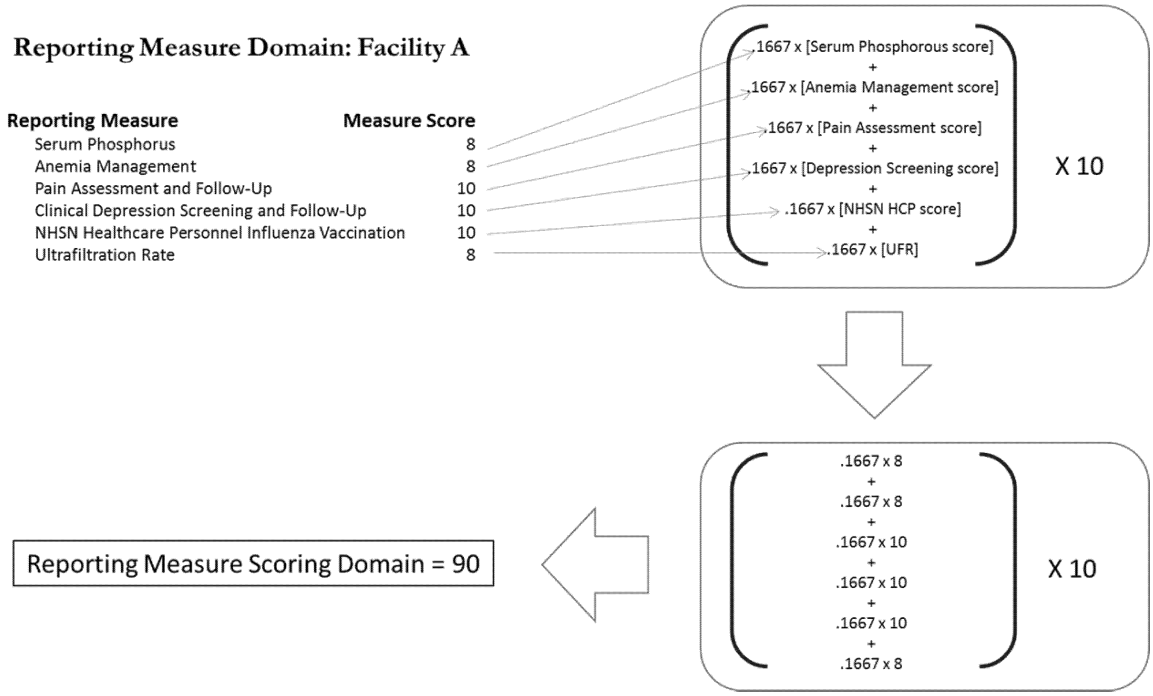


Figure 3 illustrates the methodology used for calculating the Safety Measure Domain score for Facility A.

FIGURE 3:

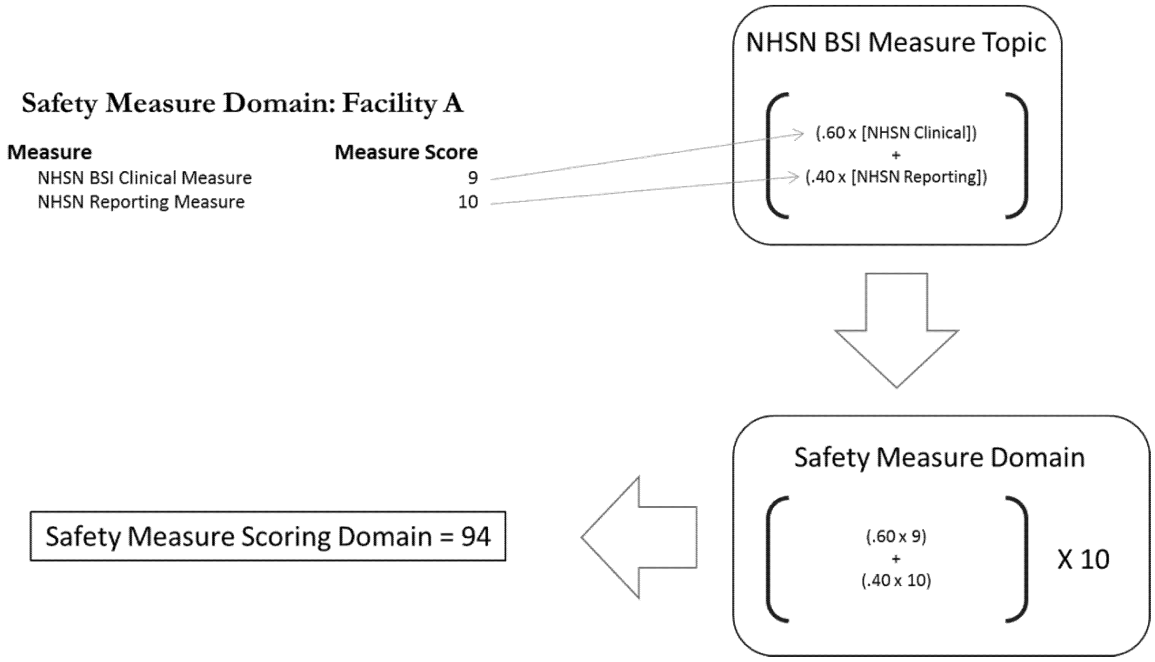


Figure 4 illustrates the methodology used to calculate the TPS for Facility A.

FIGURE 4:

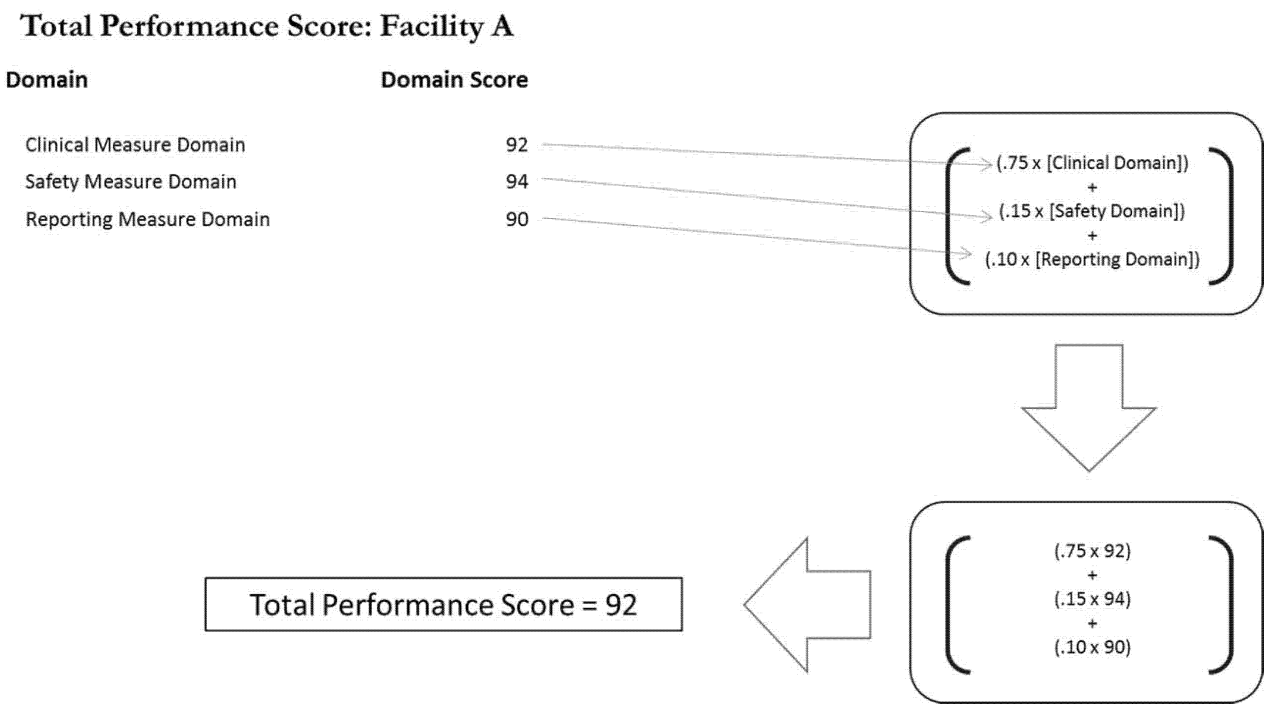
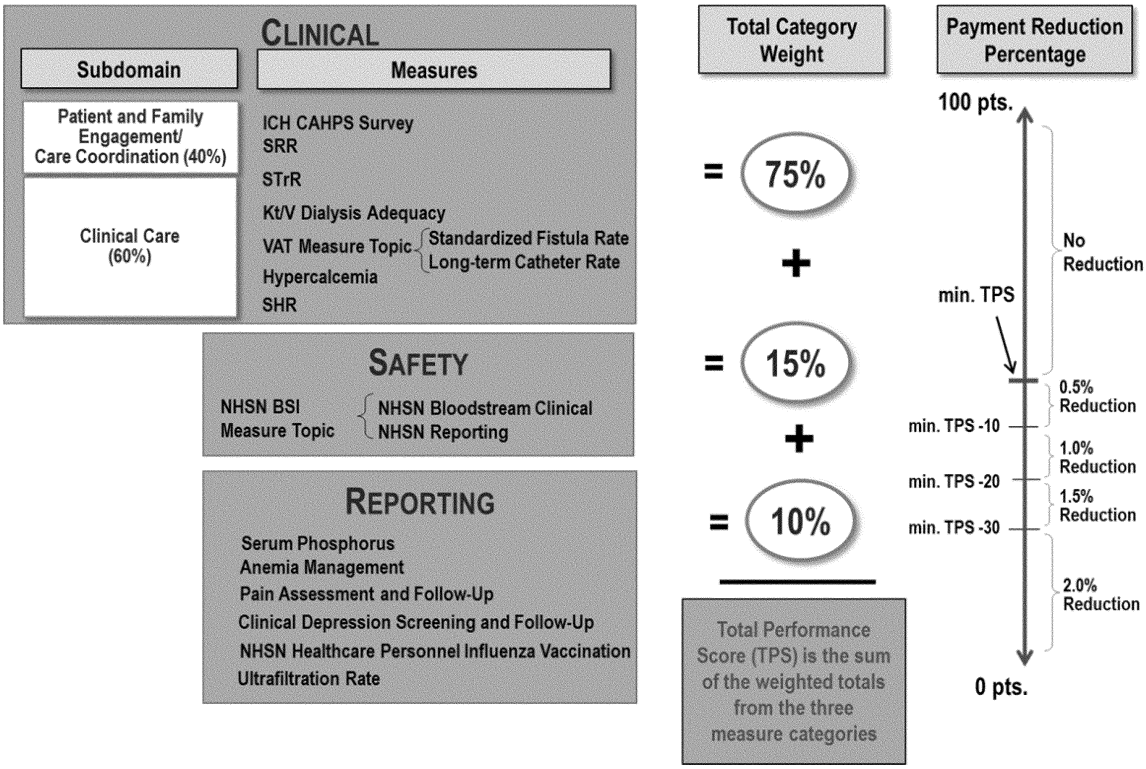


