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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Doc. No. AMS–SC–17–0036; SC17–982–1 FR]

Hazelnuts Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Hazelnut Marketing Board (Board) to increase the assessment rate established for the 2017–2018 and subsequent marketing years from $0.005 to $0.006 per pound of hazelnuts handled under the Marketing Order (Order). The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective January 29, 2018.

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

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

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington. Part 982 (hereinafter referred to as the ''Order''), is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Board locally administers the Order and is comprised of growers and handlers of hazelnuts operating within the area of production and also includes one public member.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled, ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Marketing Order now in effect, Oregon and Washington hazelnut handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable hazelnuts beginning July 1, 2017, and continue until amended, suspended, or terminated.

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

This final rule increases the assessment rate established for the Hazelnut Marketing Board for the 2017–2018 and subsequent marketing years from $0.005 to $0.006 per pound of hazelnuts handled.

The hazelnut Marketing Order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members and alternate members of the Board are growers and handlers of Oregon and Washington hazelnuts. The Board's membership also includes one public member and an alternate public member, neither of whom are involved in the production or handling of hazelnuts. The Board members are familiar with the program's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–2001 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on May 17, 2017, and unanimously recommended 2017–2018 marketing year expenditures of $878,627 and an assessment rate of $0.006 per pound of hazelnuts handled. In comparison, last year's budgeted expenditures were $765,598. The assessment rate of $0.006 per pound is $0.001 per pound higher than the rate currently in effect.

The major expenditures recommended by the Board for the 2017–2018 marketing year include $210,590 for administrative expenses, $111,000 for a crop survey, $342,037 for promotional activities, $35,000 for

consulting, and $180,000 for undesignated emergency/miscellaneous expenses. Budgeted expenses for these items in the 2016–2017 marketing year were $138,088, $96,000, $234,510, $35,000, and $262,000, respectively. The increase in administrative expenses reflects the addition of an administrative staff member. The budget increase for marketing and promotion expenditures reflects the Board's desire to improve domestic hazelnut's share of the edible nut market and to increase consumer awareness of Oregon and Washington hazelnut products.

The assessment rate recommended by the Board was derived at an annual meeting of the Board where budgetary matters for the forthcoming marketing year were discussed. After an open discussion with growers, handlers, and industry personnel, the Board established a crop estimate for the 2017–2018 marketing year. The Board considered the crop estimate, the recommended 2017–2018 marketing year expenses, and the Board's financial reserve when it recommended the assessment rate increase.

Shipments for the year are estimated to be 80,000,000 pounds, which should provide $480,000 in assessment income at the $0.006 per pound assessment rate. Income derived from handler assessments, along with funds from the Board's authorized reserve and other income, should be adequate to cover budgeted expenses. Section 982.62(a) specifies that the financial reserve is not to exceed approximately one marketing year's operational expenses. The Board expects its financial reserve to be $316,881 at the beginning of the 2017–2018 marketing year and $117,348 at the end of the year, which would be within the reserve limit authorized under the Order.

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

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2017–2018 marketing year budget, and those for subsequent marketing years, would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

According to the Board, there are approximately 800 growers of hazelnuts in the production area and approximately 17 handlers subject to regulation under the Marketing Order. Small agricultural producers (growers) are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms (handlers) are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to the latest National Agricultural Statistic Service (NASS) data, 2015 grower prices averaged $1.40 per pound. With a total production of 62,000,000 pounds in the same year, the farm gate value for hazelnuts in 2015 totaled $86.8 million ($1.40 per pound multiplied by 62,000,000 pounds). Taking the total 2015 value of production for hazelnuts and dividing it by the approximate number of hazelnut growers provides an average return per grower of $108,500. It is estimated by the Board that approximately 98 percent of hazelnut growers under the Marketing Order have annual receipts less than $750,000. Therefore, a majority of hazelnut growers are considered small entities under the SBA standards.

According to the Board, four of the approximately 17 hazelnut handlers process and ship 80 percent of the total crop. An estimation of handler receipts can be calculated using the same 2015 farm gate value of $86.8 million from NASS, described above. Multiplying $86.8 million by 80 percent ($86.8 million × 80 percent = $69.4 million) and dividing by four indicates that the largest hazelnut handlers received an estimated $17.4 million each. Dividing the remaining 20 percent ($17.4 million) by the remaining 13 handlers yields average annual receipts of $1.3 million per handler. Therefore, under SBA's definition of a small agricultural business, about 24 percent of handlers could be considered large businesses and about 76 percent could be considered small businesses. Thus, the majority of hazelnut handlers in Oregon and Washington may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 2017–2018 and subsequent marketing years from $0.005 to $0.006 per pound of hazelnuts handled. The Board unanimously recommended 2017–2018 expenditures of $878,627 and an assessment rate of $0.006 per pound. The assessment rate of $0.006 per pound is $0.001 per pound higher than the 2016–2017 rate. The quantity of assessable hazelnuts for the 2017–2018 marketing year is estimated at 80,000,000 pounds. Thus, the $0.006 per pound rate should provide $480,000 in assessment income. This amount, along with the Board's reserve funds and other income, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2017–2018 marketing year include $210,590 for administrative expenses, $111,000 for a crop survey, $342,037 for promotional activities, $35,000 for consulting, and $180,000 for undesignated emergency/miscellaneous expenses. Budgeted expenses for these items in the 2016–2017 marketing year were $138,088, $96,000, $234,510, $35,000, and $262,000, respectively.

The Board believes there is a need to expand its promotion and outreach activities to increase consumers' awareness of, and desire for, Oregon and Washington hazelnuts in the edible tree nut market. The Oregon and Washington hazelnut industry has experienced a large amount of growth in new orchard plantings in recent years. The supply of hazelnuts grown in the production area is expected to increase greatly as newly planted trees come into nut bearing age (approximately three to seven years after planting, depending on the variety of hazelnut tree). The increased assessment rate is necessary to fund expanded promotional activities intended to assist marketing of the anticipated increased supply of hazelnuts in the forthcoming years.

Prior to arriving at this budget and assessment rate, the Board considered

information from various sources, such as the Board's Budget and Personnel Committee, representatives from private research firms, and input from industry personnel. Alternative expenditure levels were discussed by these groups, based upon the relative value of various activities to the hazelnut industry. Many growers at the May 17, 2017, meeting were in favor of even greater spending by the Board on promotional activities for hazelnuts, while handlers were more conservative.

The Board ultimately determined that 2017–2018 marketing year expenditures of $878,627 were appropriate, and the recommended assessment rate, when combined with reserve funds and other income, should generate sufficient revenue to meet its budgeted expenses. Further, the Board will maintain a $180,000 emergency fund throughout the 2017–2018 marketing year in order to cover any unforeseen or emergency operational expenses. If the 2017–2018 emergency funds are not expended, the resulting operating reserve would not exceed the limit authorized under the Order.

A review of historical information and preliminary information pertaining to the upcoming marketing year indicates that the grower price for the 2017–2018 marketing year could range between $0.81 and $1.80 per pound (NASS, 2017). Therefore, the estimated assessment revenue for the 2017–2018 marketing year as a percentage of total grower revenue could range between 0.74 and 0.33 percent, respectively.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the Marketing Order. In addition, the Board's meeting was widely publicized throughout the Oregon and Washington hazelnut industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the May 17, 2017, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, ''Vegetable and Specialty Crops.'' No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule imposes no additional reporting or recordkeeping requirements on either small or large Oregon and Washington hazelnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on August 18, 2017 (82 FR 39369). Copies of the rule were mailed or sent via facsimile to all Board members and hazelnut handlers. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 18, 2017, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. Both comments were generally in support of the assessment rate increase and believed that the action would have a minimal impact on consumers. However, one commenter was concerned that the notice and comment process for changes in assessment rates was burdensome, and the other commenter expressed the opinion that the assessment rate should have a time limit and should not be in effect indefinitely.

Notice and comment rulemaking is required by statute for all changes made to marketing order regulations, including, but not limited to, establishment of assessment rates. In addition, all marketing order regulations are in effect indefinitely unless a specific effective period is defined in the regulation when it is established. The Board chose not to establish a specific time period for the regulation and is aware that the regulation will be effective indefinitely until changed. Accordingly, no changes will be made to the rule as proposed, based on the comments received.

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

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

List of Subjects in 7 CFR Part 982

Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 982.340 is revised to read as follows:

§ 982.340 Assessment rate.

On and after July 1, 2017, an assessment rate of $0.006 per pound is established for Oregon and Washington hazelnuts.

Dated: December 26, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–28171 Filed 12–28–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1179; Product Identifier 2017–NM–177–AD; Amendment 39–19141; AD 2017–26–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2015–08–01, which applied to certain The Boeing Company Model 757 airplanes. AD 2015–08–01 required, depending on

airplane configuration, installing new relays and bracket assemblies, inspecting to ensure that the new relays do not contact adjacent wire bundles, torqueing the bracket assembly installation nuts and ground stud nuts, retesting the bond resistance between the bracket assemblies and the terminal lugs on the ground studs, and doing related investigative and corrective actions if necessary. This AD does not retain any requirements, and instead requires deactivating the spoiler control module relays and capping and stowing the associated wiring on airplanes on which the actions required by AD 2015–08–01 have been done. This AD was prompted by a report of an uncommanded spoiler movement during flap configuration just before landing, on an airplane on which the actions required by AD 2015–08–01 had been done. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 3, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 3, 2018.

We must receive comments on this AD by February 12, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW, Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1179.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1179; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Myra Kuck, Aerospace Engineer, Cabin Safety, Mechanical & Environmental Systems Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5316; fax: 562–627–5210; email: *Myra.J.Kuck@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued AD 2015–08–01, Amendment 39–18137 (80 FR 21645, April 20, 2015) (''AD 2015–08–01''), for certain Model 757 airplanes. AD 2015–08–01 required, depending on airplane configuration, installing new relays and bracket assemblies, inspecting to ensure that the new relays do not contact adjacent wire bundles, torqueing the bracket assembly installation nuts and ground stud nuts, retesting the bond resistance between the bracket assemblies and the terminal lugs on the ground studs, and doing related investigative and corrective actions if necessary. AD 2015–08–01 resulted from numerous reports of unintended lateral oscillations during final approach, just before landing. We issued AD 2015–08–01 to reduce the chance of unintended lateral oscillations near touchdown, which could result in loss of lateral control of the airplane, and consequent airplane damage or injury to flight crew and passengers.

Actions Since AD 2015–08–01 Was Issued

Since we issued AD 2015–08–01, we have received a report of a momentary uncommanded spoiler movement during flap configuration just before landing, on a Model 757 airplane that had been inspected and modified in accordance with AD 2015–08–01. AD 2015–08–01 requires accomplishment of Boeing Service Bulletin 757–27A0152, which is intended to reduce the chance of a pilot-induced oscillation (PIO) during quick flight maneuvers, such as the final phase of approach in strong wind conditions, by preventing the deployment, during landing operations, of spoiler pairs 1 and 12, and 5 and 8. Boeing's subsequent investigation of Boeing Service Bulletin 757–27A0152 found that a switch in one of the relays added by that service information had failed to an electrically open position. We are issuing this AD to correct the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 757–27A0157, dated December 18, 2017. The service information describes procedures for deactivating the spoiler control module relays and capping and stowing the associated wiring. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD retains none of the requirements of AD 2015–08–01. This AD requires accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0157, dated December 18, 2017, described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1179.

Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure to deactivate the spoiler control module relays and cap and stow associated wiring can result in a failure condition that can cause an uncommanded spoiler movement

resulting in loss of controllability of the airplane during the approach phase of flight. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2017–1179 and Product Identifier 2017–NM–177–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Costs of Compliance

We estimate that this AD affects 626 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Deactivating spoiler control module relay	14 work-hours × $85 per hour = $1,190	$1,380	$2,570	*

* Based on our estimate of 169 airplanes that are in compliance with the requirements of AD 2015–08–01 and subject to the deactivation requirements of this AD, the total fleet cost for this AD is approximately $434,330.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–08–01, Amendment 39–18137 (80 FR 21645, April 20, 2015), and adding the following new AD:

2017–26–10 The Boeing Company: Amendment 39–19141; Docket No. FAA–2017–1179; Product Identifier 2017–NM–177–AD.

(a) Effective Date

This AD is effective January 3, 2018.

(b) Affected ADs

This AD replaces AD 2015–08–01, Amendment 39–18137 (80 FR 21645, April 20, 2015) (''AD 2015–08–01'').

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 757–27A0157, dated December 18, 2017.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by a report of a momentary uncommanded spoiler movement during flap configuration just before landing that occurred on an airplane on which the actions required by AD 2015–08–01 had been done. We are issuing this AD to prevent a failure condition that can cause an uncommanded spoiler movement resulting in loss of controllability of the airplane during the approach phase of flight.

(f) Compliance

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

(g) Required Actions

(1) For airplanes in Configuration 1 in Groups 1, 2, and 3, as defined in Boeing Alert Service Bulletin 757–27A0157, dated December 18, 2017: Within 90 days after the effective date of this AD, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the

Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0157, dated December 18, 2017.

(2) For airplanes in Configuration 2 in Groups 1, 2, and 3, as defined in Boeing Alert Service Bulletin 757–27A0157, dated December 18, 2017: No work is required by this paragraph.

(h) Prohibited Modification

As of the effective date of this AD, do not accomplish the actions specified in Boeing Service Bulletin 757–27A0152 on any airplane.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously for AD 2015–08–01 are not approved as AMOCs for any provision in this AD.

(5) For service information that contains steps that are labeled as RC, the provisions of paragraphs (i)(5)(i) and (i)(5)(ii) of this AD apply.

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

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

(j) Related Information

For more information about this AD, contact Myra Kuck, Aerospace Engineer, Cabin Safety, Mechanical & Environmental Systems Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5316; fax: 562–627–5210; email: *Myra.J.Kuck@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 757–27A0157, dated December 18, 2017.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on December 22, 2017.

John P. Piccola, Jr.,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–28158 Filed 12–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2012–HA–0146]

RIN 0720–AB47

TRICARE; Reimbursement of Long Term Care Hospitals and Inpatient Rehabilitation Facilities

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule establishes reimbursement rates for Long Term Care Hospitals (LTCHs) and Inpatient Rehabilitation Facilities (IRFs) in accordance with the statutory requirement that TRICARE inpatient care ''payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare.'' This final rule adopts Medicare's reimbursement methodologies for inpatient services provided by LTCHs and IRFs. Each reimbursement methodology will be phased in over a 3-year period. This final rule also removes the definitions for ''hospital, long-term (tuberculosis, chronic care, or rehabilitation)'' and ''long-term hospital care,'' and creates separate definitions for ''Long Term Care Hospital'' and ''Inpatient Rehabilitation Facility'' adopting Centers for Medicare & Medicaid Services (CMS) classification criteria. This final rule also includes authority for a year-end, discretionary General Temporary Military Contingency Payment Adjustment (GTMCPA) for inpatient services in TRICARE network IRFs when deemed essential to meet military contingency requirements.

DATES: This rule is effective March 5, 2018.

Applicability Date: The regulations setting forth the revised reimbursement systems shall be applicable for all admissions to Long Term Care Hospitals and Inpatient Rehabilitation Facilities, respectively, commencing on or after the first day of the month which is at least 120 days after the date of publication of this rule in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sharon Seelmeyer, Defense Health Agency (DHA), Medical Benefits and Reimbursement Branch, telephone (303) 676–3690.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Final Rule

1. Long Term Care Hospitals (LTCHs)

The purpose of this final rule is to establish a reimbursement system for LTCHs in accordance with the statutory provision at title 10, United States Code (U.S.C.), section 1079(i)(2). This statute requires that TRICARE payment for institutional care be determined, to the extent practicable, in accordance with the same rules as those that apply to payments to providers of services of the same type under Medicare. Medicare pays LTCHs using a LTCH Prospective Payment System (PPS) which classifies LTCH patients into distinct Diagnosis-Related Groups (DRGs). The patient classification system groupings are called Medicare Severity Long Term Care Diagnosis Related Groups (MS–LTC–DRGs), which are the same DRG groupings used under the Medicare acute hospital inpatient prospective payment system (IPPS), but that have

been weighted to reflect the resources required to treat the medically complex patients treated at LTCHs.

On January 26, 2015, a TRICARE proposed rule was published in the **Federal Register** [79 FR 51127], proposing to adopt a TRICARE LTCH PPS similar to the Center for Medicare and Medicaid Service's (CMS') reimbursement system for LTCHs, with the exception of not adopting Medicare's LTCH 25 percent rule. This TRICARE proposed rule was subsequently withdrawn and replaced by the proposed rule published August 31, 2016 [81 FR 59934]. We refer the reader to the August 31, 2016, proposed rule for additional information.

TRICARE pays for most hospital care under the TRICARE DRG-based payment system, which is similar to Medicare's, but some hospitals are exempt by current regulation from the TRICARE DRG-based payment system. LTCHs were exempted from the TRICARE DRG-based payment system and were paid by TRICARE at the lower of a negotiated rate or billed charges. Paying billed charges is fiscally imprudent and inconsistent with TRICARE's governing statute. Paying LTCHs under Medicare's methods is prudent, because it reduces government costs without affecting beneficiary access to services or quality; it is practicable, because it can be implemented without major costs; and, it is harmonious with the statute because the statute states that TRICARE shall determine its payments for institutional services to the extent practicable in accordance with Medicare's payment rates. The final rule creates a gradual transition from TRICARE's current policy of authorizing LTCHs 100 percent of allowable charges (which is either the billed charge or a voluntarily negotiated rate) by phasing-in Medicare's LTCH reimbursement rates as follows: Allowing 135 percent of Medicare LTCH PPS amounts in the first 12-month period after implementation, 115 percent in the second 12-month period after implementation, and 100 percent in the third 12-month period after implementation and follows Medicare policies during subsequent Fiscal Years (FY). Our legal authority for this portion of the final rule is 10 U.S.C. 1079(i)(2).

2. Inpatient Rehabilitation Facilities (IRFs)

The purpose of this rule is to also adopt Medicare's reimbursement system for inpatient care for IRFs in accordance with the statutory requirement at 10 U.S.C. 1079 (i)(2) that TRICARE ''payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under [Medicare].'' Medicare pays IRFs using an IRF Prospective Payment System (PPS) which classifies IRF patients into one of 92 case-mix groups (CMGs).

Similar to LTCHs, IRFs (both freestanding rehabilitation hospitals and rehabilitation hospital units) are currently exempted from the TRICARE DRG-based payment system and paid by TRICARE at the lower of a negotiated rate or billed charges. As discussed earlier, paying billed charges is fiscally imprudent and inconsistent with TRICARE's governing statute. Paying IRFs under a method similar to Medicare's is prudent, practicable, and harmonious with the statute. The final rule creates a gradual transition from TRICARE's current policy of authorizing IRFs 100 percent of allowable charges (which is either the billed charge or a voluntarily negotiated rate) by phasing-in Medicare's IRF PPS as follows: Allowing 135 percent of Medicare IRF PPS amounts in the first 12-month period after implementation, 115 percent in the second 12-month period after implementation, and 100 percent in the third 12-month period after implementation and follow Medicare's policies during subsequent FYs. Our legal authority for this portion of the final rule is 10 U.S.C. 1079(i)(2).

B. Summary of the Major Provisions of the Final Rule

1. Payment Method for LTCHs

TRICARE shall reimburse LTCHs for inpatient care using Medicare's LTCH PPS using Medicare's MS–LTC–DRGs. TRICARE is creating a 3-year transition period as described below. Payment for a TRICARE patient will be made at a predetermined, per-discharge amount for each Medicare Severity (MS)-LTC–DRG under the TRICARE LTCH PPS reimbursement methodology. The TRICARE LTCH PPS reimbursement methodology includes payment for all inpatient operating and capital costs of furnishing covered services (including routine and ancillary services), but not certain pass-through costs (*e.g.,* bad debts, direct medical education, and blood clotting factors). When the Medicare hospital day limit is exhausted for TRICARE beneficiaries, who are also eligible for Medicare (*i.e.,* TRICARE For Life (TFL) beneficiaries), TRICARE is the primary payer for medically necessary services, the beneficiary will be responsible for the appropriate TRICARE inpatient cost share. The beneficiary's out-of-pocket costs will be limited by the respective statutory catastrophic cap.

2. LTCH Transition Period

In response to public comments, we agree that a transition period is appropriate in order to prepare LTCHs for changes in reimbursement. TRICARE will allow LTCHs 135 percent of the Medicare LTCH PPS amounts in the first 12-month period after implementation, 115 percent in the second 12-month period after implementation, and 100 percent in the third 12-month period after implementation and follow Medicare's policies during subsequent fiscal years.

CMS has established two different types of LTCH PPS payment rates based on the Pathway for Sustainable Growth Rate Reform Act of 2013: (1) Standard LTCH PPS payment rates; and (2) lower site-neutral LTCH PPS payment rates that are paid at the lower of the IPPS comparable per diem amount, or the estimated cost of the case. Site-neutral patients include LTCH patients who do not use prolonged mechanical ventilation during their LTCH stay or who did not spend three or more days in the intensive care unit (ICU) during their prior acute care hospital stay. Medicare transitioned to the site-neutral payment rate reductions in FY 2016 and FY 2017 by requiring payment based on a 50/50 blend of the standard LTCH PPS rate and the site-neutral LTCH PPS rate for site-neutral patients in those years. Beginning at the individual hospital's cost reporting period beginning in FY 2018, all Medicare LTCH payments for site-neutral patients are calculated using the site-neutral payment methodology (without a 50/50 blend in payments).

TRICARE will adopt the Medicare LTCH PPS in its entirety except for the Medicare 25 percent threshold rule, including both the full LTCH PPS Standard Federal Payment Rate and site-neutral LTCH PPS methodology for qualifying LTCH cases. TRICARE will have a 3-year transition period which will start at the applicability date of this final rule. We will apply the FY 2019 LTCH PPS for the purposes of the 12-month period beginning on October 1, 2018, and follow any changes adopted by Medicare LTCH PPS for subsequent years. For example, if FY 2019 is the first year of the TRICARE transition period, TRICARE would follow Medicare and all TRICARE LTCHs would receive 135 percent of the full site-neutral payment for TRICARE site-neutral patients. TRICARE will also consider military treatment facilities (MTF) and Veterans Administration (VA) hospitals as Subsection (d)

hospitals for the purposes of the site-neutral policy.

3. Children's Hospitals and Pediatric Patients in LTCHs

Children's hospitals will be exempt from the TRICARE LTCH PPS and will be paid under the TRICARE DRG-based payment system. Pediatric patients who receive care in TRICARE authorized LTCHs will be paid under the TRICARE LTCH PPS. This final rule edits the regulatory language to include this provision.

4. Payment Method for IRFs

TRICARE shall reimburse IRFs for inpatient care using Medicare's IRF PPS. TRICARE is creating a 3-year transition period as described below. Payment for a TRICARE patient will be made at a prospectively-set, fixed payment per discharge based on a patient's classification into one of 92 CMGs. Each CMG has a national relative weight reflecting the expected relative costliness of treatment for patients in that category compared with that for the average Medicare inpatient rehabilitation patient. The relative weight for each CMG is multiplied by a standardized Medicare IRF base payment amount to calculate the case-mix adjusted prospective payment rate. The TRICARE IRF PPS payment rates will cover all inpatient operating and capital costs that IRFs are expected to incur in furnishing inpatient rehabilitation services. When the Medicare hospital day limit is exhausted for TRICARE beneficiaries who are also eligible for Medicare (*i.e.,* TRICARE For Life (TFL) beneficiaries), TRICARE will then be the primary payer for medically necessary services and the beneficiary will be responsible for the appropriate TRICARE inpatient cost share. The beneficiary's out-of-pocket costs will be limited by the respective statutory catastrophic cap.

5. IRF Transition Period

In response to public comments, we agree that a transition period is appropriate in order to prepare IRFs for changes in reimbursement. To protect IRFs from sudden significant reductions, the final rule creates a gradual transition from TRICARE's current policy of allowing 100 percent of allowable charges (which is either the billed charge or a voluntarily negotiated rate) by phasing-in the Medicare IRF PPS rates as follows: allowing 135 percent of Medicare IRF PPS amounts in the first 12-month period after implementation, 115 percent in the second 12-month period after implementation, and 100 percent in the third 12-month period after implementation. We will apply the FY 2019 IRF PPS for purposes of the 12-month period beginning on October 1, 2018, and follow any changes adopted by the Medicare IRF PPS for subsequent years.

6. Children's Hospitals and Pediatric Patients in IRFs

As stated in the supplementary language of the proposed rule published on August 31, 2016, Children's hospitals will be exempt from the TRICARE IRF PPS and will be paid under the TRICARE DRG-based payment system. Pediatric patients who receive care in TRICARE authorized IRFs will be paid under the TRICARE IRF PPS.

7. IRF Low Income Payment (LIP) Adjustment

TRICARE is including the LIP adjustment in the TRICARE IRF PPS.

8. Removal of Outdated Terms

This final rule removes outdated definitions in Title 32, Code of Federal Regulations (CFR), Part 199.2 for ''[h]ospital, long-term (tuberculosis, chronic care, or rehabilitation)'' and ''[l]ong-term hospital care'' and adds a new definition for ''Long-Term Care Hospital (LTCH)'' as well as adding a new definition for ''Inpatient Rehabilitation Facility (IRF).'' The new definitions adopt CMS' LTCH and IRF classifications. The TRICARE requirements for both LTCHs and IRFs to be authorized institutional providers have been added to 32 CFR 199.6.

9. General Temporary Military Contingency Payment Adjustment (GTMCPA) For IRFs

One of the purposes of the TRICARE program is to support military members and their families during periods of war or contingency operations, when military facility capability may be diverted or insufficient to meet military readiness priorities. To preserve the availability of IRFs during such periods, the final rule includes authority for a year-end discretionary, temporary adjustment that the Director, DHA may approve in extraordinary economic circumstances for a network IRF that serves a disproportionate share of Active Duty Service members (ADSMs) and Active Duty dependents (ADDs). TRICARE is in the process of developing policy and procedural instructions for exercising the discretionary authority under the qualifying criteria for the GTMCPAs for inpatient services provided in IRFs. The policy and procedural instructions will be available within three to six months following the applicability date of the new inpatient reimbursement methodology for IRFs. Network IRFs will be able to request a GTMCPA approximately 14 months from the applicability date of the new reimbursement method as any GTMCPA will be based on twelve months of claims payment data under the new method. Once finalized, the policy and procedural instructions will be available in the TRICARE Reimbursement Manual at *http://manuals.tricare.osd.mil.* As with any discretionary authority exercised under the regulation, a determination approving or denying a GTMCPA for an IRF is not subject to the appeal and hearing procedures set forth in 32 CFR 199.10, and Section 199.14(a)(10) of this final rule has been revised to clarify this point.

C. Costs and Benefits

Consistent with OMB Circular A–4, the effect of this rule is a transfer caused by a Federal budget action; it does not impose costs, including private expenditures. The final rule is anticipated to reduce DoD allowed amounts to LTCHs by approximately $73M in the first year of the transition, if implemented in FY 2019 when TRICARE site-neutral LTCH cases will be paid at the full applicable LTCH PPS payment amount (see Table 1). DoD allowed amounts to LTCHs would be reduced by $86M in the second year, and $98M in the third and final year of the transition.

This final rule is also anticipated to reduce DoD allowed amounts to IRFs by approximately $24M in FY 2019, which is anticipated to be the first year of the transition period, $41M in the second year, and $57M in the final year of transition.

Table 1
Reductions in TRICARE Allowed Amounts Under Proposed Policy During Transition Period

	Transition Schedule - Percent of Medicare Allowed Payments	Reductions Under Proposed Policy (Millions)	
		LTCH	IRF
FY19	135%	$73	$24
FY20	115%	$86	$41
FY21	100%	$98	$57

Source: FY 2015 TRICARE IRF claims data and FY 2016 Medicare IRF rate setting file. Assumes Rule is implemented at the start of FY 2019.

II. Discussion of Final Rule

A. Introduction and Background

In the **Federal Register** of August 31, 2016 [81 FR 59934], DoD published for public comment a rule proposing to revise its reimbursement methodologies for LTCHs and IRFs. Under 10 U.S.C. 1079(i)(2), the amount to be paid to hospitals, skilled nursing facilities, and other institutional providers under TRICARE, ''shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare.''

B. TRICARE LTCH PPS Reimbursement Methodology

Patients with clinically complex problems, such as multiple acute or chronic conditions, may need hospital care for an extended period of time. LTCHs represent a relatively small number of hospitals (approximately 425 under Medicare), which treat a critically ill population with complex needs and long lengths of stay. Per 32 CFR 199.14(a)(1)(ii)(D)(*4*), LTCHs are currently exempt from the TRICARE DRG-based payment system, just as they were exempt from Medicare's IPPS when the CMS initially implemented its DRG-based payment system. Because there is no alternate TRICARE reimbursement mechanism in 32 CFR part 199 at this time, LTCH inpatient care provided to TRICARE beneficiaries is currently paid the lower of a negotiated rate or billed charges, which is usually substantially greater than what would be paid using the TRICARE DRG method.

Medicare created a PPS for LTCHs effective with the cost reporting period beginning on or after October 1, 2002. The MS–LTC–DRG system under Medicare's LTCH PPS classifies patients into distinct diagnostic groups based on their clinical characteristics and expected resource needs. The patient classification groupings, which are the same groupings used under the inpatient acute care hospital groupings (*i.e.,* MS–DRGs), are weighted to reflect the resources required to treat the medically complex patients who are treated in LTCHs. By their nature, LTCHs treat patients with comorbidities requiring long-stay, hospital-level care.

TRICARE often adopts Medicare's reimbursement methods, but delays implementation, generally, until any transition phase is complete for the Medicare program. CMS included a 5-year transition period when it adopted LTCH PPS for Medicare, under which LTCHs could elect to be paid a blended rate for a set period of time. This transition period ended in 2006. Following the transition phase, in 2008 Medicare adopted an LTCH-specific DRG system, which uses MS–LTC–DRGs, as the patient classification method for LTCHs. In FY 2016, Medicare began its adoption of a site-neutral payment system for LTCHs. Beginning in FY 2016 and continuing in FY 2017 and 2018, CMS has been phasing in the site-neutral payment methodology; during that time, 50 percent of the allowed amount for site-neutral patients was calculated using the site-neutral payment methodology (IPPS comparable amount) and 50 percent was calculated using the current full LTCH PPS standard federal payment rate methodology. Beginning in cost reporting periods that start in FY 2018, all Medicare payments for qualifying LTCH site-neutral patients are calculated using the Medicare site-neutral payment methodology. All other LTCH patients meeting the Medicare criteria for a full LTCH PPS Standard Payment will be paid using the standard LTCH PPS payment methodology. Under 10 U.S.C. 1079(i)(2), the amount to be paid to hospitals, skilled nursing facilities, and other institutional providers under TRICARE, ''shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under [Medicare].'' Based on 10 U.S.C. 1079(i)(2), TRICARE is adopting Medicare's LTCH PPS, to include Medicare's MS–LTC–DRG weights and rates, and Medicare's site-neutral payment methodology for TRICARE authorized LTCHs. TRICARE will adopt the Medicare payment methodology that is in place at the time of TRICARE's implementation and TRICARE will adopt any additional updates or changes to Medicare's LTCH PPS payment methodology as they are adopted by Medicare. TRICARE is also adopting Medicare's adjustments for short-stay outliers, site-neutral payments, interrupted stay policy, the method of payment for preadmission services, and high-cost outlier payments. TRICARE is not adopting Medicare's 25 percent rule because there are too few TRICARE discharges at individual LTCHs to have a threshold policy based on TRICARE admissions. In FY15, only 15 of the 200 LTCHs with TRICARE discharges had 10 or more TRICARE admissions and over 70 percent of the 200 LTCH discharges were from LTCHs with 1–3 TRICARE discharges. As a result, TRICARE has too few discharges at all but a very small number of LTCHs to calculate and apply the 25 percent test using TRICARE discharges. TRICARE could not apply the results of the Medicare 25 percent rule to TRICARE LTCH discharges

because the results of Medicare's test are not known until the LTCH's Medicare cost report is settled after the end of the year. Even if DHA knew which LTCHs had failed the 25 percent rule and could identify the specific acute care hospitals that had exceeded the 25 percent rule, it would not be appropriate to apply an adjustment to the TRICARE LTCH discharges from that acute care hospital because DHA would not know which specific TRICARE LTCH discharges from that acute care hospital should have payment reductions and it would be inconsistent with Medicare's policy to reduce the payments for all TRICARE LTCH discharges from that hospital. As a result, DoD is not adopting Medicare's 25 percent rule. TRICARE will also incorporate Medicare's LTCH Quality Reporting (QR) payment adjustments for TRICARE LTCHs that are reflected Medicare's annual payment update for that facility. TRICARE is not establishing a separate reporting requirement for hospitals, but will utilize Medicare's payment adjustments resulting from their LTCH QR Program. Please see Medicare's final rule published on August 22, 2016 [81 FR 56761] for more detail about that program.

TRICARE will have a three-year phase-in period to prepare LTCHs for these changes in TRICARE reimbursement. TRICARE will allow LTCHs 135 percent of the Medicare LTCH PPS amounts in the first 12-month period after implementation, 115 percent in the second 12-month period after implementation, and 100 percent in the third 12-month period after implementation and follow Medicare's LTCH PPS policies during subsequent FYs.

C. TRICARE IRF PPS Reimbursement Methodology

IRFs are free standing rehabilitation hospitals and rehabilitation units in acute care hospitals that provide an intensive rehabilitation program. Per 32 CFR 199.14(a)(1)(ii)(D)(*2*) and (*3*), IRFs are currently exempt from the TRICARE DRG-based payment system, just as they were exempt from Medicare's IPPS when the CMS initially implemented its DRG-based payment system. Per 42 CFR 412.1(a)(3), an inpatient rehabilitation hospital or rehabilitation unit of an acute care hospital must meet the requirement for classification as an IRF stipulated in 42 CFR 412.604. In order to qualify as a Medicare-certified IRF, Medicare requires that a certain percentage (currently 60 percent) of the IRF's total inpatient population must meet at least one of 13 medical conditions listed in 42 CFR 412.29(b)(2). Because there is no alternate TRICARE reimbursement mechanism in 32 CFR part 199 at this time, IRF care provided to TRICARE beneficiaries in this setting is currently paid the lower of a negotiated rate, or billed charges. We are adopting Medicare's 60 percent requirement for IRFs.

Medicare created a PPS for IRFs effective with the cost reporting period beginning in January 2002. Section 4421 of the Balanced Budget Act of 1997 (Pub. L. 105–33) modified how Medicare payment for IRF services is to be made by creating Section 1886(j) of the Social Security Act, which authorized the implementation of a per-discharge prospective payment system for inpatient rehabilitation hospitals and rehabilitation units of acute care hospitals—referred to as IRFs. As required by Section 1886(j) of the Act, the Federal rates reflect all costs of furnishing IRF services (routine, ancillary, and capital related). CMS included a 9-month transition period when it adopted the IRF PPS for Medicare, under which IRFs could elect to be paid a blended rate. The transition period ended October 1, 2002. Following the transition period, payment to all IRFs was based entirely on the prospective payment.

TRICARE will also have a three-year phase-in to protect IRFs from sudden significant reductions. The final rule creates a gradual transition to full implementation of the Medicare IRF PPS by allowing 135 percent of Medicare IRF PPS amounts in the first 12-month period after implementation, 115 percent in the second 12-month period after implementation, and 100 percent in the third 12-month period after implementation and follow Medicare's IRF PPS policies during subsequent FYs.

Under 10 U.S.C. 1079(i)(2), the amount to be paid to hospitals, skilled nursing facilities, and other institutional providers under TRICARE, ''shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under [Medicare].'' Based on 10 U.S.C. 1079(i)(2), TRICARE is adopting Medicare's IRF reimbursement methodology for TRICARE authorized IRFs.

TRICARE is also adopting Medicare's IRF adjustments for interrupted stays, short stays of less than three days, short-stay transfers (defined as transfers to another institutional setting with an IRF length of stay less than the average length for the CMG), high-cost outliers, and the LIP adjustment. Further, TRICARE is adopting Medicare's Inpatient Rehabilitation Hospital Quality Reporting (IRFQR) payment adjustments for TRICARE authorized IRFs that reflect Medicare's annual payment update for that facility. TRICARE is not establishing a separate reporting requirement for hospitals, but will utilize Medicare's payment adjustments resulting from their IRFQR Program. Please see Medicare's final rule [CMS–1632–F; CMS–1632–CN2] RIN 0938–AS41.

D. Pediatric Cases in TRICARE Authorized LTCHs and IRFs

1. LTCH

Our analysis found that in FY 2015, there were five pediatric TRICARE patients treated at TRICARE LTCHs. We found that TRICARE LTCH patients had similar diagnoses as Medicare LTCH patients and that the few pediatric LTCH patients had similar diagnoses as TRICARE patients. Therefore, we are also adopting Medicare's LTCH PPS methodology for pediatric patients treated in TRICARE authorized LTCHs. Some TRICARE patients are treated at Children's hospitals and these hospitals will be exempt from the LTCH PPS and will be paid under the TRICARE DRG-based payment system.

2. IRF

Approximately 50 TRICARE beneficiaries under the age of 17 received treatment at TRICARE IRFs in FY 2015. We are adopting Medicare's IRF PPS for pediatric patients treated at TRICARE authorized IRFs. Some TRICARE patients are treated at Children's hospitals and these hospitals will be exempt from the IRF PPS, and will be paid under the TRICARE DRG-based payment system.

E. Veterans Administration (VA) Hospitals

VA hospitals specialize in treating injured veterans and provide access to rehabilitative care.

1. LTCH

VA hospitals are not Medicare-authorized LTCHs (because they are Federal hospitals) and they are not reimbursed using Medicare's LTCH PPS method.

2. IRF

VA hospitals are not Medicare-authorized IRFs (because they are Federal hospitals) and they are not reimbursed using Medicare's IRF PPS method. TRICARE allows VA hospitals to provide inpatient rehabilitation care to TRICARE beneficiaries, and VA hospitals provide care for over 200 TRICARE patients each year (mostly

ADSMs). VA hospitals will continue to be paid under existing payment methodologies.

F. IRF General Temporary Military Contingency Payment Adjustment (GTMCPA)

In response to the public comments, the final rule includes authority for a year-end, discretionary, GTMCPA that the Director, DHA, may approve in extraordinary economic circumstances for inpatient services from TRICARE network IRFs deemed to be essential for military readiness and support during contingency operations. The Director, DHA, or designee, may approve a GTMCPA for network IRFs that serve a disproportionate share of ADSMs and ADDs. Specific procedures for requesting an IRF GTMCPA will be outlined in the TRICARE Reimbursement Manual.

G. Additional Revisions to the Regulations

In reviewing the proposed rule, we realized that the current regulation regarding the reimbursement of facilities and services that exempt from the DRG-based payment system (32 CFR 199.14(a)(1)(ii)(C)) contains an incorrect cross-reference to paragraph (a)(3) vice (a)(4). The new paragraph (a)(3) was added as part of TRICARE; Reimbursement of Critical Access Hospitals final rule (74 FR 44752, August 31, 2009). The old paragraph (a)(3) regarding billed charges and set rates was renumbered as (a)(4), which is now the correct reference. Consequently, we have included this correction in the final rule,

III. Public Comments

The TRICARE LTCH and IRF proposed rule [81 FR 59934] published on August 31, 2016, provided a 60-day comment period. Following is a summary of the public comments and our responses.

A. LTCH

Comment: One commenter stated that DHA should have a transition period for the LTCH rule because LTCHs are already experiencing financial instability due to the implementation of Medicare's site-neutral payments. The commenter further stated that because of this instability, LTCHs may temporarily suspend all care to TRICARE beneficiaries upon implementation of the LTCH–PPS. The commenter believes this would be less likely to occur if DHA implements a two-year transition period.

Response: In response to this comment, we have considered whether we should modify our approach to include a transition period. We analyzed our options and as a result, we are including a 3-year phase in to full adoption of Medicare's LTCH PPS rates. TRICARE LTCHs will be allowed 135 percent of Medicare LTCH PPS amounts in the first 12-month period after implementation, 115 percent in the second 12-month period after implementation, and 100 percent in the third 12-month period after implementation and subsequent FYs.

Comment: Two commenters stated that DHA should do additional analysis on TRICARE LTCH beneficiaries to understand whether the LTCH payment reform will limit beneficiary access to needed care. These commenters believe that analyses should be done to ensure that the LTCH–PPS rates would adequately cover the cost of care for the TRICARE population. They opined that DHA should delay implementation of the LTCH–PPS to do these analyses.

Response: DHA analyzed FY 2015 TRICARE LTCH claims data to understand the differences between the LTCH payment rates for TRICARE patients under the current TRICARE method and proposed adoption of Medicare methods. We note that: (1) TRICARE's proposed LTCH payment rates would be no less than Medicare rates; (2) Medicare LTCH rates are higher than LTCH costs; (3) during the transition period the TRICARE rates would be much higher than the Medicare rates; and (4) that in studying Medicare beneficiary access to LTCHs, Medicare Payment Advisory Commission (MedPAC) has found that LTCH access has been maintained for Medicare beneficiaries (MedPAC, 2016 Report to Congress, Chapter 10). Thus, for the reasons stated above, DHA believes it is reasonable to assume that TRICARE beneficiaries will not have access problems for LTCH care.

Comment: One commenter stated DHA should not implement a TRICARE-specific 25-percent policy for LTCHs because the 25-percent rule would penalize many TRICARE LTCHs that admit less than four TRICARE patients annually. If implemented, the 25-percent rule would reduce TRICARE payments by far more than 67 percent.

Response: We agree with the commenter that DHA should not include a TRICARE-specific 25-percent policy for LTCHs. Our intent was not to have a TRICARE-specific 25-percent policy for LTCHs. We have also decided it is not practicable for TRICARE to adopt Medicare's 25-percent policy adjustments for TRICARE LTCHs because there are too few TRICARE discharges to have a threshold policy based on TRICARE admissions, and it would be unfair to adjust all of an LTCH's payments if the LTCH failed the Medicare threshold (and this would also be inconsistent with Medicare's policy).

Comment: One commenter stated that DHA should modify its LTCH–PPS short stay outlier policy for LTCHs to cap payments at the cost of the case. The commenter believed the Medicare Short Stay Outlier (SSO) policy would encourage perverse incentives for LTCHs who may discharge patients at certain points of their stay based on what outlier payment they would receive. A capped policy would also be easier to implement.

Response: We disagree that the Medicare LTCH SSO policy should be modified for TRICARE. DHA aims to follow Medicare policy as closely as possible, and for this reason, using Medicare's exact outlier methodology is appropriate.

Comment: Two commenters stated that TRICARE should treat military treatment facilities and VA hospitals as ''subsection (d)'' hospitals for the purposes of determining whether a case meets the clinical patient-level criteria used to determine eligibility for the LTCH–PPS standard reimbursement rate.

Response: We thank the commenters for bringing to our attention that due to the site neutral criteria, patients may potentially be rejected from admission to Long Term Care Hospitals because the preceding stay was not at a subsection (d) hospital. In order to eliminate a potential rejection, DHA agrees that TRICARE should treat military treatment facilities and VA hospitals as ''subsection (d)'' hospitals for the purposes of LTCH admission and qualification for the LTCH–PPS payment. It is important to ensure that Military Treatment Facility (MTF) and VA discharged TRICARE beneficiaries do not have LTCH access issues. We would also note that this approach is consistent with the guidance issued by CMS. Specifically, for patients who may have used their VA benefit or received inpatient care at a MTF that qualified as an ''immediately preceding'' stay, applicable criteria for exclusion from the site neutral payment rate are met. (See MLN Matters® Number: SE1627 released October 18, 2016.)

Comment: One commenter stated that few TRICARE patients go to LTCHs so the TRICARE LTCH payment change is irrelevant.

Response: We disagree with the commenter on their statement that few TRICARE patients go to LTCHs, and that changes to the TRICARE LTCH payment system would be irrelevant. In FY 2015,

over 700 TRICARE patients were admitted to approximately 200 LTCHs, with allowed amounts of over $90M. As a result, LTCH payment changes would not be irrelevant.

Comment: One commenter stated the SSO policy proposed would be different than Medicare's reimbursement system.

Response: This comment was in response to the withdrawn TRICARE proposed rule published in the **Federal Register** on January 26, 2015 [79 FR 51127]. The proposed rule has since been withdrawn. We published a new proposed rule in the **Federal Register** on August 31, 2016 [81 FR 59934], stating we would adopt Medicare's short stay outlier policy in its entirety.

Comment: One commenter agreed with our proposed definition changes.

Response: We thank the commenter for their review and observations.

B. IRF

Comment: One commenter stated the proposed timeline date of the beginning FY 2017 for implementation was incorrect.

Response: We agree that the timeline cannot begin at the beginning of FY 2017 and have modified the projected implementation date to FY 2019 for both LTCHs and IRFs.

Comment: One commenter stated that DHA should reduce IRF administrative burdens such as the repetitive authorization process.

Response: This comment does not appear to be contingent on the proposed rule, and is instead commenting on TRICARE IRF current practice. We invite the commenter to contact their regional Managed Care Support Contractor to work with them and make them aware of the issue.

Comment: Two commenters stated that TRICARE should have a transition period for the IRF rule. Providers should be given adequate advance notice of any changes to their reimbursement and should have the flexibility to transition to the new system.

Response: In response to this comment, we have considered whether we should modify our approach to include a transition period. We are including a 3-year transition period for adopting Medicare's IRF PPS rates. TRICARE will allow 135 percent of Medicare IRF PPS amounts in the first 12-month period after implementation, 115 percent in the second 12-month period after implementation, and 100 percent in the third 12-month period after implementation, and follow Medicare's IRF PPS policies during subsequent FYs.

Comment: One commenter, noting that TRICARE beneficiaries are substantially younger than Medicare beneficiaries, stated Medicare's CMG system and weights are not appropriate for TRICARE patients because TRICARE IRF patient characteristics are much different than Medicare IRF patient characteristics. This commenter also suggested that TRICARE should increase CMG weights for key TRICARE categories in order to account for TRICARE patients' different needs.

Response: We believe that the Medicare CMG system and weight structure is appropriate for TRICARE patients because although TRICARE may have a different case mix of IRF patients than Medicare, TRICARE IRF patients require similar rehabilitation services in IRFs as Medicare patients. Although in aggregate TRICARE patients do stay longer in the IRF setting (15 days in FY 2015, in comparison to the Medicare average length-of-stay of 13 days in FY 2014 (MedPAC, March 2016 Report to Congress, Table 9–5, Chapter 9)), we think the factors that are built into the Medicare CMGs are appropriate for TRICARE patients because they require similar rehabilitation services. IRF patients are grouped into one of 92 CMGs based on a number of characteristics such as the diagnosis requiring rehabilitation, functional status, cognitive status, age, and comorbidities. We think CMGs are appropriate for both Medicare and TRICARE patients. With respect to the age difference between Medicare and TRICARE beneficiaries, the Medicare CMG system is also currently used for the reimbursement of patients under the age of 65 who are entitled to Medicare. Further, in examining FY 2015 TRICARE IRF claims, three-quarters of IRF claims and about half of all allowed amounts were for retirees and their dependents.

Comment: One commenter suggested that a closer review of the legislative history shows that Congress did not intend to require DoD to adopt Medicare reimbursement rules for IRF care.

Response: We disagree. The pertinent statutory provision (10 U.S.C. 1079(i)(2)) states, ''payments may be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Title XVIII of the Social Security Act.'' The commenter argues that it was not Congress' intent to adopt Medicare rates to TRICARE IRF beneficiaries because the above statutory language was enacted before Medicare's PPS reimbursement system for IRFs went into effect. The commenter would like to read this statutory authority as being limited to only those types of care for which Medicare had a reimbursement methodology in place at the time of enactment of the statute. We see no justification that allows DoD to disregard the unambiguous requirement in the statute to adopt Medicare reimbursement methodologies to the extent practicable. We believe for the reasons stated in the proposed rule that using the IRF–PPS for TRICARE patients is practicable, and therefore, is in accordance with DoD's statutory obligation.

Comment: One commenter stated that if TRICARE implements the Medicare IRF–PPS, more TRICARE patients will be discharged from IRFs to other post-acute care settings (like Skilled Nursing Facilities (SNFs)). Because TRICARE does not have a limit on the number of medically necessary SNF days, the commenter opines that TRICARE patients may stay indefinitely at SNFs. The commenter asserted that TRICARE's projected savings from adopting the Medicare IRF PPS would be reduced because of the increased use of post-acute care.

Response: First, we would note that the commenter assumes there will be a reduction in the amount of care provided in an IRF setting which will then cause TRICARE beneficiaries to take greater advantage of other post-acute care. We do not believe this will occur. We agree with the commenter that if there is an increase in the number of TRICARE patients who are discharged from IRFs and then admitted to SNFs, it would reduce the estimated level of TRICARE savings. However, we think that the impact of this effect would be small. For example, even under the very unrealistic assumption that every TRICARE patient discharged from an IRF would have an additional 7-day stay at a SNF that otherwise would not occur, it would increase TRICARE costs by less than $10M, which is much less than the anticipated TRICARE payment reduction of almost $60M in FY 2020. Further, we disagree with the commenter that TRICARE patients who transfer to SNFs would stay at SNFs indefinitely. Only patients who require medically necessary care will be admitted to SNFs, and the stays must continue to be medically necessary. Based upon the experience of other TRICARE SNF patients who have an average length of stay of 22 days, we do not think that TRICARE SNF stays will be indefinite.

Comment: One commenter stated that TRICARE can retain contractual relationships with in-network providers, and negotiate with out-of-network providers on a case by case basis.

Response: The managed care support contractors are responsible for negotiating discounts from providers, and have strong incentives to do this today. We found that about 37 percent of out-of-network TRICARE IRFs were reimbursed at a discount off of billed charges in FY 2015 and that over 60 percent were paid at 100 percent of billed charges. Relying on the managed care support contractors to negotiate rates with network providers, however, is not a substitute for establishing an applicable reimbursement methodology. Further, negotiating rates with out-of-network providers on a case-by-case basis does not ensure compliance with statutory obligations not to pay more than Medicare rates when practicable.

Comment: One commenter stated that TRICARE could adopt Medicare rules for certain TRICARE patients like retirees who may have more similar characteristics to Medicare beneficiaries, and maintain current payment policy for other family members and active duty service members. This will ensure that ADSMs and their families will continue to receive the full scope of IRF services.

Response: We have reviewed the beneficiary population data, and we agree that a discretionary adjustment should be considered to ensure that there is sufficient access for ADSMs and their families. Those network IRFs with a high proportion of ADSM/ADD admissions may be eligible to receive a GTMCPA.

Comment: One commenter stated that TRICARE should make outlier payments based on a marginal cost factor equal to 100% of the costs in excess of the fixed-loss threshold, rather than 80% as provided by Medicare, since this practice is inconsistent with the ordinary practices of the insurance industry. TRICARE should use individual hospital cost-to-charge ratios rather than a national cost-to-charge ratio. This will help ensure payment for care provided to Service members and their families.

Response: We disagree that using Medicare's outlier methodology would be inappropriate for TRICARE patients. Under 10 U.S.C. 1079(i)(2), the amount to be paid to hospitals, skilled nursing facilities, and other institutional providers under TRICARE, ''shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under [Medicare].'' Given the statutory language, TRICARE is adopting Medicare's IRF PPS reimbursement method for our beneficiaries. Medicare does use facility-specific cost-to-charge ratios (please see Medicare's final rule published on August 6, 2015 [80 FR 47036]), and DHA plans on doing the same.

Comment: One commenter stated that DHA should do additional analysis on TRICARE IRF beneficiaries to understand whether the IRF payment reform will limit beneficiary access to needed care. Additionally, analyses should be done to ensure that the IRF–PPS rates would adequately cover the cost of care for the TRICARE population.

Response: DHA disagrees that there will be access problems because TRICARE will pay no less than Medicare does for IRF care and because MedPAC has found that there do not appear to be capacity constraints on IRF care for Medicare patients (MedPAC, 2016 Report to Congress, Chapter 9). MedPAC has also found that Medicare IRF payments exceed IRF costs.

Comment: One commenter stated that they do not agree that the agency is compelled to adopt the Medicare IRF PPS.

Response: 10 U.S.C. 1079(i)(2) states that ''payments may be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Title XVIII of the Social Security Act.'' We believe that it is practicable to adopt the Medicare system, and that adopting the IRF–PPS more closely aligns TRICARE to Medicare payment methods and rules.

Comment: One commenter stated that DHA should implement the LIP adjustment in IRF–PPS method, and revert back to policy from the original proposed rule because it is a fundamental part of the Medicare program and critical to providers serving vulnerable populations, and should not be excluded from the TRICARE rate.

Response: We agree with the commenter that the LIP adjustment should be included in the TRICARE IRF PPS. This will allow for the same payment to LIP adjusted hospitals as Medicare, and will also provide additional reimbursement to IRFs serving vulnerable TRICARE populations.

Comment: One commenter stated that TRICARE patients to IRFs should not complicate the compliance methodology for satisfying the 60 Percent Rule and that the 60 Percent Rule is not a component of payment policy.

Response: We believe that the statement in the proposed rule has confused the commenter regarding TRICARE and Medicare's 60 percent rule. It was the intent of the policy to note that TRICARE would honor the Medicare adjustments based on fulfilling the criteria of the 60 percent rule with Medicare patients, and not that TRICARE would require a 60 percent rule for its own patients. In other words, if Medicare penalizes an IRF because the IRF did not meet the 60 percent rule criteria with Medicare patients, TRICARE would also penalize the hospital. This is because TRICARE would use the same grouping software as Medicare, which already includes the 60-percent rule adjustments.

Comment: One commenter requested that we confirm that the majority of out-of-network IRF reimbursement is being reimbursed at 100 percent of billed charges.

Response: Using FY 2015 data, we found that about 63 percent of TRICARE non-network IRFs were reimbursed at 100 percent of billed charges. On average, out-of-network providers were reimbursed at 87 percent of billed charges.

IV. Regulatory Impact Analyses for LTCHs and IRFs

A. Overall Impact

DoD has examined the impacts of this final rule as required by Executive Orders (E.O.s) 12866 (September 1993, Regulatory Planning and Review) and 13563 (January 18, 2011, Improving Regulation and Regulatory Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Congressional Review Act (5 U.S.C. 804(2)), and E.O. 13771, Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

1. Executive Order 12866 and Executive Order 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100M or more in any one year).

We estimate that the effects of the LTCH and IRF provisions that would be implemented by this rule would not

result in LTCH or IRF revenue reductions exceeding $100 million in any one year individually, however, when combined revenue reductions would exceed $100 million, making this rulemaking ''economically significant'' as measured by the $100 million threshold. We have prepared a Regulatory Impact Analyses that, to the best of our ability, presents the costs and benefits of the rulemaking. This final rule is anticipated to reduce DoD allowed amounts to LTCHs by $73M and to IRFs by $24M in FY 2019 during the first year of transition.

2. Congressional Review Act. 5 U.S.C. 801

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100M or more or have certain other impacts. This final rule is a major rule under the Congressional Review Act.

3. Regulatory Flexibility Act

The RFA requires agencies to analyze options for regulatory relief of small businesses 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. Most hospitals are considered to be small entities, either by being nonprofit organizations or by meeting the Small Business Administration (SBA) identification of a small business (having revenues of $34.5M or less in any one year). For purposes of the RFA, we have determined that the majority of LTCHs and IRFs would be considered small entities according to the SBA size standards. Individuals and States are not included in the definition of a small entity. Therefore, this rule would have a significant impact on a substantial number of small entities. The Regulatory Impact Analyses, as well as the contents contained in the preamble, also serves as the Regulatory Flexibility Analysis.

4. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100M in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $140M. This final rule will not mandate any requirements for State, local, or tribal governments or the private sector.

5. Paperwork Reduction Act

This rule will not impose significant additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3502–3511). Existing information collection requirements of the TRICARE and Medicare programs will be utilized. We do not anticipate any increased costs to hospitals because of paperwork, billing, or software requirements since we are keeping TRICARE's billing/coding requirements (*i.e.,* hospitals will be coding and filing claims in the same manner as they currently are with TRICARE).

6. Executive Order 13132, ''Federalism''

This rule has been examined for its impact under E.O. 13132, and it does not contain policies that have Federalism implications that would have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, consultation with State and local officials is not required.

7. Executive Order (E.O.) 13771, ''Reducing Regulation and Controlling Regulatory Costs''

E.O. 13771 seeks to control costs associated with the government imposition of private expenditures required to comply with Federal regulations and to reduce regulations that impose such costs. This rule is not subject to the requirements of E.O. 13771 because this rule results in no more than *de minimis* costs.

B. Hospitals Included In and Excluded From the Proposed LTCH and IRF PPS Reimbursement Methodologies

The TRICARE LTCH PPS and the TRICARE IRF PPS encompass all Medicare-classified LTCHs and IRFs that are also authorized by TRICARE and that have inpatient stays for TRICARE beneficiaries, except for hospitals in States that are paid by Medicare and TRICARE under a waiver that exempts them from Medicare's inpatient prospective payment system or the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) DRG-based payment system, respectively. Neoplastic Disease Care Hospitals would also be exempt from the TRICARE LTCH PPS, while Veterans Administration (VA) hospitals would be exempt from the TRICARE IRF PPS. Children's hospitals would be exempt from the TRICARE LTCH PPS and IRF PPS.

C. Analysis of the Impact of Policy Changes on Payment for LTCH and IRF Alternatives Considered

The alternatives that were considered, the changes that we are proposing, and the reasons that we have chosen these options are discussed below.

1. Alternatives Considered for Addressing Reduction in LTCH Payments

Under the method discussed here, TRICARE's LTCH payments per discharge would decrease by 50–80 percent for most LTCHs once the LTCH PPS rates were adopted. Because the impact of moving from a charge-based reimbursement method to Medicare's method would produce such large reductions in the TRICARE allowed amounts for LTCH care, we initially considered a 4-year phase-in of this approach. Under this option, one portion of the payment would continue to be paid as the billed charge and the remaining portion would be paid under the Medicare approach. In the first year, 75 percent of the payment would be based on billed charges and in each subsequent year this portion would be reduced by 25 percentage points so that by the fourth year the billed charge portion would not be used.

As stated in our proposed rule, we believed this transition approach was not appropriate for four main reasons: (1) Medicare-based payments for TRICARE patients would have a minimal impact on overall LTCH payments, (2) LTCHs admit few TRICARE patients each year, (3) TRICARE payments would be equal to Medicare payments, and (4) there are not likely to be access issues as a result of the reimbursement change (MedPAC, 2015 Report to Congress, Chapter 11).

After careful review of the comments on the proposed rule, however, we agree that TRICARE should adopt a transition. During the transition, TRICARE would pay more than Medicare (135 percent of Medicare LTCH PPS payments in year 1 and 115 percent of Medicare LTCH PPS payments in year 2), and 100 percent of Medicare LTCH PPS payments in the final year of the transition. This transition will offer a gradual transition to full Medicare rates. Given that the TRICARE LTCH rates will equal Medicare LTCH rates in the final year of the transition, and because TRICARE payments will have a limited impact on overall LTCH payments, we do not anticipate access problems for TRICARE beneficiaries under this transition. Further, by statute, hospitals that

participate under Medicare are required to agree to accept TRICARE reimbursement.

2. Alternatives Considered for Addressing Reduction in IRF Payments

Under the method discussed here, TRICARE's IRF payments per discharge would decrease by almost 30 percent for the median TRICARE IRF and about one-third of TRICARE IRFs would have a reduction of 50 percent or more in allowed amounts. Because the impact of moving from a charge-based reimbursement method to Medicare's method would produce such large reductions in the TRICARE allowed amounts for IRF care, we considered a 3-year phase-in of this approach. Under this option, one portion of the payment would continue to be paid as the billed charge while the remaining portion would be paid under the Medicare approach. In the first year, two-thirds of the payment would be based on billed charges and in each subsequent year this portion would be reduced by one-third so that by the third year the billed charge portion would not be used.

As stated in our proposed rule, we believed this transition approach was not appropriate for four main reasons: (1) Medicare payments for TRICARE patients would have a minimal impact on overall IRF payments, (2) IRFs admit few TRICARE patients each year, (3) TRICARE payments will be equal to Medicare payments, and (4) access issues as a result of the reimbursement change are unlikely because MedPAC reports IRFs paid by Medicare have positive margins (MedPAC, 2015 Report to Congress, Chapter 10).

After careful review of the comments on the proposed rule, however, we agree that TRICARE should adopt a transition that allows a percentage of Medicare payments in the first two years (135 percent of Medicare IRF PPS payments in year 1 and 115 percent of Medicare IRF PPS payments in year 2), and 100 percent of Medicare IRF PPS payments in the final year of the transition. This transition will protect IRFs from sudden significant reductions, offering a gradual transition to full Medicare rates. Given that the TRICARE IRF rates will equal Medicare IRF rates in the final year of the transition and will have a limited impact on overall IRF payments, we do not anticipate access problems for TRICARE beneficiaries using the 3-year transition period. Further, by statute, hospitals that participate under Medicare are required to agree to accept TRICARE reimbursement.

D. Analysis of the Impact of TRICARE LTCH and IRF Payment Reform

1. LTCH Methodology

We analyzed the impact of TRICARE implementing a new method of payment for LTCHs. The proposed method is Medicare's LTCH PPS payment method, which uses the Medicare MS–LTC–DRG system for cases that meet specific clinical criteria to qualify for the standard LTCH PPS payment rates and, as of FY 2018, the Medicare IPPS MS–DRG system for all non-standard payment (site-neutral) patients. Our analysis compares the impact on allowed charges of the new methodology compared to current TRICARE methodology (where TRICARE pays billed charges or discounts off of these billed charges for all LTCH claims).

The data used in developing the quantitative analyses presented below are taken from TRICARE allowed charge data from October 2014 to September 2015. We drew upon various sources for the data used to categorize hospitals in Table 2, below. We attempted to construct these variables using information from Medicare's FY 2015 Impact file to verify that each provider was in fact a Medicare LTCH. One limitation is that for individual hospitals, some mis-categorizations are possible. We were unable to match 3 LTCHs with 4 hospital claims to the FY 2015 Impact file, and as a result, these 4 claims were excluded from the analysis. We also excluded 32 hospital claims where the DRG on the claim was unclassifiable. All Neoplastic Disease Care Hospitals (1 hospital, 1 claim) and Children's Hospital claims (2 hospitals, 46 claims) were also excluded from the analysis, and there were no TRICARE beneficiaries who were treated in Maryland LTCHs in FY 2015. After we removed the excluded claims for which we could not assign charge and hospital classification variables, we used the remaining hospitals and claims as the basis for our analysis. We focused the analysis on TRICARE claims where TRICARE was the primary payer because only these TRICARE payments will be affected by the proposed reforms.

Using allowed charge data from FY 2015, the FY 2015 Medicare MS–LTC–DRG and MS–DRG weights, the FY 2015 Medicare LTCH and IPPS national base payment rates, the FY 2015 Medicare high cost outlier fixed thresholds, and the FY 2015 wage index adjustment factors, we simulated TRICARE allowed amounts in FY 2015 using the proposed LTCH prospective payment method. Under ''current policy'' we assumed that TRICARE LTCH costs would increase by 7 percent per year from FY 2015 to FY 2020 to reflect increases in billed charges. We then projected the costs under the proposed policy, assuming that under the Medicare LTCH–PPS, costs would increase by 3 percent per year from FY 2015 to FY 2020. Under the Medicare LTCH–PPS, the percentage annual increase of 3 percent in TRICARE allowed amounts is less than the percentage increase under current policy due to slower increases in Medicare LTCH reimbursement rates (in comparison to TRICARE billed charges). The difference between the current and the proposed policy assuming full implementation of the transition period would have been $65M if fully implemented in FY 2015.

2. IRF Methodology

We analyzed the impact of TRICARE implementing a new method of payment for IRFs. The proposed method is Medicare's IRF prospective payment system (PPS) method, which pays a prospectively-set fixed payment per discharge based on a patient's classification into one of 92 case-mix groups (CMGs). Our analysis compares the impact on allowed charges of the new methodology compared to current TRICARE methodology (where TRICARE pays billed charges or discounts off of these billed charges for all IRF claims).

The data used in developing the quantitative analyses presented below are taken from TRICARE allowed charge data from October 2014 to September 2015. We drew upon various sources for the data used to categorize hospitals in Table 3, below. We attempted to construct these variables using information from Medicare's FY 2016 IRF rate setting file and the Medicare Provider file to verify that each TRICARE IRF provider was in fact a Medicare IRF. One limitation is that for individual hospitals, some mis-categorizations are possible. We were unable to match 8 IRF claims from 4 IRFs to Medicare provider numbers within the FY 2016 IRF rate setting file, and therefore had to exclude them from the analysis, even though these 4 IRFs were confirmed to be Medicare-certified IRFs in the October 2016 Medicare IRF Provider Specific file. We also excluded all Children's Hospital (2 hospitals, 11 discharges) and all Veterans hospital (12 hospitals, 239 discharges) claims because these hospitals are not paid under the Medicare IRF PPS. After we removed the excluded claims for which we could not assign charge and hospital classification variables, we used the remaining hospitals and claims as the

basis for our analysis. We focused the analysis on TRICARE claims where TRICARE was the primary payer because only these TRICARE payments will be affected by the proposed reforms.

The impact of adopting the Medicare IRF–PPS is difficult to estimate because there is insufficient diagnosis information on the TRICARE claims to classify TRICARE patients into a CMG. Because we were unable to classify TRICARE discharges into one of the 92 Medicare CMGs, we took an alternative approach to estimate the costs of adopting the Medicare IRF–PPS system. Our approach is based on first calculating the facility-specific ''Medicare'' costs for TRICARE IRF discharges at each IRF using the FY 2015 TRICARE billed charges at that IRF and the 2015 Medicare cost-to-charge ratio (CCR) for that IRF. We then used Medicare payment and cost data from the FY 2016 Medicare IRF rate setting file to calculate the Medicare margin at each IRF. In a third step of our approach we multiplied the estimated cost of each TRICARE discharge calculated in the first step by the IRF-specific margin to get an estimate of the allowed amount that would be paid by TRICARE under the Medicare IRF–PPS for each discharge.

Under ''current policy'' we assumed that TRICARE IRF costs would increase by 6 percent per year from FY 2015 to FY 2020 to reflect increases in billed charges. We then projected the costs under the proposed policy, assuming that under the Medicare IRF–PPS, costs would increase by 2.5 percent per year from FY 2015 to FY 2020. Under the Medicare IRF–PPS, the percentage annual increase of 2.5 percent in TRICARE allowed amounts is less than the percentage increase under current policy due to slower increases in Medicare IRF reimbursement rates (in comparison to TRICARE billed charges).

As a result, this approach allows us to estimate the change in allowed amounts under the Medicare method without having CMG data on TRICARE patients. The difference between the current and the proposed policy, assuming full implementation of the transition period would have been $33M if fully implemented in FY 2015.

3. Effect of Payment Policy Change on LTCHs

Table 2, Impact of TRICARE LTCH Rule in FY 2015, presents the results of our analysis of FY 2015 TRICARE claims data. This table categorizes LTCHs which had TRICARE inpatient stays in FY 2015 by various geographic and special payment consideration groups to illustrate the varying impacts on different types of LTCHs. The first column represents the number of LTCHs in FY 2015 in each category which had inpatient stays in which TRICARE was the primary payer. The second column shows the number of TRICARE discharges in each category. The third column shows the average TRICARE allowed amount per discharge in FY 2015. The fourth column shows the simulated average allowed amount per discharge under the Medicare LTCH payment method, assuming full implementation of both the TRICARE transition and the Medicare site-neutral payment policy. The fifth column shows the percentage reduction in the allowed amounts under the full implementation of the Medicare site-neutral method relative to the current allowed amounts.

The first row in Table 2 shows the overall impact on the 207 LTCHs included in the analysis. The next three rows of the table contain hospitals categorized according to their urban/rural status in FY 2015 (large urban, other urban, and rural). The second major grouping is by LTCH bed-size category, followed by TRICARE network status of the LTCH. The fourth grouping shows the LTCHs by regional divisions while the final grouping is by LTCH ownership status.

Upon full implementation of the Medicare site-neutral payment policy and after the TRICARE transition is complete, TRICARE allowed amounts to LTCHs would have decreased by 70 percent in comparison to allowed amounts paid to LTCHs under the current TRICARE policy (in FY 2015 dollars). For all the LTCH groups shown in Table 2, allowed amounts under the proposed payment methodology would be reduced.

The following discussion highlights some of the changes in allowed amounts among LTCH classifications. 99 percent of all TRICARE LTCH admissions were to urban LTCHs. Allowed amounts would have decreased by 69 percent for large urban, 71 percent for other urban and 67 percent for rural LTCHs.

Very small LTCHs (1–24 beds) would have had the least impact; allowed amounts would have been reduced by 53 percent. The change in payment methodology would have had the greatest impacts on large LTCHs (125 or more beds), where allowed amounts would have been reduced by about 73 percent.

The change in LTCH payment methodology would have a larger impact on TRICARE non-network LTCHs than network LTCHs because almost all network LTCHs currently offer a discount off billed charges while the majority of non-network LTCHs do not. Allowed charges to non-network LTCHs would have declined by 74 percent, in comparison to 67 percent for in-network hospitals. We found that network hospitals on average provide a 32 percent discount off billed charges for non-TFL TRICARE beneficiaries and that 70 percent of all TRICARE LTCH discharges were in-network in FY 2015.

LTCHs in various geographic areas would have been affected differently due to this change in payment methodology. The two regions with the largest number of TRICARE claims, the South Atlantic and West South Central region, would have had an average decrease of 69 and 71 percent in allowed charges respectively, which are very similar to the overall average of 70 percent. LTCHs in the New England and West North Central regions would have had the lowest reductions in allowed charges: 39 and 50 percent, respectively.

77 percent of all TRICARE LTCH discharges in FY 2015 were in proprietary (for-profit) LTCHs, and these facilities would have had their allowed amounts reduced by approximately 71 percent. The decline in allowed amounts for voluntary (not-for-profit) LTCHs would have been less than for-profit hospitals (61 percent).

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Table 2
Impact of TRICARE LTCH Rule in FY 2015

	Number of Hospitals	Number of Discharges	Allowed per Discharge Under Current Policy	Allowed per Discharge Under LTCH PPS	Percent Reduction in Allowed Amounts
All LTCHs	**207**	**781**	**$119,434**	**$36,159**	**70%**
Large Urban	105	469	$127,074	$39,481	69%
Other Urban	98	307	$108,665	$31,333	71%
Rural	4	5	$64,006	$20,815	67%
Beds	**207**	**781**	**$119,434**	**$36,159**	**70%**
1-24	3	5	$47,190	$22,054	53%
25-34	38	91	$115,102	$35,002	70%
35-49	52	172	$102,288	$31,505	69%
50-74	62	246	$120,171	$37,614	69%
75-124	31	149	$108,677	$33,800	69%
125+	21	118	$162,876	$44,375	73%
Network Status	**207**	**781**	**$119,434**	**$36,159**	**70%**
Network	147	549	$103,620	$34,528	67%
Non-Network	60	232	$156,855	$40,018	74%
Region	**207**	**781**	**$119,434**	**$36,159**	**70%**
New England	2	3	$36,269	$22,213	39%
Mid Atlantic	14	29	$184,906	$49,451	73%
South Atlantic	42	264	$123,577	$37,767	69%
East North Central	33	65	$102,139	$34,667	66%
East South Central	18	70	$89,630	$31,008	65%
West North Central	10	30	$73,097	$36,742	50%
West South Central	64	242	$98,605	$28,164	71%
Mountain	13	46	$213,907	$62,625	71%
Pacific	11	32	$199,204	$48,316	76%
Ownership	**207**	**781**	**$119,434**	**$36,159**	**70%**
Proprietary	171	605	$121,844	$34,940	71%
Government Owned	5	19	$124,053	$24,828	80%
Voluntary	31	157	$109,588	$42,227	61%

Note: Impact of rule shown in FY15 dollars, after the end of the transition period (TRICARE payments would be equal to 100 percent of Medicare LTCH PPS payments) and assuming full implementation of the Medicare site-neutral payment policy.

Source: FY15 TRICARE LTCH Claims and FY15 Medicare Impact File. Excludes claims with other health insurance.

Excludes 32 claims where the LTCH DRG on the TRICARE claim as unclassifiable. Excludes claims for Neoplastic Disease Care Hospitals and Children's Hospitals.

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4. Effect of Payment Policy Change on IRFs

Table 3, Impact of TRICARE IRF Rule in FY 2015, presents the results of our analysis of FY 2015 TRICARE claims data. This table categorizes IRFs which had TRICARE inpatient stays in FY 2015 by various geographic and special payment consideration groups to illustrate the varying impacts of different types of IRFs. The first column represents the number of IRFs in FY 2015 in each category which had inpatient stays in which TRICARE was the primary payer. The second column shows the simulated number of TRICARE discharges in each category. The third column shows the average TRICARE allowed amount per discharge in FY 2015. The fourth column shows the average allowed amount per discharge under the Medicare IRF payment method, assuming full implementation of the TRICARE transition, and including the LIP adjustment. The fifth column shows the percentage reduction in the allowed amounts under the Medicare payment method relative to the current TRICARE allowed amounts.

The first row in Table 3 shows the overall impact on the 493 IRFs included in the analysis. The next two rows of the table categorize hospitals according to their geographic location in FY 2015 (urban and rural). The second major grouping is by IRF bed-size category, followed by whether the IRF is a freestanding facility or a part of a hospital unit. The fourth grouping shows IRFs by TRICARE network status and fifth by teaching status. The sixth grouping is by regional divisions and the final grouping is by IRF ownership status.

The following discussion highlights some of the changes in allowed amounts among IRF classifications. 96 percent of all TRICARE IRF admissions were to urban IRFs. Allowed amounts would have decreased by 36 percent for urban IRFs and 11 percent for rural IRFs.

Very small IRFs (1–24 beds) would have had the most impact; allowed amounts would have been reduced by 50 percent. The change in payment methodology would have had the least impact on medium to large IRFs (75 to 124 beds), where allowed amounts would have been reduced by about 8 percent.

The change in IRF payment methodology would have resulted in a 49 percent reduction in the allowed amounts for IRFs that are part of a hospital unit. In comparison, freestanding IRF payments would have been reduced by 18 percent. The change in IRF payment methodology would have also had a larger impact on TRICARE non-network IRFs than network IRFs because network IRFs currently offer a discount off billed charges while non-network IRFs typically do not. Allowed charges to non-network IRFs would have declined by 55 percent, in comparison to 30 percent for in-network hospitals. We found that network hospitals on average provide a 34 percent discount off billed charges for TRICARE beneficiaries without other health insurance, and that 85 percent of all TRICARE IRF discharges were in-network in FY 2015.

We also found that the change in IRF payment methodology would have a larger impact on teaching hospitals, where payments would have been reduced by 41 percent, in comparison to non-teaching hospitals, where payments would have been reduced by 34 percent. Approximately 81 percent of all TRICARE IRF discharges were from non-teaching IRF facilities.

IRFs in various geographic areas will be affected differently by this change in payment methodology. The two regions with the largest number of TRICARE IRF claims, the South Atlantic (803 discharges) and West South Central (668 discharges), would have had an average decrease of 35 and 33 percent in allowed charges respectively. IRFs in New England and the Middle Atlantic would have had the lowest reductions in allowed charges of 13 percent. The Mountain, West South Central, and Pacific regions would have had the highest reductions (between 33 and 49 percent).

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Table 3

Impact of TRICARE IRF Rule in FY 2015

	Number of Facilities	Number of TRICARE Discharges	Allowed per Discharge Under Current Policy	Proposed Allowed per Discharge Under IRF PPS	Percent Reduction in Allowed Amounts
All IRFs	**493**	**2,582**	**$35,813**	**$23,020**	**36%**
Urban	457	2,489	$36,338	$23,156	36%
Rural	36	93	$21,753	$19,375	11%
Beds	**493**	**2,582**	**$35,813**	**$23,020**	**36%**
1-24	176	564	$44,469	$22,177	50%
25-34	71	214	$35,337	$21,508	39%
35-49	82	326	$34,010	$21,891	36%
50-74	96	755	$30,037	$22,507	25%
75-124	51	372	$25,132	$23,214	8%
125+	17	351	$47,611	$27,244	43%
Type	**493**	**2,582**	**$35,813**	**$23,020**	**36%**
Hospital Unit	314	1,179	$44,892	$23,008	49%
Freestanding	179	1,403	$28,183	$23,030	18%
Network Status	**493**	**2,582**	**$35,813**	**$23,020**	**36%**
Network	354	2,191	$33,005	$22,967	30%
Non-Network	139	391	$51,546	$23,314	55%
Teaching Status	**493**	**2,582**	**$35,813**	**$23,020**	**36%**
Teaching	50	481	$45,572	$26,740	41%
Non-Teaching	443	2,101	$33,578	$22,168	34%
Region	**493**	**2,582**	**$35,813**	**$23,020**	**36%**
New England and Middle Atlantic	72	179	$60,802	$52,598	13%
South Atlantic	104	803	$31,011	$20,302	35%
East North Central	64	154	$34,186	$22,629	34%
East South Central	36	258	$29,581	$20,498	31%
West North Central	39	152	$47,777	$30,876	35%
West South Central	99	668	$32,611	$21,870	33%
Mountain	41	173	$40,192	$22,603	44%
Pacific	38	195	$65,615	$33,478	49%
Ownership	**493**	**2,582**	**$35,813**	**$23,020**	**36%**
Proprietary	186	1,200	$29,570	$21,092	29%
Government Owned	56	307	$36,902	$22,990	38%
Voluntary	251	1,075	$42,470	$25,181	41%

Note: Impact of rule shown in FY15 dollars, after the end of the transition period (TRICARE payments would be equal to 100 percent of Medicare LTCH PPS payments).

Source: FY15 TRICARE IRF Claims and FY16 and FY17 Medicare Rate Setting File. Excludes claims with other health insurance.

Excludes claims from 12 VA Hospitals (239 discharges), 2 Children's Hospitals (11 discharges), and 4 IRFs (8 discharges) where we could not identify enough information to include in the estimate. We have combined the North East and Middle Atlantic states for the purpose of this impact analysis due to small sample size in the North East region.

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46 percent of all TRICARE IRF discharges in FY 2015 were in proprietary (for-profit) IRFs, and these facilities would have had their allowed amounts reduced by approximately 29 percent. The decline in allowed amounts for voluntary (not-for-profit) and government-owned IRFs would have been slightly more than proprietary hospitals (41 and 38 percent).

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. In § 199.2, paragraph (b) is amended by:

■ a. Removing the definition of ''Hospital, long-term (tuberculosis, chronic care, or rehabilitation).''

■ b. Adding the definition of ''Inpatient Rehabilitation Facility (IRF)'' in alphabetical order.

■ c. Adding the definition of ''Long Term Care Hospital (LTCH)'' in alphabetical order.

■ d. Removing the definition of ''Long-term hospital care.''

The additions read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Inpatient Rehabilitation Facility (IRF). A facility classified by CMS as an IRF and meets the applicable requirements established by § 199.6(b)(4)(xx) (which includes the requirement to be a Medicare participating provider).

* * * * *

Long Term Care Hospital (LTCH). A hospital that is classified by the Centers for Medicare and Medicaid Services (CMS) as an LTCH and meets the applicable requirements established by § 199.6(b)(4)(v) (which includes the requirement to be a Medicare participating provider).

* * * * *

■ 3. In § 199.6, revise paragraphs (b)(4)(v) and (xvi), and add paragraph (b)(4)(xx) to read as follows:

§ 199.6 TRICARE—authorized providers.

* * * * *

(b) * * *

(4) * * *

(v) *Long Term Care Hospital (LTCH).* LTCHs must meet all the criteria for classification as an LTCH under 42 CFR part 412, subpart O, as well as all of the requirements of this part in order to be considered an authorized LTCH under the TRICARE program.

(A) In order for the services of LTCHs to be covered, the hospitals must comply with the provisions outlined in paragraph (b)(4)(i) of this section. In addition, in order for services provided by such hospitals to be covered by TRICARE, they must be primarily for the treatment of the presenting illness.

(B) Custodial or domiciliary care is not coverable under TRICARE, even if rendered in an otherwise authorized LTCH.

(C) The controlling factor in determining whether a beneficiary's stay in a LTCH is coverable by TRICARE is the level of professional care, supervision, and skilled nursing care that the beneficiary requires, in addition to the diagnosis, type of condition, or degree of functional limitations. The type and level of medical services required or rendered is controlling for purposes of extending TRICARE benefits; not the type of provider or condition of the beneficiary.

* * * * *

(xvi) *Critical Access Hospitals (CAHs).* CAHs must meet all conditions of participation under 42 CFR 485.601 through 485.645 in relation to TRICARE beneficiaries in order to receive payment under the TRICARE program. If a CAH provides inpatient psychiatric services or inpatient rehabilitation services in a distinct part unit, the distinct part unit must meet the conditions of participation in 42 CFR 485.647, with the exception of being paid under the inpatient prospective payment system for psychiatric facilities as specified in 42 CFR 412.1(a)(2) or the inpatient prospective payment system for rehabilitation hospitals or rehabilitation units as specified in 42 CFR 412.1(a)(3). Upon implementation of TRICARE's IRF PPS in § 199.14(a)(10), if a CAH provides inpatient rehabilitation services in a distinct part unit, the distinct part unit shall be paid under TRICARE's IRF PPS.

* * * * *

(xx) *Inpatient Rehabilitation Facility (IRF).* IRFs must meet all the criteria for classification as an IRF under 42 CFR part 412, subpart B, and meet all applicable requirements established in this part in order to be considered an authorized IRF under the TRICARE program.

(A) In order for the services of inpatient rehabilitation facilities to be covered, the facility must comply with the provisions outlined in paragraph (b)(4)(i) of this section. In addition, in order for services provided by these facilities to be covered by TRICARE, they must be primarily for the treatment of the presenting illness.

(B) Custodial or domiciliary care is not coverable under TRICARE, even if rendered in an otherwise authorized inpatient rehabilitation facility.

(C) The controlling factor in determining whether a beneficiary's stay in an inpatient rehabilitation facility is coverable by TRICARE is the level of professional care, supervision, and skilled nursing care that the beneficiary requires, in addition to the diagnosis, type of condition, or degree of functional limitations. The type and level of medical services required or rendered is controlling for purposes of extending TRICARE benefits; not the type of provider or condition of the beneficiary.

* * * * *

■ 4. Section 199.14 is amended by:

■ a. Revising paragraph (a)(1)(ii)(C) introductory text;

■ b. Revising paragraphs (a)(1)(ii)(D)(*2*), (*3*) and (*4*), and (a)(1)(ii)(E);

■ c. Revising paragraph (a)(3)(i);

■ d. Revising paragraph (a)(4) introductory text; and

■ e. Adding paragraphs (a)(9) and (10).

The revisions read as follows:

§ 199.14 Provider reimbursement methods.

(a) * * *

(1) * * *

(ii) * * *

(C) *Services exempt from the DRG-based payment system.* The following hospital services, even when provided in a hospital subject to the CHAMPUS DRG-based payment system, are exempt from the CHAMPUS DRG-based payment system. The services in paragraphs (a)(1)(ii)(C)(*1*) through (a)(1)(ii)(C)(*4*) and (a)(1)(ii)(C)(*7*) through (a)(1)(ii)(C)(*9*) of this section shall be reimbursed under the procedures in paragraph (a)(4) of this section, and the services in paragraphs (a)(1)(ii)(C)(*5*) and (a)(1)(ii)(C)(*6*) of this section shall be reimbursed under the procedures in paragraph (j) of this section.

* * * * *

(D) * * *

(*2*) *Inpatient Rehabilitation Facilities (IRF).* Prior to implementation of the IRF PPS methodology described in paragraph (a)(10) of this section, an inpatient rehabilitation facility which is

exempt from the Medicare prospective payment system is also exempt from the TRICARE DRG-based payment system.

(*3*) *Psychiatric and rehabilitation units (distinct parts).* Prior to implementation of the IRF PPS methodology described in paragraph (a)(10) of this section, a rehabilitation unit which is exempt from the Medicare prospective payment system is also exempt from the TRICARE DRG-based payment system. A psychiatric unit which is exempt from the Medicare prospective payment system is also exempt from the TRICARE DRG-based payment system.

(*4*) *Long Term Care Hospitals.* Prior to implementation of the LTCH PPS methodology described in paragraph (a)(9) of this section, a long-term care hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system.

* * * * *

(E) *Hospitals which do not participate in Medicare.* Any hospital which is subject to the CHAMPUS DRG-based payment system and which otherwise meets CHAMPUS requirements but which is not a Medicare-participating provider (having completed a form HCA–1514, Hospital Request for Certification in the Medicare/Medicaid Program and a form HCFA–1561, Health Insurance Benefit Agreement) must complete a participation agreement with TRICARE. By completing the participation agreement, the hospital agrees to participate on all CHAMPUS inpatient claims and to accept the CHAMPUS-determined allowable amount as payment in full for these claims. Any hospital which does not participate in Medicare and does not complete a participation agreement with TRICARE will not be authorized to provide services to TRICARE beneficiaries.

* * * * *

(3) * * *

(i) For admissions on or after December 1, 2009, inpatient services provided by a CAH, other than services provided in psychiatric and rehabilitation distinct part units, shall be reimbursed at allowable cost (*i.e.,* 101 percent of reasonable cost) under procedures, guidelines, and instructions issued by the Director, DHA, or designee. This does not include any costs of physicians' services or other professional services provided to CAH inpatients. Inpatient services provided in psychiatric distinct part units would be subject to the TRICARE mental health payment system. Inpatient services provided in rehabilitation distinct part units would be subject to billed charges. Upon implementation of TRICARE's IRF PPS, inpatient services provided in rehabilitation distinct part units would be subject to the TRICARE IRF PPS methodology in paragraph (a)(10) of this section.

* * * * *

(4) The allowable cost for authorized care in all hospitals not subject to the TRICARE DRG-based payment system, the TRICARE mental health per-diem system, the TRICARE reasonable cost method for CAHs, the TRICARE reimbursement rules for SCHs, the TRICARE LTCH–PPS, or the TRICARE IRF PPS shall be determined on the basis of billed charges or set rates.

* * * * *

(9) *Reimbursement for inpatient services provided by a Long Term Care Hospital (LTCH).* (i) In accordance with 10 U.S.C. 1079(i)(2), TRICARE payment methods for institutional care shall be determined, to the extent practicable, in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. The TRICARE–LTC–DRG reimbursement methodology shall be in accordance with Medicare's Medicare Severity Long Term Care Diagnosis Related Groups (MS–LTC–DRGs) as found in regulation at 42 CFR part 412, subpart O. Inpatient services provided in hospitals subject to the Medicare LTCH Prospective Payment System (PPS) and classified as LTCHs and also as specified in 42 CFR parts 412 and 413 will be paid in accordance with the provisions outlined in sections 1886(d)(1)(B)(IV) and 1886(m)(6) of the Social Security Act and its implementing Medicare regulation (42 CFR parts 412, 413, and 170) to the extent practicable. Under the above governing provisions, TRICARE will recognize, to the extent practicable, in accordance with 10 U.S.C. 1079(i)(2), Medicare's LTCH PPS methodology to include the relative weights, inpatient operating and capital costs of furnishing covered services (including routine and ancillary services), interrupted stay policy, short-stay and high cost outlier payments, site-neutral payments, wage adjustments for variations in labor-related costs across geographical regions, cost-of-living adjustments, payment adjustments associated with the quality reporting program, method of payment for preadmission services, and updates to the system. TRICARE will not be adopting Medicare's 25 percent threshold payment adjustment.

(ii) Implementation of the TRICARE LTCH PPS will include a gradual transition to full implementation of the Medicare LTCH PPS rates as follows:

(A) For the first 12 months following implementation, the TRICARE LTCH PPS allowable cost will be 135 percent of Medicare LTCH PPS amounts.