Figure 5 illustrates the full scoring methodology for PY 2021.

FIGURE 5:



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j. Minimum Data for Scoring Measures for the PY 2021 ESRD QIP

Our policy is to score facilities on clinical and reporting measures for which they have a minimum number of qualifying patients during the performance period. With the exception of the Standardized Readmission Ratio, Standardized Hospitalization Ratio, Standardized Transfusion Ratio, NHSN Healthcare Personnel Influenza Vaccination, and ICH CAHPS clinical measures, a facility must treat at least 11 qualifying cases during the performance period in order to be scored on a clinical or reporting measure. A facility must have at least 11 index discharges to be eligible to receive a score on the SRR clinical measure, 10 patient-years at risk to be eligible to receive a score on the STrR clinical measure, and 5 patient-years at risk to be eligible to receive a score on the SHR clinical measure. The NHSN Healthcare Personnel Influenza Vaccination measure does not assess patient-level data and therefore does not have a minimum qualifying patient count. In order to receive a score on the ICH CAHPS clinical measure, a facility must have treated at least 30 survey-eligible patients during the eligibility period and receive 30 completed surveys during the performance period. We proposed to continue use of these minimum data policies for the measures that we proposed to continue including in the PY 2021 ESRD QIP measure set. We also proposed to use these same minimum data policies for the proposed Vascular Access Measures.

Under our current policy, we begin counting the number of months for which a facility is open on the first day of the month after the facility's CMS Certification Number (CCN) Open Date. In the CY 2018 ESRD PPS proposed rule (81 FR 31203), we discussed our proposed clarifications, which we are finalizing in this final rule (see Table 2b), to our CCN open date policy and to the patient minimum requirements for each of the measures finalized for the PY 2020 ESRD QIP. Similarly, for the PY 2021 ESRD QIP, only facilities with a CCN Open Date before July 1, 2019 would be eligible to be scored on the Anemia Management, Serum Phosphorous, Ultrafiltration Rate, Pain Assessment and Follow-Up, Clinical Depression Screening and Follow-Up reporting measures, and only facilities with a CCN Open Date before January 1, 2019 would be eligible to be scored on the NHSN BSI Clinical and Reporting Measures, the ICH CAHPS Clinical Measure, and the NHSN Healthcare Personnel Influenza Vaccination reporting measure. We proposed to continue applying these CCN open date policies to the measures proposed for PY 2021.

Table 13 displays the proposed patient minimum requirements for each of the measures, as well as the proposed CCN Open Dates after which a facility would not be eligible to receive a score on a reporting measure. We note that the 11 qualifying patient minimum used for most of the measures shown in the Table 13 is a long-standing policy in the ERSD QIP.

TABLE 13—PROPOSED MINIMUM DATA REQUIREMENTS FOR THE PY 2021 ESRD QIP

Measure	Minimum data requirements	CCN open date	Small facility adjuster
Dialysis Adequacy (Clinical)	11 qualifying patients	N/A	11–25 qualifying patients.
Hemodialysis Vascular Access: Standardized Fistula Rate (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Hemodialysis Vascular Access: Long-Term Catheter Rate (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Hypercalcemia (Clinical)	11 qualifying patients	N/A	11–25 qualifying patients.
NHSN BSI (Clinical)	11 qualifying patients *	Before January 1, 2019	11–25 qualifying patients.
NHSN Dialysis Event (Reporting)	11 qualifying patients *	Before January 1, 2019	N/A.
SRR (Clinical)	11 index discharges	N/A	11–41 index discharges.
STrR (Clinical)	10 patient-years at risk	N/A	10–21 patient-years at risk.
SHR (Clinical)	5 patient-years at risk	N/A	5–14 patient-years at risk.
ICH CAHPS (Clinical)	Facilities with 30 or more survey-eligible patients during the CY preceding the performance period must submit survey results. Facilities will not receive a score if they do not obtain a total of at least 30 completed surveys during the performance period.	Before January 1, 2019	N/A.
Anemia Management (Reporting)	11 qualifying patients	Before July 1, 2019	N/A.
Serum Phosphorus (Reporting)	11 qualifying patients	Before July 1, 2019	N/A.
Depression Screening and Follow-Up (Reporting).	11 qualifying patients	Before July 1, 2019	N/A.
Pain Assessment and Follow-Up (Reporting).	11 qualifying patients	Before July 1, 2019	N/A.
NHSN Healthcare Personnel Influenza Vaccination (Reporting).	N/A	Before January 1, 2019	N/A.
Ultrafiltration Rate (Reporting)	11 qualifying patients	Before July 1, 2019	N/A.

* For the NHSN BSI Clinical Measure and the NHSN Dialysis Event Reporting Measure, qualifying patients include only in-center hemodialysis patients. Inpatient hemodialysis patients and home hemodialysis or peritoneal dialysis patients are excluded from this measure.

The comments and our responses to the comments on our proposals are set forth below.

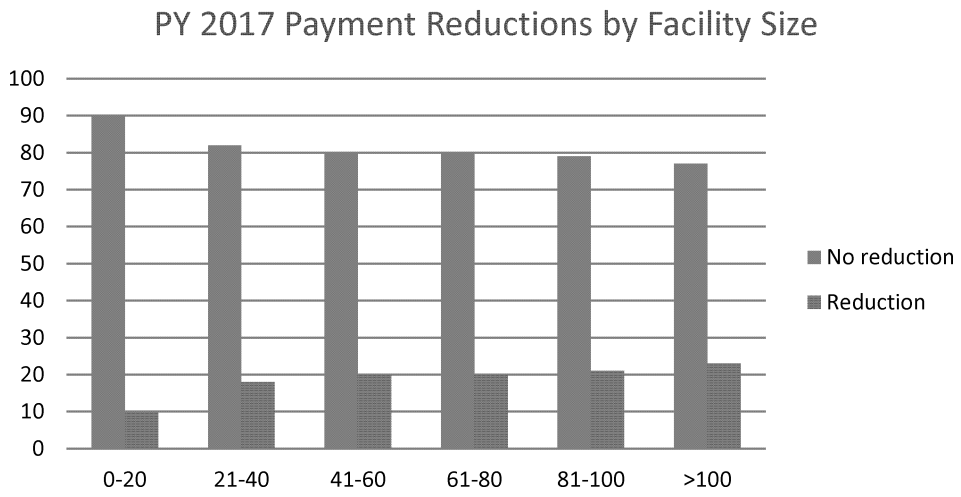
Comment: One commenter argued that the use of the 11-case minimum, while meant to ensure the privacy of individuals, is not ensuring the integrity of the data being reported. The commenter believes that CMS has introduced randomness into the process of scoring quality measures and that this randomness leads to facilities being unable to predict how their actions will impact outcomes and therefore makes measures meaningless in terms of improving quality. The commenter added that the minimum data threshold makes the outcome of these measures

meaningless to patients because the small number of patients drives the outcome rather than the actual care being provided. The commenter recommended that CMS eliminate the small facility adjuster and adopt instead a minimum sample size of 26 patients for scoring measures.

Response: We thank the commenter for their comments. While it is true that smaller facilities will most likely have more variability in measure scores, our analysis of the PY 2017 results suggest smaller facilities received fewer payment reductions (see figure 6 below). Reliability analyses have been used to determine upper thresholds for the small facility adjustment. These reliability analyses were published when the small facility adjuster was first introduced into the ESRD QIP (78 FR 72222), and are available here: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/Downloads/Small-Facility-Adjustment-Proposal-for-the-ESRD-QIP.pdf.*

These reliability analyses were performed for all measures, including the ratio measures (which have different thresholds).

FIGURE 6. Payment Year 2017 Payment Reductions by Facility Size



Final Rule Action: After considering the comments received, we are finalizing the minimum data policy for the PY 20201 ESRD QIP as proposed.

k. Payment Reductions for the PY 2021 ESRD QIP

Section 1881(h)(3)(A)(ii) of the Act requires the Secretary to ensure that the application of the scoring methodology results in an appropriate distribution of payment reductions across facilities, such that facilities achieving the lowest TPSs receive the largest payment reductions. We proposed that, for the PY 2021 ESRD QIP, a facility will not receive a payment reduction if it achieves a minimum TPS that is equal to or greater than the total of the points it would have received if:

- It performed at the performance standard for each clinical measure.
- It received the number of points for each reporting measure that corresponds to the 50th percentile of facility performance on each of the PY 2019 reporting measures.

We noted in the proposed rule that this proposed policy for PY 2021 is identical to the policy finalized for PY 2020.

We stated in the proposed rule that we were not proposing a policy regarding the inclusion of measures for which we were not able to establish a numerical value for the performance standard through the rulemaking process before the beginning of the performance period for PY 2020. We did not propose such a policy because no measures in the proposed PY 2021 measure set meet this criterion. However, should we choose to adopt a clinical measure in future rulemaking without the baseline data required to calculate a performance standard before the beginning of the performance period, we will propose a criterion accounting for that measure in the minimum TPS for the applicable payment year at that time.

The PY 2019 program is the most recent year for which we will have calculated final measure scores before the beginning of the proposed performance period for PY 2021 (that is, CY 2019). Because we have not yet calculated final measure scores, we are unable to determine the 50th percentile of facility performance on the PY 2019 reporting measures. We will propose that value in the CY 2019 ESRD PPS proposed rule once we have calculated final measure scores for the PY 2019 program, and will finalize those values in the CY 2019 ESRD PPS final rule using the most updated data available at the time of publication.

Section 1881(h)(3)(A)(ii) of the Act requires that facilities achieving the lowest TPSs receive the largest payment reductions. In the CY 2014 ESRD PPS final rule (78 FR 72223 through 72224), we finalized a payment reduction scale for PY 2016 and future payment years: For every 10 points a facility falls below the minimum TPS, the facility would receive an additional 0.5 percent reduction on its ESRD PPS payments for PY 2016 and future payment years, with a maximum reduction of 2.0 percent. We did not propose any changes to this policy for the PY 2021 ESRD QIP.

Because we are not yet able to calculate the performance standards for each of the clinical measures, we are also not able to calculate a proposed

minimum TPS at this time. We will propose a minimum TPS, based on data from CY 2017 and the first part of CY 2018, in the CY 2019 ESRD PPS proposed rule.

The comments and our responses to the comments on our proposal are set forth below.

Comment: Several commenters expressed concerns with the significant increase in the number of facilities projected to receive a payment reduction from PY 2017 to PYs 2020 and 2021. They found no changes in the methodology or measures that would explain such a substantial fluctuation. One commenter stated that changes in the minimum TPS do not predict the change that the addition of any single measure is unlikely to drive a major shift in payment reductions and there are no significant changes in the measure thresholds that would explain the large shift. The commenter therefore urged CMS to adjust the QIP payment reduction parameters to maintain more consistent payment levels from one year to the next and asked that CMS work with the community to consider a policy to adjust the payment reduction thresholds to generate more predictable payment outcomes. Another commenter asked CMS to explain how it determined the percentage of penalties and why there appears to be such a significant change, to provide for greater transparency.

Response: Though we did not propose a minimum TPS for PY 2021, we were able to provide simulations. We estimated the minimum TPS for PY 2021 for the analyses provided in the CY 2018 ESRD PPS proposed rule using the available data. For simulations, we use the performance standards from the prior year to calculate the minimum TPS. We do this so that we are simulating what is actually done when we calculate final sores. However, we have found that it does not make a big difference which performance standards are used to conduct our simulations—results do not change drastically.

Our policies for determining payment reductions have not changed from year to year and are consistent with the methodology described in several of our previous rules (see for example, 80 FR 69046 and 81 FR 77893). We believe the increases in simulated payment reductions are due to the inclusion of the ICH CAHPS and SHR measures in the PY 2020 simulation, whereas they were not included in the PY 2019 simulation because data was not available at that time. It is also due to a decrease in performance for the SRR, STrR, VAT, and Hypercalcemia measures among a subset of facilities. Finally, we note that as the ESRD QIP increases the number of measures included in the TPS, this also increases the chance that a facility will score poorly on one or more measures, which can result in increased payment reductions.

Final Rule Action: After consideration of the comments received, we are finalizing our policy for determining payment reductions for the PY 2021 ESRD QIP as proposed.

C. Miscellaneous Comments

We received several general comments on the ESRD QIP. The comments and our responses are set forth below.

Comment: Several commenters supported the general goals of the ESRD QIP and supported our efforts to develop a quality incentive program that promotes high quality patient care for patients with ESRD.

Response: We appreciate commenters' support of the ESRD QIP and welcome the opportunity to collaborate with the community to ensure that the program continues to promote high quality patient care in renal dialysis facilities.

Comment: Several commenters expressed concerns about the burden associated with the program, arguing that adding new measures to the program only increases the burden for providers and for CMS.

Response: We thank commenters for sharing their concerns. We are constantly reviewing our program and are always looking for ways to balance minimizing burden with employing a comprehensive quality performance assessment. One way in which we try to achieve this balance is, when feasible, to calculate measures using Medicare claims and other administrative data so that facilities do not need to report additional data. Doing so allows us to assess key clinical care outcomes while minimizing additional burden on dialysis facilities.

Comment: Several commenters encouraged CMS to abstain from creating new measures and to instead focus on ensuring that the current set of measures is evidence-based, promotes the delivery of high-quality care, and improves patient outcomes. One commenter recommended a detailed set of criteria for prioritizing ESRD quality measures. In addition to more closely examining the measures that are added to the program, several commenters also recommended that CMS look carefully at the existing measures to determine whether any can be retired, especially as they become ''topped out.'' Commenters expressed concern that having too large a number of measures in the measure set dilutes the impact of individual measures.

Response: We thank commenters for sharing their concerns. We are constantly re-examining the measures that are included in the program to ensure that they are capturing a wide variety of information about the care that patients receive, and we carefully consider whether measures should be retired from the program using a set of criteria previously finalized through rulemaking (81 FR 77896 through 77897). We agree that new measures implemented in the QIP should be evidence-based, promote the delivery of high-quality care, and improve patient outcomes. We also consider how our measures are weighted within the TPS in an effort to ensure that measures with greater clinical significance receive greater weight and emphasis. Additionally, through our measurement development process and consideration of which measures to include in the program, we seek to implement NQF-endorsed outcomes-based measures to the extent feasible and, as part of that analysis, examine the reporting burden associated with those measures.