(B) For the second 12 months of implementation, TRICARE LTCH PPS allowable cost will be 115 percent of the Medicare LTCH PPS amounts.

(C) For the third 12 months of implementation, and subsequent years, TRICARE LTCH PPS allowable cost will be 100 percent of the Medicare LTCH PPS amounts.

(iii) *Exemption.* The TRICARE LTCH PPS methodology under this paragraph does not apply to hospitals in States that are reimbursed by Medicare and TRICARE under a waiver that exempts them from Medicare's inpatient prospective payment system or the TRICARE DRG-based payment system, to Children's Hospitals, or to Neoplastic Disease Care Hospitals, respectively.

(10) *Reimbursement for inpatient services provided by Inpatient Rehabilitation Facilities (IRF).* (i) In accordance with 10 U.S.C. 1079(i)(2), TRICARE payment methods for institutional care shall be determined to the extent practicable, in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. The TRICARE IRF PPS reimbursement methodology shall be in accordance with Medicare's IRF PPS as found in 42 CFR part 412. Inpatient services provided in IRFs subject to the Medicare IRF prospective payment system (PPS) and classified as IRFs and also as specified in 42 CFR 412.604 will be paid in accordance with the provisions outlined in section 1886(j) of the Social Security Act and its implementing Medicare regulation found at 42 CFR part 412, subpart P to the extent practicable. Under the above governing provisions, TRICARE will recognize, to the extent practicable, in accordance with 10 U.S.C. 1079(i)(2), Medicare's IRF PPS methodology to include the relative weights, payment rates covering all operating and capitals costs of furnishing rehabilitative services adjusted for wage variations in labor-related costs across geographical regions, adjustments for the 60 percent compliance threshold, teaching adjustment, rural adjustment, high-cost outlier payments, low income payment adjustment, payment adjustments associated with the quality reporting program, and updates to the system.

(ii) Implementation of the TRICARE IRF PPS will include a gradual transition to full implementation of the Medicare IRF PPS rates as follows:

(A) For the first 12 months of implementation, the TRICARE IRF PPS allowable cost will be 135 percent of Medicare IRF PPS amounts.

(B) For the second 12 months of implementation, the TRICARE IRF PPS allowable cost will be 115 percent of the Medicare IRF PPS amounts.

(C) For the third 12 months of implementation, and subsequent years, the TRICARE IRF PPS allowable cost will be 100 percent of the Medicare IRF PPS amounts.

(iii) The IRF PPS allowable cost in paragraph (a)(10)(ii) of this section may be supplemented by an inpatient general temporary military contingency payment adjustment (GTMCPA) for TRICARE authorized IRFs.

(A) This is a year-end discretionary, temporary adjustment that the Director, DHA (or designee) may approve based on the following criteria:

(*1*) The IRF serves a disproportionate share of ADSMs and ADDs;

(*2*) The IRF is a TRICARE network hospital;

(*3*) The IRF's actual costs for inpatient services exceed TRICARE payments or other extraordinary economic circumstance exists; and

(*4*) Without the GTMCPA, DoD's ability to meet military contingency mission requirements will be significantly compromised.

(B) Policy and procedural instructions implementing the GTMCPA will be issued as deemed appropriate by the Director, DHA (or designee). As with other discretionary authority under this part, a decision to allow or deny a GTMCPA to an IRF is not subject to the appeal and hearing procedures of § 199.10.

(iv) *Exemption.* The TRICARE IRF PPS methodology under this paragraph does not apply to hospitals in States that are reimbursed by Medicare and TRICARE under a waiver that exempts them from Medicare's inpatient prospective payment system or the TRICARE DRG-based payment system, to Children's hospitals, or to VA hospitals, respectively.

* * * * *

Dated: December 22, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–28022 Filed 12–28–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–1077]

RIN 1625–AA00

Safety Zone; Mississippi River, Baton Rouge, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters from mile marker (MM) 229.5 to MM 230.5 Above Head of Passes on the Lower Mississippi River. This temporary safety zone is necessary to provide for the safety of life on these navigable waters near downtown, Baton Rouge, LA, during a fireworks display on December 31, 2017. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector New Orleans or a designated representative.

DATES: This rule is effective from 11:30 p.m. on December 31, 2017, through 1 a.m. on January 1, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–1077 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 Raymond Wagner, Marine Safety Unit Baton Rouge, U.S. Coast Guard; telephone 225–298–5400 ext. 230, email *Raymond.W.Wagner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AHP Above Head of Passes
CFR Code of Federal Regulations
COTP Captain of the Port Sector New Orleans
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 impractical and contrary to public interest. We must establish this safety zone by December 31, 2017. It is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. It is also contrary to public interest as it would delay the safety measures necessary to protect life and property from the possible hazards associated with the display.

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**. Waiting a full 30 days after publication in the **Federal Register** is contrary to the public interest as that would delay the effectiveness of the safety zone until after the planned fireworks event. Immediate action is needed to protect vessels and mariners from the safety hazards associated with an aerial fireworks display over the waterway. The Coast Guard will notify the public and maritime community that the safety zone will be in effect and of the enforcement periods via broadcast notices to mariners.

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 New Orleans (COTP) has determined that potential hazards associated with the fireworks display on December 31, 2017 will be a safety concern for any vessels or persons in the vicinity of the launch area between mile marker (MM) 229.5 and MM 230.5 Above Head of Passes (AHP) on the Lower Mississippi River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River for 1 hour and 30 minutes on the night of December 31, 2017. The safety zone will include all navigable waters of the Lower Mississippi River in Baton Rouge, LA, from mile marker (MM) 229.5 to MM

230.5, AHP. Entry into this zone is prohibited unless permission has been granted by the COTP or a designated representative. Public notifications will be made to the local maritime community prior to the event through broadcast notice to mariners. Mariners and other members of the public may also contact the COTP to inquire about the safety zone by telephone at (225) 298–5400 ext. 230.

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 safety zone will only restrict navigation on the Lower Mississippi River on an area of less than 2 miles and for 1 hour and 30 minutes on the night of December 31, 2017. Due to the limited scope and short duration of the safety zone, the impacts on routine navigation are expected to be minimal.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for all waters of the Lower Mississippi River from MM 229.5 to MM 230.5 AHP. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. 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, Waterways.

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

PART 165—SPECIFIC 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.T08–1077 to read as follows:

§ 165.T08–1077 Safety Zone; Fireworks Display Lower Mississippi River mile marker (MM) 229.5 to MM 230.5, Baton Rouge, LA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Mississippi River from mile marker 229.5 to mile marker 230.5 Above Head of Passes, Baton Rouge, LA.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector New Orleans (COTP) or the COTP's designated representative.

(2) To seek permission to enter, vessels must request permission from the COTP or a designated representative. The designated representative can be contacted on VHF–FM Channel 16 or 67, or through the Marine Safety Unit Baton Rouge Officer of the Day at 225–281–4789.

(3) Persons and vessels permitted to enter this temporary safety zone must transit at the slowest speed and comply with all lawful directions issued by the COTP or the designated representative.

(c) *Enforcement period.* This section will be enforced from 11:30 p.m. on December 31, 2017, through 1 a.m. on January 1, 2018.

Dated: December 22, 2017

K.M. Luttrell,

Captain, U.S. Coast Guard, Acting Captain of the Port Sector New Orleans.

[FR Doc. 2017–28145 Filed 12–28–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–8511]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance

will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region VI				
Louisiana:				
Beauregard Parish, Unincorporated Areas.	220026	September 25, 1979, Emerg; May 3, 1990, Reg; January 5, 2018, Susp.	January 5, 2018	January 5, 2018
DeRidder, City of, Beauregard and Vernon Parishes.	220027	September 9, 1974, Emerg; October 19, 1982, Reg; January 5, 2018, Susp.	.....do	Do.
Merryville, Town of, Beauregard Parish	220028	November 1, 1974, Emerg; February 1, 1987, Reg; January 5, 2018, Susp.	.....do	Do.

-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 14, 2017.

Eric Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2017–28182 Filed 12–28–17; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 82, No. 249
Friday, December 29, 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 71

[Docket No. FAA–2017–1002; Airspace Docket No. 17–ACE–12]

Proposed Amendment of Class E Airspace: Muscatine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace designated as a surface area and amend Class E airspace extending upward from 700 feet above the surface at Muscatine Municipal Airport, Muscatine, IA. The FAA is proposing this action due to the decommissioning of the Port City VHF omnidirectional range (VOR) facility, which provided navigation guidance for the instrument procedures to this airport. The VOR has been decommissioned as part of the VOR Minimum Operational Network (MON) Program.

DATES: Comments must be received on or before February 12, 2018.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2017–1002; Airspace Docket No. 17–ACE–12 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace designated as a surface area and amend Class E airspace extending upward from 700 feet above the surface at Muscatine Municipal Airport, Muscatine, IA, to support instrument flight rules (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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–1002; Airspace Docket No. 17–ACE–12.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents 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 that would:

Modify Class E airspace designated as a surface area to within a 4.1-mile radius (increased from a 3.9-mile radius) of Muscatine Municipal Airport, Muscatine, IA, with an extension 1.0 mile either side of the 305° bearing from the airport from the 4.1-mile radius to 4.4 miles northwest of the airport, and an extension 1.0 mile either side of the 238° bearing from the airport from the 4.1-mile radius to 4.4 miles southwest of the airport; and

Modify Class E airspace extending upward from 700 feet above the surface at Muscatine Municipal Airport by removing the Port City VOR/DME from the airspace description, removing the extensions referencing the Port City VOR/DME, and adding an extension 3.8 miles either side of the 238° bearing from the airport from the 6.6-mile radius to 10.5 miles southwest of the airport.

Airspace reconfiguration is necessary due to the decommissioning of the Port City VOR as part of the VOR MON Program, and to bring the airspace and airspace descriptions into compliance with FAA Order 7400.2L, Procedures for Handling Airspace Matters. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ACE IA E2 Muscatine, IA [Amended]

Muscatine Municipal Airport, IA
(Lat. 41°22′04″ N, long. 91°08′54″ W)

Within a 4.1-mile radius of Muscatine Municipal Airport, and within 1.0 mile either side of the 305° bearing from the airport from the 4.1-mile radius to 4.4 miles northwest of the airport, and within 1.0 mile either side of the 238° bearing from the airport from the 4.1-mile radius to 4.4 miles southwest of the airport. This Class E airspace area is effective during 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.

* * * * *

ACE IA E5 Muscatine, IA [Amended]

Muscatine Municipal Airport, IA
(Lat. 41°22′04″ N, long. 91°08′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Muscatine Municipal Airport and within 3.8 miles either side of the 238° bearing from the airport from the 6.6-mile radius to 10.5 miles southwest of the airport.

Issued in Fort Worth, Texas, on December 19, 2017.

Christopher L. Southerland,

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

[FR Doc. 2017–28048 Filed 12–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM17–3–000]

Fast-Start Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Withdrawal of notice of proposed rulemaking and termination of rulemaking proceeding.

SUMMARY: The Federal Energy Regulatory Commission is withdrawing its proposal to amend its regulations to require that each regional transmission organization and independent system operator incorporate market rules that meet certain requirements when pricing fast-start resources.

DATES: As of December 29, 2017, the notice of proposed rulemaking published on December 30, 2016, at 81 FR 96,391, is withdrawn.

FOR FURTHER INFORMATION CONTACT:

Daniel Kheloussi (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6391, *daniel.kheloussi@ferc.gov.*

Angela Amos (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6676, *angela.amos@ferc.gov.*

Kaleb Lockwood (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8255, *kaleb.lockwood@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. On December 15, 2016, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.[1] For the reasons set forth below, we are exercising our discretion to withdraw the NOPR and terminate this rulemaking proceeding.

2. In the NOPR, the Commission preliminarily found that some existing regional transmission organization/independent system operator (RTO/ISO) fast-start pricing practices, or lack of fast-start pricing practices, may not result in rates that are just and reasonable.[2] As a result, the Commission proposed to require that each RTO/ISO establish the following set of requirements for its fast-start pricing: (1) Apply fast-start pricing to any resource committed by the RTO/ISO that is able to start up within ten minutes, has a minimum run time of one hour or less, and that submits economic energy offers to the market; (2) incorporate commitment costs, *i.e.,* start-up and no-load costs, of fast-start resources in energy and operating reserve prices; (3) modify fast-start pricing to relax the economic minimum operating limit of fast-start resources and treat them as dispatchable from zero to the economic maximum operating limit for the purpose of calculating prices; (4) if the RTO/ISO allows offline fast-start resources to set prices for addressing certain system needs, the resource must be feasible and economic; and (5) incorporate fast-start pricing in both the day-ahead and real-time markets. The Commission sought comment on the proposed reforms.[3]

3. The Commission received a number of comments in response to the proposed reforms in the NOPR. Some commenters expressed support for the proposed reforms. Other commenters raised concerns about the need for the proposed reforms relative to the burden of implementing changes. Additionally, some commenters discussed the need for regional flexibility to allow RTOs/ISOs to implement fast-start pricing practices that are appropriate for their regions.

4. Upon further consideration and after review of the comments received in response to the NOPR, we will withdraw the NOPR and terminate this proceeding. We appreciate the feedback received in response to the NOPR. We continue to believe that improved fast-start pricing practices have the potential to achieve the goals outlined in the NOPR; however, we are persuaded by comments that question whether the proposed reforms would bring sufficient value in all RTOs/ISOs and argued for regional flexibility. Having considered these comments, we are persuaded to not require a uniform set of fast-start pricing requirements that would apply to all RTOs/ISOs. Instead, we will pursue the goals of the NOPR through section 206 actions involving NYISO, PJM, and SPP[4] focusing on specific concerns with each RTO's/ISO's implementation of fast-start pricing consistent with the concerns outlined in the NOPR.

5. The Commission therefore withdraws the NOPR and terminates this rulemaking proceeding.

By direction of the Commission.

Issued: December 21, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28201 Filed 12–28–17; 8:45 am]

BILLING CODE 6717–01–P

[1] *Fast-Start Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators,* 81 FR 96,391 (Dec. 30, 2016), FERC Stats. & Regs. ¶ 32,720 (2016).

[2] NOPR, FERC Stats. & Regs. ¶ 32,720 at PP 36–37.

[3] NOPR, FERC Stats. & Regs. ¶ 32,720 at P 44.

[4] *New York Independent System Operator, Inc.,* 161 FERC ¶ 61,294; *PJM Interconnection, L.L.C.,* 161 FERC ¶ 61,295; and *Southwest Power Pool, Inc.,* 161 FERC ¶ 61,296, (2017).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–476]

Schedules of Controlled Substances: Temporary Placement of Fentanyl-Related Substances in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Proposed amendment; notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is publishing this notice of intent to issue an order temporarily scheduling fentanyl-related substances that are not currently listed in any schedule of the Controlled Substances Act (CSA). The temporary order will place these substances in schedule I. This action is based on a finding by the Administrator that the placement of these synthetic opioids in schedule I is necessary to avoid an imminent hazard to the public safety. When it is issued, the temporary scheduling order will impose regulatory requirements under the CSA on the manufacture, distribution, reverse distribution, possession, importation, exportation, research, and conduct of instructional activities, and chemical analysis of these synthetic opioids, as well as administrative, civil, and criminal remedies with respect to persons who fail to comply with such requirements or otherwise violate the CSA with respect to these substances.

DATES: December 29, 2017.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: This notice of intent is issued pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The Drug Enforcement Administration (DEA) intends to issue a temporary order (in the form of a temporary amendment) placing fentanyl-related substances in schedule I of the Controlled Substances Act. The temporary scheduling order will be published in the **Federal Register** on or after January 29, 2018.

Legal Authority

Section 201 of the Controlled Substances Act (CSA), 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance permanently are initiated under 21 U.S.C. 811(a)(1) while the substance is temporarily controlled under section 811(h), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FD&C Act), 21 U.S.C. 355. 21 U.S.C. 811(h)(1). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

The Nature of the Problem and DEA's Approach To Correct It

It is well known that deaths associated with the abuse of substances structurally related to fentanyl[1] in the

[1] As explained further below, in this document, the term ''fentanyl-related substances'' is defined to include substances structurally related to fentanyl

United States are on the rise and have already reached alarming levels. While a number of factors appear to be contributing to this public health crisis, chief among the causes is the sharp increase in recent years in the availability of illicitly produced, potent substances structurally related to fentanyl. Fentanyl is approximately 100 times more potent than morphine, and the substances structurally related to fentanyl that DEA will be temporarily controlling also tend to be potent substances. Typically, these substances are manufactured outside the United States by clandestine manufacturers and then smuggled into the United States.

Fentanyl is often mixed with heroin and other substances (such as cocaine and methamphetamine) or used in counterfeit pharmaceutical prescription drugs. As a consequence, users who buy these substances on the illicit market are often unaware of the specific substance they are actually consuming and the associated risk. According to the Centers for Disease Control and Prevention (CDC), drug overdose deaths involving synthetic opioids (excluding methadone), such as fentanyl and tramadol, increased from 5,544 in 2014 to 9,580 in 2015. According to provisional data released in August 2017 by the CDC, National Center for Health Statistics (NCHS), an estimated 55 Americans are dying *every day* from overdoses of synthetic opioids (excluding methadone).[2] Drug overdose deaths involving synthetic opioids excluding methadone for the 12-month period ending in January of 2017 (20,145 deaths) more than doubled from the corresponding data for the period ending in January of 2016 (9,945 deaths).

DEA has responded to this crisis by issuing six temporary scheduling orders to control nine substances structurally related to fentanyl since 2015 and recently issued a notice of intent on November 21, 2017 to temporarily control another such substance. However, this approach has not been completely effective in preventing the emergence of new substances structurally related to fentanyl. This is because when DEA temporarily controls a given substance structurally related to fentanyl, illicit manufacturers located abroad begin producing new such substances through other structural modifications. Those new nonscheduled substances then are smuggled into the United States, where they are distributed by traffickers in this country as a purportedly ''noncontrolled'' substance.[3] In this way, traffickers are effectively circumventing the temporary control mechanism that Congress established under 21 U.S.C. 811(h) to combat newly emerging dangerous drugs. Post mortem toxicology and medical examiner reports collected by the DEA show mortality connected to substances structurally related to fentanyl. Control of these substances is necessary to avoid an imminent hazard to the public safety.

Given the gravity of the ongoing fentanyl-related overdose crisis in the United States, protection of the public safety demands the utilization of 21 U.S.C. 811(h) in a manner that cannot be readily circumvented by drug traffickers. Specifically, in issuing the upcoming temporary scheduling order, DEA will exercise its authority to avoid an imminent hazard to the public safety by placing fentanyl-related substances, as defined later in this document, in schedule I. As explained below, these fentanyl-related substances—including those that have not yet been introduced by traffickers into the U.S. market—present a significant risk to the public health and safety and need to be controlled under section 811(h) to avoid an imminent hazard to the public safety. It should also be noted that none of the substances that will be temporarily controlled has an accepted medical use in the United States; nor is any of the substances the subject of an exemption or approval under section 505 of the FD&C Act. In accordance with section 811(h), if any exemption or approval is in effect under section 505 of the FD&C Act with respect to a substance that falls within the definition of a fentanyl-related substance set forth in this document, such substance will be excluded from the temporary scheduling order.

What Will Be Controlled Under the Temporary Scheduling Order

When the temporary scheduling order is issued, fentanyl-related substances will be placed in schedule I of the CSA for two years. DEA may extend the temporary scheduling for an additional year (a total of three years) if proceedings to permanently schedule the substances are pending. DEA's intention is that the temporary scheduling order will define fentanyl-related substances to include any substance not otherwise controlled in any schedule (*i.e.,* not included under any other Administration Controlled Substance Code Number) that is structurally related to fentanyl by one or more of the following modifications:

(A) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(B) substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

(C) substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(D) replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(E) replacement of the *N*-propionyl group by another acyl group.

How DEA Will Identify Individual Fentanyl-Related Substances That Fall Within This Temporary Scheduling Order

As indicated, the temporary scheduling order that is the subject of this Notice of Intent will include all substances that fall within the above definition—even if such substances have not yet emerged on the illicit market in the United States. As a result, DEA cannot currently specify the chemical name of every potential substance that might fall under this new definition. In the future, if and when DEA identifies a specific new substance that falls under the definition, the agency will publish in the **Federal Register**, and on the agency website, the chemical name of such substance. Thus, the text of the definition of fentanyl-related substance will include language indicating that it ''includes, but is not limited to, the following substances:'' It bears emphasis, however, that even in the absence of a future publication by DEA specifically identifying such a substance, the substance will be controlled by virtue of the temporary scheduling order—at the time the temporary scheduling order is published—if it falls within the definition of fentanyl-related substance.

but which are not controlled under a separate scheduling action (listed under another Administration Controlled Substance Code Number). Thus, all ''fentanyl-related substances'' are structurally related to fentanyl, but some fentanyl-related substances are controlled under separate scheduling actions.

[2] Provisional synthetic opioid death overdose counts are based on CDC data available for analysis as of August 6, 2017, based on the 12-month reporting period ending January 2017. See *https://www.cdc.gov/nchs/data/health_policy/monthly-drug-overdose-death-estimates.pdf* accessed 09–06–2017.

[3] Such trafficking is actually illegal as persons who do so can be prosecuted using the controlled substance analogue provisions of the CSA. 21 U.S.C. 802(32), 813. However, prosecution under the analogue provisions requires proof of additional elements not required for prosecuting trafficking in scheduled substances.

Notification to the Secretary of Health and Human Services

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance in schedule I of the CSA.[4] On November 6, 2017, the Administrator transmitted notice by letter to the Assistant Secretary for Health of HHS of his intent to place fentanyl-related substances, unless listed in another schedule, in schedule I on a temporary basis. The Assistant Secretary responded by letter dated November 29, 2017, and advised that based on a review by the Food and Drug Administration (FDA), they are not aware of any investigational new drug applications or approved new drug applications for fentanyl-related substances as defined above under section 505 of the FD&C Act, 21 U.S.C. 355 and that HHS has no objection to the temporary placement of these substances into schedule I of the CSA. As indicated, in accordance with section 811(h), fentanyl-related substances will be defined under the temporary scheduling order to exclude any substance for which an exemption or approval is in effect under section 505 of the FD&C Act.

Grounds for Temporary Scheduling Order

To find that placing a substance temporarily in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). These factors include, but are not limited to, actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. *Id.* DEA has considered these factors for fentanyl-related substances, as defined above, and finds that the information is consistent across this class of substances. The DEA's three-factor analysis is available in its entirety under ''Supporting and Related Material'' of the public docket for this action at *www.regulations.gov* under Docket Number DEA–476.

Substances that are included in the above-listed structural modifications and any combination of these structural modifications have been found to cause pharmacological effects that are similar to those of fentanyl. It therefore is reasonable to expect that all such substances, even if they have yet to appear on the illicit market in the United States, share the dangerous and potentially lethal properties that have caused the recent spike in fentanyl-related overdose deaths in the United States. By temporarily placing these fentanyl-related substances in schedule I, it is DEA's intention to deter the production and introduction of these substances into the United States that traffickers might be considering—before such activity ever begins—thereby avoiding an imminent hazard to the public safety. The alternative approach, of only temporarily controlling substances that have already appeared in the illicit U.S. market, is beneficial but has not eliminated the danger these newly created substances pose and is not as effective in preventing future deaths and serious injuries associated with these substances. In addition, by controlling fentanyl-related substances, the temporary scheduling order will facilitate the development of international, national, and local prevention strategies that decrease morbidity and mortality from overdoses caused by or associated with fentanyl-related substances.

For these reasons, DEA has concluded that issuing a temporary scheduling order is necessary to avoid an imminent hazard to the public safety.

Schedule I Classification

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

As indicated, DEA finds that the fentanyl-related substances that will be temporarily controlled have a high potential for abuse. Information provided by the Assistant Secretary of HHS indicates that these fentanyl-related substances, as defined, have no currently accepted medical use in treatment in the United States, and lack accepted safety for use under medical supervision.

Conclusion

This notice of intent provides the 30-day notice pursuant to section 201(h) of the CSA, 21 U.S.C. 811(h)(1), of DEA's intent to issue a temporary scheduling order. The temporary placement of fentanyl-related substances in schedule I of the CSA will take effect pursuant to a temporary scheduling order, which will not be issued before January 29, 2018. Because the Administrator hereby finds that it is necessary to temporarily place fentanyl-related substances in schedule I to avoid an imminent hazard to the public safety, the temporary order scheduling these substances will be effective on the date that order is published in the **Federal Register**, and will be in effect for a period of two years. DEA may extend the temporary scheduling for an additional year (a total of three years) if proceedings to permanently schedule the substances are pending. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Administrator to issue a temporary scheduling order as soon as possible after the expiration of 30 days from the date of publication of this document. Upon publication of the temporary order, fentanyl-related substances, as defined in the order, will be subject to the full range of regulatory, civil, and criminal provisions of the CSA that apply to schedule I controlled substances.

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the notice-and-comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. In the alternative, even if this notice were subject to section 553 of the APA, the Administrator would find that there is good cause to forgo the notice-and-comment requirements of section

[4] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

553, as any further delays in the process for issuance of temporary scheduling orders would be contrary to the public interest in view of the urgent need to control fentanyl-related substances to avoid an imminent hazard to the public safety.

Since this notice of intent is not a ''rule'' as defined by 5 U.S.C. 601(2), it is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (h)(30), to read as follows:

§ 1308.11 Schedule I

* * * * *

(h) * * *

(30) Fentanyl-related substances, their isomers, esters, ethers, salts and salts of isomers, esters and ethers . . . 9850

(i) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:

(A) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(B) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

(C) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(D) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(E) Replacement of the *N*-propionyl group by another acyl group.

(ii) This definition includes, but is not limited to, the following substances:

[Reserved]

* * * * *

Dated: December 21, 2017.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2017–28114 Filed 12–28–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2017–0008; 189E1700D2 ET1SF0000.PSB000 EEEE500000]

RIN 1014–AA37

Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems—Revisions

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Safety and Environmental Enforcement (BSEE) proposes to amend the regulations regarding oil and natural gas production to reduce certain unnecessary regulatory burdens imposed under the existing regulations, while correcting errors and clarifying current requirements. Accordingly, after thoroughly reexamining the current regulations, and based on experiences from the implementation process, and BSEE policy, BSEE proposes to amend, revise, or remove current regulatory provisions that create unnecessary burdens on stakeholders while maintaining or advancing the level of safety and environmental protection.

DATES: Submit comments by January 29, 2018. BSEE may not fully consider comments received after this date. You may submit comments to the Office of Management and Budget (OMB) on the information collection burden in this proposed rule by January 29, 2018. The deadline for comments on the information collection burden does not affect the deadline for the public to comment to BSEE on the proposed regulations.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1014–AA37 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled Enter Keyword or ID, enter BSEE–2017–0008, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. The BSEE may post all submitted comments.
- Mail or hand-carry comments to the Department of the Interior (Department or DOI); Bureau of Safety and Environmental Enforcement; Attention: Regulations Development Branch; 45600 Woodland Road, VAE–ORP, Sterling VA 20166. Please reference ''Oil and Gas Production Safety Systems—Revisions, 1014–AA37'' in your comments and include your name and return address.
- *Send comments on the information collection in this proposed rule to:* Interior Desk Officer 1014–0003, Office of Management and Budget; 202–395–5806 (fax); email: *oira_submission@omb.eop.gov.* Please send a copy to BSEE.
- Public Availability of Comments—Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. In order for BSEE to withhold from disclosure your personal identifying information, you must identify any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequence(s) of the disclosure of information, such as embarrassment, injury, or other harm. 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.

FOR FURTHER INFORMATION CONTACT:

Amy White, Regulations and Standards Branch, 703–787–1665 or by email: *regs@bsee.gov.*

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SUPPLEMENTARY INFORMATION:

A. BSEE Statutory and Regulatory Authority and Responsibilities

BSEE derives its authority primarily from the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331–1356a. Congress enacted OCSLA in 1953, authorizing the Secretary of the Interior (Secretary) to lease the Outer Continental Shelf (OCS) for mineral development and to regulate oil and gas exploration, development, and production operations on the OCS. In 1978, Congress amended OCSLA to create environmental safeguards, promote greater cooperation between the Federal government and States and localities, and to ensure safe working conditions for those employed on the OCS. The Secretary has delegated authority to perform certain of these functions to BSEE.

To carry out its responsibilities, BSEE regulates offshore oil and gas operations to enhance the safety of offshore exploration and development of oil and gas on the OCS and to ensure that those operations protect the environment and implement advancements in technology. BSEE also conducts onsite inspections to assure compliance with regulations, lease terms, and approved plans. Detailed information concerning BSEE's regulations and guidance to the offshore oil and gas industry may be found on BSEE's website at: *http://www.bsee.gov/Regulations-and-Guidance/index.*

BSEE's regulatory program covers a wide range of facilities and activities, including drilling, completion, workover, production, pipeline, and decommissioning operations.

B. Summary of the Rulemaking

This proposed rule would amend and update the 30 CFR part 250, subpart H, Oil and Gas Production Safety Systems regulations. This proposed rule would fortify the Administration's objective of facilitating energy dominance though encouraging increased domestic oil and gas production, by reducing unnecessary burdens on stakeholders while maintaining or advancing the level of safety and environmental protection. Since 2010, the Department has promulgated several rulemakings (*e.g.,* Safety and Environmental Management Systems (SEMS) I and II final rules, the final safety measures rule, the annular casing pressure management final rule, and the blowout preventer systems and well control final rule) to improve worker safety and environmental protection. On September 7, 2016, the Department published a final rule substantially revising Subpart H—Oil and Gas Production Safety Systems (81 FR 61834). That final rule addressed issues such as production safety systems, subsurface safety devices, and safety device testing. These systems play a critical role in protecting workers and the environment. Most of the provisions of that rulemaking took effect on November 7, 2016. Since that time, BSEE has become aware that certain provisions in that rulemaking created potentially unduly burdensome requirements to oil and natural gas production operators on the OCS, without significantly increasing safety of the workers or protection of the environment. While implementing the requirements from the previous rulemaking, BSEE reassessed a number of the provisions in the original rulemaking and determined that some provisions could be revised to reduce or eliminate some of the concerns expressed by the operators, reducing the burden, while providing the same level of safety and protection of the environment.

This proposed rulemaking would primarily revise sections of 30 CFR part 250, subpart H—Oil and Gas Production Safety Systems that address the following requirements in the current Subpart H regulations:

- Update the incorporated edition of standards referenced in subpart H.
- Add gas lift shut down valves (GLSDVs) to the list of safety and pollution prevention equipment (SPPE).
- Revise requirements for SPPE to clarify the existing regulations, and remove the requirement for operators to certify through an independent third party that each device is designed to function in the most extreme conditions to which it will be exposed and that the device will function as designed. Compliance with the various required standards (including American Petroleum Institute (API) Spec Q1, American National Standards Institute (ANSI)/API Spec. 14A, ANSI/API RP 14B, ANSI/API Spec. 6A, and API Spec. 6AV1) ensures that each device will function in the conditions for which it was designed.
- Clarify failure reporting requirements.
- Clarify and revise some of the production safety system design requirements, including revising the requirements for piping schematics, simplifying the requirements for electrical system information, clarifying when operators must provide certain documents to BSEE, and clarifying when operators must update existing documents.
- Clarify requirements for Class 1 vessels.
- Clarify requirements for inspection of the fire tube for tube-type heaters.
- Clarify the requirement for notifying the District Manager before commencing production.
- Make other conforming changes to ensure consistency within the regulations and minor edits.

C. Recent Executive and Secretarial Orders

Since the start of 2017, the President issued several Executive Orders (E.O.) that necessitated the review of BSEE's rules. On January 30, 2017, the President issued E.O. 13771, entitled, ''Reducing Regulation and Controlling Regulatory Costs,'' which requires Federal agencies to take proactive measures to reduce the costs associated with complying with Federal regulations. On March 28, 2017, the President issued E.O. 13783, ''Promoting Energy Independence and Economic Growth,'' (82 FR 16093). This E.O. directed Federal agencies to review all existing regulations and other agency actions and, ultimately, to suspend, revise, or rescind any such regulations or actions that unnecessarily burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law. E.O. 13783 also required a review of all

''existing rules, regulations, orders, guidance documents, policies, and any other similar agency actions,'' that may burden energy development. The E.O. directed agencies to ''suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding, those actions'' that unduly burden oil and gas development beyond what is needed to protect the public interest or comply with the law.

On April 28, 2017, the President issued E.O. 13795, ''Implementing an America-First Offshore Energy Strategy,'' (82 FR 20815). The E.O. directed the Secretary to reconsider the Well Control Rule [1] and to take appropriate action to revise any related rules for consistency with the order's stated policy ''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, while ensuring that any such activity is safe and environmentally responsible'' and ''publish for notice and comment a proposed rule revising that rule, if appropriate and as consistent with law.''

To further implement E.O. 13783, the Secretary issued Secretary's Order (S.O.) 3349, ''American Energy Independence'' on March 29, 2017. The order directed the DOI to review all existing regulations ''that potentially burden the development or utilization of domestically produced energy resources.'' To further implement E.O. 13795, the Secretary issued S.O. 3350, ''America-First Offshore Energy Strategy,'' on May 1, 2017, which directed BSEE to review the Well Control Rule and related rulemakings. BSEE interpreted each of these orders to apply to the Subpart H—Production Safety System rulemaking (Subpart H Rule).

As part of its response to E.O.s 13783 and 13795, and S.O.s 3349 and 3350, BSEE reviewed the previous Subpart H Rule and is proposing revisions to the current regulations that could potentially reduce burdens on operators without impacting safety and protection of the environment. In addition, in response to comments from industry received since the previous final Subpart H Rule was published, BSEE is proposing certain revisions that would clarify the existing regulations.

[1] Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control, 81 FR 25887 (April 29, 2016).

D. Incorporation by Reference of Industry Standards

BSEE frequently uses standards (*e.g.,* codes, specifications (Spec.), and recommended practices (RP)) developed through a consensus process, facilitated by standards development organizations and with input from the oil and gas industry, as a means of establishing requirements for activities on the OCS. BSEE may incorporate these standards into its regulations by reference without republishing the standards in their entirety in regulations. The legal effect of incorporation by reference is that the incorporated standards become regulatory requirements. This incorporated material, like any other regulation, has the force and effect of law. Operators, lessees, and other regulated parties must comply with the documents incorporated by reference in the regulations. BSEE currently incorporates by reference over 100 consensus standards in its regulations. (*See* 30 CFR 250.198.)

Federal regulations, at 1 CFR part 51, govern how BSEE and other Federal agencies incorporate documents by reference. Agencies may incorporate a document by reference by publishing in the **Federal Register** the document title, edition, date, author, publisher, identification number, and other specified information. The preamble of the proposed rule must also discuss the ways that the incorporated materials are reasonably available to interested parties and how those materials can be obtained by interested parties. The Director of the Federal Register will approve each incorporation of a publication by reference in a final rule that meets the criteria of 1 CFR part 51.

When a copyrighted publication is incorporated by reference into BSEE regulations, BSEE is obligated to observe and protect that copyright. BSEE provides members of the public with website addresses where these standards may be accessed for viewing—sometimes for free and sometimes for a fee. Standards development organizations decide whether to charge a fee. One such organization, the American Petroleum Institute (API), provides free online public access to view read only copies of its key industry standards, including a broad range of technical standards. All API standards that are safety-related and that are incorporated into Federal regulations are available to the public for free viewing online in the Incorporation by Reference Reading Room on API's website at: *http://publications.api.org.*[2] In addition to the free online availability of these standards for viewing on API's website, hardcopies and printable versions are available for purchase from API. The API website address to purchase standards is: *http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents.*

For the convenience of members of the viewing public who may not wish to purchase copies or view these incorporated documents online, they may be inspected at BSEE's office, 45600 Woodland Road, Sterling, Virginia 20166, or by sending a request by email to *regs@bsee.gov.*

E. Section-by-Section Discussion of Changes

Documents Incorporated by Reference (§ 250.198)

This proposed rulemaking would update the incorporation by reference of superseded standards currently incorporated in Subpart H to the current edition of the relevant standard. This includes incorporating new or recently reaffirmed editions of a number of standards referenced in Subpart H, as well as replacing one standard currently incorporated in the regulations, that was withdrawn by API, with a new standard. However, BSEE is still evaluating the newer editions of these standards to analyze the specific changes between the incorporated editions and the current editions and to assess the potential impacts of those changes on offshore operations. BSEE may decide not to replace the incorporated edition of a specific standard before the publication of the final rule. BSEE is soliciting comments that will inform our decision on updating these standards, including comments on potential risks and costs associated with the new editions. BSEE will consider a number of factors in evaluating the current editions; primarily focusing how compliance with the current edition balances impacts on safety and protection of the environment and with costs and burdens. If BSEE decides to replace the incorporated documents with new editions in the final rule, the new editions would apply to all sections of 30 CFR part 250 where those documents are incorporated. BSEE may also make some conforming changes to the regulatory text in the final rule that

[2] To view these standards online, go to the API publications website at: *http://publications.api.org.* You must then log-in or create a new account, accept API's ''Terms and Conditions,'' click on the ''Browse Documents'' button, and then select the applicable category (*e.g.,* ''Exploration and Production'') for the standard(s) you wish to review.

were not identified in this proposed rule.

This proposed rulemaking would replace the following standard:

• API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore was withdrawn by API and superseded by API STD 6AV2—Installation, Maintenance, and Repair of Surface Safety Valves and Underwater Safety Valves Offshore. API STD 6AV2, first edition 2014 revises and supersedes API Recommended Practice 14H, Fifth Edition 2007. API STD 6AV2 provides practices for installing and maintaining SSVs and USVs used or intended to be used as part of a safety system, as defined by documents such as API Recommended Practice 14C. The standard includes provisions for conducting inspections, installations, and maintenance, field and off-site repair. Other provisions address testing procedures, acceptance criteria, failure reporting, and documentation. Significant changes include updated definitions; new provisions for qualified personnel; documentation, test procedures and acceptance criteria for post-installation and post-field repair, and offsite repair and remanufacture alignment to API 6A.

BSEE would update the incorporated edition of the following standards:

• ANSI/American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section I, Rules for Construction of Power Boilers; including Appendices, 2017 Edition; and July 2017 Addenda, and all Section I Interpretations Volume 55. This would update the current incorporation of the 2004 Edition (and 2005 Addenda) of the same standard. ASME BPVC Section 1 provides all methods and requirements for construction of power, electric, and miniature boilers; high temperature water boilers, heat recovery steam generators, and certain fired pressure vessels to be used in stationary service; and power boilers used in locomotive, portable, and traction service. Major Changes in this edition include (a) visual examination guidance in the fabrication process, (b) a non-mandatory option for ultrasonic examination acceptance criteria, (c) rules for retaining radiographs as digital images, (d) clarification on material identification requirements for a ''pressure part material'', (e) updated mandatory training for qualified personnel for various non-destructive examination (NDE) techniques, (f) updated what types of auxiliary lift devices can be used for alternative testing of valves to align with current state of the art, (g) clarified that welded pressure parts shall be hydrostatic tested with the completed boiler, and references to other standards updated.

• ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Rules for Construction of Heating Boilers; including Appendices 1, 2, 3, 5, 6, and Non-mandatory Appendices B, C, D, E, F, H, I, K, L, and M, and the Guide to Manufacturers Data Report Forms, 2017 Edition; July 2017 Addenda, and all Section IV Interpretations Volume 55. This would update the current incorporation of the 2004 Edition (and 2005 Addenda) of the same standard. This Section provides requirements for design, fabrication, installation and inspection of steam heating, hot water heating, hot water supply boilers, and potable water heaters intended for low pressure service that are directly fired by oil, gas, electricity, coal or other solid or liquid fuels. The new edition has (a) equipment scope clarifications, (b) a new mandatory appendix for feedwater economizers, (c) deleted conformity assessments requirements and moved them to normative reference ASME CA–1, (d) new corrosion resistant alloy requirements for internal tank surfaces of heat exchangers installed in storage tanks, and (e) clarified requirements for modular boilers.

• ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Pressure Vessels; Divisions 1 and 2, 2017 Edition; July 2017 Addenda, Divisions 1, 2, and 3 and all Section VIII Interpretations Volumes 54 and 55.

This document gives detailed requirements for the design, fabrication, testing, inspection, and certification of both fired and unfired pressure vessels. It specifically refers to those pressure vessels that operate at pressures, either internal or external, that exceed 15 psig. Since the 2004 edition, ASME has attempted to rewrite the ASME code to incorporate the latest technologies and engineering knowledge. Section VIII contains three divisions, each of which covers different vessel specifications.

Division 1 of Section VIII largely contains appendixes, some mandatory and some non-mandatory, that detail supplementary design criteria, nondestructive examination techniques, and inspection acceptance standards for pressure vessels. It also contains rules that apply to the use of the single ASME certification mark. Significant changes include (a) new general requirements for quick-actuating closures and quick-opening closures, (b) updated nozzle design methods, (c) moved conformity assessment requirements to the newly referenced ASME CA–1 standard, (d) clarified when manual or automated ultrasonic examination methods are acceptable, and (e) allowance for organizations who fabricate parts without design responsibility to obtain an ASME certification.

Division 2 contains more rigorous requirements for the materials, design, and nondestructive examination techniques for pressure vessels to offset the use of higher stress intensity values in the design. Significant changes include (a) the addition of two classes of vessels, with differing design margins, and certification requirements, (b) updated acceptance criteria for shear stresses, (c) moved conformity assessment requirements to the newly referenced ASME CA–1 standard, (d) axial and compressive hoop compression requirements, and (e) corrected design equation for non-circular vessels.

• API 510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration, Downstream Segment, Tenth Edition, May 2014; Addendum 1, May 2017. This would update the current incorporation of the Ninth Edition (from 2006) of the same standard. The tenth edition of API 510 was issued May 2014 and replaces the ninth edition from June 2006. API 510 covers the in-service inspection, repair, alteration, and re-rating activities for pressure vessels and the pressure-relieving devices protecting these vessels. The intent of API 510 is to specify the in-service inspection and condition-monitoring program that is needed to determine the integrity of pressure vessels and pressure-relieving devices. The tenth edition includes updated normative references, updated definitions, and new requirements for inspection programs, corrective actions, management of change, integrity operating windows, pressure testing, corrosion considerations and marking requirements.

• API STD 2RD, Dynamic Risers for Floating Production Systems, Second Edition, September 2013. This would update the current incorporation of the First Edition (from 1998; as well as 2009 Errata) of the same standard. API RP 2RD first edition was published in 1998. In September 2013, the second edition of the document was issued as a standard instead of a recommended practice (RP). The second edition attempts to address the advancement in technology and deepwater environments and addresses a broader scope of marine risers compared to the first edition. The design approach has changed from an allowable stress criteria to a load and resistance factor design, also known as limit state design.

From there, four different methods are given to evaluate combined loads and the designer has the flexibility to choose which one to use. Each method ensures burst limit states are not exceeded for the extreme ''Accidental Limit State'' (survival) case. Other design changes addressed include both structural and leak limit states for components, exceedance of yield, combined load approach, explicit burst and collapse checks, temperature de-rating, special material testing requirements, fatigue checks, and accidental load assessments. A requirement to develop and implement an integrity management program is also in the second edition, along with integrity management activities such as new installation requirements and monitoring, post installation surveys, and fatigue damage analyses.

• API RP 2SK, Recommended Practice for Design and Analysis of Stationkeeping Systems for Floating Structures, Third Edition, October 2005, Addendum, May 2008, Reaffirmed June 2015. This would update the current incorporation of this standard to reflect its reaffirmation in June 2015. The third edition of API RP 2SK was released in October 2005 and reaffirmed in 2015. This document presents a rational method for analyzing, designing, or evaluating station-keeping systems used for floating units. This document addresses station-keeping system (mooring, dynamic positioning, or thruster-assisted mooring) design, analysis and operation. Different design requirements for mobile and permanent moorings are provided. There are no changes to this document; we are simply revising to reflect the reaffirmation of this standard.