V. Advancing Health Information Exchange

HHS has a number of initiatives designed to improve health and health care quality through the adoption of health information technology (health IT) and nationwide health information exchange. Health IT facilitates the secure, efficient, and effective sharing and use of health-related information when and where it is needed, and is an important tool for settings across the continuum of care, including ESRD facilities. Health IT plays an important role in developing care plans to manage dialysis related care and co-morbid conditions for patients with ESRD, as well as enabling electronic coordination and communication among multidisciplinary teams. Such tools can promote quality improvement, improve efficiencies and reduce unnecessary costs.

HHS continues to make important strides promoting the availability of technology tools to support providers, including those in ESRD settings. For instance, in 2015 the Office of the National Coordinator for Health Information Technology (ONC) released a document entitled ''Connecting Health and Care for the Nation: A Shared Nationwide Interoperability Roadmap Version 1.0 (Roadmap) (available at *https://www.healthit.gov/sites/default/files/hie-interoperability/nationwide-interoperability-roadmap-final-version-1.0.pdf*), which describes barriers to

interoperability across the current health IT landscape, the desired future state that the industry believes will be necessary to enable a learning health system, and a suggested path for moving from the current state to the desired future state. In the near term, the Roadmap focuses on actions that will enable a majority of individuals and providers across the care continuum to send, receive, find and use priority data domains at the nationwide level by the end of 2017. Moreover, the vision described in the Roadmap significantly expands the types of electronic health information, information sources, and information users well beyond clinical information derived from electronic health records.

In addition, ONC has released the 2017 Interoperability Standards Advisory (available at *https://www.healthit.gov/standards-advisory*), a coordinated catalog of standards and implementation specifications to enable priority health information exchange functions. Providers, payers, and vendors are encouraged to take these health IT standards into account as they implement interoperable health information exchange across the continuum of care.

We encourage stakeholders to utilize health information exchange and certified health IT to effectively and efficiently help providers improve internal care delivery practices, support management of care across the continuum, enable the reporting of electronically specified clinical quality measures, and improve efficiencies and reduce unnecessary costs. As adoption of certified health IT increases and interoperability standards continue to mature, HHS will seek to reinforce standards through relevant policies and programs.

The comments and our responses to the comments on this proposal are set forth below.

Comment: Several commenters noted the recent focus on leveraging health IT to improve provider communication but noted that dialysis facilities often do not receive discharge information needed for continuity of care. Commenters indicated that patients often do not disclose information about recent hospitalizations and dialysis facilities face challenges when requesting discharge instructions and summaries on behalf of the patient. Commenters recommended that CMS require hospitals, particularly those using certified health IT, to send the following information to providers involved in the patient's care: (1) The discharge instructions and discharge summary within 48 hours; (2) pending test results within 72 hours of their availability; and (3) all other necessary information specified in the ''transfer to another facility'' requirements.

Response: We agree with commenters' support for the use of health IT to facilitate improved communication and coordination across care settings. We appreciate commenters' concerns that discharge information is often not sent to dialysis facilities following a hospitalization or may not be sent in a timely manner for continuity of care. While out of scope for this rulemaking, several policies currently address this issue. Under Medicare's Conditions of Participation in 42 CFR 482.43(d), hospitals transferring or referring a patient are already required to send necessary medical information to appropriate facilities and outpatient services as needed for follow-up care. We also note that eligible hospitals and critical access hospitals participating in Stage 2 and Stage 3 of the Medicare and Medicaid Electronic Health Record Incentives Programs are measured on their ability to electronically send summary of care information for transitions of care or referrals to another setting or provider of care, which may include dialysis facilities. With respect to recommendations regarding timing requirements for the sending of discharge information, we will take these comments under consideration as we continue to revise and build on these policies in the future.

VI. Collection of Information Requirements

A. Legislative Requirement for Solicitation of Comments

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. We solicited comments in the notice of proposed rulemaking that published in the **Federal Register** on July 5, 2017 (82 FR 31190). For the purpose of transparency, we are republishing the discussion of the information collection requirements. All of the requirements discussed in this section are already accounted for in OMB approved information collection requests.

B. Requirements in Regulation Text

We are not finalizing changes to the regulatory text for the ESRD PPS or for AKI dialysis payment in CY 2018.

C. Additional Information Collection Requirements

This final rule does not impose any new information collection requirements in the regulation text, as specified above. However, this final rule does make reference to several associated information collections that are not discussed in the regulation text contained in this document. The following is a discussion of these information collections.

1. ESRD QIP

a. Wage Estimates

To derive wage estimates, we used data from the U.S. Bureau of Labor Statistics' May 2016 National Occupational Employment and Wage Estimates. In the CY 2016 ESRD PPS final rule (80 FR 69069), we stated that it was reasonable to assume that Medical Records and Health Information Technicians, who are responsible for organizing and managing health information data,[11] are the individuals tasked with submitting measure data to CROWNWeb and NHSN for purposes of the data validation studies rather than a Registered Nurse, whose duties are centered on providing and coordinating care for patients.[12] The mean hourly wage of a Medical Records and Health Information Technician is $19.93 per hour. Fringe benefit is calculated at 100 percent. Therefore, using these assumptions, we estimate an hourly labor cost of $39.86 as the basis of the wage estimates for all collection of information calculations in the ESRD QIP. We have adjusted these employee hourly wage estimates by a factor of 100 percent to reflect current HHS department-wide guidance on estimating the cost of fringe benefits and overhead. These are necessarily rough adjustments, both because fringe benefits and overhead costs vary significantly from employer to employer and because methods of estimating these costs vary widely from study to study. Nonetheless, there is no practical alternative and we believe that these are reasonable estimation methods.

b. Time Required To Submit Data Based on Reporting Requirements for PY 2020

In the CY 2016 ESRD PPS final rule (80 FR 69070), we estimated that the time required to submit measure data for Payment Year 2019 using CROWNWeb is 2.5 minutes per data element submitted, which takes into account the small percentage of data

[11] *https://www.bls.gov/oes/current/oes292071.htm.*

[12] *https://www.bls.gov/oes/current/oes291141.htm.*

that is manually reported, as well as the human interventions required to modify batch submission files such that they meet CROWNWeb's internal data validation requirements. Since then, these estimates of the time required to submit data have not changed and we are therefore continuing to rely upon them in our burden calculations for PY 2020 and future payment years.

c. Data Validation Requirements for the PY 2020 ESRD QIP

Section IV.B.3.g of this final rule outlines our data validation policies for PY 2020. Specifically, for the CROWNWeb validation, we will continue randomly sampling records from 300 facilities as part of our continuing pilot data validation program. Each sampled facility will be required to produce approximately 10 records, and the sampled facilities will be reimbursed by our validation contractor for the costs associated with copying and mailing the requested records. The burden associated with these validation requirements is the time and effort necessary to submit the requested records to a CMS contractor. We estimate that it will take each facility approximately 2.5 hours to comply with this requirement. If 300 facilities are asked to submit records, we estimate that the total combined annual burden for these facilities will be 750 hours (300 facilities × 2.5 hours). Since we anticipate that Medical Records and Health Information Technicians or similar administrative staff would submit this data, we estimate that the aggregate cost of the CROWNWeb data validation would be approximately $29,895 (750 hours × $39.86/hour), or a total of approximately $93 ($29,895/300 facilities) per facility in the sample. The burden associated with these requirements is captured in an information collection request (OMB control number 0938–1289).

Under the continuing data validation study for validating data reported to the NHSN Dialysis Event Module, we will continue using the methodology finalized in the CY 2017 ESRD PPS final rule, however we are adopting a modification to our sampling methodology, which we described at section IV.B.3.g of this final rule. A CMS contractor will send these facilities requests for medical records for all patients with ''candidate events'' during the evaluation period. Overall, we estimate that, on average, quarterly lists would include two positive blood cultures per facility, but we recognize these estimates may vary considerably from facility to facility. We estimate that it will take each facility approximately 60 minutes to comply with this requirement (30 minutes from each of the two quarters in the evaluation period). If 35 facilities are asked to submit records, we estimate that the total combined annual burden for these facilities will be 35 hours (35 facilities × 1 hour). Since we anticipate that Medical Records and Health Information Technicians or similar administrative staff will submit this data, we estimate that the aggregate cost of the NHSN data validation will be $1,395.10 (35 hours × $39.86/hour), or a total of $39.86 ($1,395.10/35 facilities) per facility in the sample. The burden associated with these requirements is captured in an information collection request (OMB control number 0938–1340).