• API RP 2SM, Recommended Practice for Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore Mooring, Second Edition, July 2014. This would update the current incorporation of the First Edition (from 2001; as well as 2007 Addendum) of the same standard. API 2SM first edition was published March 2001 and its update was published in July 2014. This document covers recommended practices for manufacture, installation and maintenance of synthetic fiber ropes as offshore moorings for permanent and temporary offshore installations. The document also discusses the difference between steel catenary moorings and synthetic fiber moorings. This scope and structure provides guidance as to the advantages of utilizing each anchoring methodology and the logic an operator should use in selecting mooring systems. The most significant change in the new edition of API 2SM is the addition of more requirements for in-service inspection, testing, and maintenance. This document intends to ensure robust design and use of synthetic fiber rope for offshore moorings.

• ANSI/API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems, Sixth Edition, September 2015. This would update the current incorporation of the fifth edition (from 2005) of the same standard. ANSI/API RP 14B sixth edition was published September 2015, and supersedes the fifth edition published October 2005. This standard creates requirements and provides guidelines for subsurface safety valves (SSSV) system equipment. Subsurface safety valve systems are designed and installed to prevent uncontrolled well flow when actuated. The new edition addresses system design, installation, operation, testing, redress, support activities, documentation, and failure reporting. Specific equipment covered in the standard includes control systems, control lines, SSSVs and secondary tools. The new edition also emphasizes supplier and manufacturer operating manuals, systems integration manuals, handling, system quality, documentation, and data control. Finally, ANSI/API RP 14B provides criteria for proper redress for replacement or disassembly of an SSSV.

• API RP 14C, Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Eighth Edition, February 2017. This would update the current incorporation of the Seventh Edition (from 2001, reaffirmed 2007) of the same standard. The eighth edition API RP 14C contains extensive changes compared to the last substantive revision (sixth edition) in 1998. This document presents provisions for designing, installing, and testing both process safety and non-marine emergency support systems (ESSs) on an offshore fixed or floating facility. API RP 14C addresses methods to document and verify process safety system functions, as well as procedures for testing common safety devices with recommendations for test data and acceptable test tolerances.

Components addressed in the new standard are boarding shut down valve requirements, pipeline Shutdown Valve (SDV)/Flow Safety Valve (FSV) leakage and testing requirements, compressors, heat exchangers, High Integrity Pressure Protection System (HIPPS), acceptable SSV leakage rates, pump suction lines, and Temperature Safety Element (TSE) requirements. For users of HIPPS, the eighth edition references to more performance based standards, such as API 521, ''Guide for Pressure-Relieving and Depressuring Systems.'' New annexes in the eighth edition cover HIPPS, logic solvers, safety system bypassing, and remote operations. Finally, all subsea requirements were removed and relocated to the new standard API 17V, ''Recommended Practice for Analysis, Design, Installation, and Testing of Safety Systems for Subsea Applications,'' while API 14C addresses topside safety systems.

• API RP 14FZ, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1 and Zone 2 Locations, Second Edition, May 2013. This would update the current incorporation of the first Edition (from 2001, reaffirmed 2007) of the same standard. API RP 14FZ first edition was published September 2001 and reaffirmed March 2007. The second edition of API RP 14FZ was published May 2013 and contains substantial changes from the first edition. The second edition establishes minimum requirements and guidelines for design and installation of electrical systems on fixed and floating petroleum facilities located offshore when hazardous locations are classified as Zone 0, Zone 1, or Zone 2. As revised, API RP 14FZ applies to both permanent and temporary electrical installations and is intended to describe basic desirable electrical practices for offshore electrical systems.

• API RP 14G, Recommended Practice for Fire Prevention and Control on Fixed Open-type Offshore Production Platforms, Fourth Edition, April 2007; reaffirmed January 2013. This would update the current incorporation of this standard to reflect its reaffirmation in 2013. This publication includes provisions for minimizing the likelihood of having an accidental fire, and for designing, inspecting, and maintaining fire control systems. It emphasizes the need to train personnel in firefighting, to conduct routine drills, and to establish methods and procedures for safe evacuation. The fire control systems in this publication are intended to provide an early response to incipient fires to prevent their growth. However, this recommended practice is not intended to preclude the application of more extensive practices to meet special situations or the substitution of other systems which will provide an equivalent or greater level of protection.

This publication is applicable to fixed open-type offshore production platforms which are generally installed in moderate climates and which have sufficient natural ventilation to minimize the accumulation of vapors. Enclosed areas, such as quarters buildings and equipment enclosures, normally installed on this type platform, are addressed. Totally enclosed platforms installed for extreme weather conditions or other reasons are beyond the scope of this RP.

• API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, Third Edition, December 2012; Errata January 2014. This would update the current incorporation of the second edition (from 1997, reaffirmed in 2002) of the same standard. The purpose of this recommended practice is to provide guidelines for classifying locations Class I, Division 1 and Class I, Division 2 at petroleum facilities for the selection and installation of electrical equipment. Basic definitions given in the 2011 edition of National Fire Protection Association (NFPA) 70, National Electrical Code (NEC), have been followed in developing this RP.

• ANSI/API Specification Q1 (ANSI/API Spec. Q1), Specification for Quality Programs for the Petroleum, Petrochemical and Natural Gas Industry, Ninth Edition, June 2013; effective date June 1, 2014; Errata, February 2014; Errata 2, March 2014; Addendum 1, June 2016. This would update the current incorporation of the eighth edition (from 2007) of the same standard. API Specification Q1, ninth edition was published June 2013, and supersedes API Specification Q1, eighth edition 2007. This revision features over 85 new clauses and 5 new sections, creating a major shift in quality management as it applies to the oil and gas industry. A thematic change is the approach to quality through risk assessment and risk management. The five new sections include risk assessment and management, contingency planning, product quality plan, preventative maintenance, and management of change. Another motivation for the ninth edition revision is alignment with the 2011 publication API Specification Q2, Specification for Quality Management System Requirements for Service Supply Organizations for the Petroleum and Natural Gas Industries, first edition. Overall, the goal of API Q1 ninth edition is to further enhance the minimum baseline requirements of quality management systems of oil and gas equipment manufacturers.

• ANSI/API Specification 6A (ANSI/API Spec. 6A), Specification for Wellhead and Christmas Tree Equipment, Twentieth Edition, October 2010; Addendum 1, November 2011; Errata 2, November 2011; Addendum 2, November 2012; Addendum 3, March 2013; Errata 3, June 2013; Errata 4, August 2013; Errata 5, November 2013; Errata 6, March 2014; Errata 7, December 2014; Errata 8, February 2016; Addendum 4: June 2016; Errata 9, June 2016; Errata 10, August 2016. This would update the current incorporation of the Nineteenth Edition (from 2004) of the same standard. The twentieth edition of API Spec. 6A includes notable changes from the previous edition. Major changes include: (a) Updated definitions and terms, (b) updated normative references to other standards, (c) temperature ratings, (d) more stringent material performance requirements, (e) revamped repair and remanufacture annex, (f) updated requirements for equipment in hydrogen sulfide service, and (g) Surface Safety Valve (SSV) and Underwater Safety Valve (USV) performance requirements. This edition also aligns with other standards, such as material performance to NACE MR0175 (for use in H_2S-containing Environments), and options to use various ASTM (American Society for Testing and Materials) International documents for material testing. References to obsolete standards and requirements for obsolete equipment were removed from the twentieth edition.

• API Spec. 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Second Edition, February 2013. This would update the current incorporation of the first edition (from 1996, reaffirmed in 2003) of the same standard. The second edition of API Spec 6AV1 is the first substantive change in 21 years. The new edition establishes design validation requirements for API Specification 6A, Specification for Wellhead and Christmas Tree Equipment, for SSVs and USVs and associated valve bore sealing mechanisms for Class II and Class III. Major changes from the first edition include: Replacing ''Performance Requirement'' with the term ''Class,'' phasing out the use of Class 1/PR1 valves, the API licensing of test agencies, updated facility requirements, more specificity on the validation testing procedures of Class II, and new validation tests for Class III SSVs and USVs.

• ANSI/API Spec. 14A, Specification for Subsurface Safety Valve Equipment, Twelfth Ed. January 2015; Errata, July 2015; Addendum, June 2017. This would update the current incorporation of the eleventh edition (from 2005) of the same standard. API 14A twelfth edition was published January 2015 and was the successor to the eleventh edition of the document published October 2005. SSSVs are downhole valves that have integral importance to the safety of an offshore production system. The new edition now addresses other equipment such as injection valves (SSISVs), alternative SSSV technology, and secondary tools to SSSVs. Other significant changes include design analysis methods, new validation grades and associated testing, new HPHT requirements, and finally, harmonization with ANSI/API 14B, Design, Installation, Operation, Test, and Redress of Subsurface Safety Valves. This specification covers both valves and the secondary tools that interface with the valves to function properly.

• ANSI/API Spec. 17J, Specification for Unbonded Flexible Pipe, Fourth Edition May 2014; Errata 1, September 2016; Errata 2, May 2017; Addendum 1, October 2017. This would update the current incorporation of the third edition (from 2008) of the same standard. API 17J fourth edition was published May 2014 and it follows the third edition from July 2008. API 17J defines the technical requirements for safe, dimensionally and functionally interchangeable, flexible pipes. Minimum requirements are specified for the design, material selection, manufacture, testing, pipe composition, marking, and packaging of flexible pipes, with reference to existing codes and standards where applicable. The current edition updates definitions, overall functional requirements, internal pressure and temperature design considerations, fluid composition, corrosion protection, gas venting, fire resistance, and exothermal chemical reaction cleaning. Flexible pipe span lengths can flow from seabed to platform and from offshore to an onshore receiving entity.

• API 570 Piping Inspection Code: In-service Inspection, Rating, Repair, and Alteration of Piping Systems, Fourth Edition, February 2016; Addendum 1: May 2017. This would update the current incorporation of the third edition (from 2009) of the same standard. API 570 covers inspection, rating, repair, and alteration procedures for metallic and fiberglass-reinforced plastic (FRP) piping systems and their associated pressure relieving devices

that have been placed in service. This inspection Code applies to all hydrocarbon and chemical process piping covered in section 1.2.1 that have been placed in service unless specifically designated as optional per section 1.2.2. This publication does not cover inspection of specialty equipment including instrumentation, exchanger tubes and control valves. Process piping systems that have been retired from service and abandoned in place are no longer covered by this ''in service inspection'' Code. However abandoned in place piping may still need some amount of inspection and/or risk mitigation to assure that it does not become a process safety hazard because of continuing deterioration. Process piping systems that are temporarily out of service but have been mothballed (preserved for potential future use) are still covered by this Code. BSEE is also proposing to revise §§ 250.198(h)(58) and 250.198(h)(62) to update cross references to § 250.842(b) that would change to § 250.842(c) in this rulemaking.

What must the DWOP contain? (§ 250.292)

BSEE is proposing to revise § 250.292 paragraph (p)(3) to replace the incorporation by reference of API RP 2RD to API STD 2RD.

General (§ 250.800)

BSEE is proposing to revise § 250.800 paragraph (c)(2) to replace the incorporation by reference of API RP 2RD to API STD 2RD.

Safety and Pollution Prevention Equipment (SPPE) Certification. (§ 250.801)

This section would be revised to explicitly state that GLSDVs are included in SPPE. This is merely a clarification, since GLSDVs already must follow § 250.801. Under § 250.873 in the current regulations, GLSDVs must meet the requirements in §§ 250.835 and 250.836 for boarding shutdown valves (BSDVs). Further, § 250.835 requires that BSDVs meet the requirements in §§ 250.801 through 250.803. Since § 250.835 currently requires that BSDVs meet the requirements in § 250.801, and GLSDVs must meet the requirements for BSDVs in § 250.835 pursuant to § 250.873, it follows that GLSDVs are already required to meet the requirements of § 250.801. BSEE proposes to revise § 250.801 to expressly include GLSDVs in the list of equipment that BSEE considers to be SPPE to make this requirement more clear. BSEE also considered identifying water injection shutdown valves (WISDVs) as SPPE. However, under normal operation WISDVs do not handle hydrocarbons, so they do not serve the same function as other equipment identified as SPPE.

BSEE is proposing to revise the introductory sentence in paragraph (a) of this section to remove the phrase, ''[i]n wells located on the OCS.'' BSEE does not need to specify the location of the SPPE, since all of the equipment that is considered SPPE, is either located in a well or a riser.

Requirements for SPPE (§ 250.802)

Consistent with the proposed revision to § 250.801, BSEE would revise this section to add GLSDVs to the list of equipment in this section, as well.

BSEE would also remove the provision at § 250.802(c)(1) and redesignate subsequent paragraphs under paragraph (c). Current § 250.802(c)(1), is redundant with industry standards incorporated in BSEE's regulations. This section currently requires that a qualified independent third-party certify that SPPE will function as designed, including under the most extreme conditions to which it may be exposed.

Operators raised concerns that it may not be possible for independent third parties to certify that specific SPPE will perform under the most extreme conditions to which it will be exposed. Compliance with the various required standards (including API Spec Q1, ANSI/API Spec. 14A, ANSI/API RP 14B, ANSI/API Spec. 6A, and API Spec. 6AV1) ensures that each device will function in the conditions for which it was designed. In addition, the third-party reviews and certifications are unnecessary because the use of the standards referenced in paragraphs (a) and (b) of this section (*e.g.,* ANSI/API Spec. 6A, API Spec. 6AV1, ANSI/API Spec. 14A, and ANSI/API RP 14B) ensures the valves will function in the full range of operating conditions for which they were designed. BSEE generally requires independent third party reviews when the regulated technology, system, or component: (1) Is not addressed in existing engineering standards; (2) requires a high degree of specialized or technically complex engineering expertise to understand or evaluate; and/or (3) has an associated level of risk (or even novelty) associated that additional review, assurance, or evaluation is deemed prudent prior to acceptance or approval. These criteria for independent third-party review are not present since the SPPE meet the applicable specified industry standards incorporated into BSEE's regulations. Industry has used these SPPE for decades and the use of these valves does not require highly specialized expertise. Using these valves as intended reduces the risk associated with oil and natural gas production operations. Therefore, after review and consideration of the current requirements, BSEE concluded that requiring independent third party review and certification of these valves is not necessary, because ANSI/API Spec. 14A and ANSI/API Spec. Q1 provide for independent testing to ensure the devices will function as designed.

During the implementation of the original final rule, a number of operators inquired about using existing inventory of BSDVs that meet the requirements of § 250.802, but are not certified. BSEE is considering an approach that would allow operators to use this existing inventory. We are requesting comments on how to allow this, including information on the size of existing inventory and timing for use of that inventory, as well as comments on an approach to allow for this.

Consistent with the proposed change in § 250.801(a), BSEE would revise paragraph (d)(2) to remove the phrase, ''on that well.'' BSEE does not need to specify the location of the SPPE, since all of the equipment that is considered SPPE, is either located in a well or a riser. The preamble to the 2016 final rule describes the current table in § 250.802(d) as clarifying ''when operators must install SPPE equipment that conforms to the requirements of § 250.801'' and makes no mention of whether the SPPE is located in the well or riser (81 FR 61859). Consistently throughout, that preamble describes the requirements of existing §§ 250.800 through 250.802 without any reference to the location of the SPPE as on a well or riser, (*e.g.,* (81 FR 61846), describing the existing § 250.800(c)(2) as allowing operators to continue using BDSV and single bore production risers already installed on floating production systems).

What SPPE failure reporting procedures must I follow? (§ 250.803)

In addition to the specific proposals described below, BSEE is seeking input about how to revise the current language specifying what constitutes ''failure'' used in this regulation. In response to comments received on the previous proposed rulemaking, BSEE included this language in the previous Subpart H rulemaking. During implementation of the current rule, BSEE received a number of questions from industry asking for additional clarification of this language and of what specific equipment issues operators must report. BSEE is requesting comments on

revising how ''failure'' is specified. The current § 250.803 states, ''[a] failure is any condition that prevents the equipment from meeting the functional specification or purpose.''

Operators are required to follow the failure reporting requirements from ANSI/API Spec. 6A for SSVs, BSDVs, and USVs and to follow ANSI/API Spec. 14A and ANSI/API RP 14B for SSSVs. BSEE seeks input on specifying what constitutes ''failure'' for the purposes of the reporting requirements under § 250.803. The documents incorporated by reference in § 250.803 have different definitions of failure or may not include a definition of failure at all. Given these various definitions of failure, BSEE is inquiring as to if it is appropriate to include a single description of what constitutes failure that applies to all of the SPPE covered in § 250.803? Or is it more useful to include various descriptions, based on the type of equipment?

BSEE reviewed the definition of failure in various industry standards related to production systems, and found the following definitions:

API Spec 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Second Edition (incorporated by reference at §§ 250.802(a), 250.833, 250.873(b), and 250.874(g)), defines failure as: [i]mproper performance of a device or equipment item that prevents completion of its design function.''

ANSI/API Spec. 14A, Specification for Subsurface Safety Valve Equipment, Twelfth Edition (incorporated by reference at §§ 250.802(b) and 250.803(a)), defines failure as: [a]ny equipment condition that prevents it from performing to the requirements of the functional specification.

ABS 281, Guide for Classification and Certification of Subsea Production Systems, Equipment and Components, August 2017, defines failure as: [a]n event causing an undesirable condition (*e.g.,* loss of component or system function) or deterioration of functional capability to such an extent that the safety of the unit, personnel, or environment is significantly reduced.

BSEE would revise paragraph (a) of this section to include GLSDVs in the list of equipment that are subject to the failure reporting requirements. In addition, BSEE is proposing to revise this paragraph to require operators to submit their SPPE failure information to BSEE through the Chief, Office of Offshore Regulatory Programs, unless BSEE has designated a third-party. If BSEE has designated a third party, then operators would be required to submit it to that party. Currently, operators submit this information through *www.SafeOCS.gov*, where it is received and processed by the U.S. Department of Transportation's Bureau of Transportation Statistics (BTS), the designee of the Chief of the Office of Offshore Regulatory Programs (OORP). BSEE previously identified BTS as the designee of the Chief of OORP and recommended that SPPE failure information be sent to BTS via *www.SafeOCS.gov* through a press release issued on October 26, 2016 (*https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-expands-safeocs-program*). BSEE and BTS have an MOU that provides for BTS collection of BOP and SPPE failure reports. The MOU may be viewed on BSEE's website at: *https://www.bsee.gov/sites/bsee.gov/files/bsee-bts-mou-08-18-2016_0.pdf*.

Reporting instructions are on the SafeOCS website at: *https://www.SafeOCS.gov*. Reports submitted through *www.SafeOCS.gov* are collected and analyzed by BTS and protected from release under the Confidential Information Protection and Statistical Efficiency Act (CIPSEA). BTS operates under this Federal law, the CIPSEA, which requires that the program, under strict criminal and civil penalties for noncompliance, treats and stores reports confidentially. Information submitted under this statute also is protected from release to other government agencies, Freedom of Information Act (FOIA) requests, and subpoena. If the information were to be submitted to BSEE, BSEE could only protect its confidentiality as allowed by Federal law. Accordingly, while BSEE could keep certain information confidential, it would likely need to release much of the information related to the failure of SPPE. Were BSEE to reconsider its agreement with BTS to collect these reports, BSEE would look for arrangements with other agencies or non-governmental organizations that could provide the same degree of confidentiality as that provided by BTS under CIPSEA.

BSEE proposes to revise paragraph (d) to address the use of a BSEE-designated third party to receive the failure reporting information.

Design, Installation, and Operation of SSSVs—Dry Trees (§ 250.814)

BSEE would revise § 250.814 paragraph (d) to replace the incorporation by reference of API RP 14B with ANSI/API 14B.

Use of SSVs (§ 250.820)

This section would be revised to replace the incorporation by reference of API RP 14H, which was withdrawn by API, to API STD 6AV2.

Emergency Action and Safety System Shutdown—Dry Trees (§ 250.821)

BSEE is proposing to revise paragraph (a) of this section to clarify that operators must shut in the production on any facility that ''is impacted or that will potentially be impacted by an emergency situation.'' BSEE includes some examples of emergencies such as named storms, ice events in the Arctic, or earthquakes. It was not BSEE's intent to specify all emergency events that could trigger this regulation. The operator must determine when their facility is impacted or will potentially be impacted due to an emergency situation. The existing regulations do not clearly state that operators must shut in any facility that has been or may potentially be impacted by an impending emergency. The proposed clarification is to ensure that operators understand that they have an obligation to properly secure wells before the platform is evacuated in the event of an emergency. For example, if a well is capable of flowing and does not have a subsurface safety device, one must be installed. The current regulations require that this activity be done as soon as possible. BSEE requests comments on whether the phrase ''as soon as possible'' provides sufficient regulatory certainty or if there are more objective criteria, such as a before the facility is evacuated, that could be used to define these obligations.

Design, Installation, and Operation of SSSVs—Subsea Trees (§ 250.828)

BSEE would revise § 250.828 paragraph (c) to replace the incorporation by reference of API RP 14B with ANSI/API 14B.

Specification for Underwater Safety Valves (USVs) (§ 250.833)

BSEE is proposing to revise the introductory paragraph in this section to replace API Spec. 6A with ANSI/API Spec. 6A.

Use of USVs (§ 250.834)

This section would be revised to update the incorporation by reference of API RP 14H, which was withdrawn by API, to API STD 6AV2.

Use of BSDVs (§ 250.836)

This section would be revised to update the incorporation by reference of API RP 14H, which was withdrawn by API, to API STD 6AV2.

Emergency Action and Safety System Shutdown—Subsea Trees (§ 250.837)

BSEE is proposing to revise paragraph (a) of this section to clarify that operators must shut in the production

on any facility that ''is impacted or that will potentially be impacted by an emergency situation.'' This revision is consistent with the revision proposed for § 250.821(a) for facilities with dry tress. BSEE includes some examples of emergencies such as named storms, ice events in the Arctic, or earthquakes. It is not BSEE's intent to specify all emergency events that could trigger this regulation. The operator must determine when there may be potential impacts due to an emergency or if their facility was impacted by an emergency event. The existing regulations do not clearly state that operators must shut in any facility that has been or may be impacted by an impending emergency. BSEE would also add GLSDVs to the list of equipment that is closed during a shut-in. This is consistent with identifying GLSDVs as SPPE in §§ 250.801 through 250.803 and elsewhere in this subpart.

In addition, BSEE is proposing to revise paragraph (b) of this section to clarify the requirements for dropped objects in an area with subsea operations, and to be consistent with the provisions of subpart G on dropped objects. For example, the current subpart H regulations state that the operator must develop and submit a dropped objects plan to the appropriate District Manager, as part of an Application for Permit to Drill (APD) or Application for Permit to Modify (APM). A dropped objects plan is required by § 250.714. However, § 250.714 does not require operators to submit this plan as part of the APD or APM; rather, they must make their dropped object plans available to BSEE upon request. A dropped object plan is not a static plan, § 250.714 requires operators to update their dropped objects plans as the subsea infrastructure changes.

Throughout this section, BSEE would replace ''MODU or other type of workover vessel'' with ''vessel.'' The use of the word ''vessel'' is a more comprehensive term that includes any type of equipment that could be used to perform well operations.

Platforms (§ 250.841)

BSEE would add a new paragraph (c) to this section to address major modifications to a facility, by directing operators to follow the requirements in § 250.900(b)(2). This is not a new requirement, as operators are already required to follow the provisions of § 250.900(b)(2) for major modifications. This simply provides direction to the operator and emphasizes the need to follow § 250.900(b)(2).

The existing paragraph (b) of this section currently requires operators to maintain all piping for platform production processes as specified in API RP 14E Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems (API RP 14E). Section 6.5(a)(1) of API RP 14E addresses painting of steel piping to prevent corrosion. Corrosion prevention is important for safety and pollution prevention, and BSEE is not currently proposing to remove the reference to API RP 14E from this section. However, BSEE is interested in comments on whether other changes may be warranted. BSEE recognizes that there are difficulties accessing some of the piping on existing facilities, and BSEE is aware that operators have asked for extension, after BSEE has issued an incident of noncompliance, to provide additional time to implement this requirement on some facilities. In these cases, BSEE has generally requested that operators submit a departure request that includes an implementation plan to BSEE for complying with this section of API RP 14E. In the implementation plan, BSEE is looking for the operator to: (1) Identify facilities for which extra time is needed for compliance, (2) specify areas of inaccessible piping, (3) address precautions taken until the piping can be accessed for painting, and (4) prioritize high-risk areas for more rapid treatment.

Approval of Safety Systems Design and Installation Features (§ 250.842)

BSEE proposes to revise some of the requirements related to the diagrams and drawings the operators must to submit to BSEE for approval. Currently, operators must submit all of the documents listed in existing paragraph (a) of this section to BSEE for approval and those documents are required to be stamped by a registered professional engineer (PE). BSEE would revise this provision to require operators to submit only the most critical documents to BSEE and have those documents stamped by a PE. However, BSEE has identified some documents that the operator would be required to develop and maintain, but that that operator would not be required to submit to BSEE; nor would these documents would be required to be stamped by at PE. BSEE would list these less critical documents in a new paragraph (b).

BSEE would reorganize this section in conjunction with these changes. This proposed rulemaking would also clarify that operators do not need to update existing drawings until a modification request is submitted to BSEE. When an operator submits a modification request, it must include fully updated drawings as required in paragraph (a) with all changes stamped by a PE.

Existing introductory paragraph (a) states that before installing or modifying a production safety system the operator must submit a production safety system application to the District Manager for approval. This would be revised to clearly state that the operator must receive approval from the District Manager before commencing production through or utilizing the new or modified system.

The table in existing paragraph (a) identifies specific diagrams and drawings that the operator is required to submit to BSEE as part of the production safety system application and be stamped by a PE. BSEE would revise the table to require operators to submit the safety analysis flow diagram, safety analysis function evaluation (SAFE) chart, electrical one line diagram, and area classification diagram for new facilities and for modifications to existing facilities. In addition revised paragraph (a) would be revised to require operators to submit piping and instrumentation diagrams (P&ID) for new facilities only; the operator would not be required to submit the P&ID modification. The table under paragraph (a) would be reordered as part of this revision.

Existing paragraph § 250.842(a)(3), which addresses electrical system information would be substantially revised. This paragraph would be redesignated as paragraph (a)(2). Some items currently required as part electrical system information would be removed from the scope of required submissions. BSEE would revise this section would now require the operator to submit an electrical diagrams, showing key elements, including generators, circuit breakers, transformers, bus bars, conductors, battery banks, automatic transfer switches, uninterruptable power supply (UPS), dynamic (motor) loads, and static (*e.g.,* electrostatic treater grid, lighting panels, etc.) loads. Other information required under the current regulations would be moved to paragraph (b)(1) in this proposed revision, such as electrical drawings for cable/tray conduit routing plans and panel board/junction box location plans.

The proposed rule would redesignate existing paragraph (b) as paragraph (c) and insert a new paragraph (b). Some of the diagrams required in existing paragraph (a) would be moved to the new paragraph (b). The operator would still be required to develop and maintain all of the diagrams included in existing paragraph (a). However, for

those diagrams proposed to be moved into new paragraph (b), BSEE would only require the operator to develop and maintain them, and provide them to BSEE upon request. The operator would no longer be required to submit these with the production safety system application. These diagrams would include: Additional electrical system information, schematics of the fire and gas-detection systems, and revised P&IDs for existing facilities. The operator would not be required to have the diagrams and drawings listed in proposed new paragraph (b) certified and stamped by a PE. The operator would be required to develop and maintain these diagrams to accurately document any changes made to the production systems; and provide these to BSEE upon request.

The requirements for schematic P&IDs that are currently required under (a)(1) in the table would be moved to (a)(4) and revised to state that the operator is required to submit the P&ID for new facilities to BSEE. The operator would be required to develop and maintain revised P&IDs for modifications to existing facilities, under new (b)(3).

The safety analysis flow diagram and the related SAFE chart currently in section (a)(2) would be moved to (a)(1), with additional details added to clarify what the operator must include on the diagram.

Current paragraph (a)(3) in the table requires the operator to submit electrical system information. The proposed rule would move this to (a)(2) and revise it to require the operator to submit only the electrical one-line diagram. The additional electrical information in the current paragraph (a)(3) would be included in new section (b)(1), with details added to specify what electrical system information the operator must develop, maintain, and make available to BSEE.

This section would no longer require operators to identify all areas where potential ignition sources are located. This requirement is already addressed under § 250.842(c)(3), which requires operators to perform a hazards analysis in accordance with § 250.1911 and API RP 14J. API RP 14J specifically addresses ignition sources and minimizing the chances of ignition. API RP 14J directs the operators to consider all ignition sources when designing their facility and provides detailed guidance on designing the facility and equipment to prevent the ignition of hydrocarbons. The requirement for operators to develop and maintain a separate document identifying ignition sources is not necessary because this is inherent to compliance with API RP 14J. In addition, § 250.842(c)(3) requires operators to have a hazards analysis program in place to assess potential hazards during the operation of the facility.

New paragraph (b)(2) would address the schematics of the fire and gas-detection systems, which are currently addressed in existing paragraph (a)(4). New paragraph (b)(3) would include revised P&IDs for modifications to existing facilities.

Redesignated paragraph (c) (existing paragraph (b)), would continue to require operators to certify that: (1) The all electrical installations were designed according to API RP 14F or API RP 14FZ, as applicable; (2) a hazards analysis was performed in accordance with § 250.1911 and API RP 14J; and (3) operators have a hazards analysis program in place to assess potential hazards during the operation of the facility. Redesignated (c)(2) of § 250.842 (existing (b)(2)) would be revised to state that the designs for the mechanical and electrical systems that the operator is required to submit under paragraph (a) of this section be reviewed, approved, and stamped by an appropriate registered PE.

The drawings that would be required under new paragraph (b) include additional electrical system information, schematics of the fire and gas-detection systems, and revised P&IDs for existing facilities; would no longer require review, approval, and stamping by an appropriate registered PE. This change would reduce the burden on operators by no longer requiring a PE to certify as many diagrams and drawings. Operators would still be required to develop these diagrams and drawings and provide them to BSEE upon request. The operators would also be required to maintain them, ensuring they accurately reflect the current production system.

BSEE would remove existing paragraph (c), which currently requires operators to submit a letter to the District Manager certifying that the mechanical and electrical systems were installed in accordance with the approved designs, before beginning production. This step was intended to ensure the operator properly documented the installation of the mechanical and electrical systems. This submittal was a burdensome step to assure document management and confirm that operator performed the modification as proposed and approved. Because the operators must submit the as-built drawings which BSEE uses for field verification, the certification letter was not needed.

Under existing paragraph (d), the operators are already required to have the as-built diagrams stamped by a PE and to submit the as-built diagrams for the new or modified production safety systems to BSEE. Under the proposed rule, BSEE would no longer require operators to submit a letter to certify that the mechanical and electrical systems were installed in accordance with the approved designs. This letter was primarily used for tracking documentation; it is not needed by either industry or BSEE.

BSEE would clarify existing § 250.842(d) regarding PE stamping of required drawings.

The proposed rule would require the diagrams that are submitted to BSEE under § 250.842 paragraphs (a)(1), (2), and (3) to be reviewed, approved, and stamped by an appropriate registered PE(s). The requirement from existing paragraph (e), that the operators submit the as-built diagrams within 60 days of commencing production would be included in this section.

BSEE would redesignate existing paragraph (f) as paragraph (e), since the requirements from existing paragraph (e) would be moved to new paragraph (d). Redesignated paragraph (e) addresses the requirements for maintaining the documents required in this section. BSEE is not proposing any revisions to the requirements in this paragraph.

Pressure Vessels (Including Heat Exchangers) and Fired Vessels (§ 250.851)

BSEE is proposing to remove the dates from this section that required that existing uncoded pressure and fired vessels that were in use on November 7, 2016 (the effective date of the previous Subpart H rulemaking), to be code stamped before March 1, 2018. These dates no longer need to be included as they both will have already passed by the time the final rulemaking is issued in this rulemaking. In addition, most pressure vessels and fired vessels were already required to be coded stamped. The previous regulations only added vessels with an operating pressure greater than 15 psig to that requirement. The existing regulations provide that the operator may request approval from the District Manager to continue to use uncoded pressure and fired vessels.

Flowlines/Headers (§ 250.852)

BSEE is proposing to revise paragraphs § 250.852(e)(1) and (e)(4) to replace the reference to API Spec. 17J with ANSI/API Spec. 17J.

Safety Sensors (§ 250.853)

This section would be revised to add a new paragraph (d) to require that all

level sensors are equipped to permit testing through an external bridle on all new vessel installations, where possible, depending on the type of vessel for which the level sensor is used. This change was originally included in the previous proposed rulemaking. However, it was not included in the final rule, based on concerns raised by public comments. BSEE has reviewed those comments and is reconsidering its decision to remove this provision from the final rule. The preamble of the previous final rule stated that BSEE removed proposed paragraph (d) from the final rule because BSEE can address level sensors adequately using existing regulatory processes, such as the Deepwater Operations Plan (DWOP), and we do not need to specify uses and conditions of such sensors in this regulation.

When BSEE reviewed that decision, we determined that including this requirement in the regulations is important because it clearly states the expectation to have an external bridle to permit testing. This would ensure that, where possible, the sensor is accessible for testing, which is the accepted approach, at this time. A comment on the previous rulemaking asserted that certain sensor testing technologies (*e.g.,* ultrasonic and capacitance) are not suitable for use in external bridles, and that some proposed or new projects evaluated using ultrasonic, optical, microwave, conductive, or capacitance sensors, and that such sensors do not use bridles. BSEE recognizes that there are sensors that do not use bridles and that other equipment options exist. However, the use of level sensor with an external bridle that allows testing through the bridle remains BSEE's preferred approach. Sensor testing equipment built according to API standards, which are incorporated by reference into BSEE's regulations, should be able to meet this provision. We are proposing additional language to recognize other approaches, stating that operators must ensure that all level sensors are equipped to permit testing through an external bridle ''where possible, depending on the type of vessel for which the level sensor is used.'' This language allows BSEE more flexibility in approving a different design, without requiring the operator to apply for an alternate procedure or equipment to test the level sensor under § 250.141.

Temporary Quarters and Temporary Equipment (§ 250.867)

BSEE is proposing to revise paragraph (a) of this section to require District Manager approval of safety systems and safety devices associated with the temporary quarters prior to installation. This would apply to all temporary quarters to be installed on OCS production facilities. The existing regulations specify that that operator must receive approval for temporary quarters ''. . . installed in production processing areas or other classified areas on OCS facilities.'' This proposed would require approval of the safety systems and safety devices, instead of approval of the actual temporary quarters, regardless of where the temporary quarters are located. This proposed change recognizes that risk of a hazard occurring related to production is not restricted to the production areas or classified areas. This change would ensure that temporary quarters have the proper safety systems and devices installed to protect individuals in the temporary quarters, regardless of where they are located on the facility.

BSEE recognizes the authority of the United States Coast Guard (USCG) as the lead agency for living quarters on the OCS. This is recognized in two Memorandums of Agreement (MOAs) between BSEE and USCG related to oil and gas production facilities: MOA OCS–09, Fixed OCS Facilities, dated September 19, 2014 and MOA OCS–04, Floating OCS Facilities, dated January 28, 2016. MOA OCS–09 establishes BSEE as the lead for safety systems, specifically for emergency shutdown systems, gas detection, and safety and shutdown systems on fixed OCS facilities. MOA OCS–04 establishes BSEE as the lead for emergency shutdown systems and components on floating OCS facilities. The existing requirement that temporary quarters must be equipped with all safety devices required by API RP 14C, Annex G would not change. This paragraph would ensure operators install the proper safety devices on or in temporary quarters, including fire and gas detection equipment and emergency shut down stations addressed in API RP 14C. BSEE will discuss this proposed change with the USCG to ensure an understanding that the USCG will not approve the installation of the temporary quarters until the operator obtains approval of the safety systems and devices from BSEE.

BSEE would also add a new paragraph (d) to this section that states that operators must receive District Manager approval before installing temporary generators that would require a change to the electrical one-line diagram under § 250.842(a).

Time Delays on Pressure Safety Low (PSL) Sensors (§ 250.870)

BSEE is proposing to revise the requirement in paragraph (a) of this section regarding the use of Class B, Class C, or Class B/C logic. This section currently states that the operator ''may apply any or all of the industry standard Class B, Class C, or Class B/C logic to all applicable PSL sensors installed on process equipment, as long as the time delay does not exceed 45 seconds.'' BSEE would delete the phrase ''any or all of the'' from that sentence, as it is not needed. We would no longer require the operator to seek approval from BSEE for alternative compliance under § 250.141 to use a PSL sensor with a time delay that is greater than 45 seconds. Instead, the section would state that if the device may be bypassed for greater than 45 seconds, the operator must monitor the bypassed devices in accordance with § 250.869(a). The alternative compliance approval is not needed, since monitoring bypassed devices is addressed in the current § 250.869(a), for which no change is proposed.

Atmospheric Vessels (§ 250.872)

BSEE would revise paragraph (a) of this section to state that atmospheric vessels connected to the process system that contain a Class I liquid must be reflected on the corresponding drawings, along with the associated pumps. The current regulations do not specifically require the operator to include the atmospheric vessels on these drawings. However, since these tanks are used to process or store liquid hydrocarbons, it is important to identify where they are located in the processing system and to ensure they are properly protected.

BSEE is also proposing to revise paragraph (b) of this section, adding language that the operator must design the level safety high (LSH) sensor on the atmospheric vessel to prevent pollution as required by § 250.300(b)(3) and (4). This is not a new requirement. BSEE is adding this provision to emphasize the importance that these vessels be designed to prevent pollution.

In addition, BSEE is proposing to change the current requirement that the LSH must be installed to sense the level in the oil bucket, to limit this requirement to newly installed atmospheric vessels with oil buckets. The proposed change is based on questions and departure requests BSEE received during implementation of the Subpart H Rule. BSEE recognizes that the installation of a LSH on the oil bucket is not possible on some existing

vessels without extensive modifications to the vessels.

BSEE is proposing to remove § 250.872(c) which currently states that operators must ensure that all flame arrestors are maintained to ensure proper design function (installation of a system to allow for ease of inspection should be considered). This requirement is not necessary as it is redundant with § 250.800(a) which requires operators to maintain all production safety equipment in a manner to ensure the safety and protection of the human, marine, and coastal environments.

Subsea Gas Lift Requirements (§ 250.873)

BSEE is proposing to revise the table in paragraph (b) of this section to replace multiple references to API Spec. 6A with ANSI/API Spec. 6A.

Subsea Water Injection Systems (§ 250.874)

BSEE would revise paragraph (g)(2) of this section to replace the reference to API Spec. 6A with ANSI/API Spec. 6A.

Fired and Exhaust Heated Components (§ 250.876)

BSEE would revise this section to delete the requirement that the fire tube be removed during inspection. BSEE recognizes that there are other ways to inspect the fire tube, without removing them. For example, a combination of cameras with thickness sensors could be used to inspect fire tubes that cannot be easily accessed, instead of removing the fire tube completely. This change would allow the operator to determine an appropriate method to inspect the fire tube and is a more flexible, performance-based approach. BSEE recognizes the need for fire tube inspections; however, the process to remove the fire tube for inspection can pose its own safety concerns. In some cases, use of an alternative method for inspections would actually increase safety, since removing the fire tube may present a hazard if the fire tube is located in a place where it is not easy to remove.

Production Safety System Testing (§ 250.880)

BSEE is proposing to clarify language in paragraph (a)(1) of this section to clearly state that the operator must notify BSEE at least 72 hours before commencing initial production on a facility. The current language states that the operator must notify BSEE, ''at least 72 hours before commencing production.'' It does not specify that this notification is for initial production, leading to possible interpretation that the operator must notify BSEE anytime production on a facility has been shut in and the operator is ready to resume production. This interpretation was not BSEE's intent.

In addition, BSEE would revise paragraphs (c)(2)(iv) and (c)(4)(iii) to update the incorporation by reference of API RP 14H, which was withdrawn by API, to API STD 6AV2.

BSEE would also revise § 250.880 paragraph (c) to replace the incorporation by reference of API RP 14B with ANSI/API 14B.

What industry standards must your platform meet? (§ 250.901)

BSEE is proposing to revise paragraph (a) of § 250.901 and the table in paragraph (d) to update the incorporation by reference of API STD 2RD.

Design Requirements for DOI Pipelines (§ 250.1002)

BSEE is proposing to revise paragraph (b) of § 250.1002 to update the references to ANSI/API Spec. 6A, ANSI/API Spec. 17J, and API STD 2RD.

What To Include in Applications (§ 250.1007)

BSEE is proposing to revise paragraphs (a) of § 250.1007 to replace the reference to API Spec. 17J with ANSI/API Spec. 17J.

F. Additional Comments Solicited

BSEE has identified a number of potential revisions to the 30 CFR part 250 regulations that are not specifically included in this proposed rulemaking. However, BSEE is soliciting comments on these potential revisions, which it may implement in the final rule or a future rulemaking.

Potential Revisions to § 250.107(c) Best Available and Safest Technology (BAST)

In the 2016 final rule, BSEE revised the definition of BAST contained in Section 250.107 based on public comments. BSEE solicits comments on whether this language adequately reflects the statutory mandate concerning the use of BAST on the OCS.

Potential Revisions to § 250.198 Documents Incorporated by Reference

BSEE is considering potential, non-substantive revisions to § 250.198, as a whole, for the purposes of reorganizing and revising that section to make it clearer, more user-friendly, and more consistent with the Office of the Federal Register's (OFR's) recommendations for incorporations by reference in Federal regulations. BSEE will continue to consult with the OFR regarding its suggestions for specific organizational and language changes to § 250.198 and expects to address such revisions in a separate rulemaking as soon as possible. BSEE does not anticipate that those potential revisions would have any substantive impact on the proposed incorporations by reference of industry standards discussed in this notice.

Considerations for failure reporting under § 250.803 what SPPE failure reporting procedures must I follow?

BSEE is seeking input on clarifying when a failure analysis is required under § 250.803. Under what circumstances should BSEE require more failure analysis information? For example, a formal root cause failure analysis conducted by Subject Matter Experts, or the manufacturer? Should BSEE limit the formal failure analysis to cases where SPPE are returned to shore for remedial action to address the cause of the failure?

Extension of Compliance for Pressure Safety Valve (PSV) Testing Under § 250.880 Production Safety System Testing

BSEE also considered revising the requirements regarding PSV testing in § 250.880(c)(2)(i). This existing provision requires operators to test PSVs annually and that the main valve piston must be lifted during this test. The main valve piston is a critical component of the PSV, and this approach will verify it will actually vent when needed. BSEE recognizes that this is a change to the approach used for testing prior to the 2016 rule and that some operators needed time develop new testing procedures. In some cases, operators may need to modify existing equipment or fabricate new equipment to fully comply. BSEE granted departures to this provision, giving operators who requested a departure under § 250.142, until November 7, 2018 to comply with this requirement. BSEE expects that operators will be able to comply by that date and a revision to this requirement is not needed; nevertheless BSEE is considering whether it is appropriate to provide additional time to perform the first required test on those PSVs where it is not possible to lift the piston during the test. BSEE would potentially consider an additional 1 to 2 years beyond the effective of this rulemaking for BSEE seeks comments on this issue, including comments on an appropriate time period for the delay.

Potential Revisions Based on the Investigation of the Explosion and Fatality on West Delta Block 105 Platform E

In 2016, BSEE issued a panel report entitled Investigation of November 20, 2014, Explosion and Fatality, Lease OCS–00842, West Delta Block 105 Platform E. The incident involved an explosion inside the electrostatic heater treater located on the platform while the contract cleaning crew personnel were engaged in activities related to cleaning the vessel. The report and corresponding memorandum, can be found at *https://www.bsee.gov/wd-105-e-panel-report*. We are seeking comments on the possibility of revising BSEE's regulations to address the recommendations in this report, including information on timing, costs, and other considerations. BSEE will consider relevant comments in developing any proposed rulemaking addressing the following topics from the report:

Safety Device To De-Energize Electrostatic Heater Treater

Should BSEE consider requiring facilities to have a safety device able to detect a drop in the level of the coalescing section of electrostatic treaters and have the associated function of tripping the power to the transformer and/or grid if the level drops too low? How are the associated risks for similar equipment managed?

Safe Cleaning Procedures for Tanks and Vessels

Do the existing BSEE regulations and standards provide adequate guidance regarding safety when performing cleaning activities on tanks or vessels that contain, or previously contained, petroleum or petroleum-related products? If not, what revisions to BSEE's regulations or incorporated standards are needed?

Implementation of This Rulemaking

BSEE seeks comments on potential obstacles for implementing the requirements in this NPRM; including the feasibility of implementation and any hardships operators may encounter during implementation.

Procedural Matters

Regulatory Planning and Review (E.O. 12866, E.O. 13563, E.O. 13771)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs within OMB will review all significant rules. The Office of Information and Regulatory Affairs has determined that this proposed rule is neither economically significant nor significant because it would raise novel legal or policy issues. After reviewing the requirements of this proposed rule, BSEE has determined that it will not have an annual effect on the economy of $100 million or more nor adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, public health or safety, the environment, or state, local, or tribal governments or communities.

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

Executive Order 13771 requires Federal agencies to take proactive measures to reduce the costs associated with complying with Federal regulations. Consistent with E.O. 13771 BSEE has evaluated this rulemaking based on the requirements of E.O. 13771. This proposed rule is expected to be an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis. While this rulemaking is not a significant regulatory action under E.O. 12866, the regulatory clarifications, reduction in paperwork burdens, adoption of industry standards, migration to performance standards for select provisions and additional time for operators to meet the production equipment requirements constitutes an E.O. 13771 deregulatory action. BSEE also finds the reduction in regulated entity compliance burden does not increase the safety or environmental risk for offshore production operations.

This rule primarily proposes to revise sections of 30 CFR part 250 subpart H—Oil and Gas Production Safety Systems. BSEE has reassessed a number of the provisions in the original (1014–AA10) rulemaking and determined that some provisions should be written as performance standards rather than prescriptive requirements. Other proposed revisions reduce or eliminate parts of the paperwork burden of the original rulemaking, while providing the same level of safety and environmental protection. BSEE has reexamined the economic analysis for the 2016 1014–AA10 final rule and now believes that it may have underestimated compliance costs. BSEE is therefore revising some of the compliance cost assumptions in that analysis for this rulemaking. The underestimate of compliance costs in the 1014–AA10 analysis is primarily related to (1) the burden for obtaining PE review and stamping of all drawings on a facility if any production equipment modifications are proposed and (2) duplicative independent third party equipment certifications that would no longer be required under this proposal. BSEE underestimated both the cost and number of PE reviews required under § 250.842. The cost of independent 3rd party testing and certifications required under the § 250.802 paragraph (c)(1) was also underestimated by BSEE.

BSEE expects this proposed rule to reduce the regulatory burden on industry. Regulatory compliance cost savings are a result of changes in the proposed rule that reduce burden hours, PE stamping for production safety system components and independent third party equipment certifications. BSEE estimates this rulemaking, if adopted, would reduce industry compliance burdens by $33 million annually. Over 10 years BSEE estimates the reduced compliance burdens and cost savings to be $281 million discounted at 3 percent or $228 million discounted at 7 percent. As discussed in the initial Regulatory Impact Analysis (RIA) the proposed amendments would not negatively impact worker safety or the environment.

The cost savings for revised provisions on PE stamping of production safety system modification documents (§ 250.842) is the single largest single cost savings provision in this proposed rule. The additional PE certifications and stamping will no longer be required for all production safety system documents in an application, only the documents for those components being modified. BSEE estimates the net regulatory cost savings will be $23.1 million in the first year (2018) and $162.0 million over 10 years discounted at 7 percent. The other provision providing substantial regulatory relief is the proposed elimination of the third-party reviews and certifications for select SPEE. Compliance with the various required standards (including API Spec Q1,

ANSI/API Spec. 14A, ANSI/API RP 14B, ANSI/API Spec. 6A, and API Spec. 6AV1) ensures that each device will function in the conditions for which it was designed. The table below summarizes BSEE's estimate 10-year the compliance cost savings. Additional information on the compliance costs, savings and benefits can be found in the initial RIA posted in the docket.

TOTAL ESTIMATED COST SAVINGS ASSOCIATED WITH AMENDMENTS TO SUBPART H

[2016 $]

Year	Undiscounted	Discounted at 3%	Discounted at 7%
Total	$332,630,000	$281,021,257	$228,268,048
Annualized	33,263,000	32,944,264	32,500,235

BSEE has developed this final rule consistent with the requirements of E.O. 12866, E.O. 13563, and E.O. 13771. This proposed rule revises various provisions in the current regulations with performance-based provisions based upon the best reasonably obtainable safety, technical, economic, and other information. BSEE has provided industry flexibility to meet the safety or equipment standards rather than specifying the compliance method when practical. Based on a consideration of the qualitative and quantitative safety and environmental factors related to the proposed rule, BSEE's assessment is that its promulgation is consistent with the requirements of the applicable E.O.s and the OCSLA and that this rulemaking would impose the least burden on industry and provide the public a net benefit.

Small Business Regulatory Enforcement Fairness Act and Regulatory Flexibility Act

The proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. This proposed rule would revise the requirements for oil and gas production safety systems. The changes would not have any negative impact on the economy or any economic sector, productivity, jobs, the environment, or other units of government. Most of the new requirements are related to inspection, testing, and paperwork requirements, and would not add significant time to development and production processes.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements will apply to all entities operating on the OCS.

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires agencies to analyze the economic impact of proposed regulations when a significant economic impact on a substantial number of small entities is likely and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities. The Initial Regulatory Flexibility Analysis (IRFA), which assesses the impact of this proposed rule on small entities, can be found in the Regulatory Impact Analysis within the rulemaking docket.

As defined by the Small Business Administration (SBA), a small entity is one that is ''independently owned and operated and which is not dominant in its field of operation.'' What characterizes a small business varies from industry to industry in order to properly reflect industry size differences. This proposed rule would affect lease operators that are conducting OCS drilling or well operations. BSEE's analysis shows this could include about 69 companies with active operations. Of the 69 companies, 21 (30 percent) are large and 48 (70 percent) are small. Entities that would operate under this proposed rule primarily fall under the SBA's North American Industry Classification System (NAICS) codes 211111 (Crude Petroleum and Natural Gas Extraction). For the NAICS code 211111, a small company has fewer than 1,251 employees.

BSEE considers that a rule will have an impact on a ''substantial number of small entities'' when the total number of small entities impacted by the rule is equal to or exceeds 10 percent of the relevant universe of small entities in a given industry. BSEE's analysis shows that there are 48 small companies with active operations on the OCS. All of the operating businesses meeting the SBA classification are potentially impacted; therefore BSEE expects that the proposed rule would affect a substantial number of small entities.

This proposed rule is a deregulatory action and BSEE has estimated the overall associated costs savings. BSEE has estimated the annualized cost savings and allocated those savings to small or large entities based on the number of active or idle OCS production facilities. Using the share of small and large companies' production facilities, we estimate that small companies would realize 87 percent of the cost savings from this rulemaking and large companies 13 percent. Small companies operate ~90 percent of the shallow water facilities and are expected to realize most of the benefits in this rulemaking due to the greater number of facilities operated. Additional information can be found in the IRFA in the rulemaking docket.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implications Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that

State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

The BSEE has the authority to regulate offshore oil and gas production. State governments do not have authority over offshore production on the OCS. None of the changes in this proposed rule would affect areas that are under the jurisdiction of the States. It would not change the way that the States and the Federal government interact, or the way that States interact with private companies.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors, ambiguity, and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175 and the DOI Tribal Consultation Policy, we have evaluated this proposed rule and determined that it would have no substantial, direct effects on federally recognized Indian tribes.

Paperwork Reduction Act (PRA) of 1995

This proposed rule contains a collection of information that will be submitted to the OMB for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As part of our continuing effort to reduce paperwork and respondent burdens, BSEE invites the public and other Federal agencies to comment on any aspect of the proposed reporting and recordkeeping burden. If you wish to comment on the information collection (IC) aspects of this proposed rule, you may send your comments directly to OMB and send a copy of your comments to BSEE's Regulations and Standards Branch (see the **ADDRESSES** section of this proposed rule). Please reference; 30 CFR part 250, subpart H, *Oil and Gas Production Safety Systems Revisions,* 1014–0003, in your comments. BSEE specifically requests comments concerning: the need for the information, its practical utility, the accuracy of the agency's burden estimate, and ways to minimize the burden. You may obtain a copy of the supporting statement for the collection of information by contacting the Bureau's Information Collection Clearance Officer at (703) 787–1607. To see a copy of the entire IC Review submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by January 29, 2018. This does not affect the deadline for the public to comment to BSEE on the proposed regulations.

The title of the collection of information for this rule is 30 CFR part 250, subpart H, *Oil and Gas Production Safety Systems Revisions* (Proposed Rulemaking). The proposed regulations concern oil and gas production requirements, and the information is used in our efforts to protect life and the environment, conserve natural resources, and prevent waste.

Potential respondents comprise Federal OCS oil, gas, and Sulphur operators and lessees. The frequency of response varies depending upon the requirement. Responses to this collection of information are mandatory, or are required to obtain or retain a benefit; they are also submitted on occasion, annually, and as a result of situations encountered depending upon the requirement. The IC does not include questions of a sensitive nature. The BSEE will protect proprietary information according to the FOIA (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), 30 CFR part 252, *OCS Oil and Gas Information Program,* and 30 CFR 250.197, *Data and Information to be made available to the public or for limited inspection.*

Proposed changes to the information collection due to this rulemaking are as follows:

- § 250.802(c)(1) is being eliminated and would cause a reduction in non-hour costs burdens by −$550,000.
- § 250.842(c) is being eliminated and would cause a reduction in hour burden by −192 hours.
- During the 1014–AA10 rulemaking (original Subpart H rewrite), BSEE inadvertently omitted costs for Professional Engineers required to stamp documents in § 250.842. This revision to the collection requests approval of an additional $23,470,000 non-hour costs (PE Costs). We are adding this category of costs in this rulemaking but note that this rulemaking reduces the amount of information a PE must stamp from the 2016 rule.

Current subpart H regulations have 95,997 hours and $5,582,481 non-hour cost burdens (cost recovery fees) approved by OMB. Due to this rulemaking, the revisions to the collection would result in a total of 95,805 hours and $28,502,481 non-hour cost burdens.

Once this rule becomes effective, the changes in hour burdens and non-hour cost burdens will be adjusted in the current OMB approved collection (1014–0003).

National Environmental Policy Act of 1969

BSEE has prepared a draft environmental assessment (EA) to determine whether this proposed rule would have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). If the final EA supports the issuance of a Finding of No Significant Impact (FONSI) for the rule, the preparation of an environmental impact statement pursuant to the NEPA would not be required.

The draft EA was placed in the file for BSEE's Administrative Record for the rule at the address specified in the **ADDRESSES** section. A copy of the draft EA can be viewed at the *Federal eRulemaking Portal: https://www.regulations.gov* (use the keyword/ID ''BSEE–2017–0008'').

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Nation's Energy Supply (E.O. 13211)

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

Clarity of This Regulation (E.O. 12866)

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

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

Public Availability of Comments

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

Severability

If a court holds any provisions of a subsequent final rule or their applicability to any person or circumstances invalid, the remainder of the provisions and their applicability to other people or circumstances will not be affected.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur.

Dated: December 7, 2017.

Katharine S. MacGregor,

Deputy Assistant Secretary—Land and Minerals Management, Exercising the authority of the Assistant Secretary—Land and Minerals Management U.S. Department of the Interior.

For the reasons stated in the preamble, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 33 U.S.C. 1321(j)(1)(C); 43 U.S.C. 1334.

■ 2. Amend § 250. 198 by revising paragraphs (g)(1),(2), and (3), (h)(1), (51), (52), (53), (55), (56), (58), (59), (60), (61), (62), (65), (68), (70), (71), (73), (74), and (96) to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(g) * * *

(1) ANSI/ASME Boiler and Pressure Vessel Code, Section I, Rules for Construction of Power Boilers; including Appendices, 2017 Edition; and July 2017 Addenda, and all Section I Interpretations Volume 55, incorporated by reference at §§ 250.851(a), and 250.1629(b).

(2) ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Rules for Construction of Heating Boilers; including Appendices 1, 2, 3, 5, 6, and Non-mandatory Appendices B, C, D, E, F, H, I, K, L, and M, and the Guide to Manufacturers Data Report Forms, 2017 Edition; July 2017 Addenda, and all Section IV Interpretations Volume 55, incorporated by reference at §§ 250.851(a) and 250.1629(b).

(3) ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Pressure Vessels; Divisions 1 and 2, 2017 Edition; July 2017 Addenda, Divisions 1, 2, and 3 and all Section VIII Interpretations Volumes 54 and 55, incorporated by reference at §§ 250.851(a) and 250.1629(b).

* * * * *

(h) * * *

(1) API 510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration, Downstream Segment, Tenth Edition, May 2014; Addendum 1, May 2017; incorporated by reference at §§ 250.851(a) and 250.1629(b);

* * * * *

(51) API STD 2RD, Dynamic Risers for Floating Production Systems, Second Edition, September 2013; incorporated by reference at §§ 250.292, 250.733, 250.800(c), 250.901(a), (d), and 250.1002(b);

(52) API RP 2SK, Recommended Practice for Design and Analysis of Stationkeeping Systems for Floating Structures, Third Edition, October 2005, Addendum, May 2008, Reaffirmed June 2015; incorporated by reference at §§ 250.800(c) and 250.901(a) and (d);

(53) API RP 2SM, Recommended Practice for Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore Mooring, Second Edition, July 2014; incorporated by reference at §§ 250.800(c) and 250.901;

* * * * *

(55) ANSI/API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems, Sixth Edition, September 2015; incorporated by reference at §§ 250.802(b), 250.803(a), 250.814(d), 250.828(c), and 250.880(c);

(56) API RP 14C, Recommended Practice for Analysis, Design, Installation, and Testing of Safety Systems for Offshore Production Facilities, Eight Edition, February 2017; incorporated by reference at §§ 250.125(a), 250.292(j), 250.841(a), 250.842(a), 250.850, 250.852(a), 250.855, 250.856(a), 250.858(a), 250.862(e), 250.865(a), 250.867(a), 250.869(a) through (c), 250.872(a), 250.873(a), 250.874(a), 250.880(b) and (c), 250.1002(d), 250.1004(b), 250.1628(c) and (d), 250.1629(b), and 250.1630(a);

* * * * *

(58) API RP 14F, Recommended Practice for Design, Installation, and Maintenance of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class 1, Division 1 and Division 2 Locations, Upstream Segment, Fifth Edition, July 2008, Reaffirmed: April 2013; incorporated by reference at §§ 250.114(c), 250.842(c), 250.862(e), and 250.1629(b);

(59) API RP 14FZ, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1 and Zone 2 Locations, Second Edition, May 2013; incorporated by reference at §§ 250.114(c), 250.842(c), 250.862(e), and 250.1629(b);

(60) API RP 14G, Recommended Practice for Fire Prevention and Control on Fixed Open-type Offshore Production Platforms, Fourth Edition, April 2008, reaffirmed January 2013; incorporated by reference at §§ 250.859(a), 250.862(e), 250.880(c), and 250.1629(b);

(61) API STD 6AV2, Installation, Maintenance, and Repair of Surface Safety Valves and Underwater Safety Valves Offshore; First Edition, March 2014; Errata 1, August 2014; incorporated by reference at §§ 250.820, 250.834, 250.836, and 250.880(c);

(62) API RP 14J, Recommended Practice for Design and Hazards

Analysis for Offshore Production Facilities, Second Edition, May 2001; Reaffirmed: January 2013; incorporated by reference at §§ 250.800(b) and (c), 250.842(c), and 250.901(a);

* * * * *

(65) API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, Third Edition, December 2012; Errata January 2014, API Stock No. C50002; incorporated by reference at §§ 250.114(a), 250.459, 250.842(a), 250.862(a) and (e), 250.872(a), 250.1628(b) and (d), and 250.1629(b);

* * * * *

(68) ANSI/API Specification Q1 (ANSI/API Spec. Q1), Specification for Quality Programs for the Petroleum, Petrochemical and Natural Gas Industry, Ninth Edition, June 1, 2014; Errata, February 2014; Errata 2, March 2014; Addendum 1, June 2016; incorporated by reference at §§ 250.730, 250.801(b) and (c);

* * * * *

(70) ANSI/API Specification 6A (ANSI/API Spec. 6A), Specification for Wellhead and Christmas Tree Equipment, Twentieth Edition, October 2010; Addendum 1, November 2011; Errata 2, November 2011; Addendum 2, November 2012; Addendum 3, March 2013; Errata 3, June 2013; Errata 4, August 2013; Errata 5, November 2013; Errata 6, March 2014; Errata 7, December 2014; Errata 8, February 2016; Addendum 4: June 2016; Errata 9, June 2016; Errata 10, August 2016; incorporated by reference at §§ 250.730, 250.802(a), 250.803(a), 250.833, 250.873(b), 250.874(g), and 250.1002(b);

(71) API Spec. 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Second Edition, February 2013; incorporated by reference at §§ 250.802(a), 250.833, 250.873(b), and 250.874(g);

* * * * *

(73) ANSI/API Spec. 14A, Specification for Subsurface Safety Valve Equipment, 12th Ed. January 2015; Errata, July 2015; Addendum, June 2017; incorporated by reference at §§ 250.802(b) and 250.803(a);

(74) ANSI/API Spec. 17J, Specification for Unbonded Flexible Pipe, Fourth Edition, May 2014; Errata 1, September 2016; Errata 2, May 2017; incorporated by reference at §§ 250.852(e), 250.1002(b), and 250.1007(a).

* * * * *

(96) API 570 Piping Inspection Code: In-service Inspection, Rating, Repair, and Alteration of Piping Systems, Fourth Edition, February 2016; Addendum 1: May 2017; incorporated by reference at § 250.841(b).

* * * * *

■ 3. Amend § 250.292 by revising paragraph (p)(3) to read as follows:

§ 250.292 What must the DWOP contain?

* * * * *

(p) * * *

(3) A description of how you met the design requirements, load cases, and allowable stresses for each load case according to API STD 2RD (as incorporated by reference in § 250.198);

* * * * *

■ 4. Amend § 250.800 revise paragraph (c)(2) to read as follows:

§ 250.800 General.

* * * * *

(c) * * *

(2) Meet the production riser standards of API STD 2RD (incorporated by reference as specified in § 250.198), provided that you may not install single bore production risers from floating production facilities;

* * * * *

■ 5. Amend § 250.801 by revising paragraph (a) to read as follows:

§ 250.801 Safety and pollution prevention equipment (SPPE) certification.

(a) *SPPE equipment.* You must install only safety and pollution prevention equipment (SPPE) considered certified under paragraph (b) of this section or accepted under paragraph (c) of this section. BSEE considers the following equipment to be types of SPPE:

(1) Surface safety valves (SSV) and actuators, including those installed on injection wells capable of natural flow;

(2) Boarding shutdown valves (BSDV) and their actuators. For subsea wells, the BSDV is the surface equivalent of an SSV on a surface well;

(3) Underwater safety valves (USV) and actuators;

(4) Subsurface safety valves (SSSV) and associated safety valve locks and landing nipples; and

(5) Gas lift shutdown valves (GLSDV) and their actuators.

* * * * *

■ 6. Amend § 250.802 paragraphs (a), (c), and (d) to read as follows:

§ 250.802 Requirements for SPPE.

(a) All SSVs, BSDVs, USVs, and GLSDVs and their actuators must meet all of the specifications contained in ANSI/API Spec. 6A and API Spec. 6AV1 (both incorporated by reference as specified in § 250.198).

* * * * *

(c) Requirements derived from the documents incorporated in this section for SSVs, BSDVs, USVs, USVs, GLSDVs, and their actuators, include, but are not limited to, the following:

(1) All materials and parts must meet the original equipment manufacturer specifications and acceptance criteria.

(2) The device must pass applicable validation tests and functional tests performed by an API-licensed test agency.

(3) You must have requalification testing performed following manufacture design changes.

(4) You must comply with and document all manufacturing, traceability, quality control, and inspection requirements.

(5) You must follow specified installation, testing, and repair protocols.

(6) You must use only qualified parts, procedures, and personnel to repair or redress equipment.

(d) You must install and use SPPE according to the following table.

If . . .	Then . . .
(1) You need to install any SPPE	You must install SPPE that conforms to § 250.801.
(2) A non-certified SPPE is already in service	It may remain in service.
(3) A non-certified SPPE requires offsite repair, re-manufacturing, or any hot work such as welding.	You must replace it with SPPE that conforms to § 250.801.

* * * * *

■ 7. Revise § 250.803 to read as follows:

§ 250.803 What SPPE failure reporting procedures must I follow?

(a) You must follow the failure reporting requirements contained in section 10.20.7.4 of ANSI/API Spec. 6A SSVs, BSDVs, GLSDVs and USVs and section 7.10 of ANSI/API Spec. 14A and Annex F of API RP 14B for SSSVs (all

incorporated by reference in § 250.198). Within 30 days after the discovery and identification of the failure, you must provide a written notice of equipment failure to the manufacturer of such equipment and to BSEE through the Chief, Office of Offshore Regulatory Programs, unless BSEE has designated a third party as provided in paragraph (d) of this section. A failure is any condition that prevents the equipment from meeting the functional specification or purpose.

(b) You must ensure that an investigation and a failure analysis are performed within 120 days of the failure to determine the cause of the failure. If the investigation and analyses are performed by an entity other than the manufacturer, you must ensure that the analysis report is submitted to the manufacturer and to BSEE through the Chief, Office of Offshore Regulatory Programs, unless BSEE has designated a third party as provided in paragraph (d) of this section. You must also ensure that the results of the investigation and any corrective action are documented in the analysis report.

(c) If the equipment manufacturer notifies you that it has changed the design of the equipment that failed or if you have changed operating or repair procedures as a result of a failure, then you must, within 30 days of such changes, report the design change or modified procedures in writing to BSEE through the Chief, Office of Offshore Regulatory Programs, unless BSEE has designated a third party as provided in paragraph (d) of this section.

(d) BSEE may designate a third party to receive this data on behalf of BSEE. If BSEE designates a third party, you must submit the information required in this section to the designated third party, as directed by BSEE.

■ 8. Amend § 250.814 by revising paragraph (d) to read as follows:

§ 250.814 Design, installation, and operation of SSSVs—dry trees.

* * * * *

(d) You must design, install, maintain, inspect, repair, and test all SSSVs in accordance with ANSI/API RP 14B (incorporated by reference as specified in § 250.198). For additional SSSV testing requirements, refer to § 250.880.

■ 9. Revise § 250.820 to read as follows:

§ 250.820 Use of SSVs.

You must install, maintain, inspect, repair, and test all SSVs in accordance with API STD 6AV2 (incorporated by reference as specified in § 250.198). If any SSV does not operate properly, or if any gas and/or liquid fluid flow is observed during the leakage test as described in § 250.880, then you must shut-in all sources to the SSV and repair or replace the valve before resuming production.

■ 10. Amend § 250.821 by revising paragraph (a) to read as follows:

§ 250.821 Emergency action and safety system shutdown—dry trees.

(a) If your facility is impacted or will potentially be impacted by an emergency situation (*e.g.,* an impending National Weather Service-named tropical storm or hurricane, ice events in the Arctic, or post-earthquake), you must:

(1) Properly install a subsurface safety device on any well that is not yet equipped with a subsurface safety device and that is capable of natural flow, as soon as possible, with due consideration being given to personnel safety.

* * * * *

■ 11. Amend § 250.828 by revising paragraph (c) to read as follows:

§ 250.828 Design, installation, and operation of SSSVs—subsea trees.

* * * * *

(c) You must design, install, maintain, inspect, repair, and test all SSSVs in accordance with your Deepwater Operations Plan (DWOP) and ANSI/API RP 14B (incorporated by reference as specified in § 250.198). For additional SSSV testing requirements, refer to § 250.880.

■ 12. Amend § 250.833, by revising the introductory text to read as follows:

§ 250.833 Specification for underwater safety valves (USVs).

All USVs, including those designated as primary or secondary, and any alternate isolation valve (AIV) that acts as a USV, if applicable, and their actuators, must conform to the requirements specified in §§ 250.801 through 250.803. A production master or wing valve may qualify as a USV under ANSI/API Spec. 6A and API Spec. 6AV1 (both incorporated by reference as specified in § 250.198).

* * * * *

■ 13. Revise § 250.834 to read as follows:

§ 250.834 Use of USVs.

You must install, maintain, inspect, repair, and test any valve designated as the primary USV in accordance with this subpart, your DWOP (as specified in §§ 250.286 through 250.295), and API STD 6AV2 (incorporated by reference as specified in § 250.198). For additional USV testing requirements, refer to § 250.880.

■ 14. Revise § 250.836 to read as follows:

§ 250.836 Use of BSDVs.

You must install, inspect, maintain, repair, and test all new BSDVs and BSDVs that you remove from service for remanufacturing or repair in accordance with API STD 6AV2 (incorporated by reference as specified in § 250.198) for SSVs. If any BSDV does not operate properly or if any gas fluid and/or liquid fluid flow is observed during the leakage test, as described in § 250.880, you must shut-in all sources to the BSDV and immediately repair or replace the valve.

■ 15. Amend § 250.837 by revising paragraphs (a), (b), and (c)(5) to read as follows:

§ 250.837 Emergency action and safety system shutdown—subsea trees.

(a) If your facility is impacted or will potentially be impacted by an emergency situation (*e.g.,* an impending National Weather Service-named tropical storm or hurricane, ice events in the Arctic, or post-earthquake), you must shut-in all subsea wells unless otherwise approved by the District Manager. A shut-in is defined as a closed BSDV, USV, GLSDV, and surface-controlled SSSV.

(b) When operating a vessel (*e.g.,* mobile offshore drilling unit (MODU) or other type of workover or intervention vessel) in an area with subsea infrastructure, you must:

(1) Suspend production from all such wells that could be affected by a dropped object, including upstream wells that flow through the same pipeline; or

(2) Establish direct, real-time communications between the vessel and the production facility control room and develop a dropped objects plan, as required in § 250.714. If an object is dropped, you must immediately secure the well directly under the vessel while simultaneously communicating with the platform to shut-in all affected wells. You must also maintain without disruption, and continuously verify, communication between the production facility and the vessel. If communication is lost between the vessel and the platform for 20 minutes or more, you must shut-in all wells that could be affected by a dropped object.

(c) * * *

(5) *Subsea ESD (vessel).* In the event of an ESD activation that is initiated by a dropped object from a vessel, you must secure all wells in the proximity of the vessel by closing the USVs and surface-controlled SSSVs in accordance with the applicable tables in §§ 250.838 and 250.839. You must notify the

appropriate District Manager before resuming production.

* * * * *

■ 16. Amend § 250.841, by adding paragraph (c) to read as follows:

§ 250.841 Platforms.

* * * * *

(c) If you plan to make a major modification to any facility you must follow the requirements in § 250.900(b)(2). A major modification is defined in § 250.900(b)(2).

■ 17. Amend § 250. 842 by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (c);

■ c. Redesignating paragraph (b) as paragraph (c);

■ d. Adding a new paragraph (b);

■ e. Revising paragraph (d);

■ f. Removing paragraph (e); and

■ g. Redesignating existing paragraph (f) as (e) to read as follows:

§ 250.842 Approval of safety systems design and installation features.

(a) Before you install or modify a production safety system, you must submit a production safety system application to the District Manager. The District Manager must approve your production safety system application before you commence production through or utilize the new or modified system. The application must include the information prescribed in the following table:

You must submit:	Details and/or additional requirements:
(1) Safety analysis flow diagram (API RP 14C, Annex B) and Safety Analysis Function Evaluation (SAFE) chart (API RP 14C, section 6.3.3) (incorporated by reference in 2500.198).	Your safety analysis flow diagram must show the following: (i) Well shut-in tubing pressure; (ii) Piping specification breaks, piping sizes; (iii) Pressure relieving device set points; (iv) Size, capacity, and design working pressures of separators, flare scrubbers, heat exchangers, treaters, storage tanks, compressors and metering devices; (v) Size, capacity, design working pressures, and maximum discharge pressure of hydrocarbon-handling pumps; (vi) Size, capacity, and design working pressures of hydrocarbon-handling vessels, and chemical injection systems handling a material having a flash point below 100 degrees Fahrenheit for a Class I flammable liquid as described in API RP 500 and API RP 505 (both incorporated by reference as specified in § 250.198); and (vii) Size and maximum allowable working pressures as determined in accordance with API RP 14E (incorporated by reference as specified in § 250.198).
(2) Electrical one-line diagram	Showing elements, including generators, circuit breakers, transformers, bus bars, conductors, battery banks, automatic transfer switches, uninterruptable power supply (UPS), dynamic (motor) loads, and static (*e.g.,* electrostatic treater grid, lighting panels, etc.) loads. You must also include a functional legend.
(3) Area classification diagram	A plan for each platform deck and outlining all classified areas. You must classify areas according to API RP 500 or API RP 505 (both incorporated by reference as specified in § 250.198). The plan must contain: (i) All major production equipment, wells, and other significant hydrocarbon and class 1 flammable sources, and a description of the type of decking, ceiling, walls (*e.g.,* grating or solid), and firewalls; and (ii) The location of generators, control rooms, motor control center (MCC) buildings, and any other building or major structure on the platform.
(4) A schematic piping and instrumentation diagram, for new facilities	A detailed diagram which shows the piping and vessels in the process flow, together with the instrumentation and control devices.
(5) The service fee listed in § 250.125	The fee you must pay will be determined by the number of components involved in the review and approval process.

(b) You must develop and maintain the following diagrams and make them available to BSEE upon request:

Diagram:	Details and/or additional requirements:
(1) Additional electrical system information,	(i) Cable tray/conduit routing plan which identifies the primary wiring method (*e.g.,* type cable, conduit, wire); (ii) Cable schedule; and (iii) Panel board/junction box location plan.
(2) Schematics of the fire and gas-detection systems	Showing a functional block diagram of the detection system, including the electrical power supply and also including the type, location, and number of detection sensors; the type and kind of alarms, including emergency equipment to be activated; the method used for detection; and the method and frequency of calibration.
(3) Revised P&ID for existing facilities	A detailed diagram which shows the piping and vessels in the process flow, together with the instrumentation and control devices.

(c) In the production safety system application, you must also certify the following:

(1) That all electrical installations were designed according to API RP 14F or API RP 14FZ, as applicable (incorporated by reference as specified in § 250.198);

(2) That the designs for the mechanical and electrical systems that you are required to submit under paragraph (a) of this section were reviewed, approved, and stamped by an appropriate registered professional engineer(s). For modified systems, only the modifications are required to be approved and stamped by an appropriate registered professional engineer(s). The registered professional engineer must be registered in a State or Territory of the United States and have sufficient expertise and experience to perform the duties; and

(3) That a hazards analysis was performed in accordance with § 250.1911 and API RP 14J (incorporated by reference as specified in § 250.198), and that you have a hazards analysis program in place to assess potential hazards during the operation of the facility.

(d) Within 60 days after production commences, you must submit to the District Manager the as-built diagrams for the new or modified production safety systems outlined in paragraphs (a)(1), (2), and (3) of this section, the diagrams must be reviewed, approved, and stamped by an appropriate registered professional engineer(s). The registered professional engineer must be registered in a State or Territory in the United States and have sufficient expertise and experience to perform the duties.

■ 18. Amend § 250.851 by revising paragraph (a)(2) to read as follows:

§ 250.851 Pressure vessels (including heat exchangers) and fired vessels.

(a) * * *

Item name	Applicable codes and requirements
* * * * * * *	
(2) Existing uncoded pressure and fired vessels; (i) with an operating pressure greater than 15 psig; and (ii) that are not code stamped in accordance with the ANSI/ASME Boiler and Pressure Vessel Code.	Must be justified and approval obtained from the District Manager for their continued use.
* * * * * * *	

* * * * *

■ 19. Amend § 250.852 by revising paragraphs (e)(1) and (e)(4) to read as follows:

§ 250.852 Flowlines/Headers.

* * * * *

(e) * * *

(1) Review the manufacturer's Design Methodology Verification Report and the independent verification agent's (IVA's) certificate for the design methodology contained in that report to ensure that the manufacturer has complied with the requirements of ANSI/API Spec. 17J (incorporated by reference as specified in § 250.198);

* * *

(4) Submit to the District Manager a statement certifying that the pipe is suitable for its intended use and that the manufacturer has complied with the IVA requirements of ANSI/API Spec. 17J (incorporated by reference as specified in § 250.198).

* * * * *

■ 20. Amend § 250.853 by adding paragraph (d) to read as follows:

§ 250.853 Safety sensors.

* * * * *

(d) All level sensors are equipped to permit testing through an external bridle on all new vessel installations where possible, depending on the type of vessel for which the level sensor is used.

■ 21. Amend § 250.867 by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 250.867 Temporary quarters and temporary equipment.

(a) You must equip temporary quarters with all safety devices required by API RP 14C, Annex G (incorporated by reference as specified in § 250.198). The District Manager must approve the safety system/safety devices associated with the temporary quarters prior to installation.

* * * * *

(d) The District Manager must approve temporary generators that would require a change to the electrical one-line diagram in § 250.842(a).

■ 22. Amend § 250.870 by revising paragraph (a) to read as follows:

§ 250.870 Time delays on pressure safety low (PSL) sensors.

(a) You may apply industry standard Class B, Class C, or Class B/C logic to applicable PSL sensors installed on process equipment. If the device may be bypassed for greater than 45 seconds, you must monitor the bypassed devices in accordance with § 250.869(a). You must document on your field test records any use of a PSL sensor with a time delay greater than 45 seconds. For purposes of this section, PSL sensors are categorized as follows:

* * * * *

■ 23. Revise § 250.872 to read as follows:

§ 250.872 Atmospheric vessels.

(a) You must equip atmospheric vessels used to process and/or store liquid hydrocarbons or other Class I liquids as described in API RP 500 or 505 (both incorporated by reference as specified in § 250.198) with protective equipment identified in API RP 14C, section A.6 (incorporated by reference as specified in § 250.198). Transport tanks approved by the U.S. Department of Transportation, that are sealed and not connected via interconnected piping to the production process train and that are used only for storage of refined liquid hydrocarbons or Class I liquids, are not required to be equipped with the protective equipment identified in API RP 14C, section A.5. The atmospheric vessels connected to the process system that contains a Class I liquid and the associated pumps must be reflected on the corresponding drawings.

(b) You must ensure that all atmospheric vessels are designed and maintained to ensure the proper working conditions for LSH sensors. The LSH must be designed in such a way to prevent pollution as required by § 250.300(b)(3) and (4). The LSH sensor bridle must be designed to prevent different density fluids from impacting sensor functionality. For newly installed atmospheric vessels that have oil buckets, the LSH sensor must be installed to sense the level in the oil bucket.

■ 24. Amend § 250.873 by revising paragraph (b)(3) to read as follows:

§ 250.873 Subsea gas lift requirements.

* * * * *

(b) * * *

If your subsea gas lift system introduces the lift gas to the . . .	Then you must install a				In addition, you must
	ANSI/API Spec 6A and API Spec 6AV1 (both incorporated by reference as specified in § 250.198) gas-lift shutdown valve (GLSDV), and . . .	FSV on the gas-lift supply pipeline . . .	PSHL on the gas-lift supply . . .	ANSI/API Spec 6A and API Spec 6AV1 manual isolation valve . . .	
*	*	*	*	*	*
(3) Pipeline risers via a gas-lift line contained within the pipeline riser.	Meet all of the requirements for the GLSDV described in §§ 250.835(a), (b), and (d) and 250.836 on the gas-lift supply pipeline. Attach the GLSDV by flanged connection directly to the ANSI/API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser. To facilitate the repair or replacement of the GLSDV or production riser BSDV, you may install a manual isolation valve between the GLSDV and the ANSI/API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser, or outboard of the production riser BSDV and inboard of the ANSI/API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser.	upstream (in-board) of the GLSDV.	flowline upstream (in-board) of the FSV.	downstream (out board) of the GLSDV.	(i) Ensure that the gas-lift supply flowline from the gas-lift compressor to the GLSDV is pressure-rated for the MAOP of the pipeline riser. (ii) Ensure that any surface equipment associated with the gas-lift system is rated for the MAOP of the pipeline riser. (iii) Ensure that the gas-lift compressor discharge pressure never exceeds the MAOP of the pipeline riser. (iv) Suspend and seal the gas-lift flowline contained within the production riser in a flanged ANSI/API Spec. 6A component such as an ANSI/API Spec. 6A tubing head and tubing hanger or a component designed, constructed, tested, and installed to the requirements of ANSI/API Spec. 6A. (v) Ensure that all potential leak paths upstream or near the production riser BSDV on the platform provide the same level of safety and environmental protection as the production riser BSDV. (vi) Ensure that this complete assembly is fire-rated for 30 minutes.

* * * * *

■ 25. Amend § 250.874 by revising paragraph (g)(2) to read as follows:

§ 250.874 Subsea water injection systems.

* * * * *

(g) * * *

(2) If a designated USV on a water injection well fails the applicable test under § 250.880(c)(4)(ii), you must notify the appropriate District Manager and request approval to designate another ANSI/API Spec 6A and API Spec. 6AV1 (both incorporated by reference as specified in § 250.198) certified subsea valve as your USV.

* * * * *

■ 26. Revise § 250.876 to read as follows:

§ 250.876 Fired and exhaust heated components.

No later than September 7, 2018, and at least once every 5 years thereafter, you must have a qualified third-party inspect, and then you must repair or replace, as needed, the fire tube for tube-type heaters that are equipped with either automatically controlled natural or forced draft burners installed in either atmospheric or pressure vessels that heat hydrocarbons and/or glycol. If inspection indicates tube-type heater deficiencies, you must complete and document repairs or replacements. You must document the inspection results, retain such documentation for at least 5 years, and make the documentation available to BSEE upon request.

■ 27. Amend § 250.880 by revising paragraphs (a) introductory text, (a)(1) (c)(1)(i), (c)(2)(iv), (c)(4)(i) and (iii) to read as follows:

§ 250.880 Production safety system testing.

(a) *Notification.* You must:

(1) Notify the District Manager at least 72 hours before you commence initial production on a facility, so that BSEE may conduct a preproduction inspection of the integrated safety system.

* * * * *

(c) * * *

(1) * * *

Item name	Testing frequency, allowable leakage rates, and other requirements
(i) Surface-controlled SSSVs (including devices installed in shut-in and injection wells.	Semi-annually, not to exceed 6 calendar months between tests. Also test in place when first installed or reinstalled. If the device does not operate properly, or if a liquid leakage rate >400 cubic centimeters per minute or a gas leakage rate >15 standard cubic feet per minute is observed, the device must be removed, repaired, and reinstalled or replaced. Testing must be according to ANSI/API RP 14B (incorporated by reference as specified in § 250.198) to ensure proper operation.
* *	* * * * *

* * * * * (2) * * *

Item name	Testing frequency and requirements
* *	* * * * *
(iv) SSVs	Once each calendar month, not to exceed 6 weeks between tests. Valves must be tested for both operation and leakage. You must test according to API STD 6AV2 (incorporated by reference as specified in § 250.198). If an SSV does not operate properly or if any gas and/or liquid fluid flow is observed during the leakage test, the valve must be immediately repaired or replaced.
* *	* * * * *

* * * * * (4) * * *

Item name	Testing frequency, allowable leakage rates, and other requirements
(i) Surface-controlled SSSVs (including devices installed in shut-in and injection wells).	Tested semiannually, not to exceed 6 months between tests. If the device does not operate properly, or if a liquid leakage rate >400 cubic centimeters per minute or a gas leakage rate >15 standard cubic feet per minute is observed, the device must be removed, repaired, and reinstalled or replaced. Testing must be according to ANSI/API RP 14B (incorporated by reference as specified in § 250.198) to ensure proper operation, or as approved in your DWOP.
* *	* * * * *
(iii) BSDVs	Tested at least once each calendar month, not to exceed 6 weeks between tests. Valves must be tested for both operation and leakage. You must test according to API STD 6AV2 for SSVs (incorporated by reference as specified in § 250.198). If a BSDV does not operate properly or if any fluid flow is observed during the leakage test, the valve must be immediately repaired or replaced.
* *	* * * * *

* * * * *

■ 28. Amend § 250.901 by revising paragraph (a)(10) and (d)(19) to read as follows:

§ 250.901 What industry standards must your platform meet?

(a) * * *

(10) API STD 2RD, Design of Risers for Floating Production Systems (FPSs) and Tension-Leg Platforms (TLPs), (as incorporated by reference in § 250.198);

* * * * *

(d) * * *

(19) API STD 2RD, Design of Risers for Floating Production Systems (FPSs) and Tension-Leg Platforms (TLPs);

* * * * *

■ 29. Amend § 250.1002 by revising paragraphs (b)(1), (2), (4) and (5) to read as follows:

§ 250.1002 Design requirements for DOI pipelines.

* * * * *

(b)(1) Pipeline valves shall meet the minimum design requirements of ANSI/API Spec 6A (as incorporated by reference in § 250.198), API Spec 6D (as incorporated by reference in § 250.198), or the equivalent. A valve may not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those standards.

(2) Pipeline flanges and flange accessories shall meet the minimum design requirements of ANSI B16.5, ANSI/API Spec 6A, or the equivalent (as incorporated by reference in 30 CFR 250.198). Each flange assembly must be able to withstand the maximum pressure at which the pipeline is to be operated and to maintain its physical and chemical properties at any temperature to which it is anticipated that it might be subjected in service.

* * * * *

(4) If you are installing pipelines constructed of unbonded flexible pipe, you must design them according to the standards and procedures of ANSI/API Spec 17J, as incorporated by reference in 30 CFR 250.198.

(5) You must design pipeline risers for tension leg platforms and other floating platforms according to the design standards of API STD 2RD, Design of Risers for Floating Production Systems (FPSs) and Tension Leg Platforms (TLPs) (as incorporated by reference in § 250.198).

* * * * *

■ 30. Amend § 250.1007 by revising paragraph (a)(4)(i)(D) to read as follows:

§ 250.1007 What to include in applications.

(a) * * *

(4) * * *

(i) * * *

(D) A review by a third-party independent verification agent (IVA) according to ANSI/API Spec 17J (as incorporated by reference in § 250.198), if applicable.

* * * * *

[FR Doc. 2017–27309 Filed 12–28–17; 8:45 am]

BILLING CODE 4310–VH–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 17–1099; MB Docket No. 16–320; RM–11774]

Radio Broadcasting Services; Gaylord, Michigan

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division dismisses the petition for rulemaking filed by N Content Marketing, LLC (Petitioner), proposing to amend the FM Table of Allotments, by allotting Channel 246C2 at Gaylord, Michigan. Petitioner did not file comments expressing a continuing interest in the proposed Gaylord allotment. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Roy E. Henderson and Great Northern Broadcasting, Inc., jointly (Joint Counterpropsal), as well as Smile FM, separately, submitted counterproposals. The Joint Counterproposal is dismissed and Smile FM is given the opportunity to file its counterproposal as a petition for rulemaking within 60 days for consideration in a new proceeding. We will not allot Channel 246C2 at Gaylord, Michigan.

DATES: This document was released on November 9, 2017.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 16–320, adopted November 9, 2017, and released November 9, 2017. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW, Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. This document is not subject to the Congressional Review Act. (The Commission is not required to submit a copy of this *Report and Order* to Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) since the proposed petition for rule making is dismissed).

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2017–27115 Filed 12–28–17; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[4500090022]

Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions To List a Species and Remove a Species From the Federal Lists of Endangered and Threatened Wildlife and Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 12-month findings on petitions to list a species as an endangered or threatened species and remove a species from the Federal Lists of Endangered and Threatened Wildlife and Plants (List or Lists) under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to add the beaverpond marstonia to the Lists or remove the southwestern willow flycatcher from the List. However, we ask the public to submit to us at any time any new information that becomes available relevant to the status of either of the species listed above or their habitats.

DATES: The findings in this document were made on December 29, 2017.

ADDRESSES: Detailed descriptions of the basis for each of these findings are available on the internet at *http://www.regulations.gov* under the following docket numbers:

Species	Docket number
Beaverpond marstonia	FWS–R4–ES–2017–0090
Southwestern willow flycatcher	FWS–R2–ES–2016–0039

Supporting information used to prepare these findings is available for public inspection, by appointment, during normal business hours, by contacting the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning these findings to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
Beaverpond marstonia	Don Imm, Field Supervisor, Georgia Ecological Services Field Office, 706–613–9493, ext. 230.
Southwestern willow flycatcher	Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 602–242–0210.