To determine the burden associated with the collection of information requirements, we look at each of these elements together: The total number of patients nationally, the number of elements per patient-year required for each measure, the amount of time required for data entry, and the estimated wage plus benefits of the individuals within facilities who are most likely to be entering data into CROWNWeb. Therefore, based on this methodology, in the CY 2017 ESRD PPS final rule, we anticipated the burden associated with the new collection of information requirements was approximately $91 million for the PY 2020 ESRD QIP (81 FR 77957).[13] We are not changing our data collection methodology for PY 2021; however, we are replacing two existing measures for PY 2021. We believe replacing the two existing measures will have a de minimis effect on the overall burden associated with collection of information requirements in PY 2021. Accordingly, the PY 2021 burden estimate remains the same at $91 million. The net incremental burden from PY 2020 to PY 2021 is $0.

VII. Economic Analyses

A. Regulatory Impact Analysis

1. Introduction

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as economically significant); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule is not economically significant within the meaning of section 3(f)(1) of the Executive Order. However, OMB has determined that the actions are significant within the meaning of section 3(f)(4) and 3(f)(3) of the Executive Order. Therefore, OMB has reviewed this final rule, and the Departments have provided the following assessment of their impact. We solicited comments on the regulatory impact analysis provided and no comments were received.

2. Statement of Need

This rule finalizes a number of routine updates and one policy change to the ESRD PPS in CY 2018. The finalized routine updates include the CY 2018 wage index values, the wage

[13] We note that the aggregate impact of the PY 2020 ESRD QIP was included in the CY 2017 ESRD PPS final rule (81 FR 77834 through 77969). The previously finalized aggregate impact of $113 million reflects the PY 2020 estimated payment reductions and the collection of information requirements for the Ultrafiltration Rate Reporting Measure, finalized in the CY 2017 ESRD PPS final rule (81 FR 77915).

index budget-neutrality adjustment factor, and outlier payment threshold amounts. The finalized policy change involves an update to the outlier pricing policy. Failure to publish this final rule would result in ESRD facilities not receiving appropriate payments in CY 2018 for renal dialysis services furnished to ESRD patients.

This rule finalizes routine updates to the payment for renal dialysis services furnished by ESRD facilities to individuals with AKI. Failure to publish this final rule would result in ESRD facilities not receiving appropriate payments in CY 2018 for renal dialysis services furnished to patients with AKI in accordance with section 1834(r) of the Act.

This rule finalizes requirements for the ESRD QIP, including the adoption of a measure set for the PY 2021 program, as directed by section 1881(h) of the Act. Failure to finalize requirements for the PY 2021 ESRD QIP would prevent continuation of the ESRD QIP beyond PY 2020. In addition, finalizing requirements for the PY 2021 ESRD QIP provides facilities with more time to review and fully understand new measures before they are scored on them in the ESRD QIP.

3. Overall Impact

We estimate that the final revisions to the ESRD PPS will result in an increase of approximately $60 million in payments to ESRD facilities in CY 2018, which includes the amount associated with updates to the outlier thresholds, outlier policy, and updates to the wage index. We are estimating approximately $20 million that would now be paid to ESRD facilities for dialysis treatments provided to AKI beneficiaries.

We note that the impacts for the ESRD PPS and AKI payments in the proposed rule are substantially different from what we are finalizing. The proposed ESRD PPS impact was $100 million based on the proposed update factor of 0.7. The final update factor was calculated as 0.3 percent, and that change resulted in the lower impact amount included in this final rule.

The proposed impact for AKI payments was $2 million. The increase from the proposed rule to the final rule is based on actual preliminary claims data that became available after publication of the proposed rule, which allowed us to make a more accurate estimation of the utilization of services.

For PY 2021, we estimate that the final revisions to the ESRD QIP will result in a savings of $29 million, which includes a zero incremental burden due to collection of information requirements and $29 million in estimated payment reductions across all facilities.

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule, we estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on last year's proposed rule will be the number of reviewers of this final rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed last year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this rule. We requested comments on the approach in estimating the number of entities which will review the proposed rule and no comments were received.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this final rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule. We requested comments on this assumption, however, no comments were received.

Using the wage information from the BLS (*https://www.bls.gov/oes/2015/may/naics4_621100.htm*) for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $105.00 per hour, including overhead and fringe benefits. Assuming an average reading speed, we estimate that it would take approximately 1.25 hours for the staff to review half of this final rule. For each ESRD facility that reviews the rule, the estimated cost is $131.25 (1.25 hours × $105.00). Therefore, we estimated that the total cost of reviewing this regulation is $19,162.50 ($131.25 × 146 reviewers).

B. Detailed Economic Analysis

1. CY 2018 End-Stage Renal Disease Prospective Payment System

a. Effects on ESRD Facilities

To understand the impact of the changes affecting payments to different categories of ESRD facilities, it is necessary to compare estimated payments in CY 2017 to estimated payments in CY 2018. To estimate the impact among various types of ESRD facilities, it is imperative that the estimates of payments in CY 2017 and CY 2018 contain similar inputs. Therefore, we simulated payments only for those ESRD facilities for which we are able to calculate both current payments and new payments.

For this final rule, we used CY 2016 data from the Part A and B Common Working Files, as of August 4, 2017, as a basis for Medicare dialysis treatments and payments under the ESRD PPS. We updated the 2016 claims to 2017 and 2018 using various updates. The updates to the ESRD PPS base rate are described in section II.B.2.d of this final rule. Table 14 shows the impact of the estimated CY 2018 ESRD payments compared to estimated payments to ESRD facilities in CY 2017.

TABLE 14—IMPACT OF CHANGES IN PAYMENT TO ESRD FACILITIES FOR CY 2018 FINAL RULE [1]

Facility type	Number of facilities	Number of treatments (in millions)	Effect of 2018 changes in outlier policy	Effect of 2018 changes in wage indexes	Effect of 2018 changes in payment rate update	Effect of total 2018 proposed changes (outlier, wage indexes, routine updates to the payment rate)
	A	B	C(%)	D(%)	E(%)	F(%)
All Facilities	6,814	45.1	0.2	0.0	0.3	0.5

TABLE 14—IMPACT OF CHANGES IN PAYMENT TO ESRD FACILITIES FOR CY 2018 FINAL RULE [1]—Continued

Facility type	Number of facilities	Number of treatments (in millions)	Effect of 2018 changes in outlier policy	Effect of 2018 changes in wage indexes	Effect of 2018 changes in payment rate update	Effect of total 2018 proposed changes (outlier, wage indexes, routine updates to the payment rate)
	A	B	C(%)	D(%)	E(%)	F(%)
Type						
Freestanding	6,383	42.7	0.2	0.0	0.3	0.5
Hospital based	431	2.4	0.3	0.1	0.3	0.7
Ownership Type						
Large dialysis organization	5,110	34.3	0.2	0.0	0.3	0.4
Regional chain	871	5.8	0.2	0.1	0.3	0.6
Independent	487	3.1	0.2	0.0	0.3	0.5
Hospital based [2]	341	1.8	0.3	0.1	0.3	0.8
Unknown	5	0.0	0.0	0.2	0.3	0.5
Geographic Location						
Rural	1,243	6.5	0.2	-0.2	0.3	0.3
Urban	5,571	38.6	0.2	0.0	0.3	0.5
Census Region						
East North Central	1,109	6.4	0.2	0.0	0.3	0.4
East South Central	551	3.4	0.2	−0.1	0.3	0.4
Middle Atlantic	742	5.5	0.2	0.1	0.3	0.6
Mountain	382	2.2	0.1	−0.1	0.3	0.3
New England	191	1.5	0.2	−0.1	0.3	0.4
Pacific [3]	808	6.4	0.2	0.0	0.3	0.5
Puerto Rico and Virgin Islands	50	0.4	0.1	0.0	0.3	0.5
South Atlantic	1,572	10.5	0.2	−0.1	0.3	0.4
West North Central	484	2.3	0.2	0.2	0.3	0.7
West South Central	925	6.5	0.2	0.2	0.3	0.7
Facility Size						
Less than 4,000 treatments	1,158	2.0	0.2	0.0	0.3	0.4
4,000 to 9,999 treatments	2,542	11.7	0.2	−0.1	0.3	0.4
10,000 or more treatments	3,036	31.0	0.2	0.0	0.3	0.5
Unknown	78	0.4	0.3	0.5	0.3	1.1
Percentage of Pediatric Patients						
Less than 2%	6,706	44.7	0.2	0.0	0.3	0.5
Between 2% and19%	43	0.3	0.2	0.2	0.3	0.8
Between 20% and 49%	11	0.0	0.3	−0.6	0.3	0.0
More than 50%	54	0.1	0.3	0.2	0.3	0.9

[1] Sensipar will be paid under the transitional drug add-on payment adjustment for CY 2018. In CY 2016 there was approximately $840 million in spending for Sensipar under Part D.
[2] Includes hospital-based ESRD facilities not reported to have large dialysis organization or regional chain ownership.
[3] Includes ESRD facilities located in Guam, American Samoa, and the Northern Mariana Island.
Note: Totals do not necessarily equal the sum of rounded parts, as percentages are multiplicative, not additive.

Column A of the impact table indicates the number of ESRD facilities for each impact category and column B indicates the number of dialysis treatments (in millions). The overall effect of the final changes to the outlier payment policy described in section II.B.2.c of this rule is shown in column C. For CY 2018, the impact on all ESRD facilities as a result of the changes to the outlier payment policy would be a 0.2 percent increase in estimated payments. Nearly all ESRD facilities are anticipated to experience a positive effect in their estimated CY 2018 payments as a result of the finalized outlier policy changes.

Column D shows the effect of the finalized CY 2018 wage indices and the wage index floor of 0.4000. The categories of types of facilities in the impact table show changes in estimated payments ranging from a −0.6 percent decrease to a 0.5 percent increase due to these finalized updates in the wage indices.

Column E shows the effect of the finalized CY 2018 ESRD PPS payment rate update. The finalized ESRD PPS payment rate update is 0.3 percent,

which reflects the finalized ESRDB market basket percentage increase factor for CY 2018 of 1.9 percent, the 1.0 percent reduction as required by the section 1881(b)(14)(F)(i)(I) of the Act, and the MFP adjustment of 0.6 percent.

Column F reflects the overall impact, that is, the effects of the finalized outlier policy changes, the finalized wage index floor, and payment rate update. We expect that overall ESRD facilities would experience a 0.5 percent increase in estimated payments in CY 2018. The categories of types of facilities in the impact table show impacts ranging from 0.0 percent to an increase of 1.1 percent in their CY 2018 estimated payments.

b. Effects on Other Providers

Under the ESRD PPS, Medicare pays ESRD facilities a single bundled payment for renal dialysis services, which may have been separately paid to other providers (for example, laboratories, durable medical equipment suppliers, and pharmacies) by Medicare prior to the implementation of the ESRD PPS. Therefore, in CY 2018, we estimate that the finalized ESRD PPS would have zero impact on these other providers.

c. Effects on the Medicare Program

We estimate that Medicare spending (total Medicare program payments) for ESRD facilities in CY 2018 would be approximately $9.8 billion. This estimate takes into account a projected increase in fee-for-service Medicare dialysis beneficiary enrollment of 1.6 percent in CY 2018.

d. Effects on Medicare Beneficiaries

Under the ESRD PPS, beneficiaries are responsible for paying 20 percent of the ESRD PPS payment amount. As a result of the projected 0.5 percent overall increase in the finalized CY 2018 ESRD PPS payment amounts, we estimate that there will be an increase in beneficiary co-insurance payments of 0.5 percent in CY 2018, which translates to approximately $10 million a figure which is rounded to the nearest $10 million. The rounded $10 million is based on 20 percent of CY 2018 estimated total payment increase of $60 million. There are roughly 400,000 ESRD beneficiaries, so this increase represents a $25 increase per beneficiary.

e. Alternatives Considered

In section II.B.1.d of this final rule, we finalized a policy to price eligible outlier drugs and biologicals that were or would have been, prior to January 1, 2011, separately billable under Medicare Part B using any of the methodologies available under section 1847A of the Act. We considered not making any change to the outlier pricing policy and also potentially requiring manufacturers to submit ASP data in order to be eligible for outlier payment or payment under the TDAPA.

2. CY 2018 Payment for Renal Dialysis Services Furnished to Individuals With AKI

a. Effects on ESRD Facilities

We analyzed CY 2017 hospital outpatient claims to identify the number of treatments furnished historically for AKI patients. We identified 32,433 AKI dialysis treatments that were furnished in the first four months of CY 2017. We then inflated the 32,433 treatments to account for the whole year of 2017. We further inflated to 2018 values using estimated population growth for fee-for service non-ESRD beneficiaries. This results in an estimated 98,900 treatments that would now be paid to ESRD facilities for furnishing dialysis to beneficiaries with AKI. Using the CY 2018 final ESRD base rate of $232.37 and an average wage index multiplier, we are estimating approximately $20 million that would now be paid to ESRD facilities for dialysis treatments provided to AKI beneficiaries.

Ordinarily, we would provide a table showing the impact of this provision on various categories of ESRD facilities. However, because we have no way to project how many patients with AKI requiring dialysis will choose to have dialysis treatments at an ESRD facility, we are unable to provide a table at this time.

b. Effects on Other Providers

Under section 1834(r) of the Act, as added by section 808(b) of TPEA, we are finalizing a payment rate for renal dialysis services furnished by ESRD facilities to beneficiaries with AKI. The only two Medicare providers authorized to provide these outpatient renal dialysis services are hospital outpatient departments and ESRD facilities. The decision about where the renal dialysis services are furnished is made by the patient and their physician. Therefore, this provision will have zero impact on other Medicare providers.

c. Effects on the Medicare Program

We anticipate paying an estimated $20 million to ESRD facilities in CY 2018 as a result of AKI patients receiving renal dialysis services in the ESRD facility.

d. Effects on Medicare Beneficiaries

Currently, beneficiaries have a 20 percent coinsurance obligation when they receive AKI dialysis in the hospital outpatient setting. When these services are furnished in an ESRD facility, the patients would continue to be responsible for a 20 percent coinsurance. Because the AKI dialysis payment rate paid to ESRD facilities is lower than the outpatient prospective payment system's payment amount, we would expect beneficiaries to pay $50 less coinsurance when AKI dialysis is furnished by ESRD facilities.

e. Alternatives Considered

As we discussed in the CY 2017 ESRD PPS proposed rule (81 FR 42870), we considered adjusting the AKI payment rate by including the ESRD PPS case-mix adjustments, and other adjustments at section 1881(b)(14)(D) of the Act, as well as not paying separately for AKI specific drugs and laboratory tests. We ultimately determined that treatment for AKI is substantially different from treatment for ESRD and the case-mix adjustments applied to ESRD patients may not be applicable to AKI patients and as such, including those policies and adjustment would be inappropriate.

3. ESRD QIP

a. Effects of the PY 2021 ESRD QIP on ESRD Facilities

The ESRD QIP provisions are intended to prevent possible reductions in the quality of renal dialysis services provided to beneficiaries. The methodology that we are using to determine a facility's TPS for the PY 2021 ESRD QIP is described in section IV.B.4.g of this final rule. Any reductions in ESRD PPS payments as a result of a facility's performance under the PY 2021 ESRD QIP would apply to ESRD PPS payments made to the facility in CY 2021.

For the PY 2021 ESRD QIP, we estimate that, of the 6,453 dialysis facilities (including those not receiving a TPS) enrolled in Medicare, approximately 40 percent or 2,551 of the facilities would receive a payment reduction in PY 2021. The total payment reduction for all of the 2,551 facilities expected to receive a reduction is approximately $29 million ($29,017,218). Facilities that do not receive a TPS are not eligible for a payment reduction.

Table 15 shows the overall estimated distribution of payment reductions resulting from the PY 2021 ESRD QIP.

TABLE 15—ESTIMATED DISTRIBUTION OF PY 2021 ESRD QIP PAYMENT REDUCTIONS

Payment Reduction (%)	Number of facilities	Percent of facilities
0.0	3,469	57.6
0.5	1,507	25.0
1.0	754	12.5
1.5	228	3.8
2.0	62	1.0

Note: This table excludes 433 facilities that we estimate will not receive a payment reduction because they will not report enough data to receive a TPS.

To estimate whether or not a facility would receive a payment reduction in PY 2021, we scored each facility on achievement and improvement on several measures we have previously finalized and for which there were available data from CROWNWeb and Medicare claims. Measures used for the simulation are shown in Table 16.