If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

We are required to make a finding whether or not the petitioned action is warranted within 12 months after receiving any petition we determined contained substantial scientific or commercial information indicating that the petitioned action may be warranted (section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) (''12-month finding''). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted but precluded. ''Warranted but precluded'' means that (a) the petitioned action is warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened species, and (b) expeditious progress is being made to add qualified species to the Lists and to remove from the Lists species for which the protections of the Act are no longer necessary. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring that a subsequent finding be made within 12 months of that date. We must publish these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists. The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering whether a species may meet the definition of a threatened species or an endangered species because of any of the five factors, we must look beyond the mere exposure of the species to the stressor to determine whether the species responds to the stressor in a way that causes actual impacts to the species. If there is exposure to a stressor, but no response, or only a positive response, that stressor does not cause a species to meet the definition of a threatened species or an endangered species. If there is exposure and the species responds negatively, we determine whether that stressor drives or contributes to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species. The mere identification of stressors that could affect a species negatively is not sufficient to compel a finding that listing is or remains warranted. For a species to be listed or remain listed, we require evidence that these stressors are operative threats to the species and its habitat, either singly or in combination, to the point that the species meets the definition of an endangered or a threatened species under the Act.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the beaverpond marstonia and southwestern willow flycatcher meet the definition of ''endangered species'' or ''threatened species,'' we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. We reviewed the petitions, information available in our files, and other available published and unpublished information. These evaluations may include information from recognized experts; Federal, State, and tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The species assessment form for the beaverpond marstonia and the 12-month finding assessment for the southwestern willow flycatcher contain more detailed biological information, a thorough analysis of the listing factors, and an explanation of why we determined that these species do not meet the definition of an endangered species or threatened species. This supporting information can be found on the internet at *http://www.regulations.gov* under the appropriate docket number (see **ADDRESSES**, above). The following are informational summaries for each of the findings in this notice.

Beaverpond marstonia (Marstonia castor)

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy, requesting that the beaverpond marstonia be listed as an endangered or threatened species under the Act. On September 27, 2011, we published a 90-day finding in the **Federal Register** (76 FR 59836) concluding that the petition presented substantial information indicating that listing the beaverpond marstonia may be warranted. Subsequently, we entered into a stipulated settlement agreement with the Center for Biological Diversity that required us to submit a 12-month finding to the **Federal Register** by December 31, 2017. This notice constitutes the 12-month finding on the April 20, 2010, petition to list the beaverpond marstonia under the Act.

Summary of Finding

The beaverpond marstonia is a freshwater snail in the Hydrobiidae family. The tan-colored shell of the beaverpond marstonia is less than 4 millimeters (mm) (0.2 inches (in)) in length. The species has been found at only three creeks in Georgia, and, like other members of its family, it has limited dispersal capabilities and a narrow distribution in a local drainage system.

Little is known about the biology and ecology of the beaverpond marstonia, but in the creeks where it was located, it was found primarily by clumps of vegetation in shallow, clear water with a slight current. In this fragile habitat, the beaverpond marstonia relies on fine particulate organic matter and aquatic microorganisms as its primary food sources.

The beaverpond marstonia was last observed in 2000. Repeated surveys for the species, starting in 2014 through March of 2017, in the locations where it was previously found and in surrounding areas with similar habitat have yielded no specimens. Based on both the results of repeated species surveys by qualified species experts at all three historical locations and suitable habitat in surrounding areas, the best available science indicates there are no extant populations of beaverpond marstonia.

Therefore, we believe the beaverpond marstonia to be extinct. As a result, the beaverpond marstonia does not fall within the statutory definition of either a threatened species or an endangered species and, accordingly, does not warrant listing under the Act. A detailed discussion of the basis for this finding can be found in the beaverpond marstonia species assessment form and other supporting documents (see **ADDRESSES**, above).

Southwestern Willow Flycatcher (Empidonax traillii extimus)

Previous Federal Actions

The southwestern willow flycatcher was listed as an endangered species under the Act on February 27, 1995 (60 FR 10694). On August 20, 2015, we received a petition from The Pacific Legal Foundation (representing The Center for Environmental Science, Accuracy, and Reliability, Building Industry Legal Defense Fund, California Building Industry Association, California Cattlemen's Association, New Mexico Business Coalition, New Mexico Cattle Growers Association, New Mexico Farm and Livestock Bureau, and New Mexico Wool Growers Inc.), requesting that the southwestern willow flycatcher be removed from the Federal List of Endangered and Threatened Wildlife under the Act. On March 16, 2016, we published a 90-day finding in the **Federal Register** (81 FR 14058) concluding that the petition presented substantial information indicating that removing the southwestern willow flycatcher may be warranted based on information related to the taxonomic status. This notice constitutes the 12-month finding on the August 19, 2015, petition to remove the southwestern willow flycatcher from the List.

Summary of Finding

The southwestern willow flycatcher is a small, neotropical migrant bird that grows to about 15 centimeters (cm) (6 in) in length. During its breeding season from about May to September, this subspecies of willow flycatcher is found in the southwestern United States in parts of California, Nevada, Utah, Colorado, Arizona, New Mexico, and Texas.

The southwestern willow flycatcher breeds in areas from near sea level to over 2,600 meters (m) (8,500 feet (ft)) in vegetation alongside rivers, streams, or other wetlands. It establishes nesting territories, builds nests, and forages in mosaics of relatively dense and expansive growths of trees and shrubs, near or adjacent to surface water or underlain by saturated soil. The subspecies eats a wide range of terrestrial and aquatic invertebrates including flying and ground- and vegetation-dwelling insects.

We evaluated the subspecies classification and all relevant stressors under the five factors, including any regulatory mechanisms and conservation measures addressing these stressors. In our evaluation of the subspecies classification, we considered information provided in the petition suggesting that the southwestern willow flycatcher is not a valid subspecies, reports and literature (including more recent quantitative data), the professional opinion of a broad group of ornithological organizations, and additional analyses of recent flycatcher studies evaluating diagnostic subspecies characteristics. We found that the southwestern willow flycatcher is a valid subspecies and that the following threats are acting on the subspecies such that it continues to meet the definition of an endangered species under the Act: habitat loss and modification caused by dams and reservoirs, diversion and groundwater pumping, invasive plants and beetles, river management, urbanization, agricultural development, livestock grazing and management, fire and fire management, cowbird parasitism, and recreation (Factor A); other natural or manmade factors including drought and the effects of climate change, vulnerability of small or isolated populations, and genetic effects (Factor E); and cumulative effects of these threats. The existing regulatory mechanisms are not adequate to ameliorate these threats (Factor D). Therefore, we find that removing the southwestern willow flycatcher from the List is not warranted. A detailed discussion of the basis for this finding can be found in the southwestern willow flycatcher 12-month finding assessment and other supporting documents (see **ADDRESSES**, above).

New Information

We request that you submit any new information concerning the taxonomy, biology, ecology, status of, or stressors to, the southwestern willow flycatcher. We further request that you contact us as soon as possible if new information becomes available suggesting specimens of beaverpond marstonia have been located. Please contact the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor the species and make appropriate decisions about their conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

References Cited

Lists of the references cited in the petition findings are available on the internet at *http://www.regulations.gov* in the dockets listed above in **ADDRESSES** and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 3, 2017.

James W. Kurth,

Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2017–28163 Filed 12–28–17; 8:45 am]

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Notices

Federal Register

Vol. 82, No. 249

Friday, December 29, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Administrative Conference of the United States adopted five recommendations at its Sixty-Eighth Plenary Session. The appended recommendations address Plain Language in Regulatory Drafting; Marketable Permits; Agency Guidance Through Policy Statements; Learning from Regulatory Experience; and Regulatory Waivers and Exemptions.

FOR FURTHER INFORMATION CONTACT: For Recommendations 2017–3 and Recommendation 2017–7, Frank Massaro; for Recommendations 2017–4 and 2017–5, Gisselle Bourns; and for Recommendation 2017–6, Todd Rubin. For each of these actions the address and telephone number are: Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations to agencies, the President, Congress, and the Judicial Conference of the United States for procedural improvements (5 U.S.C. 594(1)). For further information about the Conference and its activities, see *www.acus.gov.* At its Sixty-Eighth Plenary Session, held December 14–15, 2017, the Assembly of the Conference adopted five recommendations.

Recommendation 2017–3, *Plain Language in Regulatory Drafting.* This recommendation identifies tools and techniques agencies have used successfully to write regulatory documents (including rulemaking preambles and guidance documents) using plain language, proposes best practices for agencies in structuring their internal drafting processes, and suggests ways agencies can best use trainings and other informational resources.

Recommendation 2017–4, *Marketable Permits.* This recommendation provides best practices for structuring, administering, and overseeing marketable permitting programs for any agency that has decided to implement such a program.

Recommendation 2017–5, *Agency Guidance Through Policy Statements.* This recommendation, formerly titled *Agency Guidance,* provides best practices to agencies on the formulation and use of policy statements. It lists steps that agencies can take to remain flexible in their use of policy statements and to encourage, when appropriate, public participation in the adoption or modification of policy statements.

Recommendation 2017–6, *Learning from Regulatory Experience.* This recommendation, formerly titled *Regulatory Experimentation,* offers advice to agencies on learning from different regulatory approaches. It encourages agencies to collect data, conduct analysis at all stages of the rulemaking lifecycle (from pre-rule analysis to retrospective review), and solicit public input at appropriate points in the process.

Recommendation 2017–7, *Regulatory Waivers and Exemptions.* This recommendation provides best practices to agencies in structuring their waiver and exemption procedures for regulatory requirements. It encourages transparency and public input by asking agencies to consider establishing standards and procedures for approval of waivers and exemptions and to seek public comments in developing standards and procedures and in approving individual waivers and exemptions.

The Appendix below sets forth the full texts of these five recommendations, as well as a timely filed Separate Statement associated with Recommendation 2017–5, *Agency Guidance Through Policy Statements.* The Conference will transmit the recommendations to affected agencies, Congress, and the Judicial Conference of the United States, as appropriate. The recommendations are not binding, so the entities to which they are addressed will make decisions on their implementation.

The Conference based these recommendations on research reports that are posted at: *https://www.acus.gov/68thPlenary.*

Dated: December 22, 2017.

Shawne C. McGibbon,

General Counsel.

APPENDIX—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Administrative Conference Recommendation 2017–3

Plain Language in Regulatory Drafting

Adopted December 14, 2017

For decades, agencies have worked to make regulatory requirements more comprehensible to regulatory stakeholders and the public at large, including by using ''plain language'' or ''plain writing.'' [1] Clearly drafting and explaining regulations facilitates the core administrative law goals of public participation, efficient compliance, judicial review, and the protection of rights. Numerous statutory and executive requirements direct agencies to draft rules and guidance plainly.

Plain Language Legal Requirements

The Plain Writing Act of 2010 (PWA) [2] and Executive Order 13,563 [3] require agencies to use plain language in various public-facing documents.[4] Plain writing, as defined by the PWA, is ''writing that is clear, concise, well-

[1] These terms carry the same meaning and are used interchangeably here.

[2] Public Law 111–274, 124 Stat. 2861 (2010) (codified at 5 U.S.C. 301 note).

[3] Exec. Order No. 13,563, 76 FR 3821 (Jan. 18, 2011).

[4] Executive guidance issued prior to the PWA's enactment also directs agencies to use plain language. Executive Order 12,866 provides that ''[e]ach agency shall draft its regulations to be simple and easy to understand.'' Exec. Order No. 12,866 § 2(b), 58 FR 51,735, 51,737 (Oct. 4, 1993). President Clinton's 1998 Plain Language Memorandum further requires agencies to ''use plain language in all new documents, other than regulations, that explain how to obtain a benefit or service, or how to comply with a requirement [the agency] administer[s] or enforce[s],'' as well as ''all proposed and final rulemaking documents published in the **Federal Register**.'' Memorandum on Plain Language in Government Writing, 63 FR 31,885 (June 10, 1998).

organized, and follows other best practices appropriate to the subject or field and intended audience.'' [5] The Plain Language Action and Information Network (PLAIN) [6] further explains that ''[w]ritten material is in plain language if your audience can find what they need, understand what they find, and use what they find to meet their needs.'' [7] As such, writing in plain language does not mean abandoning complexity or nuance, nor does it mean omitting technical terms.[8] For the purposes of this recommendation, writing that is ''plain'' conveys the intended meaning in a way that the intended audience can easily understand.

The PWA requires agencies to use plain language in all ''covered documents,'' which are: Documents necessary ''for obtaining any Federal Government benefit or service or filing taxes;'' documents that ''provide information about any Federal Government benefit or service,'' such as pamphlets; and documents that provide recommendations on ''how to comply with a requirement the Federal Government administers or enforces,'' such as guidance documents.[9] Although the PWA does not cover regulations, Executive Order 13,563 requires them to be ''accessible, consistent, written in plain language, and easy to understand.'' [10] The Office of Management and Budget (OMB) interprets the PWA to apply to ''rulemaking preambles,'' [11] because a ''regulation,'' as exempted by the PWA, is a ''rule carrying the force of law,'' [12] but a preamble explains a rule's basis and purpose [13] and is not binding.

The PWA further directs agencies to: Designate ''senior officials to oversee . . . agency implementation''; communicate PWA requirements to employees and train them in plain writing; maintain a ''plain writing section of the agency's website''; and issue annual compliance reports.[14] Finally, the Act precludes judicial review of agencies' compliance with its terms.[15]

Agency Plain Language Practices

The PWA formalized and expanded a decades-long internal administrative effort to promote plain language in rules and guidance documents.[16] For instance, many agencies have provided trainings and other resources on plain writing since the 1970s [17]—a practice codified by the Act.[18] Some agencies make their trainings and related resources publicly available. Trainings may cover the PWA's requirements and plain writing techniques, including the use of organization and formatting to guide readers through a document; the use of bullet points, lists, and other visual aids; and the use of simple rather than complex vocabulary, if doing so will not alter the intended meaning. Additionally, trainings may focus on meeting the needs of the agency's various audiences, such as regulated small businesses.

Agencies must also designate officials to oversee compliance with the Act's requirements, such as by delivering trainings.[19] Agencies may designate plain language officials in a number of different kinds of offices, such as media, executive correspondence, or public outreach. These officials can provide a valuable coordination function when the agency is communicating with the public.[20] In some agencies, plain language officials may be well positioned to support agency staff during—not just after—the drafting process.

Rule and guidance drafting processes may directly incorporate other efforts to promote plain writing. Agencies' internal drafting manuals, which provide style and formatting guidelines, often encompass plain writing techniques. Agencies also have guidelines specifying how offices within the agency should coordinate when drafting rules or guidance. These practices have important implications for how agencies implement plain writing, though divergent approaches may be equally successful. For example, one agency's practice is to assign each office involved in drafting the responsibility for reviewing documents based on its expertise; this can include reviewing documents for plain language, in addition to reviewing them for technical sufficiency. In this agency, edits or comments on a document marked as within an office's assigned responsibilities must be either accepted or resolved in consultation with that office. Thus, a regulatory attorney may flag text that could be interpreted in multiple ways as an issue of both plainness and legal ambiguity. Similarly, program staff, economists, and engineers may be responsible for ensuring that text involving their areas of expertise is not only accurate, but plain to relevant audiences. Other agencies may not assign such formal responsibilities to particular offices; rather, the program office originating a rule or guidance may be in charge of reviewing the whole of the document and working with other participating offices to ensure text is plainly written.

Each of the above practices structures how an agency drafts rules and guidance, both of which may inform an agency's audiences of regulatory requirements or benefits.[21] For instance, a final rule may target an audience of legal professionals and industry experts who expect to see certain terms of art, whereas a guidance document may walk a small business through the process of filing financial forms. Though it is appropriate to tailor guidance to a specialist audience, sometimes tailoring documents to particular specialist audiences runs the risk of obscuring or glossing over important information for other audiences. In certain circumstances, some commentators have raised concerns that guidance may omit salient information, leaving non-specialist parties at a disadvantage compared to experts.[22] Crafting guidance carefully can ensure it is fully explanatory while remaining

[5] 5 U.S.C. 301 note sec. 3(3).

[6] PLAIN grew out of early, informal agency efforts to share plain writing tools and techniques, and has served as a hub for such resources since its establishment during the Clinton Administration. *About Us*, Plain Language Action & Information Network, *https://plainlanguage.gov/about/*.

[7] *What is Plain Language?*, Plain Language Action & Information Network, *https://plainlanguage.gov/about/definitions/*.

[8] For guidance on writing plainly without compromising nuance or avoiding important technical terms, consult the *Federal Plain Language Guidelines,* a resource compiled by PLAIN, which both the PWA and executive guidance direct agencies to use. Plain Language Action & Information Network, Federal Plain Language Guidelines (Rev. ed. May 2011), *http://www.plainlanguage.gov/guidelines/*.

[9] 5 U.S.C. 301 note sec. 3(2)(A).

[10] Exec. Order No. 13,563 § 1(a), 76 FR 3821, 3821 (Jan. 18, 2011).

[11] Office of Mgmt. & Budget, Exec. Office of the President, OMB Mem. M–11–15, Final Guidance on Implementing the Plain Writing Act of 2010 5 (2011).

[12] *See* United States v. Mead Corp., 533 U.S. 218, 226–27 (2001).

[13] 5 U.S.C. 553(c).

[14] *Id.* § 301 note sec. 4(a).

[15] *Id.* § 301 note sec. 6.

[16] *See* Cynthia Farina, Mary J. Newhart, & Cheryl Blake, *The Problem with Words: Plain Language and Public Participation in Rulemaking,* 83 Geo. Wash. L. Rev. 1358, 1367–79 (2015).

[17] Blake Emerson & Cheryl Blake, Plain Language in Regulatory Drafting 33 (Dec. 8, 2017) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/plain-language-regulatory-drafting-final-report*.

[18] 5 U.S.C § 301 note secs. 4(a)(1)(A), 4(a)(1)(C).

[19] *Id.* § 301 note sec. 4(a).

[20] Emerson & Blake, *supra* note 17, at 32–33.

[21] Some envision rulemaking and guidance documents as situated along a ''continuum'' ranging from more ''complicated'' documents like the rule itself to simpler documents that digest the material for non-specialist audiences. Complicated documents can be written plainly, but may require greater resource investment.

[22] Joshua D. Blank & Leigh Osofsky, *Simplexity: Plain Language and the Tax Law,* 66 Emory L.J. 189, 193 (2017).

comprehensible—though this may come at the cost of brevity.[23]

Finally, though agencies have worked to implement plain writing for rules and guidance both prior to and since the PWA's enactment, challenges remain. Inter- and intra-agency coordination in drafting is inherently difficult. Additionally, departing from language that external stakeholders expect to see, or that has required significant negotiation, may be costly. And, due to ever-present resource constraints, agencies must prioritize investing in plain writing when audiences will most benefit.

* * * * *

This Recommendation identifies tools and techniques agencies have successfully used to facilitate plain language drafting in rulemaking and guidance documents. Additionally, this recommendation proposes best practices for agencies' internal drafting processes, makes suggestions to maximize the value of trainings and related resources, and notes special considerations for drafting rulemaking preambles and guidance documents.

Recommendation

Plain Writing Practices in General

1. Agencies should follow the plain language best practices and writing techniques documented in the *Federal Plain Language Guidelines.*

Agency Internal Drafting Processes

2. Agencies should consider directing one or more offices involved in drafting rules and guidance to review them for plain language.

Agency Plain Language Officials, Trainings, and Related Resources

3. To improve the accessibility of rules and guidance, agency drafting staff should consider soliciting guidance or input from senior officials responsible for overseeing an agency's compliance with the Plain Writing Act (PWA).

4. When delivering trainings on plain writing techniques and the requirements of the PWA and related executive guidance, agencies should ensure appropriate focus on how plain language promotes the core administrative law goals of public participation, efficient compliance, judicial review, and the protection of rights. Agencies should additionally consider offering trainings to their technical experts to help them understand their role in the regulatory process and how they can draft technical text plainly for both specialist and non-specialist audiences.

5. In their PWA compliance reports, agencies should consider highlighting rulemaking preambles and guidance documents that exemplify plain language best practices.

Plain Drafting in Rulemaking Documents

6. To support plain drafting, internal agency rulemaking guidelines should include:

a. A requirement that rule drafters write documents in terms that the relevant audience can understand.

b. Information on plain language techniques and reference materials that the agency considers most relevant to its rulemaking practice. Such techniques include omitting excess words; using active voice, headings and other formatting techniques, such as bullet points, lists, Q&As, and other visual aids, to organize documents; and replacing complex vocabulary with simple words by, among other things, providing examples of substitutions that would be appropriate.

c. Examples of how the agency's rules, guidance, or other documents have implemented these techniques.

d. In addition to accounting for the needs of each relevant audience in any given document, at a minimum:

i. The preambles to proposed rules should include a summary of the rule that non-specialists and the general public can understand. Such summaries may be those already required by the Administrative Committee of the Federal Register or applicable executive guidance. Other subparts of the preamble should include language that is plain for specialist audiences if it is not practicable to describe the rule's purpose, reasoning, or requirements without legal or technical language, although these subparts may benefit from brief introductory summaries directed at non-specialists.

ii. The preambles and text of final rules should be written in language that reviewing courts and attorneys inside and outside the agency can easily understand.

7. Agencies should consider including in each notice of proposed rulemaking a request for comments on whether the regulation's purposes and requirements are clear and understandable. Agencies should also consider specifying topics or questions on which the agency would most benefit from feedback from non-specialist stakeholders and the general public.

Plain Drafting in Guidance Documents

8. When drafting guidance documents, agencies should tailor the guidance to the informational needs and level of expertise of the intended audiences. Audiences that are particularly likely to benefit from tailored guidance include: Regulated small business; regulatory beneficiaries, *e.g.,* benefit recipients, consumers, and protected classes; and private compliance offices, *e.g.,* human resources departments. For audiences that may find complex technical and legal details inaccessible, plain language summaries, Q&As, or related formats may be especially helpful.

9. When drafting guidance documents, agencies should strive to balance brevity, usefulness, and completeness. One way to help strike this balance is for guidance documents to include citations, hyperlinks, or other references or points of contact enabling readers to easily locate underlying regulatory or statutory requirements.

Administrative Conference Recommendation 2017–4

Marketable Permits

Adopted December 14, 2017

Marketable permits are a type of government-created license that regulates the level of a particular activity.[1] Often, they ration the use of a resource (for instance, clean air by limiting pollution, fisheries by limiting fish catch, or the electromagnetic spectrum by allocating it among various uses), but they may also be used to satisfy affirmative obligations to engage in an activity (such as requirements to produce renewable energy). Marketable permits are distinguishable from other regulatory permits in that they can be bought or sold independently of any real property or other interest.[2] Because marketable permits are alienable, it is particularly important to define their longevity and the privileges conveyed by their ownership, so that parties will understand exactly what it is that they are purchasing.

[23] For a closer examination of guidance practices, see Nicholas R. Parrillo, Federal Agency Guidance: An Institutional Perspective (Dec. 1, 2017) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/agency-guidance-final-report.*

[1] *See* Jason Schwartz, Marketable Permits: Recommendations on Application and Management i (Dec. 11, 2017) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/marketable-permits-final-report.*

[2] In 2015, the Administrative Conference issued recommendations on the design and tailoring of regulatory permits generally, which are defined as ''any administrative agency's statutorily authorized, discretionary, judicially reviewable granting of permission to do something which would otherwise be statutorily prohibited.'' Admin. Conf. of the U.S., Recommendation 2015–4, *Designing Federal Permitting Programs,* 80 FR 78,164 (Dec. 16, 2015).

Marketable permitting programs generally fall into one of three types.[3] In ''cap-and-trade'' programs, regulators set a limit, or cap, on the total amount of activity that can take place. For example, the cap could be total tons of a pollutant, total number of fish that can be caught, or total number of airport landing slots. A ''rate-based trading'' program is similar, but instead of capping the total amount of a regulated activity, agencies limit the relative amount of activity per regulated entity or unit of regulated activity. For example, a rate-based air pollution permit market may limit the amount of pollution power plants can emit per unit of electricity generated, and fuel efficiency standards set limits on the acceptable amount of fuel required to drive a mile. Finally, in ''credit trading'' systems, regulators set a relative goal (*e.g.,* no net emissions increase or no net increase in property development), and then any covered entities seeking, for example, to increase emissions or develop property must purchase offsetting credits that are sold by third parties and verified by regulators. Credits can be earned when parties limit their level of the regulated activity by more than the required amount. Credit systems can also be combined with cap-and-trade or rate-based programs. For example, in a greenhouse gas cap-and-trade program, unregulated sources may be allowed to reduce their emissions voluntarily and sell verified credits on the market. In a property development setting, a party could decline to develop a particular parcel of land to generate a credit, and then sell that credit to another party.

Establishing a Marketable Permitting Program

Like other agency activities, marketable permitting programs must be within the agency's statutory authority. But even when an agency has statutory discretion to use a marketable permitting program, such a program may not be the most suitable regulatory tool to achieve an agency's goal. Marketable permitting programs are more likely to be suitable when:

- The agency can clearly define the privileges or obligations to be assigned by the program and has the necessary information to set the level of regulated activity.
- The agency has sufficient resources to design and administer the program and is capable of reevaluating the appropriate target level of activity over time.
- The agency finds it difficult or expensive to discern compliance costs for individual regulated parties. This often occurs when the activity to be regulated is conducted by numerous heterogeneous or small sources, or when there are as yet unrealized opportunities for significant technological developments by actors other than those upon whom the regulatory obligations fall.
- The agency is reasonably confident that a robust market is feasible. This requires interest and participation by regulated entities that have, or are capable of developing, sufficient knowledge to make efficient decisions in the market.
- Regulated parties have sufficiently differing compliance costs, such that the savings from trading are likely to be greater than transaction costs.
- The agency determines that the overall level of an activity is more significant than the identity or location of the actors engaging in the activity. Alternatively, a marketable permit system could take locational differences into account in its structure, by, for example, setting prices so that it costs more to buy permits in a place where the marginal benefits of cutbacks are high.[4]

Marketable permitting programs are less likely to be suitable when:

- The balance of factors listed above is not favorable.
- The risk of unintended consequences from trading, such as the potential for localized problems,[5] is difficult to manage.

Once an agency has decided to create a marketable permitting program, it must consider how to establish it. Many agencies have used notice-and-comment rulemaking when creating a marketable permitting regime.[6] In a handful of instances, agencies have established marketable permitting programs through guidance documents.[7] Since agencies cannot impose legally binding obligations through guidance documents,[8] this latter approach can lead to some uncertainty among existing and prospective permittees and even agency officials as to the permanence of the program.[9] While notice-and-comment rulemaking has costs, it also has the virtue of soliciting stakeholder input while a rule is being shaped.[10] Public input can be beneficial in determining whether a particular activity lends itself to regulation via a marketable permitting regime and, if so, how the program should be designed so as to best serve the public interest.

Allocating Permits

Once a marketable permitting program has been established, permits will need to be distributed. The initial allocation of permits is referred to as the ''primary market'' for permits.[11] Agencies typically develop systems and regulations to allocate and keep track of permits and to verify their ultimate retirement, under their authority to implement the underlying permitting program.

Agencies predominantly follow one of two approaches in distributing permits: Historical-based allocations and auctions. Historical-based allocations distribute permits based on historical use of the regulated activity. This method is typically used to avoid disruptions to the status quo, to protect returns on past investments, and to ease tensions with the regulated industry and gain political support. However, it may also reward parties for engaging in activity that the agency now wants to curb, increase the risk of monopolies in

[3] Many of the examples in this Recommendation are drawn from marketable permitting programs in the environmental context because a significant amount of the experience and writing to date regarding marketable permitting programs stems from the environmental area. This is not meant to imply that marketable permits are not suitable in other contexts, nor that they are always useful in environmental contexts.

[4] For example, as with sulfur dioxide emissions from the Midwest which affect the East Coast and emissions from the East Coast which mostly blow out to sea.

[5] *See, e.g.,* Exec. Order No. 12,898, § 1–101, 59 FR 7629, 7629 (Feb. 16, 1994) (requiring each federal agency to ''identif[y] and addres[s], as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations''); *see also* Clean Air Act, 42 U.S.C. 7491(a)(1) (2016) (noting with respect to ''Class I'' areas (primarily national parks) that ''Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'').

[6] Schwartz, *supra* note 1, at 27.

[7] *Id.*

[8] *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 301–02 (1979).

[9] Schwartz, *supra* note 1, at 27–28.

[10] The Administrative Conference has long advised use of notice-and-comment even when it is not legally required. *See, e.g.,* Admin. Conf. of the U.S., Recommendation 2012–2, *Midnight Rules,* 77 FR 47,801 (Aug. 10, 2012); Admin. Conf. of the U.S., Recommendation 92–1, *The Procedural and Practice Rule Exemption from the APA Notice-and-Comment Rulemaking Requirements,* 57 FR 30,101 (July 8, 1992); Admin. Conf. of the U.S., Recommendation 82–2, *Resolving Disputes Under Federal Grant Programs,* 47 FR 30,701 (July 15, 1982).

[11] *See* Interagency Working Grp. for the Study on Oversight of Carbon Mkts., Report on the Oversight of Existing and Prospective Carbon Markets Carbon Study 12 (2011) (describing the primary market as the entry point for permits, whether entry occurs as a result of the government distributing permits directly to market participants, auctioning permits, or some combination of the two).

the permit market, reduce the incentive to innovate, and incentivize undesirable strategic behavior, like a firm artificially inflating its use of a resource ahead of an allocation benchmark to increase its share of allocated permits.[12]

By comparison, distributing permits through auctions reduces the barriers to entry to the regulated activity. Auctions also tend to lower the risk of monopolies and strategic behavior, facilitate price discovery, and prevent undue windfalls. However, auctions can be challenging to administer, especially for agencies without prior experience in doing so, and may require significant resources upfront to design and implement.[13]

There are also several other, less common ways of conducting initial permit allocation that may be useful in certain specialized contexts. These include output-based allocations,[14] allocating permits to particular communities,[15] or allocating permits based on other policy objectives.

In deciding how to allocate permits, agencies must make two additional important decisions. The first is to decide who is eligible to purchase permits. Some agencies restrict the buying and selling of permits to regulated entities, whereas others allow non-regulated parties—such as brokers, speculators, market facilitators, or the general public—to purchase permits. Allowing access to the market for permits to a wider range of parties can promote market liquidity and facilitate efficient price discovery, though it also increases the risk of market participants trying to ''corner the market'' (amassing permits to control prices). Allowing unregulated parties to buy permits and retire them also allows the public to decrease the level of the cap.

The second is whether to hold a pool of permits in reserve for future entrants. Once the initial allocation of permits has been made, in the absence of competitive markets, permit holders may have an incentive to impede purchases from potential new competitors.[16] Agencies have sometimes addressed this barrier to entry by creating a reserve pool of permits for new entrants. Some agencies have also instituted similar mechanisms for introducing permits into the market in the wake of large economic changes or emergencies that heavily drive demand for permits.

Overseeing a Marketable Permitting Program

Once initial permit distribution has occurred, agencies will want to ensure that parties comply with any obligations that arise under their permits. Monitoring ongoing performance is essential to achieving compliance with permit obligations. This includes tracking ownership of permits through their lifecycle, tracking the amount of regulated activity by permit holders, and verifying that credits represent real offsets of regulated activity. Agencies often conduct compliance monitoring themselves, but sometimes rely on self-verification by regulated parties or use third parties to verify compliance.[17]

In the event that regulated parties engage in more of the regulated activity than their permits allow, agencies have several enforcement tools.[18] For instance, agencies can require parties to buy additional permits until their use is in compliance with the number of permits they possess and can require parties to develop plans to ensure future compliance. Agencies can also impose sanctions. There is evidence that compliant parties are more supportive of enforcement in marketable permitting programs because noncompliance by other parties lowers the value of their allowances.[19]

Compliance monitoring and enforcement are important aspects of ensuring the integrity of a marketable permitting program. Another involves overseeing secondary and derivative markets that may emerge, with or without government assistance, following the initial allocation of permits. The secondary market for permits involves transactions in which permits are bought and sold following their initial entry into commerce in the primary market. This is in contrast to derivative markets, which are primarily risk management and price discovery markets in which actual transfer of permits might not occur.[20] Trading in secondary and derivative markets can be accomplished through (1) negotiations between buyers and sellers—which may or may not be facilitated by third parties (these are known as over-the-counter transactions)—or (2) exchanges, which match buyers and sellers in standardized transactions.[21]

The authority to oversee trading on secondary markets is somewhat fragmented, and authority over marketable permit programs is not always well defined and would benefit from clarification. The Commodity Futures Trading Commission (CFTC) has broad enforcement authority to pursue manipulation of the price of a commodity in interstate commerce.[22] It also has the authority to surveil spot trading (sales for the immediate delivery of a commodity) conducted on exchanges.[23] However, the CFTC only rarely brings enforcement actions for fraud in spot markets. The Federal Trade Commission (FTC)—under its authority to act against unfair, anticompetitive, and deceptive practices

[12] T.H. Tietenberg, Emissions Trading: Principles and Practice 138–39 (2d ed. 2006).

[13] Peter Cramton & Jesse Schwartz, *Collusive Bidding: Lessons from the FCC Spectrum Auctions,* 17 J. Reg. Econ. 229 (2000).

[14] Often proposed in marketable permitting programs that regulate electricity generators, output-based allocation distributes permits for pollution based on the amount of electricity produced by a given party, as opposed to the historical amount of pollution that party generated. This results in awarding permits to some of the cleanest producers of electricity, like renewable energy, rather than disproportionately to the most heavily polluting producers. Project on Alt. Regulation, Marketable Rights: A Practical Guide to the Use of Marketable Rights as a Regulatory Alternative 14 (1981).

[15] For instance, tradable fish catch shares are sometimes allocated directly to native communities to enable them to protect their interests.

[16] For example, airlines in possession of valuable landing slots have an incentive to retain the slots for possible future ridership, rather than deciding to sell the slots to a potential new competitor.

[17] In some marketable permitting programs, monitoring has been accomplished by spot checking only a small percentage of permit holders. On the other end of the spectrum, some programs require extensive measures such as third-party audits of all permits or credits annually or every few years.

[18] An example of a program that has achieved near perfect compliance is the acid rain market. It features a sophisticated monitoring system that tracks pollution allowance holdings and compares them at the end of the compliance period to total emissions registered in an emissions monitoring system. It also includes stiff penalties fixed to inflation per excess ton of pollutant discharged and imposes a requirement to submit a plan for how excess emissions will be offset in future years. Schwartz, *supra* note 1, at 65.

[19] For example, in many fishery and catch share programs, fishers are reportedly more cooperative with enforcement officials after the introduction of a marketable permitting program, recognizing that illegal fishing reduces the value of their quota. Tom Tietenberg, *Tradable Permits in Principle and Practice,* 14 Penn. St. Envtl. L. Rev. 251, 260 (2006).

[20] Derivatives are contracts or instruments based on the value of another financial or economic interest or property and are used for hedging and speculation. A derivative of a marketable permit would be a contract or instrument based on the value of the permit. Hedging allows the transfer of market risks to parties more capable of assuming it. Speculation involves attempting to earn profit by anticipating price movements or taking advantage of a perceived mispricing. Commonly traded types of derivative contracts include futures, options, and swaps.

[21] Interagency Working Grp. for the Study on Oversight of Carbon Mkts., *supra* note 11, at 14.

[22] *See id.* at 43 (''Because the CFTC has broad enforcement authority to pursue manipulation of a commodity's price in interstate commerce, the agency would have the authority to bring actions against individuals or entities believed to be involved in the price manipulation of allowance and carbon offsets.'').

[23] For example, the CFTC oversees trading of permits for the Regional Greenhouse Gas Initiative and the acid rain market on exchanges like the Chicago Climate Futures Exchange.

affecting commerce—and the Department of Justice—under its antitrust authority—also have some authority over secondary permit markets, though they have had limited involvement with marketable permitting programs to date. An individual agency's ability to oversee secondary markets will depend on its statutory authority, but even when it does have such authority, it may lack the expertise or resources to routinely monitor trading in these markets.

Authority to oversee derivative markets is largely vested in the CFTC.[24] It oversees derivatives traded in exchanges, which must publish certain kinds of trading information that would allow the CFTC to detect fraud and manipulation. The CFTC also has authority to oversee over-the-counter transactions. The CFTC's authority over derivative markets, and particularly over-the-counter derivative transactions, was strengthened by the Dodd-Frank Wall Street Reform and Consumer Protection Act.[25]

Agencies with authority to oversee permit markets have various tools to combat fraud, manipulation, and price volatility, all of which can undermine economic efficiency and erode confidence in permit markets. Fraud and manipulation can be addressed through various mechanisms, such as position limits, accountability triggers, market surveillance, and reporting requirements. Position limits can be used to ensure that no single party or combination of parties can control the supply of permits to the point of dictating prices. Position accountability triggers, which require permit holders wishing to exceed a certain threshold of permits to submit to additional reporting and oversight, can likewise be used to prevent hoarding of permits. Effective surveillance of markets and robust reporting requirements also discourage fraudulent activity.

Price volatility can occur in marketable permitting programs even without fraudulent activity, particularly in smaller, less robust markets with fewer participants, due to unexpected increases in demand or the costs of compliance. Volatility increases the risk of noncompliance and decreases confidence in the market system. Tools to address volatility include circuit breakers, which limit how much prices can rise or fall in a given period, and safety valves, which can set maximum or minimum prices or release reserve credits into the market in case of emergencies or demand spikes. Another way to reduce volatility is to issue permits with different durations. Finally, by defining a broader program that covers more entities under a single market, agencies can diversify the portfolio of permit seekers, reducing the risk of unexpectedly high cost in an isolated sector. Any individual regulated sector can experience unexpected compliance costs as economic conditions change; a broader market offers more flexibility, better absorbs price volatility, and so increases certainty for regulated parties and investors.

Because permit markets rely heavily on the decisions of both the agency and permit buyers, facilitating the flow of information is an extremely important part of a marketable permitting program. Making data on permit transactions, prices, and holdings publicly available can help the agency and the public assess the efficacy of the program. It also enables smooth operation of the permit markets by enabling permit buyers to better evaluate the value of the permits. Having clear communication policies for announcing policy changes or enforcement actions that could influence the market prevents pre-publication leaks and information asymmetries that could unjustly benefit some parties and undermine the permit market.

* * * * *

This Recommendation does not address whether agencies should increase or reduce their usage of marketable permitting programs or speak to the substantive areas in which such programs may be desirable. Rather, the Administrative Conference acknowledges that agencies have been directed to consider marketable permits, consistent with statutory authorization and any applicable statutory requirements, as one possible mode of regulation and seeks to identify the key considerations in assessing marketable permits as a potential alternative.[26] This Recommendation highlights best practices that agencies should consider in designing a marketable permitting program.

Recommendation

Establishing a Marketable Permitting Program

1. When designing a marketable permitting program, agencies should carefully consider whether such a program will best achieve their policy objectives, and, if so, whether the agency's goals would be better served by using a cap-and-trade, rate-based, or credit trading system or a combination of the above.

2. Agencies should establish and publish clear guidelines containing all of the features of marketable permit programs, including expectations as to the longevity of marketable permits and the precise obligations or authorizations that they convey.

3. Agencies should generally consider using notice-and-comment rulemaking when creating a marketable permitting regime, both in order to reduce uncertainty as to the permanence of the program and to gather public input that may prove beneficial in shaping the program.

4. Agencies should consider whether to allow non-regulated parties to buy and sell permits. Allowing a broader range of parties to trade permits can promote market liquidity and facilitate efficient price discovery but may increase opportunities for manipulation in thin markets.

5. Agencies should explore agreements with other appropriate agencies and authorities to allocate responsibilities for developing standards or policies, where appropriate. These actions may include addressing compliance enforcement and market manipulation.

Overseeing a Marketable Permitting Program

6. As with other types of permitting programs, when designing a marketable permitting program, agencies should include mechanisms to ensure compliance with the program. Agencies should monitor performance by tracking ownership of permits, tracking regulated activity, and verifying that credits represent real offsets from regulated activity. Depending on feasibility and efficiency, agencies should consider verifying compliance directly, making use of self-verification, or engaging third parties to verify compliance. Self-verification tends to be a useful option when verification procedures can be standardized or when legal remedies are available to aid in enforcement. If an

[24] Interagency Working Grp. for the Study on Oversight of Carbon Mkts., *supra* note 11, at 44, 51. The Securities and Exchange Commission has authority over securities and securities based swaps.

[25] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). Certain activities involving derivatives may be exempt from CFTC oversight, but CFTC has the statutory authority to eliminate many of those exemptions and to provide comprehensive oversight of derivatives in permit markets. Schwartz, *supra* note 1, at 76.

[26] Exec. Order No. 12,866, 58 FR 51,735 (Oct. 4, 1993). Other examples of regulatory tools drawing on economic incentives include fees, penalties, subsidies, changes in liability rules or property rights, required bonds, insurance, and warranties. Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A–4, Regulatory Analysis (2003).

agency chooses to use third-party credit verifiers, it should set standards to ensure that they are qualified, insured, and free from conflicts of interest.

7. As with other types of permitting programs, in designing a marketable permitting program, agencies should require noncompliant parties to come into compliance and should include sanctions with sufficient deterrent effect to discourage noncompliance.

8. Agencies should coordinate with other appropriate agencies and authorities to identify which oversight tools are appropriate to prevent fraud and manipulation.

9. Agencies should address extreme price volatility by creating broad markets, issuing permits with different durations, or using circuit breakers, safety valves, or reserve pools, as necessary. Agencies should also consider using reserve pools to facilitate new parties entering the market.

Information Management

10. Subject to other agency priorities and applicable legal requirements, including the Paperwork Reduction Act (PRA) and e-Government Act, agencies should collect data on the operation of marketable permitting programs and consider periodically assessing both the policy effectiveness and economic efficiency of existing marketable permitting programs. Agencies should be cognizant that some of the data collected may be confidential and protected against disclosure by law.

11. To the extent practicable, agencies should release data on permit transactions, prices, holdings, compliance rates, and other data to help the public gauge a market's policy effectiveness and to help parties make efficient decisions in the market.

12. Agencies that manage marketable permitting programs should coordinate with other agencies and authorities that have expertise to improve marketable permitting programs.

13. In order to minimize information asymmetries, agencies should develop communication policies for announcing policy changes or enforcement actions that could influence the market.

Administrative Conference Recommendation 2017–5

Agency Guidance Through Policy Statements

Adopted December 14, 2017

General statements of policy under the Administrative Procedure Act (hereinafter policy statements) are agency statements of general applicability, not binding on members of the public, ''issued . . . to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [1] Interpretive rules are defined as rules or ''statements issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers.'' [2] Both policy statements and interpretive rules are exempt from the APA's requirements for the issuance of legislative rules (including notice and comment) [3] and are often referred to as ''guidance'' or ''guidance documents'' (although usage varies). This Recommendation, however, covers only policy statements, not interpretive rules; nevertheless, many of the recommendations herein regarding flexible use of policy statements may also be helpful with respect to agencies' use of interpretive rules.

Over the years, the Conference has issued several recommendations pertaining to policy statements. Recommendation 76–5 states that agencies should provide for public participation in the formulation of policy statements (and of interpretive rules) depending on the impact of the statement in question and the practicability of participation.[4] Recommendation 92–2 recognizes the value of policy statements but expresses concern about policy statements ''that are intended to impose binding substantive standards or obligations upon affected persons'' notwithstanding the legal requirement that they be nonbinding on the public, and it advises agencies to establish flexible procedures that allow members of the public a fair opportunity to argue for approaches different from those set forth in a policy statement.[5] The Conference has now decided, twenty-five years after Recommendation 92–2, to update its recommendations on the formulation and use of policy statements in light of current administrative experience.[6]

Policy statements are important instruments of administration across numerous agencies, and are of great value to agencies and the public alike. Compared with adjudication or enforcement, policy statements can make agency decisionmaking faster and less costly, saving time and resources for the agency and the regulated public. They can also make agency decisionmaking more predictable and uniform and shield regulated parties from unequal treatment, unnecessary costs, and unnecessary risk, while promoting compliance with the law.[7] Compared with legislative rules, policy statements are generally better for dealing with conditions of uncertainty and often for making agency policy accessible, especially to regulated parties who lack counsel. Further, the provision of policy statements often takes less time and resources than legislative rulemaking, freeing up the agency to, for instance, take other action within its statutory mission. In pursuit of benefits such as these, agencies may use policy statements to bind some agency employees to the approach of the policy statement,[8] so long as such employees are not bound in a manner that forecloses a fair opportunity for the public or employee to argue for approaches different from those in the policy statement or seek modification of the policy statement.[9]

Despite their usefulness to both agencies and the public, policy statements are sometimes criticized for coercing members of the public as if they were legislative rules,

[1] Attorney General's Manual on the Administrative Procedure Act 30 n.3 (1947).