TABLE 16—DATA USED TO ESTIMATE PY 2021 ESRD QIP PAYMENT REDUCTIONS

Measure	Period of time used to calculate achievement thresholds, performance standards, benchmarks, and improvement thresholds	Performance period
VAT		
Standardized Fistula Ratio	Jan 2014–Dec 2014	Jan 2015–Dec 2015.
%Catheter	Jan 2014–Dec 2014	Jan 2015–Dec 2015.
Kt/V Dialysis Adequacy Comprehensive	Jan 2014–Dec 2014	Jan 2015–Dec 2015.
Hypercalcemia	Jan 2014–Dec 2014	Jan 2015–Dec 2015.
STrR	Jan 2014–Dec 2014	Jan 2014–Dec 2014.
ICH CAHPS Survey	Jan 2015–Dec 2015	Jan 2015–Dec 2015.
SRR	Jan 2014–Dec 2014	Jan 2015–Dec 2015.
NHSN BSI	Jan 2014–Dec 2014	Jan 2015–Dec 2015.
SHR	Jan 2014–Dec 2014	Jan 2015–Dec 2015.

For all measures except STrR and SHR, clinical measure topic areas with less than 11 cases for a facility were not included in that facility's TPS. For SHR and STrR, facilities were required to have at least 5 and 10 patient-years at risk, respectively, in order to be included in the facility's TPS. Each facility's TPS was compared to an estimated minimum TPS and an estimated payment reduction table that were consistent with the final policies outlined in section IV.B.4.g of this final rule. Facility reporting measure scores were estimated using available data from CY 2014 and 2015. Facilities were required to have a score on at least one clinical and one reporting measure to receive a TPS.

To estimate the total payment reductions in PY 2021 for each facility resulting from this proposed rule, we multiplied the total Medicare payments to the facility during the 1-year period between January 2015 and December 2015 by the facility's estimated payment reduction percentage expected under the ESRD QIP, yielding a total payment reduction amount for each facility: Total ESRD payment in January 2015 through December 2015 times the estimated payment reduction percentage.

Table 17 shows the estimated impact of the finalized ESRD QIP payment reductions to all facilities for PY 2021. The table details the distribution of facilities by facility size (both among facilities considered to be small entities and by number of treatments per facility), geography (both urban/rural and by region), and by facility type (hospital based/freestanding facilities). Given that the time periods used for these calculations differ from those we are using for the PY 2021 ESRD QIP, the actual impact of the PY 2021 ESRD QIP may vary significantly from the values provided here.

TABLE 17—ESTIMATED IMPACT OF QIP PAYMENT REDUCTIONS TO FACILITIES FOR PY 2021

	Number of facilities	Number of treatments 2015 (in millions)	Number of facilities with QIP score	Number of facilities expected to receive a payment reduction	Payment reduction (percent change in total ESRD payments) (%)
All Facilities	6,453	40.0	6,020	2,551	−0.32
Facility Type:					
Freestanding	6,022	37.8	5,852	2,502	−0.33
Hospital-based	431	2.2	168	49	−0.20

TABLE 17—ESTIMATED IMPACT OF QIP PAYMENT REDUCTIONS TO FACILITIES FOR PY 2021—Continued

	Number of facilities	Number of treatments 2015 (in millions)	Number of facilities with QIP score	Number of facilities expected to receive a payment reduction	Payment reduction (percent change in total ESRD payments) (%)
Ownership Type:					
Large Dialysis	4,541	28.6	4,432	1,910	−0.32
Regional Chain	989	6.2	929	316	−0.26
Independent	568	3.5	536	282	−0.50
Hospital-based (non-chain)	354	1.8	123	43	−0.25
Unknown	1	0.0	0	0	.....
Facility Size:					
Large Entities	5,530	34.8	5,361	2,226	−0.31
Small Entities [1]	922	5.2	659	325	−0.45
Unknown	1	0.0	0	0	.....
Rural Status:					
(1) Yes	1,260	6.0	1,146	325	−0.19
(2) No	5,193	34.0	4,874	2,226	−0.35
Census Region:					
Northeast	879	6.2	786	340	−0.32
Midwest	1,511	7.6	1,356	557	−0.31
South	2,852	18.2	2,743	1,276	−0.36
West	1,142	7.6	1,084	341	−0.22
US Territories [2]	69	0.4	51	37	−0.56
Census Division:					
Unknown	1	0.0	0	0	.....
East North Central	1,045	5.5	951	443	−0.36
East South Central	522	3.0	515	202	−0.30
Middle Atlantic	702	4.9	623	300	−0.37
Mountain	368	2.0	336	86	−0.17
New England	182	1.3	164	40	−0.14
Pacific	782	5.7	753	257	−0.24
South Atlantic	1,458	9.4	1,388	719	−0.41
West North Central	469	2.1	406	115	−0.19
West South Central	875	5.8	841	355	−0.33
US Territories [2]	49	0.3	43	34	−0.62
Facility Size (# of total treatments)					
Less than 4,000 treatments	1,211	2.7	1,006	357	−0.30
4,000–9,999 treatments	2,401	11.0	2,324	880	−0.29
Over 10,000 treatments	2,680	26.1	2,603	1,256	−0.35
Unknown	161	0.2	87	58	−0.66

b. Effects on Other Providers

The ESRD QIP is applicable to dialysis facilities. We are aware that several of our measures finalized for PY 2021 may impact other Medicare providers. For example, with the introduction of the Standardized Readmission Ratio Clinical measure in PY 2017 and the Standardized Hospitalization Ratio Clinical Measure in PY 2020, we anticipate that hospitals may experience financial savings as dialysis facilities work to reduce the number of unplanned readmissions and hospitalizations. We are actively exploring various methods to assess the impact these measures have on hospitals and other types of providers and facilities.

c. Effects on the Medicare Program

For PY 2021, we estimate that ESRD QIP will contribute approximately $29 million ($29,017,218) in Medicare savings. For comparison, Table 18 shows the payment reductions achieved by the ESRD QIP program for PYs 2016 through 2021 totals nearly $115 million ($114,736,974).

TABLE 18—PAYMENT REDUCTIONS PAYMENT YEAR 2016 THROUGH 2021

Payment year	Estimated payment reductions (citation)
PY 2021	$29,017,218.
PY 2020	$31,581,441 (81 FR 77960).
PY 2019	$15,470,309 (80 FR 69074).
PY 2018	$11,576,214 (79 FR 66257).
PY 2017	$11,954,631 (79 FR 66255).
PY 2016	$15,137,161 (78 FR 72247).

d. Effects on Medicare Beneficiaries

The ESRD QIP is applicable to dialysis facilities. Since the program's inception, there is evidence of improved performance on ESRD QIP measures. As we stated in the CY 2017 ESRD PPS final rule, one objective measure we can examine to demonstrate the improved quality of care over time is the improvement of performance standards (81 FR 77873). As the ESRD QIP has refined its measure set and as facilities have gained experience with the measures included in the program, performance standards have generally continued to rise. We view this as evidence that facility performance (and therefore the quality of care provided to Medicare beneficiaries) is objectively improving. To date we have been unable to examine the impact of the ESRD QIP on Medicare beneficiaries including the financial impact of the program or the impact on the health outcomes of beneficiaries. However, in future years we are interested in examining these impacts through the analysis of available data from our existing measures.

e. Alternatives Considered

In an effort to reduce administrative and financial burden on dialysis facilities, we considered the burden associated with each of the measures included in the ESRD QIP to determine whether any of the measures could feasibly be removed from the program at this time. The Ultrafiltration Rate Reporting measure, finalized for inclusion in the program beginning with PY 2020, adds a significant burden to facilities because of the number of data elements required to be entered for each patient treated by the facility. We carefully considered whether this measure could be removed from the program in an effort to reduce burden for facilities, but as we noted in the CY 2017 ESRD PPS final rule, this measure is extremely valuable from a clinical perspective. Studies [14] suggest that higher ultrafiltration rates are associated with higher mortality and higher odds of an ''unstable'' dialysis session, and that rapid rates of fluid removal at dialysis can precipitate events such as intradialytic hypotension, subclinical, yet significantly decreased organ perfusion, and in some cases myocardial damage and heart failure (81 FR 77912). Therefore we continue to believe that, despite the high burden associated with this measure, it is clinically valuable and important to continue including this measure in the ESRD QIP's measure set and that the clinical benefits outweigh the burden associated with the measure.

C. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in Table 19 below, we have prepared an accounting statement showing the classification of the transfers and costs associated with the various provisions of this final rule.