[2] *Id.*

[3] 5 U.S.C. 553(b)(A).

[4] Admin. Conf. of the U.S., Recommendation 76–5, *Interpretive Rules of General Applicability and Statements of General Policy,* 41 FR 56,769 (Dec. 30, 1976). Additional prior Conference recommendations pertaining to policy statements and agency guidance more broadly, apart from others referenced specifically in this preamble, include Recommendation 2015–3, *Declaratory Orders,* 80 FR 78,163 (Dec. 16, 2015); and Recommendation 2014–3, *Guidance in the Rulemaking Process,* 79 FR 35,992 (June 25, 2014).

[5] Admin. Conf. of the U.S., Recommendation 92–2, *Agency Policy Statements,* 57 FR 30,103 (July 8, 1992).

[6] The Conference commissioned a study that resulted in interviews with 135 individuals across agencies, industry, and non-governmental organizations (NGOs), which are the basis for this Recommendation. *See* Nicholas R. Parrillo, Federal Agency Guidance: An Institutional Perspective (Oct. 12, 2017) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/agency-guidance-final-report.*

[7] *See id.* at 28–30; *see also* Admin. Conf. of the U.S., Recommendation 71–3, *Articulation of Agency Policies,* 38 FR 19,788 (July 23, 1973) (''Agency policies which affect the public should be articulated and made known to the public to the greatest extent feasible. To this end, each agency which takes actions affecting substantial public or private interests, whether after hearing or through informal action, should, as far as is feasible in the circumstances, state the standards that will guide its determination in various types of agency action, either through published decisions, general rules or policy statements other than rules.'').

[8] *See* Recommendation 92–2, *supra* note 5; Office of Mgmt. & Budget, Exec. Office of the President, Final Bulletin for Agency Good Guidance Practices, 72 FR 3432, 3436 (Jan. 25, 2007) (''[A]gency employees should not depart from significant agency guidance documents without appropriate justification and supervisory concurrence.''); *id.* at 3437 (''[W]hile a guidance document cannot legally bind, agencies can appropriately bind their employees to abide by agency policy as a matter of their supervisory powers over such employees without undertaking pre-adoption notice and comment rulemaking.'').

[9] *See* Final Bulletin for Agency Good Guidance Practices, *supra* note 8, 72 FR at 3440.

notwithstanding their legally nonbinding status. Recommendation 92–2 defined this problem in terms of an agency's *intent* to use policy statements to bind the public, which may imply that the problem is one of agency bad faith. While agency intent to make a policy statement binding, if shown, would deserve criticism and correction, a focus on intent is often inadequate for understanding and addressing the phenomenon of binding policy statements. This Recommendation supplements Recommendation 92–2 by addressing other reasons why members of the public may feel bound by what they perceive as coercive guidance.

There are several kinds of reasons why members of the public sometimes find they have no practical escape from the terms of a policy statement. First are those that are not of the making of an agency or its officials. Specifically, modern regulatory schemes often have structural features that tend to lead *regulated parties* to follow the policy statement's approach even if in theory they might be legally free to choose a different course, because the costs and risks associated with doing so are simply too high. This is often the case if statutes or regulations (a) require a regulated party to obtain prior approval from an agency to obtain essential permissions or benefits; (b) subject a regulated party to repeated agency evaluation under a legal regime with which perfect compliance is practically unachievable, incentivizing the party to cultivate a reputation with the agency as a good-faith actor by following even non-binding guidance; or (c) subject the regulated party to the possibility of enforcement proceedings that entail prohibitively high costs regardless of outcome, or can lead to sanctions so severe that the party will not risk forcing an adjudication of the accusation. Meanwhile, a policy statement can operate on *beneficiaries* of a statute or legislative rule as if it were a legislative rule by effectively depriving them of the statute or legislative rule's protection. This can occur if the policy statement promises to treat regulated parties less stringently than the statute or legislative rule requires, effectively freeing those parties to shift their behavior in a direction that harms beneficiaries. Similarly, in its focus on regulatory beneficiaries and regulated parties, an agency policy statement may induce conduct harmful to other interested parties.

Second, there are a number of reasons why agencies themselves may naturally tend to be somewhat inflexible with respect to their own policy statements. Even though these reasons are more within an agency's or its officials' control than those discussed above, this lack of flexibility may often stem from causes other than agency intent. Officials who behave inflexibly may be seeking to balance the importance of being flexible against stakeholder demands to honor other, competing values that officials would be remiss to ignore. For example, if one regulated firm argues for a different approach from that in a policy statement and the agency approves, this may prompt other firms to criticize the agency for not keeping a level playing field among competitors; may cause other firms to lose faith in the agency's consistency and predictability, which may render them less likely to trust and cooperate with the agency; and may open the agency to accusations of favoritism from non-governmental organizations (NGOs), the media, and congressional overseers.

In principle, one way an agency might reconcile these understandable pressures would be to prepare and disseminate written reasons when it approves an approach different from that in a policy statement, thereby making the same reasoning available to all similarly situated parties going forward. This transparency helps level the playing field, makes agency behavior more predictable, and diminishes concerns about favoritism. But agencies might still find inflexibility the easier course and adopt it by default, because reason-giving requires agency resources.[10] Besides this, there are additional organizational reasons for inflexibility: Some agency offices, by reason of their usual day-to-day business, are socialized to be less receptive to stakeholder requests than others; higher-level officials have institutional reasons to back the decisions of their subordinates; and the distinction between binding and nonbinding policies is counter-intuitive for many officials, at least without substantial training.

These various pressures tend to give at least some policy statements a quasi-binding character in fact regardless of their legal status. That said, there are important steps that agency officials can take to mitigate these legislative-rule-like effects of policy statements by stating that they are not binding[11] and by remaining flexible in their use of such statements by offering members of the public a fair opportunity to argue for other approaches. What steps to take and when is the focus of paragraphs 4 through 8 of this Recommendation. Agencies should also, in appropriate circumstances, use appropriate tools to enable public participation in the formulation of policy statements before these statements are adopted. This is the focus of paragraphs 9 through 11 of this Recommendation.

First, flexibility often requires managerial initiative and resources to foster and maintain. This Recommendation identifies concrete organizational measures that agencies may take to foster flexibility: Low-cost measures that agencies should take at a minimum and additional measures with higher cost that agencies should consider in light of resource limitations and competing priorities.

In addition, public participation at the time of a policy statement's adoption may be of value to the agency, regulated parties, regulatory beneficiaries, and other interested parties. Such public participation may be especially valuable to parties that lack the opportunity and resources to participate in the individual adjudicatory or enforcement proceedings to which a policy may apply.

Choosing a level and means of public participation that is appropriate to a policy statement's likely impact and is practicable requires consideration of several factors. Given the complexity of these factors and their tendency to vary with context, it is appropriate to make decisions about whether or how to seek public participation on policy statements on a document-by-document or agency-by-agency basis.[12] A government-wide requirement for inviting written input from the public on policy statements is not recommended, unless confined to the most extraordinary documents.[13] This is

[10] Another difficulty with giving reasons is a potential tension with agency policies on the protection of confidential business or personal information. This Recommendation is not intended to alter existing agency policies on such protection.

[11] *See, e.g., About Guidance Documents,* U.S. Food & Drug Admin., *https://www.fda.gov/RegulatoryInformation/Guidances/default.htm#about* (''Guidance documents represent FDA's current thinking on a topic. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations.'').

[12] Some agencies have adopted procedural rules requiring solicitation of written input from the public for large and well-defined categories of their policy statements, whereas others have undertaken such solicitations on a decentralized, ad hoc basis. Parrillo, *supra* note 6, at 167–68.

[13] The Office of Management and Budget's Good Guidance Practices calls for pre-adoption public comment on ''economically significant'' guidance documents, but this appears to cover only a very small number of documents. *See id.* at 167–71 (citing Final Bulletin for Agency Good Guidance Practices, *supra* note 8, 72 FR at 3439–40).

a function both of the complex cost-benefit considerations noted above and the fact that broad mandates for written public input on policy statements can result in two additional unintended consequences. First, a broad mandate applied to a resource-strapped agency may cause the agency to fail to process and incorporate comments and instead leave many policy statements in published ''draft'' form indefinitely, which may at least partly defeat the purpose of participation and cause stakeholder confusion. Second, a broad mandate may so legitimize policy statements in the eyes of the agency that such statements could end up largely supplanting legislative rulemaking.

Recommendation

Policy Statements Should Not Bind the Public

1. An agency should not use a policy statement to create a standard binding on the public, that is, as a standard with which noncompliance may form an independent basis for action in matters that determine the rights and obligations of any member of the public.

2. An agency should afford members of the public a fair opportunity to argue for lawful approaches other than those put forward by a policy statement or for modification or rescission of the policy statement.

3. Although a policy statement should not bind an agency as a whole, it is sometimes appropriate for an agency, as an internal agency management matter, and particularly when guidance is used in connection with regulatory enforcement, to direct some of its employees to act in conformity with a policy statement. But the agency should ensure that this does not interfere with the fair opportunity called for in Recommendation 2. For example, a policy statement could bind officials at one level of the agency hierarchy, with the caveat that officials at a higher level can authorize action that varies from the policy statement. Agency review should be available in cases in which frontline officials fail to follow policy statements in conformity with which they are properly directed to act.

Minimum Measures To Avoid Binding the Public

4. A policy statement should prominently state that it is not binding on members of the public and explain that a member of the public may take a lawful approach different from the one set forth in the policy statement or request that the agency take such a lawful approach. The policy statement should also include the identity and contact information of officials to whom such a request should be made.

5. A policy statement should not include mandatory language unless the agency is using that language to describe an existing statutory or regulatory requirement, or the language is addressed to agency employees and will not interfere with the fair opportunity called for in Recommendation 2.

6. The agency should instruct all employees engaged in an activity to which a policy statement pertains to refrain from making any statements suggesting that a policy statement is binding on the public. Insofar as any employee is directed, as an internal agency management matter, to act in conformity with a policy statement, that employee should be instructed as to the difference between such an internal agency management requirement and law that is binding on the public.

Additional Measures To Avoid Binding the Public

7. In order to avoid using policy statements to bind the public and in order to provide a fair opportunity for other lawful approaches, an agency should, subject to considerations of practicability and resource limitations and the priorities described in Recommendation 8, consider additional measures, including the following:

a. Promoting the flexible use of policy statements in a manner that still takes due account of needs for consistency and predictability. In particular, when the agency accepts a proposal for a lawful approach other than that put forward in a policy statement and the approach seems likely to be applicable to other situations, the agency should disseminate its decision and the reasons for it to other persons who might make the argument, to other affected stakeholders, to officials likely to hear the argument, and to members of the public, subject to existing protections for confidential business or personal information.

b. Assigning the task of considering arguments for approaches other than that in a policy statement to a component of the agency that is likely to engage in open and productive dialogue with persons who make such arguments, such as a program office that is accustomed to dealing cooperatively with regulated parties and regulatory beneficiaries.

c. In cases where frontline officials are authorized to take an approach different from that in a policy statement but decline to do so, directing appeals of such a refusal to a higher-level official who is not the direct superior of those frontline officials.

d. Investing in training and monitoring of frontline personnel to ensure that they (i) understand the difference between legislative rules and policy statements; (ii) treat parties' ideas for lawful approaches different from those in a policy statement in an open and welcoming manner; and (iii) understand that approaches other than that in a policy statement, if undertaken according to the proper internal agency procedures for approval and justification, are appropriate and will not have adverse employment consequences for them.

e. Facilitating opportunities for members of the public, including through intermediaries such as ombudspersons or associations, to propose or support approaches different from those in a policy statement and to provide feedback to the agency on whether its officials are giving reasonable consideration to such proposals.

Priorities in Deciding When To Invest in Promoting Flexibility

8. Because measures to promote flexibility (including those listed in Recommendation 7) may take up agency resources, it will be necessary to set priorities for which policy statements are most in need of such measures. In deciding when to take such measures the agency should consider the following, bearing in mind that these considerations will not always point in the same direction:

a. An agency should assign a higher priority to a policy statement the greater the statement's impact is likely to be on the interests of regulated parties, regulatory beneficiaries, and other interested parties, either because regulated parties have strong incentives to comply with the statement or because the statement practically reduces the stringency of the regulatory scheme compared to the status quo.

b. An agency should assign a lower priority to promoting flexibility in the use of a policy statement insofar as the statement's value to the agency and to stakeholders lies primarily in the fact that it is helpful to have consistency independent of the statement's substantive content.

Public Participation in Adoption or Modification of Policy Statements

9. When an agency is contemplating adopting or modifying a policy statement, it should consider whether to solicit public participation, and, if so, what kind, before adopting the statement. Options for public participation include outreach to selected stakeholder representatives,

stakeholder meetings or webinars, advisory committee proceedings, and invitation for written input from the public with or without a response. In deciding how to proceed, the agency should consider:

a. Existing agency procedures for the adoption of policy statements, including any procedures adopted in response to the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices (2007).

b. The factors listed in Recommendation 8.

c. The likely increase in useful information available to the agency from broadening participation, keeping in mind that non-regulated parties (regulatory beneficiaries and other interested parties) may offer different information than regulated parties and that non-regulated parties will often have no opportunity to provide input regarding policy statements other than at the time of adoption.

d. The likely increase in policy acceptance from broadening participation, keeping in mind that non-regulated parties will often have no opportunity to provide input regarding policy statements other than at the time of adoption, and that policy acceptance may be less likely if the agency is not responsive to stakeholder input.

e. Whether the agency is likely to learn more useful information by having a specific agency proposal as a focal point for discussion, or instead having a more free-ranging and less formal discussion.

f. The practicability of broader forms of participation, including invitation for written input from the public, keeping in mind that broader participation may slow the adoption of policy statements and may diminish resources for other agency tasks, including the provision of policy statements on other matters.

10. If an agency does not provide for public participation before adopting or modifying a policy statement, it should consider offering an opportunity for public participation after adoption. As with Recommendation 9, options for public participation include outreach to selected stakeholder representatives, stakeholder meetings or webinars, advisory committee proceedings, and invitation for written input from the public with or without a response.

11. An agency may make decisions about the appropriate level of public participation document-by-document or by assigning certain procedures for public participation to general categories of documents. If an agency opts for the latter, it should consider whether resource limitations may cause some documents, if subject to pre-adoption procedures for public participation, to remain in draft for substantial periods of time. If that is the case, agencies should either (a) make clear to stakeholders which draft policy statements, if any, should be understood to reflect current agency thinking; or (b) provide in each draft policy statement that, at a certain time after publication, the document will automatically either be adopted or withdrawn.

12. All written policy statements affecting the interests of regulated parties, regulatory beneficiaries, or other interested parties should be promptly made available electronically and indexed, in a manner in which they may readily be found. Written policy statements should also indicate the nature of the reliance that may be placed on them and the opportunities for reconsideration or modification of them or the taking of different approaches.

Separate Statement for Administrative Conference Recommendation 2017–5 by Senior Fellow Ronald M. Levin

Filed December 20, 2017

The accompanying Recommendation observes that ''[t]his Recommendation . . . concerns only policy statements, not interpretive rules; nevertheless, many of the recommendations herein regarding flexible use of policy statements may also be helpful with respect to agencies' use of interpretive rules.'' This remark is well taken as far as it goes, but in another respect it is notably cautious. Other governmental bodies that have adopted procedures or guidelines regarding the same general subject during the past two decades have each used only one framework to address all guidance—that is, both policy statements and interpretive rules.[1]

In adopting the Recommendation, the Assembly of the Administrative Conference was generally sympathetic to the stance taken by the groups just mentioned, but it concluded that it did not have enough information to take a firm stand. The research for its project had focused primarily on policy statements. Thus, the Assembly opted for a relatively narrow recommendation for the present, but it also adopted a ''sense of the Conference'' resolution envisioning a follow-up study that would lay the groundwork for a subsequent recommendation on interpretive rules. The Assembly's caution is understandable, but I will use this separate statement to emphasize that its ancillary resolution has pointed in the right direction.

The basic problem that Recommendation 2017–5 seeks to redress is that regulated persons sometimes feel that they have no choice other than to comply with a policy statement's position, even if they disagree with it. The Recommendation seeks to mitigate that problem by suggesting ways in which an agency can give those persons a fair opportunity to ask the agency to reconsider and perhaps change its position. At the same time, the Recommendation's solutions are made ''subject to considerations of practicability and resource limitations,'' so as to avoid deterring agencies from giving advice that the public desires.

Essentially the same analysis can also be applied to interpretive rules: The relative proportion of law and policy in the document has little or nothing to do with either the agency's interest in giving advice or the private party's interest in being able to induce the agency to reconsider it. Moreover, in practice, law and policy blend together in many guidance document; thus, procedures that speak to one and not the other are bound to prove somewhat artificial.

Why, then, wouldn't one urge agencies to apply the same principles to interpretive rules? It may be thought that, in contrast to its handling of policy statements, an agency will naturally treat an interpretive rule as binding, because it concerns binding law. But that is a non-sequitur. An agency should, of course, be free to state and act on its *position* that a statute or regulation, as construed in an interpretive rule, is binding. However, the very purpose of issuing such a rule is to specify which of various imaginable readings of the statute or regulation the agency considers correct. Persons who may believe that a different interpretation is correct should have what Recommendation 2017–5 calls a ''fair opportunity'' to try to persuade the agency to adopt their preferred view—just as the Recommendation contemplates with respect to policy statements. For an agency to assert that, because the underlying text is binding, the interpretation that the agency happens to have chosen must also be binding is to beg the question that ought to be the subject of that dialogue.

The Assembly was mindful that opinions have differed on the question of whether, for procedural purposes, interpretive rules can be binding in a sense that policy statements cannot be.

[1] *See, e.g.,* Prohibition on Improper Guidance Documents, (DOJ, Nov. 16, 2017), *https://www.justice.gov/opa/press-release/file/1012271/download;* Final Bulletin for Agency Good Guidance Practices, 72 FR 3432 (OMB, Jan. 25, 2007); FDA Good Guidance Practices, 21 CFR 10.115 (2017) (issued Sept. 19, 2000).

As just suggested, I myself believe the answer is no, but some agency lawyers think otherwise. Ultimately, however, that divergence in opinion should not prevent the Conference from moving forward with a recommendation in the next phase of its inquiry. As with most Conference pronouncements, the principal goal should be to articulate recommended practices, not to opine about the law.

I hope that a project of the kind contemplated by the sense of the Conference resolution will be pursued in the near future. I trust that it will culminate in broad recognition that most, if not all, of the advice in the present Recommendation can and should be applied to interpretive rules as well.

Administrative Conference Recommendation 2017–6

Learning From Regulatory Experience

Adopted December 15, 2017

Making sound regulatory decisions demands information and analysis. Several Administrative Conference recommendations encourage agencies to gather data when making new rules and when reviewing existing rules.[1] These recommendations reinforce analytic demands imposed on agencies by legislation,[2] executive orders,[3] and judicial decisions.[4]

Agencies need information about the problems that new rules will address, such as the risks involved and their causes. But agencies also need information about potential solutions to these problems. What possible alternative rules or rule designs might help solve the problems? How effective are these alternatives likely to be in addressing the underlying problems? Are there constraints, barriers, or unanticipated consequences that arise in the use of these different alternatives? In terms of understanding possible alternatives and how well they might work in practice, agencies benefit from having information from experience with different solutions. Learning from experience is the focus of this recommendation.

Learning From Regulatory Experience

No uniform or tidy formula exists as to how agencies should generate, gather, and analyze the data necessary to support sound regulatory decisions. A variety of well-accepted and widely-used methods exist from which agencies may choose, with the appropriate choices often varying agency by agency and even from situation to situation. Practical considerations such as resource and data availability will affect the choices agencies make about the methods of learning used to support regulatory decisionmaking.[5] Still, it is possible to identify some of the main methods for learning that agencies should consider using at different stages of the rulemaking lifecycle. These methods, which are not necessarily mutually exclusive, can be used before or after a rule is adopted, and they may be considered on occasion as part of the final rule itself, which might be structured to facilitate future learning by agency officials.

Variation is the key to agency learning. In this context, ''variation'' can refer to differences among jurisdictions[6] or across time,[7] with some jurisdictions or time periods having in place a version of a rule and others having in place a different version of the rule (or no applicable rule at all). It can also refer to differences among regulated entities or people within the same jurisdiction, with some entities or people subject to a version of a rule and others subject to a different version of the rule (or no applicable rule at all).

An agency can learn from all of these kinds of variation. For example, a regulation that goes into effect in 2017 leaves the agency with two distinct time periods to compare: The years before 2017, and 2017 and beyond. A rule that applies in jurisdictions X and Y but not in jurisdictions A and B leaves the agency with the ability to compare outcomes in X and Y with those in A and B, assuming the jurisdictions are comparable or that differences can be statistically controlled. The agency can then learn whether outcomes are improved in those time periods or jurisdictions with the regulatory obligation. However, agencies must be careful not to assume automatically that any differences in outcomes that they observe have been caused by the intervention of the regulation. Other factors that correlate with the observed outcomes might also vary across the same time periods or jurisdictions.

Using Observational or Randomized Methods To Learn From Experience

To learn from experience, agencies should seek methods that allow them to draw valid inferences about whether a particular regulatory intervention causes (or will cause) improvements in the desired outcomes. Concern about the validity of such causal inferences generally takes two forms. The first of these—external validity—refers to the extent to which the inferences from a study situated within a particular time period or setting can apply to other time periods or settings. In other words, an agency should consider to what extent the results of a study focused on entities or individuals in one period or setting are generalizable to entities or individuals in other times or settings. The second type of validity—internal validity—refers to the extent to which the outcomes observed in a study can be said to have been caused by the intervention rather than by potential

[1] *See, e.g.,* Admin. Conf. of the U.S., Recommendation 2014–5, *Retrospective Review of Agency Rules,* 79 FR 75,114 (Dec. 17, 2014); Admin. Conf. of the U.S., Recommendation 85–2, *Agency Procedures for Performing Regulatory Analysis of Rules,* 50 FR 28,364 (July 12, 1985); Admin. Conf. of the U.S., Recommendation 79–4, *Public Disclosure Concerning the Use of Cost-Benefit and Similar Analyses in Regulation,* 44 FR 38,826 (June 8, 1979).

[2] *See, e.g.,* Data Quality Act, Public Law 106–554, 515, 114 Stat. 2763A–153 (2001).

[3] *See, e.g.,* Exec. Order No. 12,866, § 5, 58 FR 51,735, 51,739 (Oct. 4, 1993) (''[T]o . . . improve the effectiveness of existing regulations . . . each . . . agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives.''); Exec. Order No. 13,563, § 6, 58 FR 3821, 3822 (Jan. 21, 2011) (requiring agencies to ''consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned''); Exec. Order No. 13,771, § 2, 82 FR 9339 (Feb. 3, 2017) (requiring the repeal of two existing regulations for each new regulation proposed, and leaving in place prior analytical requirements); Exec. Order No. 13,777, § 3, 82 FR 12,285, 12,286 (Mar. 1, 2017) (requiring the establishment of regulatory reform task forces that ''shall evaluate existing regulations . . . and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law'').

[4] *See, e.g.,* Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 52 (1983) (explaining that the agency must show that its action was the result of ''reasoned decisionmaking'' consistent with ''the evidence before the agency'').

[5] A general discussion of factors to consider in choosing methods and measurements in regulatory learning can be found in Cary Coglianese, *Measuring Regulatory Excellence, in Achieving Regulatory Excellence 291–305* (Cary Coglianese ed., 2017) [hereinafter Coglianese, *Measuring Regulatory Excellence*].

[6] Cross-sectional analysis means analysis of data collected across at least two groups or jurisdictions, with one that is subject to the intervention (such as regulation) and one that is not. *See* Cary Coglianese, *Empirical Analysis and Administrative Law,* 2002 U. Ill. L. Rev. 1111, 1117–19.

[7] Longitudinal analysis is a research design that involves repeated observations of the same subjects over a period, where variation in the intervention occurs over time (*i.e.,* data before and after an intervention is introduced). *See* Cary Coglianese, *Measuring Regulatory Performance: Evaluating the Impact of Regulation and Regulatory Policy,* Organization for Econ. Co-Operation and Dev. [OECD] Expert Paper No. 1 39 (Aug. 2012) [hereinafter Coglianese, *Measuring Regulatory Performance*].

confounders.[8] In other words, an agency should consider whether what might appear to be a relationship between a regulation and changes in outcomes truly derives from the regulation. For example, if a study shows that accidents from a particular industrial process have declined following the adoption of a regulation intended to reduce those accidents, concern about internal validity would lead agency officials to consider the possibility that the observed decline might have arisen from market or technological factors that led to changes in the relevant industrial processes around the same time as the regulation but which came about for reasons entirely unrelated to the regulation. An agency may wish to learn whether the observed decline came from the regulation or from other factors so as to know whether to redesign the regulation if further improvements are warranted.

To isolate the true effects of a regulation on relevant outcomes, such as risk reduction, agencies can use randomized approaches or observational approaches. Both of these approaches have advantages and disadvantages, and choosing between them will depend on a variety of contextual factors.

Randomized approaches promise to generate results with a high level of internal validity because, by making a random assignment of individuals or entities subject to a regulatory intervention, any other factors that might lead to changes in the relevant outcomes should be distributed randomly between the group subject to the regulatory intervention and the comparison group. Of course, randomized methods can also have their limitations. There is always a question as to whether the results of a randomized experiment are externally valid. For example, a perfectly designed randomized experiment may indicate that exposure to an intervention generates particular outcomes in a laboratory setting but may not mean that those same outcomes will occur outside of the laboratory. In addition, the results of randomized methods may lack validity if individuals, knowing that their behaviors are part of a randomized experiment, behave differently from how they would otherwise act. Researchers try to limit this particular threat to validity by using double-blind, or even just single-blind, study designs.[9] However, it is possible that, in many regulatory contexts, regulated parties will know they are subject to a randomized study and may engage in strategic behavior that may skew the results of the study.

In addition to these methodological challenges, randomized study methods may present legal, policy, and ethical concerns. From a legal standpoint, subjecting similar parties to different rules may be thought to raise concerns under the Equal Protection Clause of the Constitution or the arbitrary-and-capricious standard of the Administrative Procedure Act.[10] Of course, an agency might present a legally valid argument that the rational basis, or non-arbitrary reason, for its action is to generate information necessary to make an informed decision.[11] From a policy standpoint, if some entities are subject to regulation and others are not, an agency may well risk artificially distorting a market, depending on what a rule requires or how the study is designed. From an ethical standpoint, if a rule specifically sets up an experiment with the idea that, after the experiment, the agency may change the rule, a concern may exist if some regulated entities will by then have invested heavily in capital-intensive equipment required by the rule. Another concern might be with varying levels of health or safety protection to different members of the public. In the absence of countervailing considerations, legal, policy, and ethical challenges such as these may mean that regulatory agencies should use randomized study methods only under limited circumstances.

If randomized study methods are either unavailable or inadvisable, agencies can use a broad range of opportunities to learn from observational studies. Sometimes these studies are called ''natural experiments,'' as they seek to draw inferences based on variation that naturally arises over time or across settings in the absence of randomization. For this reason, observational studies lack some of the methodological advantages of randomization. Internal validity is generally a more present concern with observational studies, as other factors may confound a study's results. In other words, other factors may also vary naturally with the intervention under study and affect the observed outcomes. An example of a potential confounding factor is when an intervention is accepted voluntarily; those individuals or entities who voluntarily choose to adopt a new practice may be different from the individuals or entities to whom a mandatory requirement would apply.

The possibility of such confounding factors should be accounted for when conducting observational studies and can be effectively addressed by using various methods that attempt to mimic statistically what occurs with randomization.[12] Assuming the potential threats to internal validity can be addressed, observational studies may in some circumstances lead to results with stronger external validity than randomization. As a general matter, observational studies will also not raise the same legal, policy, or ethical concerns as randomization. With observational studies, the agency is either exploiting natural variation that would have arisen from the rule anyway or allowing for learning from other existing variation, such as state-by-state variation.

Opportunities for Learning From Experience Throughout the Rulemaking Lifecycle

Agencies have opportunities to learn from experience throughout the rulemaking lifecycle. For example, one stage of this cycle occurs before a rule is adopted, as agencies are focused on a problem to be addressed and are considering potential regulatory solutions. Learning from experience at this early stage can help inform an agency of how a rule should be designed. Another stage of the cycle lies with the design of the rule itself. At this stage, as an agency writes a rule, it may design it in a way that can facilitate the type of variation needed to promote learning. Finally, yet another stage arises after the agency has promulgated the rule. At this stage, agencies can consider actions, such as waivers, that can facilitate learning from experience.

Learning Before Adopting a Rule

Prior to adopting a rule, an agency should gather information using appropriate methods to help inform the regulatory action it plans to take. An agency may wish to consider randomized or observational methods.

Randomized Methods. Agencies can analyze existing peer-reviewed studies

[8] In this context, ''confounders'' refer to changes in outcomes that may appear to have been caused by the regulation but are actually caused by other factors. *See* Coglianese, *Measuring Regulatory Performance, supra* note 7 and accompanying text.

[9] ''Blindness'' in this context means subjects are not aware of whether they are in the treatment or comparison group. ''Double blindness'' means neither the subjects nor the researchers know which subjects received the treatment, and which received the placebo. *See* Michael Abramowicz et al., *Randomizing Law,* 159 U. Pa. L. Rev. 929, 948–50 (2011).

[10] *See* 5 U.S.C. 706(2)(A).

[11] *See* Abramowicz et al., *supra* note 9, at 968.

[12] Examples of such statistical methods include: difference-in-differences, propensity score matching, instrumental variables, and regression discontinuity. *See* Coglianese, *Measuring Regulatory Performance, supra* note 7, at 39–42.

that incorporate a randomized design. They can also initiate or support new pilot programs that produce randomized study data. For example, if an agency were trying to determine whether a certain default rule related to saving for retirement should be required of all employers offering 401(k) plans, it might, if consistent with applicable law, seek the cooperation of some large employers to see whether they would assign randomly some of their employees to a company policy that requires them to opt into a retirement savings plan and other employees to a company policy that defaults employees into the plan but then allows them to opt out. Such action would be voluntary by the company but random (and effectively involuntary) by the individual. The agency might be able to learn better which default rule will yield greater savings and then use these results to inform a decision about a regulation that would apply to all companies.

Observational Methods. Agencies can also undertake observational studies prior to creating new rules. An agency might, for example, employ a cross-sectional research design by looking at variation in existing policies at the state level (or perhaps in other countries), taking to heart Justice Louis Brandeis's observation that ''a . . . state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.'' [13] In fact, Congress has, on numerous occasions, directed agencies to analyze state-by-state variation to help determine optimal policies.[14]

Designing a Rule To Facilitate Learning

An agency can write a rule to facilitate future learning or to enable it later to take advantage of variation that stems naturally from the rule.[15] Again, an agency may wish to consider randomized or observational methods.

Randomized Methods. When appropriate, an agency might consider structuring a rule to allow for learning through a randomized method.[16] This could entail writing a rule in such a way that some entities or people that fall within the agency's regulatory scope are subject to one version of the rule and some are subject to another version of the rule or not subject to the rule at all. The agency's decision as to who falls within each category could be made on a random basis. For example, Michael Abramowicz, Ian Ayres, and Yair Listokin use as an example a test of speed limits in which the posted limits on different roads are randomly increased or decreased.[17] Drivers on these roads are informed of the regulatory intervention (*i.e.,* the speed limit on that road) without necessarily knowing that they are participating in a randomized experiment. Although this example falls outside the realm of federal rulemaking, agencies at the federal level may have similar ways to structure the timing or application of a rule using randomization. Assuming any potential methodological, legal, ethical, and policy concerns about randomization can be addressed, there may be some circumstances in which randomization will be an appropriate way for an agency to generate variation that will facilitate learning from experience.

Observational Methods. For the reasons discussed above, agencies will generally find it more feasible to use observational approaches than randomized ones. In any rulemaking, there will be variation from observing the world before the rule went into effect and comparing it to the world after the rule has taken effect. Further, in the case of a rule that an agency has rescinded, there will be variation in three conditions: the world before the rule went into effect; The world in which the rule was in effect; and the world after the rule was rescinded. Such variation can present rich opportunities for observational studies, especially when a satisfactory baseline or control group can be identified. Agencies may well decide, at the outset when promulgating a new rule, to commit to setting up a longitudinal study. In doing so, they would need to collect data from regulated parties before the rule goes into effect and then collect data once the rule has taken effect, keeping in mind potential confounders and using statistical techniques to control for them.[18]

Additionally, agencies may consider deliberately introducing or allowing for some non-random variation in response to a rule by allowing for flexibility by states in the implementation of the rule. For example, variation can occur if the agency sets a federal minimum standard and permits states to exceed that standard. Agencies then can commit to using the resulting state-by-state variation to compare firms separated by a very short distance in neighboring states that have adopted different rules. Using the statistical technique known as regression discontinuity, the agency may be able to approximate randomization (*i.e.,* the ''assignment'' of firms to a state with one rule versus another would be effectively random).[19]

Learning After Promulgating a Rule

An agency can also use either randomized or observational methods to take advantage of variation once a rule has been put into place.

Randomized Methods. An agency might choose, only if appropriate, after taking into account all legal, ethical, practical, and fairness considerations, to vary the application of a rule on a randomized basis to learn from variation.[20]

Observational Methods. In addition to varying the application of a rule on a randomized basis, agencies can achieve variation once the rule is in place by considering conditional waivers and exemptions. For example, if a regulated entity can present some evidence to suggest that it can meet the purpose of the regulation using an alternative approach, the agency might grant a waiver to that entity with the condition that the entity uses that alternative approach.[21] After granting a certain number of waivers, the agency could then test the effectiveness of its rule by comparing entities that have selected different approaches. The agency would likely find it necessary to use statistical techniques to control for potential confounders. Over time, these kinds of

[13] New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

[14] *See, e.g.,* Energy Policy Act of 2005, Public Law 109–58, 139, 119 Stat. 594, 647 (2005) (''[T]he Secretary . . . shall conduct a study of State and regional policies that promote cost-effective programs to reduce energy consumption (including energy efficiency programs) that are carried out by utilities that are subject to State regulation.'').

[15] These features can facilitate retrospective review. *See* Admin. Conf. of the U.S., Recommendation 2014–5, *Retrospective Review of Agency Rules,* 79 FR 75,114 (Dec. 17, 2014).

[16] *See generally* Abramowicz et al., *supra* note 9.

[17] *See id.* at 951.

[18] *See* Admin. Conf. of the U.S., Recommendation 2014–5, ¶ 7, *Retrospective Review of Agency Rules,* 79 FR 75,114, 75,116–17 (Dec. 17, 2014).

[19] *See* Jonah B. Gelbach & Jonathan Klick, *Empirical Law and Economics, in* The Oxford Handbook of Law and Economics (Francisco Parisi ed., 2017).

[20] In 2004, the Securities and Exchange Commission (SEC) varied the application of its ''Uptick Rule.'' *See* Order Suspending the Operation of Short Sale Price Provisions for Designated Securities and Time Periods, Exchange Act Release No. 50,104, 69 FR 48,032 (Aug. 6, 2004). Market observers characterized the SEC's conclusion to be that the rule did not substantially increase market efficiency. The SEC rescinded the rule. *See* Zachary Gubler, Regulatory Experimentation 42 (Nov. 17, 2017) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/regulatory-experimentation-final-report.*

[21] *See* Admin. Conf. of the U.S., Recommendation 2017–7, *Regulatory Waivers and Exemptions,* 82 FR ___(approved Dec. 15, 2017); *see also* Aaron Nielson, Waivers, Exemptions, and Prosecutorial Discretion: An Examination of Agency Non-Enforcement Practices 30 (Nov. 1, 2017) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/regulatory-waivers-and-exemptions-final-report.*

studies may provide the agency with retrospective information that justifies amending an existing rule. Fairness, legal, and ethical concerns might be minimized when using conditional waivers if the agency permits all regulated entities to seek a waiver based on presentation of evidence and the agency widely publicizes its waiver availability.[22]

Table 1 summarizes the main methods of learning discussed in the preceding sections.

TABLE 1—EXAMPLES OF METHODS FOR REGULATORY LEARNING

	Randomized	Observational
Learning before adopting a rule.	• Randomized voluntary pilot programs • Studies that rely on randomization	• Pilot programs where intervention is not assigned randomly (such as with voluntary programs). • Analysis of regulatory approaches in different jurisdictions, including countries.
Designing a rule to facilitate learning.	• Randomized assignment of different regulatory obligations.	• Rules that allow for state implementation and variation (*e.g.,* cooperative federalism). • Analysis of temporal differences (*i.e.,* ''before and after'' comparisons). • Creation of regulatory thresholds that will facilitate later comparisons of entities above/below a threshold.
Learning after promulgating a rule.	• Randomized application of rules in appropriate circumstances.	• Granting of waivers or exemptions that allow for the adoption of alternative approaches that can be studied.

Common Issues in Learning From Experience

As noted, each stage of the rulemaking lifecycle allows agencies to learn from variation. Agencies can learn from both randomized and observational methods, keeping in mind the virtues and challenges of each. Whichever method an agency chooses, at least two additional issues should be considered: Data collection and public input.

Data Collection

Collecting data is essential. Only with information can agencies hope to learn from analyzing regulations. When collecting data, though, agencies must be mindful of the Paperwork Reduction Act (PRA), which can constrain their ability to send a survey instrument to ten or more parties.[23] As part of agencies' data collection efforts, it may be helpful for agencies to work closely with the Office of Information and Regulatory Affairs to ensure proper use of available flexibility in accordance with the PRA and the Office of Management and Budget's implementing regulations.

Public Input

Best practices generally call for some opportunity for the public to learn about and comment on the design and results of studies an agency undertakes. For pre-rule learning, the notice-and-comment process provides the required minimum process by which agencies should engage the public, but there are other methods of public input that might be useful, even at the pre-rule stage, for public input beyond just notice and comment.[24] If an agency is planning to revise a rule, a subsequent notice-and-comment rulemaking will provide an additional opportunity for public input. If an initial rule provides for its expiration on a certain date, that may also help ensure that the public has the opportunity to offer input on a future notice-and-comment rulemaking to keep or modify the rule. Even rules not subject to notice-and-comment procedures can benefit from subsequent opportunities for public comment.[25]

But even in situations in which the agency does not undertake a new notice-and-comment rulemaking or otherwise leaves a rule ''as is,'' the agency may benefit from outside input on the systematic learning effort it has undertaken, whether through a peer review process, advisory committees, public hearings or meetings, or just a supplemental solicitation of comments. The decision as to which approach to use to solicit public input will turn on numerous factors, including resource constraints.[26]

Recommendation

1. Agencies should seek opportunities to collect data to learn the most effective way to design their rules and analyze the effects of their rules. They can learn from experience at one or more stages of the rulemaking process, from pre-rule analysis to retrospective review. Before adopting a rule, agencies can learn from pilot projects, demonstrations, and flexibility among states or regulated entities. After promulgating a rule, agencies may, where legally permissible, use waivers and exemptions to learn. As agencies seek out such learning opportunities, they should give due regard for legal, ethical, practical, and fairness considerations.

2. When agencies analyze variation to learn more about the effectiveness of policy options, they should make every effort to collect data and conduct reliable analysis. Only where appropriate, agencies should consider creating variation through a randomized control trial.

3. To inform the learning process, agencies should consider soliciting public input at various points in the rulemaking lifecycle. This can include input on the design and results of any learning process. In addition to the public input required under 5 U.S.C. 553(c), agencies should consider, as time and resources permit, the use of supplemental requests for public comment, peer review, advisory committee deliberation, or public hearings or meetings.

4. When gathering data, agencies and the Office of Management and Budget (OMB) should seek to use flexibilities within the Paperwork Reduction Act

[22] *See* Admin. Conf. of the U.S., Recommendation 2017–7, *Regulatory Waivers and Exemptions,* 82 FR ___(approved Dec. 15, 2017).

[23] *See* 44 U.S.C. 3502(3)(A)(i).

[24] *See, e.g.,* Admin. Conf. of the U.S., Recommendation 2017–2, *Negotiated Rulemaking and Other Options for Public Engagement,* 82 FR 31,039 (July 5, 2017); Admin. Conf. of the U.S., Recommendation 2013–5, *Social Media in Rulemaking,* 78 FR 76,269 (Dec. 17, 2013).

[25] Admin. Conf. of the U.S., Recommendation 95–4, *Procedures for Noncontroversial and Expedited Rulemaking,* 60 FR 43,110 (Nov. 8, 1995).

[26] *See* Gubler, *supra* note 20, at 54.

and OMB's implementing regulations (*e.g.,* a streamlined comment period for collections associated with proposed rules) when permissible and appropriate.

5. Agencies, as appropriate, should seek legal authority from Congress to take advantage of this recommendation.

Administrative Conference Recommendation 2017–7

Regulatory Waivers and Exemptions

Adopted December 15, 2017

Individuals and entities regulated by federal agencies must adhere to program-specific requirements prescribed by statute or regulation. Sometimes, however, agencies prospectively excuse individuals or entities from statutory or regulatory requirements through waivers or exemptions.[1] The authority to waive or exempt regulated parties from specific legal requirements affords agencies much-needed flexibility to respond to situations in which generally applicable laws are a poor fit for a given situation.[2] Emergencies or other unforeseen circumstances may also render compliance with statutory or regulatory requirements impossible or impracticable.[3] In such instances, requiring strict adherence to legal requirements may not be desirable.[4] This is particularly true when the recipient of a waiver or exemption demonstrates that it intends to engage in conduct that will otherwise further the agency's legitimate goals.

Yet, waiving or exempting a regulated party from a statutory or regulatory requirement also raises important questions about predictability, fairness, and protection of the public. For instance, when an agency decides to waive legal requirements for some but not all regulated parties, the decision to grant a waiver or exemption may create the appearance—or perhaps even reality—of irregularity, bias, or unfairness. Waiving or exempting a regulated party from a legal requirement, therefore, demands that agencies simultaneously consider regulatory flexibility, on the one hand, and consistent, non-arbitrary administration of the law, on the other.

Agencies' authority to waive or exempt regulated parties from legal requirements may also intersect with other principles of administrative law. When agencies frequently issue waivers or exemptions because a regulation is outdated or ineffective, for example, amending or rescinding the regulation may be more appropriate in some circumstances, despite the necessary resource costs.[5] Such revisions can enhance efficiency and transparency. The requisite notice-and-comment procedures can also foster public participation and informed decisionmaking.

The following recommendations offer best practices and factors for agencies to consider regarding their waiver and exemption practices and procedures. They are not intended to disturb or otherwise limit agencies' broad discretion to elect how to best use their limited resources.

Recommendation

Scope of Waiver and Exemption Authority

1. When permitted by law, agencies should consider creating mechanisms that would allow regulated parties to apply for waivers or exemptions by demonstrating conduct that will achieve the same purpose as full compliance with the relevant statutory or regulatory requirement.

2. When consistent with the statutory scheme, agencies should endeavor to draft regulations so that waivers and exemptions will not be routinely necessary. When an agency has approved a large number of similar waivers or exemptions, the agency should consider revising the regulation accordingly. If eliminating the need for waivers or exemptions requires statutory reform, Congress should consider appropriate legislation.

Exercising Waiver or Exemption Authority

3. Agencies should endeavor, to the extent practicable, to establish standards and procedures for seeking and approving waivers and exemptions.