TABLE 19—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS/SAVINGS

Category	Transfers
ESRD PPS and AKI	
Annualized Monetized Transfers	$70 million.
From Whom to Whom	Federal government to ESRD providers.
Increased Beneficiary Co-insurance Payments	$10 million.
From Whom to Whom	Beneficiaries to ESRD providers.
ESRD QIP for PY 2021	
Annualized Monetized Transfers	$-29 million.
From Whom to Whom	Federal government to ESRD providers (payment reductions).
Category	Costs
Annualized Monetized ESRD Provider Costs	$0.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (September 19, 1980, Pub. L. 96–354) (RFA) requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Approximately 12 percent of ESRD dialysis facilities are considered small entities according to the Small Business Administration's (SBA) size standards, which classifies small businesses as those dialysis facilities having total revenues of less than $38.5 million in any 1 year. Individuals and States are not included in the definitions of a small entity. For more information on SBA's size standards, see the Small Business Administration's Web site at *http://www.sba.gov/content/small-business-size-standards* (Kidney Dialysis Centers are listed as 621492 with a size standard of $38.5 million).

We do not believe ESRD facilities are operated by small government entities such as counties or towns with populations of 50,000 or less, and therefore, they are not enumerated or included in this estimated RFA analysis. Individuals and States are not included in the definition of a small entity.

For purposes of the RFA, we estimate that approximately 12 percent of ESRD facilities are small entities as that term is used in the RFA (which includes small businesses, nonprofit organizations, and small governmental jurisdictions). This amount is based on the number of ESRD facilities shown in the ownership category in Table 14. Using the definitions in this ownership category, we consider the 487 facilities that are independent and the 341 facilities that are shown as hospital-based to be small entities. The ESRD facilities that are owned and operated by large dialysis organizations (LDOs) and regional chains will have total revenues of more than $38.5 million in any year when the total revenues for all locations are combined for each business (individual LDO or regional chain), and are not, therefore, included as small entities.

For the ESRD PPS updates finalized in this rule, a hospital-based ESRD facility (as defined by type of ownership, not by type of dialysis facility) is estimated to receive a 0.8 percent increase in payments for CY 2018. An independent facility (as defined by ownership type) is also estimated to receive a 0.5 percent increase in payments for CY 2018.

[14] Flythe JE, Kimmel SE, Brunelli SM. Rapid fluid removal during dialysis is associated with cardiovascular morbidity and mortality. Kidney International (2011) Jan; 79(2):250–7. PMID: 20927040.

Flythe JE, Curhan GC, Brunelli SM. Disentangling the Ultrafiltration Rate–Mortality Association: The Respective Roles of Session Length and Weight Gain. Clin J Am Soc Nephrol. 2013 Jul;8(7):1151–61.

Movilli, Ezio, et al. ''Association between high ultrafiltration rates and mortality in uraemic patients on regular haemodialysis. A 5-year prospective observational multicenter study.'' Nephrology Dialysis Transplantation 22.12(2007): 3547–3552.

For AKI dialysis, we are unable to estimate whether patients will go to ESRD facilities, however, we have estimated there is a potential for $20 million in payment for AKI dialysis treatments that could potentially be furnished in ESRD facilities.

We estimate that of the 2,551 ESRD facilities expected to receive a payment reduction in the PY 2021 ESRD QIP, 325 are ESRD small entity facilities. We present these findings in Table 15 (''Estimated Distribution of PY 2021 ESRD QIP Payment Reductions'') and Table 17 (''Impact of Proposed QIP Payment Reductions to ESRD Facilities for PY 2021'') above. We estimate that the payment reductions will average approximately $11,375 per facility across the 2,551 facilities receiving a payment reduction, and $13,885 for each small entity facility. Using our estimates of facility performance, we also estimated the impact of payment reductions on ESRD small entity facilities by comparing the total estimated payment reductions for 922 small entity facilities with the aggregate ESRD payments to all small entity facilities. We estimate that there are a total of 922 small entity facilities, and that the aggregate ESRD PPS payments to these facilities would decrease 0.45 percent in PY 2021.

The Secretary has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The economic impact assessment is based on estimated Medicare payments (revenues) and HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Any such regulatory impact analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We do not believe this final rule will have a significant impact on operations of a substantial number of small rural hospitals because most dialysis facilities are freestanding. While there are 132 rural hospital-based dialysis facilities, we do not know how many of them are based at hospitals with fewer than 100 beds. However, overall, the 132 rural hospital-based dialysis facilities will experience an estimated 0.4 percent increase in payments. As a result, this final rule is not estimated to have a significant impact on small rural hospitals.

Therefore, the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

IX. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2017, that is approximately $148 million. This final rule does not include any mandates that would impose spending costs on State, local, or Tribal governments in the aggregate, or by the private sector, of $148 million. Moreover, HHS interprets UMRA as applying only to unfunded mandates. We do not interpret Medicare payment rules as being unfunded mandates, but simply as conditions for the receipt of payments from the Federal government for providing services that meet federal standards. This interpretation applies whether the facilities or providers are private, State, local, or tribal.

X. Federalism Analysis

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it will not have substantial direct effects on the rights, roles, and responsibilities of States, local or Tribal governments.

XI. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, entitled Reducing Regulation and Controlling Regulatory Costs (82 FR 9339), was issued on January 30, 2017. This final rule is not expected to be subject to the requirements of Executive Order 13771 because it is expected to result in no more than de minimis costs.

XII. Congressional Review Act

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

XIII. Files Available to the Public via the Internet

The Addenda for the annual ESRD PPS proposed and final rulemakings will no longer appear in the **Federal Register**. Instead, the Addenda will be available only through the Internet and is posted on the CMS Web site at *http://www.cms.gov/ESRDPayment/PAY/list.asp*. In addition to the Addenda, limited data set (LDS) files are available for purchase at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/LimitedDataSets/EndStageRenalDiseaseSystemFile.html*. Readers who experience any problems accessing the Addenda or LDS files, should contact *ESRDPayment@cms.hhs.gov*.

Dated: October 23, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 24, 2017.

Eric D. Hargan,

Acting Secretary, Department of Health and Human Services.

[FR Doc. 2017–23671 Filed 10–27–17; 4:15 pm]

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
November 1	Nov 16	Nov 22	Dec 1	Dec 6	Dec 18	Jan 2	Jan 30
November 2	Nov 17	Nov 24	Dec 4	Dec 7	Dec 18	Jan 2	Jan 31
November 3	Nov 20	Nov 24	Dec 4	Dec 8	Dec 18	Jan 2	Feb 1
November 6	Nov 21	Nov 27	Dec 6	Dec 11	Dec 21	Jan 5	Feb 5
November 7	Nov 22	Nov 28	Dec 7	Dec 12	Dec 22	Jan 8	Feb 5
November 8	Nov 24	Nov 29	Dec 8	Dec 13	Dec 26	Jan 8	Feb 6
November 9	Nov 24	Nov 30	Dec 11	Dec 14	Dec 26	Jan 8	Feb 7
November 13	Nov 28	Dec 4	Dec 13	Dec 18	Dec 28	Jan 12	Feb 12
November 14	Nov 29	Dec 5	Dec 14	Dec 19	Dec 29	Jan 16	Feb 12
November 15	Nov 30	Dec 6	Dec 15	Dec 20	Jan 2	Jan 16	Feb 13
November 16	Dec 1	Dec 7	Dec 18	Dec 21	Jan 2	Jan 16	Feb 14
November 17	Dec 4	Dec 8	Dec 18	Dec 22	Jan 2	Jan 16	Feb 15
November 20	Dec 5	Dec 11	Dec 20	Dec 26	Jan 4	Jan 19	Feb 20
November 21	Dec 6	Dec 12	Dec 21	Dec 26	Jan 5	Jan 22	Feb 20
November 22	Dec 7	Dec 13	Dec 22	Dec 27	Jan 8	Jan 22	Feb 20
November 24	Dec 11	Dec 15	Dec 26	Dec 29	Jan 8	Jan 23	Feb 22
November 27	Dec 12	Dec 18	Dec 27	Jan 2	Jan 11	Jan 26	Feb 26
November 28	Dec 13	Dec 19	Dec 28	Jan 2	Jan 12	Jan 29	Feb 26
November 29	Dec 14	Dec 20	Dec 29	Jan 3	Jan 16	Jan 29	Feb 27
November 30	Dec 15	Dec 21	Jan 2	Jan 4	Jan 16	Jan 29	Feb 28