4. Agencies should apply the same treatment to similarly situated parties when approving waivers and exemptions, absent extenuating circumstances.

5. Agencies should clearly announce the duration, even if indefinite, over which a waiver or exemption extends.

Transparency and Public Input in Seeking and Approving Waivers and Exemptions

6. Agencies should consider soliciting public comments before establishing standards and procedures for seeking and approving waivers and exemptions.

7. Agencies should endeavor, to the extent practicable, to make standards and procedures for seeking and approving waivers and exemptions available to the public.

8. Agencies should consider soliciting public comments before approving waivers or exemptions.

9. Agencies should provide written explanations for individual waiver or exemption decisions and make them publicly available to the extent practicable and consistent with legal or policy concerns, such as privacy. Further, agencies should consider providing written explanations of representative instances to help illustrate the types of activities likely to qualify for a waiver or exemption.

[FR Doc. 2017–28124 Filed 12–28–17; 8:45 am]

BILLING CODE 6110–01–P

[1] Agencies may also *retrospectively* decline to bring an enforcement action once a legal violation has already occurred. This recommendation, however, is confined to the agency practice of prospectively waiving or exempting regulated parties from legal requirements.

[2] The terms ''waiver'' and ''exemption'' carry various meanings in agency practice. For the purposes of this recommendation, when Congress has expressly authorized an agency to excuse a regulated party from a legal requirement, the term ''waiver'' is used. If an agency is implicitly authorized by Congress to excuse a regulated party from a legal requirement, ''exemption'' is used. These definitions stem from the report underlying this recommendation. *See* Aaron L. Nielson, Waivers, Exemptions, and Prosecutorial Discretion: An Examination of Agency Nonenforcement Practices (Nov. 1, 2017) (report to the Admin. Conf. of the U.S.), *https://acus.gov/report/regulatory-waivers-and-exemptions-final-report.* Some agencies may also derive authority to grant waivers or exemptions from presidential delegations under Article II of the Constitution. That category of waivers and exemptions is outside the scope of this recommendation.

[3] See, for example, the Stafford Act, 42 U.S.C. 5141, authorizing any federal agency charged with the administration of a federal assistance program in a presidentially declared major disaster to modify or waive administrative conditions for assistance if requested to do so by state or local authorities.

[4] Of course, agencies cannot issue waivers or exemptions unless authorized by law, and even when authorized by law, agencies must not issue them in an arbitrary fashion.

[5] *See* Admin. Conf. of the U.S., Recommendation 2014–5, *Retrospective Review of Agency Rules,* ¶ 5, 79 FR 75,114, 75,116 (Dec. 17, 2014) (identifying petitions from stakeholder groups and members of the public and poor compliance rates as factors to consider in identifying regulations that may benefit from amendment or rescission).

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of January 18, 2018 Advisory Committee on Voluntary Foreign Aid Meeting

AGENCY: United States Agency for International Development.

ACTION: Notice of meeting.

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: Thursday, January 18, 2018.

Time: 2:00–4:00 p.m.

Location: Horizon Ballroom, The Ronald Reagan Building, 1300 Pennsylvania Ave. NW, Washington DC 20004.

Purpose

The Advisory Committee on Voluntary Foreign Aid (ACVFA) brings together USAID and private voluntary organization officials, representatives from universities, international nongovernment organizations, U.S. businesses, and government, multilateral, and private organizations to foster understanding, communication, and cooperation in the area of foreign aid.

Agenda

USAID leadership will make opening remarks, followed by a presentation and discussion on the principles, benchmarks, and programs that the Agency is considering to support countries along their development journey to self-reliance and long-term prosperity. The full meeting agenda will be forthcoming on the ACVFA website at *http://www.usaid.gov/who-we-are/organization/advisory-committee.*

Stakeholders

The meeting is free and open to the public. Persons wishing to attend should register online at *http://www.usaid.gov/who-we-are/organization/advisory-committee.*

FOR FURTHER INFORMATION CONTACT: Jessica Klein, *acvfa@usaid.gov* or 202–712–5856.

Dated: December 18, 2017.

Jessica Klein,

Acting Executive Director, U.S. Agency for International Development.

[FR Doc. 2017–28152 Filed 12–28–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Notice of Request for Extension or Renewal of a Currently Approved Information Collection

AGENCY: Office of the Assistant Secretary for Civil Rights, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Office of the Assistant Secretary for Civil Rights (OASCR) to request a renewal of a currently approved information collection. OASCR will use the information collected to collect the race, ethnicity, and gender (REG) of all program applicants and participants by county and State.

DATES: Comments on this notice must be received by February 27, 2018 to be assured of consideration.

ADDRESSES: Office of the Assistant Secretary for Civil Rights/Office of Compliance, Policy, and Training invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

☐ *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

☐ *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, 1400 Independence Avenue SW, Washington, DC 20250–3700, Mailstop 9401.

☐ *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Washington, DC 20250–3700, Mailstop 9401.

Instructions: All items submitted by mail or electronic mail must include the Office of the Assistant Secretary for Civil Rights/Office of Compliance, Policy, and Training, Docket No. 0503–0022, Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the Office of the Assistant Secretary for Civil Rights/Office of Compliance, Policy, and Training, Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700, Mailstop 9401, between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Contact Anna G. Stroman, Deputy Director, Office of Compliance, Policy, and Training, Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, (202) 205–5953 or *Anna.Stroman@ascr.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 15 subpart D—Data Collection Requirement.

OMB Number: OMB No. 0503–0022.

Expiration Date of Approval: January 31, 2018.

Type of Request: Extension or renewal of the USDA 7 CFR part 15 subpart D—Data Collection Requirement Form.

Abstract: Currently, Section 14006 of the 2008 Farm Bill requires the Secretary of Agriculture to annually compile for each county and State in the United States program application and participation rate data regarding socially disadvantaged farmers or ranchers for each program of USDA that serves agricultural producers or landowners. This requirement only applies to FSA, NRCS, RD, and RMA. These four agencies use the voluntary data collection form approved by OMB that is attached as a cover page to the application forms for programs that provide services to agriculture producers, farmers and ranchers. In addition, all remaining USDA agencies with conducted programs (Animal and Plant Health Inspection Service, and Foreign Agricultural Service) were required to develop a strategy for collecting voluntary REG data from individuals for their respective federally conducted programs by utilizing the same OMB approved form. Applicants and program participants of these programs and activities provide this data on a voluntary basis. These strategies will be reviewed and approved by OASCR, who will also provide oversight and monitoring of the collection of this data through its compliance activities.

If the REG data is not collected on applicants and participants in USDA federally conducted programs, USDA will not be able to collect and report demographic data on its applicants and program participants. In addition, USDA would not be able to determine if programs and services are reaching and meeting the needs of the public, beneficiaries, partners, and other stakeholders based on demographic data.

Failure to collect this information will also have a negative impact on USDA's outreach and compliance activities. This could result in an inability to equitably deliver programs and services to applicants and producers, and ultimately an inability to hold the agencies accountable.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one hour per response.

Respondents: Producers, applicants, and USDA customers.

Estimated Number of Respondents: 1,190.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 68 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Anna G. Stroman, Deputy Director, Office of Compliance, Policy, and Training, Office of the Assistant Secretary for Civil Rights. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Winona Lake Scott,

Acting Deputy Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights.

[FR Doc. 2017–27448 Filed 12–28–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Amendment of the Land Management Plan for Santa Fe National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of the opportunity to object to the Forest Plan Amendment for Geothermal Leasing on the Santa Fe National Forest prior to approval of Final Environmental Impact Statement for the Santa Fe National Forest Geothermal Leasing Project.

SUMMARY: The Santa Fe National Forest, located in New Mexico, prepared a significant, programmatic forest plan amendment to allow geothermal leasing to accompany its Final Environmental Impact Statement (FEIS) and a Draft Record of Decision (ROD) for Geothermal Leasing. This notice is to inform the public that a 60-day period is being initiated where individuals or entities with specific concerns on the Santa Fe's Forest Plan Amendment for Geothermal Leasing may file an objection for a Forest Service review prior to the approval of the Record of Decision for Geothermal Leasing.

DATES: The Santa Fe's Forest Plan Amendment for Geothermal Leasing, FEIS, Draft ROD, and other supporting information, will be available for review at *http://www.fs.usda.gov/projects/santafe/landmanagement/projects* starting December 29, 2017.

A legal notice of the initiation of the 60-day objection period is also being published in the Santa Fe National Forest's newspaper of record, which is the *Albuquerque Journal.* The date of the publication of the legal notice in the *Albuquerque Journal* will determine the actual date of initiation of the 60-day objection period. A copy of the legal notice that is published in the *Albuquerque Journal* will be posted on the website listed above.

ADDRESSES: Copies of the Santa Fe's Forest Plan Amendment for Geothermal Leasing on Santa Fe National Forest, the FEIS, and the Draft ROD can be obtained online at: *http://www.fs.usda.gov/projects/santafe/landmanagement/projects;* or by visiting or mailing a request to the Forest Supervisor's Office at the following location:

- 11 Forest Lane, Santa Fe, NM 87508 (Telephone: 505–438–5443).

Objections must be submitted to the Reviewing Officer:

- Regional Forester, USDA-Forest Service, ATTN: Objection Reviewing Officer, 333 Broadway Blvd. SE, Albuquerque, NM 87102 (Fax: 505–842–3173).

Objections may be submitted electronically at *objections-southwestern-regional-office@fs.fed.us.*

Note that the office hours for submitting a hand-delivered objection are 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays. Electronic objections must be submitted in a commonly used format such as an email message, plain text (.txt), rich text format (.rtf) or Microsoft Word® (.doc or .docx).

FOR FURTHER INFORMATION CONTACT: Larry Gore, Geologist, Santa Fe National Forest at 575–289–3264, ext. 2149. 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 time), Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Service, Southwestern Region, Santa Fe National Forest, prepared a Forest Plan Amendment for Geothermal Leasing. This notice is to inform the public that a 60-day period is being initiated where individuals or entities with specific concerns on the Santa Fe's Forest Plan Amendment for Geothermal Leasing may file an objection for a Forest Service review prior to the approval of the ROD for the Final Environmental Impact Statement for the Geothermal Leasing Project.

The publication date of the legal notice in the Santa Fe National Forest's newspaper of record, the *Albuquerque Journal,* will initiate the 60-day objection period and is the exclusive means for calculating the time to file an objection (36 CFR 219.16 and 219.52). An electronic scan of the notice with the publication date will be posted on the Santa Fe National Forest's website at: *http://www.fs.usda.gov/projects/santafe/landmanagement/projects.*

The objection process under 36 CFR 219 subpart B, provides an opportunity for members of the public who have participated in the planning process for the Forest Plan Amendment for Geothermal Leasing on Santa Fe National Forest to have any unresolved concerns reviewed by the Forest Service prior to a final decision by the Responsible Official. Only those who provided substantive formal comments during opportunities for public comment during the planning process are eligible to file an objection. Regulations at 36 CFR 219.62 define substantive formal comments as:

> ''Written comments submitted to, or oral comments recorded by, the responsible official or his designee during an opportunity for public participation provided during the planning process, and attributed to the individual or entity providing them. Comments are considered substantive when they are within the scope of the proposal, are specific to the proposal, have a direct relationship to the proposal, and include supporting reasons for the responsible official to consider.''

How To File an Objection

The Forest Service will accept mailed, emailed, faxed, and hand-delivered objections concerning the Santa Fe's Forest Plan Amendment for Geothermal Leasing for 60 calendar days following the date of the publication of the legal notice of this objection period in the newspaper of record, the *Albuquerque Journal.* It is the responsibility of the objector to ensure that the Reviewing Officer receives the objection in a timely manner. The regulations prohibit extending the length of the objection filing period.

Objections must be submitted to the Reviewing Officer, who will be the Regional Forester for the Southwestern Region, at the address shown in the **ADDRESSES** section of this notice.

An objection must include the following (36 CFR 219.54(c)):

(1) The objector's name and address along with a telephone number or email address if available—in cases where no identifiable name is attached to an

objection, the Forest Service will attempt to verify the identity of the objector to confirm objection eligibility;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection. The Forest Service will communicate to all parties to an objection through the lead objector. Verification of the identity of the lead objector must also be provided if requested;

(4) The name of the forest plan amendment being objected to, and the name and title of the Responsible Official;

(5) A statement of the issues and/or parts of the forest plan amendment to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If the objector believes that the forest plan amendment is inconsistent with law, regulation, or policy, an explanation should be included;

(7) A statement that demonstrates the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment; and

(8) All documents referenced in the objection (a bibliography is not sufficient), except that the following need not be provided:

a. All or any part of a Federal law or regulation,

b. Forest Service Directive System documents and land management plans or other published Forest Service documents,

c. Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection, and

d. Formal comments previously provided to the Forest Service by the objector during the plan amendment comment period.

Responsible Official

The responsible official for the Santa Fe's Forest Plan Amendment for Geothermal Leasing on the Santa Fe National Forest is James Melonas, Forest Supervisor, Santa Fe National Forest, 11 Forest Lane, Santa Fe, NM, 87508.

Dated: December 15, 2017.

Glenn P. Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2017–28134 Filed 12–28–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Order Temporarily Denying Export Privileges

Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran;

Pejman Mahmood Kosarayanifard, a/k/a Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates;

Mahmoud Amini, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates;

and

P.O. Box 52404, Dubai, United Arab Emirates; and

Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates;

Kerman Aviation, a/k/a GIE Kerman Aviation, 42 Avenue Montaigne 75008, Paris, France;

Sirjanco Trading LLC, P.O. Box 8709, Dubai, United Arab Emirates;

Mahan Air General Trading LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates;

Mehdi Bahrami, Mahan Airways—Istanbul Office, Cumhuriye Cad. Sibil Apt No: 101 D:6, 34374 Emadad, Sisli Istanbul, Turkey;

Al Naser Airlines, a/k/a al-Naser Airlines, a/k/a Al Naser Wings Airline, a/k/a Alnaser Airlines and Air Freight Ltd., Home 46, Al-Karrada, Babil Region, District 929, St 21 Beside Al Jadirya Private Hospital, Baghdad, Iraq; and

Al Amirat Street, Section 309, St. 3/H.20 Al Mansour, Baghdad, Iraq; and

P.O. Box 28360, Dubai, United Arab Emirates; and

P.O. Box 911399, Amman 11191, Jordan;

Ali Abdullah Alhay, a/k/a Ali Alhay, a/k/a Ali Abdullah Ahmed Alhay, Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq; and

Anak Street, Qatif, Saudi Arabia 61177;

Bahar Safwa General Trading, PO Box 113212 Citadel Tower, Floor-5, Office #504, Business Bay, Dubai, United Arab Emirates; and

PO Box 8709, Citadel Tower, Business Bay, Dubai, United Arab Emirates;

Sky Blue Bird Group, a/k/a Sky Blue Bird Aviation, a/k/a Sky Blue Bird Ltd, a/k/a Sky Blue Bird FZC, P.O. Box 16111, Ras Al Khaimah Trade Zone, United Arab Emirates;

Issam Shammout, a/k/a Muhammad Isam Muhammad Anwar Nur Shammout, a/k/a Issam Anwar, Philips Building, 4th Floor, Al Fardous Street, Damascus, Syria; and

Al Kolaa, Beirut, Lebanon 151515; and

17–18 Margaret Street, 4th Floor, London, W1W 8RP, United Kingdom; and

Cumhuriyet Mah. Kavakli San St. Fulya, Cad. Hazar Sok. No.14/A Silivri, Istanbul, Turkey

Order Renewing Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2016) (''EAR'' or ''the Regulations''),[1] I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the temporary denial order issued in this matter on June 27, 2017, as recently modified on November 16, 2017. I find that renewal of this order, as recently modified, is necessary in the public interest to prevent an imminent violation of the EAR. I also find it necessary in connection with this renewal to add ''Al Naser Wings Airline'' as an alias being used by respondent Al Naser Airlines.

I. Procedural History

On March 17, 2008, Darryl W. Jackson, the then-Assistant Secretary of Commerce for Export Enforcement (''Assistant Secretary''), signed an order denying Mahan Airways' export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order also named as denied persons Blue Airways, of Yerevan, Armenia (''Blue Airways of Armenia''), as well as the ''Balli Group Respondents,'' namely, Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd., all of the United Kingdom. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations, and went into effect on March 21, 2008, the date it was published in the **Federal Register**.

This temporary denial order (''TDO'') was renewed in accordance with Section 766.24(d) of the Regulations.[2]

[1] The Regulations, currently codified at 15 CFR parts 730–774 (2017), originally issued pursuant to the Export Administration Act of 1979 (''EAA'' or ''the Act''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 FR 39,005 (Aug. 16, 2017)) has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

[2] Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order. Renewal requests may include discussion of any additional or changed circumstances, and may seek appropriate modifications to the order,

Continued

Subsequent renewals also have issued pursuant to Section 766.24(d), including most recently on June 27, 2017.[3] Some of the renewal orders and the modification orders that have issued between renewals have added certain parties as respondents or as related persons, or effected the removal of certain parties.[4]

The September 11, 2009 renewal order continued the denial order as to Mahan Airways, but not as to the Balli Group Respondents or Blue Airways of Armenia.[5] As part of the February 25, 2011 renewal order, Pejman Mahmood Kosarayanifard (a/k/a Kosarian Fard), Mahmoud Amini, and Gatewick LLC (a/k/a Gatewick Freight and Cargo Services, a/k/a Gatewick Aviation Services) were added as related persons to prevent evasion of the TDO.[6] A modification order issued on July 1, 2011, adding Zarand Aviation as a respondent in order to prevent an imminent violation.[7]

As part of the August 24, 2011 renewal, Kerman Aviation, Sirjanco Trading LLC, and Ali Eslamian were added as related persons. Mahan Air General Trading LLC, Equipco (UK) Ltd., and Skyco (UK) Ltd. were added as related persons by a modification order issued on April 9, 2012. Mehdi Bahrami was added as a related person as part of the February 4, 2013 renewal order.

On May 21, 2015, a modification order issued adding Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading as respondents. As detailed in that order and discussed further *infra,* these respondents were added to the TDO based upon evidence that they were acting together to, inter alia, obtain aircraft subject to the Regulations for export or reexport to Mahan in violation of the Regulations and the TDO. Sky Blue Bird Group and its chief executive officer, Issam Shammout, were added as related persons as part of the July 13, 2015 renewal order.[8]

The June 27, 2017 renewal order continued the denial of the export privileges of Mahan Airways, Pejman Mahmood Kosarayanifard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Mahan Air General Trading LLC, Mehdi Bahrami, Al Naser Airlines, Ali Abdullah Alhay, Bahar Safwa General Trading, Sky Blue Bird Group, and Issam Shammout, as well as Ali Eslamian, Equipco (UK) Ltd., and Skyco (UK) Ltd. On November 16, 2017, a modification order issued to remove Eslamian, Equipco, and Skyco following a request by OEE for their removal.[9]

On November 28, 2017, BIS, through OEE, submitted a written request for renewal of the TDO that issued on June 27, 2017, as modified on November 16, 2017. The written request was made more than 20 days before the TDO's scheduled expiration. Notice of the renewal request was provided to Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received. Furthermore, no appeal of the related person determinations made as part of the September 3, 2010, February 25, 2011, August 24, 2011, April 9, 2012, February 4, 2013, and July 13, 2015 renewal or modification orders has been made by Kosarian Fard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Mahan Air General Trading LLC, Mehdi Bahrami, Sky Blue Bird Group, or Issam Shammout.[10]

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue or renew an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant,

including the addition of parties as respondents or related persons, or the removal of parties previously added as respondents or related persons. BIS is not required to seek renewal as to all parties, and a removal of a party can be effected if, without more, BIS does not seek renewal as to that party. Any party included or added to a temporary denial order as a respondent may oppose a renewal request as set forth in Section 766.24(d). Parties included or added as related persons can at any time appeal their inclusion as a related person, but cannot challenge the underlying temporary denial order, either as initially issued or subsequently renewed, and cannot oppose a renewal request. *See also* note 4, *infra.*

[3] The June 27, 2017 renewal order was effective upon issuance and published in the **Federal Register** on July 3, 2017 (82 FR 30,823). Prior renewal orders issued on September 17, 2008, March 16, 2009, September 11, 2009, March 9, 2010, September 3, 2010, February 25, 2011, August 24, 2011, February 15, 2012, August 9, 2012, February 4, 2013, July 31, 2013, January 24, 2014, July 22, 2014, January 16, 2015, July 13, 2015, January 7, 2016, July 7, 2016, and December 30, 2016, respectively. The August 24, 2011 renewal followed the issuance of a modification order that issued on July 1, 2011, to add Zarand Aviation as a respondent. The July 13, 2015 renewal followed a modification order that issued May 21, 2015, and added Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading as respondents. Each of the renewal orders and each of the modification orders referenced in this footnote or elsewhere in this order has been published in the **Federal Register.**

[4] Pursuant to Sections 766.23 and 766.24(c) of the Regulations, any person, firm, corporation, or business organization related to a denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may be added as a ''related person'' to a temporary denial order to prevent evasion of the order.

[5] Balli Group PLC and Balli Aviation settled proposed BIS administrative charges as part of a settlement agreement that was approved by a settlement order issued on February 5, 2010. The sanctions imposed pursuant to that settlement and order included, inter alia, a $15 million civil penalty and a requirement to conduct five external audits and submit related audit reports. The Balli Group Respondents also settled related charges with the Department of Justice and the Treasury Department's Office of Foreign Assets Control.

[6] *See* note 4, *supra,* concerning the addition of related persons to a temporary denial order. Kosarian Fard and Mahmoud Amini remain parties to the TDO. On August 13, 2014, BIS and Gatewick resolved administrative charges against Gatewick, including a charge for acting contrary to the terms of a BIS denial order (15 CFR 764.2(k)). In addition to the payment of a civil penalty, the settlement includes a seven-year denial order. The first two years of the denial period were active, with the remaining five years suspended conditioned upon Gatewick's full and timely payment of the civil penalty and its compliance with the Regulations during the seven-year denial order period. This denial order, in effect, superseded the TDO as to Gatewick, which was not included as part of the January 16, 2015 renewal order. The Gatewick LLC Final Order was published in the **Federal Register** on August 20, 2014. *See* 79 FR 49283 (Aug. 20, 2014).

[7] Zarand Aviation's export privileges remained denied until July 22, 2014, when it was not included as part of the renewal order issued on that date.

[8] The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') designated Sky Blue Bird and Issam Shammout as Specially Designated Global Terrorists (''SDGTs'') on May 21, 2015, pursuant to Executive Order 13324, for ''providing support to Iran's Mahan Air.'' See 80 FR 30762 (May 29, 2015).

[9] The November 16, 2017 modification was published in the **Federal Register** on December 4, 2017. *See* 82 FR 57,203 (Dec. 4, 2017). On September 28, 2017, BIS and Ali Eslamian resolved an administrative charge for acting contrary to the terms of the denial order (15 CFR 764.2(k)) that was based upon Eslamian's violation of the TDO after his addition to the TDO on August 24, 2011. Equipco (UK) Ltd. and Skyco (UK) Ltd., two companies owned and operated by Eslamian, also were parties to settlement agreement and were added to the settlement order as related persons. In addition to other sanctions, the settlement provides that Eslamian, Equipco, and Skyco shall be subject to a conditionally-suspended denial order for a period of four years from the date of the settlement order.

[10] A party named or added as a related person may not oppose the issuance or renewal of the underlying temporary denial order, but may file an appeal of the related person determination in accordance with Section 766.23(c). See also note 2, *supra.*

deliberate, covert and/or likely to occur again, rather than technical or negligent [.]'' Id. A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Request for Renewal

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO, and the renewal and modification orders subsequently issued in this matter, including the May 21, 2015 modification order and the renewal order issued on June 27, 2017, and the evidence developed over the course of this investigation, which indicate a blatant disregard of U.S. export controls and the TDO. The initial TDO was issued as a result of evidence that showed that Mahan Airways and other parties engaged in conduct prohibited by the EAR by knowingly re-exporting to Iran three U.S.-origin aircraft, specifically Boeing 747s (''Aircraft 1–3''), items subject to the EAR and classified under Export Control Classification Number (''ECCN'') 9A991.b, without the required U.S. Government authorization. Further evidence submitted by BIS indicated that Mahan Airways was involved in the attempted re-export of three additional U.S.-origin Boeing 747s (''Aircraft 4–6'') to Iran.

As discussed in the September 17, 2008 renewal order, evidence presented by BIS indicated that Aircraft 1–3 continued to be flown on Mahan Airways' routes after issuance of the TDO, in violation of the Regulations and the TDO itself.[11] It also showed that Aircraft 1–3 had been flown in further violation of the Regulations and the TDO on the routes of Iran Air, an Iranian Government airline. Moreover, as discussed in the March 16, 2009, September 11, 2009 and March 9, 2010 renewal orders, Mahan Airways registered Aircraft 1–3 in Iran, obtained Iranian tail numbers for them (EP–MNA, EP–MNB, and EP–MNE, respectively), and continued to operate at least two of them in violation of the Regulations and the TDO,[12] while also committing an additional knowing and willful violation when it negotiated for and acquired an additional U.S.-origin aircraft. The additional acquired aircraft was an MD–82 aircraft, which subsequently was painted in Mahan Airways' livery and flown on multiple Mahan Airways' routes under tail number TC–TUA.

The March 9, 2010 renewal order also noted that a court in the United Kingdom (''U.K.'') had found Mahan Airways in contempt of court on February 1, 2010, for failing to comply with that court's December 21, 2009 and January 12, 2010 orders compelling Mahan Airways to remove the Boeing 747s from Iran and ground them in the Netherlands. Mahan Airways and the Balli Group Respondents had been litigating before the U.K. court concerning ownership and control of Aircraft 1–3. In a letter to the U.K. court dated January 12, 2010, Mahan Airways' Chairman indicated, *inter alia,* that Mahan Airways opposes U.S. Government actions against Iran, that it continued to operate the aircraft on its routes in and out of Tehran (and had 158,000 ''forward bookings'' for these aircraft), and that it wished to continue to do so and would pay damages if required by that court, rather than ground the aircraft.

The September 3, 2010 renewal order discussed the fact that Mahan Airways' violations of the TDO extended beyond operating U.S.-origin aircraft and attempting to acquire additional U.S.-origin aircraft. In February 2009, while subject to the TDO, Mahan Airways participated in the export of computer motherboards, items subject to the Regulations and designated as EAR99, from the United States to Iran, via the United Arab Emirates (''UAE''), in violation of both the TDO and the Regulations, by transporting and/or forwarding the computer motherboards from the UAE to Iran. Mahan Airways' violations were facilitated by Gatewick LLC, which not only participated in the transaction, but also has stated to BIS that it acted as Mahan Airways' sole booking agent for cargo and freight forwarding services in the UAE.

Moreover, in a January 24, 2011 filing in the U.K. court, Mahan Airways asserted that Aircraft 1–3 were not being used, but stated in pertinent part that the aircraft were being maintained in Iran especially ''in an airworthy condition'' and that, depending on the outcome of its U.K. court appeal, the aircraft ''could immediately go back into service . . . on international routes into and out of Iran.'' Mahan Airways' January 24, 2011 submission to U.K. Court of Appeal, at p. 25, ¶¶ 108, 110. This clearly stated intent, both on its own and in conjunction with Mahan Airways' prior misconduct and statements, demonstrated the need to renew the TDO in order to prevent imminent future violations. Two of these three 747s subsequently were removed from Iran and are no longer in Mahan Airways' possession. The third of these 747s, with Manufacturer's Serial Number (''MSN'') 23480 and Iranian tail number EP–MNE, remained in Iran under Mahan's control. Pursuant to Executive Order 13324, it was designated a Specially Designated Global Terrorist (''SDGT'') by the U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') on September 19, 2012.[13] Furthermore, as discussed in the February 4, 2013 Order, open source information indicated that this 747, painted in the livery and logo of Mahan Airways, had been flown between Iran and Syria, and was suspected of ferrying weapons and/or other equipment to the Syrian Government from Iran's Islamic Revolutionary Guard Corps. Open source information showed that this aircraft had flown from Iran to Syria as recently as June 30, 2013, and continues to show that it remains in active operation in Mahan Airways' fleet.

In addition, as first detailed in the July 1, 2011 and August 24, 2011 orders, and discussed in subsequent renewal orders in this matter, Mahan Airways also continued to evade U.S. export control laws by operating two Airbus A310 aircraft, bearing Mahan Airways' livery and logo, on flights into and out of Iran.[14] At the time of the July 1, 2011 and August 24, 2011 orders, these Airbus A310s were registered in France, with tail numbers F–OJHH and F–OJHI, respectively.[15]

The August 2012 renewal order also found that Mahan Airways had acquired another Airbus A310 aircraft subject to the Regulations, with MSN 499 and

[11] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

[12] The third Boeing 747 appeared to have undergone significant service maintenance and may not have been operational at the time of the March 9, 2010 renewal order.

[13] See *http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20120919.aspx.*

[14] The Airbus A310s are powered with U.S.-origin engines. The engines are subject to the EAR and classified under Export Control Classification (''ECCN'') 9A991.d. The Airbus A310s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR. They are classified under ECCN 9A991.b. The export or reexport of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[15] OEE subsequently presented evidence that after the August 24, 2011 renewal, Mahan Airways worked along with Kerman Aviation and others to de-register the two Airbus A310 aircraft in France and to register both aircraft in Iran (with, respectively, Iranian tail numbers EP–MHH and EP–MHI). It was determined subsequent to the February 15, 2012 renewal order that the registration switch for these A310s was cancelled and that Mahan Airways then continued to fly the aircraft under the original French tail numbers (F–OJHH and F–OJHI, respectively). Both aircraft apparently remain in Mahan Airways' possession.

Iranian tail number EP–VIP, in violation of the TDO and the Regulations.[16] On September 19, 2012, all three Airbus A310 aircraft (tail numbers F–OJHH, F–OJHI, and EP–VIP) were designated as SDGTs.[17]

The February 4, 2013 renewal order laid out further evidence of continued and additional efforts by Mahan Airways and other persons acting in concert with Mahan, including Kral Aviation and another Turkish company, to procure U.S.-origin engines—two GE CF6–50C2 engines, with MSNs 517621 and 517738, respectively—and other aircraft parts in violation of the TDO and the Regulations.[18] The February 4, 2013 order also added Mehdi Bahrami as a related person in accordance with Section 766.23 of the Regulations. Bahrami, a Mahan Vice-President and the head of Mahan's Istanbul Office, also was involved in Mahan's acquisition of the original three Boeing 747s (Aircraft 1–3) that resulted in the original TDO, and has had a business relationship with Mahan dating back to 1997.

The July 31, 2013 renewal order detailed additional evidence obtained by OEE showing efforts by Mahan Airways to obtain another GE CF6–50C2 aircraft engine (MSN 528350) from the United States via Turkey. Multiple Mahan employees, including Mehdi Bahrami, were involved in or aware of matters related to the engine's arrival in Turkey from the United States, plans to visually inspect the engine, and prepare it for shipment from Turkey.

Mahan Airways sought to obtain this U.S.-origin engine through Pioneer Logistics Havacilik Turizm Yonetim Danismanlik (''Pioneer Logistics''), an aircraft parts supplier located in Turkey, and its director/operator, Gulnihal Yegane, a Turkish national who previously had conducted Mahan related business with Mehdi Bahrami and Ali Eslamian. Moreover, as referenced in the July 31, 2013 renewal order, a sworn affidavit by Kosol Surinanda, also known as Kosol Surinandha, Managing Director of Mahan's General Sales Agent in Thailand, stated that the shares of Pioneer Logistics for which he was the listed owner were ''actually the property of and owned by Mahan.'' He further stated that he held ''legal title to the shares until otherwise required by Mahan'' but would ''exercise the rights granted to [him] exactly and only as instructed by Mahan and [his] vote and/or decisions [would] only and exclusively reflect the wills and demands of Mahan[.]''[19]

The January 24, 2014 renewal order outlined OEE's continued investigation of Mahan Airways' activities and detailed an attempt by Mahan, which OEE thwarted, to obtain, via an Indonesian aircraft parts supplier, two U.S.-origin Honeywell ALF–502R–5 aircraft engines (MSNs LF5660 and LF5325), items subject to the Regulations, from a U.S. company located in Texas. An invoice of the Indonesian aircraft parts supplier dated March 27, 2013, listed Mahan Airways as the purchaser of the engines and included a Mahan ship-to address. OEE also obtained a Mahan air waybill dated March 12, 2013, listing numerous U.S.-origin aircraft parts subject to the Regulations—including, among other items, a vertical navigation gyroscope, a transmitter, and a power control unit—being transported by Mahan from Turkey to Iran in violation of the TDO.

The July 22, 2014 renewal order discussed open source evidence from the March-June 2014 time period regarding two BAE regional jets, items subject to the Regulations, that were painted in the livery and logo of Mahan Airways and operating under Iranian tail numbers EP–MOK and EP–MOI, respectively.[20] In addition, aviation industry resources indicated that these aircraft were obtained by Mahan Airways in late November 2013 and June 2014, from Ukrainian Mediterranean Airline, a Ukrainian airline that was added to BIS's Entity List (Supplement No. 4 to Part 744 of the Regulations) on August 15, 2011, for acting contrary to the national security and foreign policy interests of the United States.[21] Open source information indicates that at least EP–MOI remains active in Mahan's fleet, and that the aircraft was being operated on multiple flights within the last week.

The January 16, 2015 renewal order detailed evidence of additional attempts by Mahan Airways to acquire items subject the Regulations in further violation of the TDO. Specifically, in March 2014, OEE became aware of an inertial reference unit bearing serial number 1231 (''the IRU'') that had been sent to the United States for repair. The IRU is subject to the Regulations, classified under ECCN 7A103, and controlled for missile technology reasons. Upon closer inspection, it was determined that IRU came from or had been installed on an Airbus A340 aircraft bearing MSN 056. Further investigation revealed that as of approximately February 2014, this aircraft was registered under Iranian tail number EP–MMB and had been painted in the livery and logo of Mahan Airways.

The January 16, 2015 renewal order also described related efforts by the Departments of Justice and Treasury to further thwart Mahan's illicit procurement efforts. Specifically, on August 14, 2014, the United States Attorney's Office for the District of Maryland filed a civil forfeiture complaint for the IRU pursuant to 22 U.S.C. 401(b) that resulted in the court issuing an Order of Forfeiture on December 2, 2014. EP–MMB remains listed as active in Mahan Airways' fleet and has been used on flights into and out of Iran as recently as December 19, 2017.

[16] See note 14, *supra.*

[17] See *http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20120919.aspx.* Mahan Airways was previously designated by OFAC as a SDGT on October 18, 2011. 77 FR 64,427 (October 18, 2011).

[18] Kral Aviation was referenced in the February 4, 2013 renewal order as ''Turkish Company No. 1.'' Kral Aviation purchased a GE CF6–50C2 aircraft engine (MSN 517621) from the United States in July 2012, on behalf of Mahan Airways. OEE was able to prevent this engine from reaching Mahan by issuing a redelivery order to the freight forwarder in accordance with Section 758.8 of the Regulations. OEE also issued Kral Aviation a redelivery order for the second CF6–50C2 engine (MSN 517738) on July 30, 2012. The owner of the second engine subsequently cancelled the item's sale to Kral Aviation. In September 2012, OEE was alerted by a U.S. exporter that another Turkish company (''Turkish Company No. 2'') was attempting to purchase aircraft spare parts intended for re-export by Turkish Company No. 2 to Mahan Airways. *See* February 4, 2013 renewal order.

On December 31, 2013, Kral Aviation was added to BIS's Entity List, Supplement No. 4 to Part 744 of the Regulations. *See* 78 FR75458 (Dec. 12, 2013). Companies and individuals are added to the Entity List for engaging in activities contrary to the national security or foreign policy interests of the United States. *See* 15 CFR 744.11.

[19] Pioneer Logistics, Gulnihal Yegane, and Kosol Surinanda also were added to the Entity List on December 12, 2013. *See* 78 FR 75458 (Dec. 12, 2013).

[20] The BAE regional jets are powered with U.S.-origin engines. The engines are subject to the EAR and classified under ECCN 9A991.d. These aircraft contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR. They are classified under ECCN 9A991.b. The export or reexport of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[21] *See* 76 FR 50407 (Aug. 15, 2011). The July 22, 2014 renewal order also referenced two Airbus A320 aircraft painted in the livery and logo of Mahan Airways and operating under Iranian tail numbers EP–MMK and EP–MML, respectively. OEE's investigation also showed that Mahan obtained these aircraft in November 2013, from Khors Air Company, another Ukrainian airline that, like Ukrainian Mediterranean Airlines, was added to BIS's Entity List on August 15, 2011. Open source evidence indicates the two Airbus A320 aircraft may be been transferred by Mahan Airways to another Iranian airline in October 2014, and issued Iranian tail numbers EP–APE and EP–APF, respectively.

Additionally, on August 29, 2014, OFAC blocked the property and interests in property of Asian Aviation Logistics of Thailand, a Mahan Airways affiliate or front company, pursuant to Executive Order 13224. In doing so, OFAC described Mahan Airways' use of Asian Aviation Logistics to evade sanctions by making payments on behalf of Mahan for the purchase of engines and other equipment.[22]

The May 21, 2015 modification order detailed the acquisition of two aircraft, specifically an Airbus A340 bearing MSN 164 and an Airbus A321 bearing MSN 550, that were purchased by Al Naser Airlines in late 2014/early 2015 and are currently located in Iran under the possession, control, and/or ownership of Mahan Airways.[23] The sales agreements for these two aircraft were signed by Ali Abdullah Alhay for Al Naser Airlines.[24] Payment information reveals that multiple electronic funds transfers (''EFT'') were made by Ali Abdullah Alhay and Bahar Safwa General Trading in order to acquire MSNs 164 and 550. The May 21, 2015 modification order also laid out evidence showing the respondents' attempts to obtain other controlled aircraft, including aircraft physically located in the United States in similarly-patterned transactions during the same recent time period. Transactional documents involving two Airbus A320s bearing MSNs 82 and 99, respectively, again showed Ali Abdullah Alhay signing sales agreements for Al Naser Airlines.[25] A review of the payment information for these aircraft similarly revealed EFTs from Ali Abdullah Alhay and Bahar Safwa General Trading that follow the pattern described for MSNs 164 and 550, *supra.* MSNs 82 and 99 were detained by OEE Special Agents prior to their planned export from the United States.

The July 13, 2015 renewal order outlined evidence showing that Al Naser Airlines' attempts to acquire aircraft on behalf of Mahan Airways extended beyond MSNs 164 and 550 to include a total of nine aircraft.[26] Four of the aircraft, all of which are subject to the Regulations and were obtained by Mahan from Al Naser Airlines, had been issued the following Iranian tail numbers: EP–MMD (MSN 164), EP–MMG (MSN 383), EP–MMH (MSN 391) and EP–MMR (MSN 416), respectively.[27] Publicly available flight tracking information provided evidence that at the time of the July 13, 2015 renewal, both EP–MMH and EP–MMR were being actively flown on routes into and out of Iran in violation of the TDO and Regulations.[28] The January 7, 2016 renewal order discussed evidence that Mahan Airways had begun actively flying EP–MMD on international routes into and out of Iran, including from/to Bangkok, Thailand. Additionally, the January 7, 2016 order described publicly available aviation database and flight tracking information indicating that Mahan Airways continued efforts to acquire Iranian tail numbers and press into active service under Mahan's livery and logo at least two more of the Airbus A340 aircraft it had obtained from or through Al Naser Airlines: EP–MME (MSN 371) and EP–MMF (MSN 376), respectively. Since January 2016, EP–MME has logged flights to and from Tehran, Iran involving various destinations, including Guangzhou, China and Dubai, United Arab Emirates, in further violation of the TDO and the Regulations.

The July 7, 2016 renewal order described Mahan Airways' acquisition of a BAE Avro RJ–85 aircraft (MSN E2392) in violation of the TDO and its subsequent registration under Iranian tail number EP–MOR.[29] This information was corroborated by publicly available information on the website of Iran's civil aviation authority. The July 7, 2016 order also outlined Mahan's continued operation of EP–MMF in violation of the TDO on routes from Tehran, Iran to Beijing, China and Shanghai, China, respectively.

The December 30, 2016 renewal order outlined Mahan's continued operation of multiple Airbus aircraft, including EP–MMD (MSN 164), EP–MMF (MSN 376), and EP–MMH (MSN 391), which were acquired from or through Al Naser Airlines in violation of the TDO, as previously detailed in pertinent part in the July 13, 2015 and January 7, 2016 renewal orders. Publicly available flight tracking information showed that the aircraft were operated on flights into and out of Iran, including from/to Beijing, China, Kuala Lumpur, Malaysia, and Istanbul, Turkey.[30]

The June 27, 2017 renewal order included similar evidence regarding Mahan Airways' violation of the TDO by operating multiple Airbus aircraft

[22] See *http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20140829.aspx.* See 79 FR 55073 (Sep. 15, 2014). OFAC also blocked the property and property interests of Pioneer Logistics of Turkey on August 29, 2014. *Id.* Mahan Airways' use of Pioneer Logistics in an effort to evade the TDO and the Regulations was discussed in a prior renewal order, as summarized, *supra,* at 13–14. BIS added both Asian Aviation Logistics and Pioneer Logistics to the Entity List on December 12, 2013. *See* 78 FR 75458 (Dec. 12, 2013).

[23] Both of these aircraft are powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. Both aircraft contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR regardless of their location. The aircraft are classified under ECCN 9A991.b. The export or re-export of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[24] The evidence obtained by OEE showed Ali Abdullah Alhay as a 25% owner of Al Naser Airlines.

[25] Both aircraft were physically located in the United States and therefore are subject to the Regulations pursuant to Section 734.3(a)(1). Moreover, these Airbus A320s are powered by U.S.-origin engines that are subject to the Regulations and classified under Export Control Classification Number ECCN 9A991.d. The Airbus A320s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR regardless of their location. The aircraft are classified under ECCN 9A991.b. The export or re-export of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[26] This evidence included a press release dated May 9, 2015, that appeared on Mahan Airways' website and stated that Mahan ''added 9 modern aircraft to its air fleet [,]'' and that the newly acquired aircraft included eight Airbus A340s and one Airbus A321. See *http://www.mahan.aero/en/mahan-air/press-room/44.* The press release was subsequently removed from Mahan Airways' website. Publicly available aviation databases similarly showed that Mahan had obtained nine additional aircraft from Al Naser Airlines in May 2015, including MSNs 164 and 550. As also discussed in the July 13, 2015 renewal order, Sky Blue Bird Group, via Issam Shammout, was actively involved in Al Naser Airlines' acquisition of MSNs 164 and 550, and the attempted acquisition of MSNs 82 and 99 (which were detained by OEE).

[27] The Airbus A340s are powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. The Airbus A340s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR regardless of their location. The aircraft are classified under ECCN 9A991.b. The export or re-export of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[28] There is some publicly available information indicating that the aircraft Mahan Airways is flying under Iranian tail number EP–MMR is now MSN 615, rather than MSN 416. Both aircraft are Airbus A340 aircraft that Mahan acquired from Al Naser Airlines in violation of the TDO and the Regulations. Moreover, both aircraft were designated as SDGTs by OFAC on May 21, 2015, pursuant to Executive Order 13324. See 80 FR 30762 (May 29, 2015).

[29] The BAE Avro RJ–85 is powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. The BAE Avro RJ–85 contains controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result is subject to the EAR regardless of its location. The aircraft is classified under ECCN 9A991.b, and its export or re-export to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[30] Specifically, on December 22, 2016, EP–MMD (MSN 164) flew from Dubai, UAE to Tehran, Iran. Between December 20 and December 22, 2016, EP–MMF (MSN 376) flew on routes from Tehran, Iran to Beijing, China and Istanbul, Turkey, respectively. Between December 26 and December 28, 2016, EP–MMH (MSN 391) flew on routes from Tehran, Iran to Kuala Lumpur, Malaysia.

subject to the Regulations, including, but not limited to, aircraft procured from or through Al Naser Airlines, on flights into and out of Iran, including from/to Moscow, Russia, Shanghai, China and Kabul, Afghanistan.[31] The June 27, 2017 order also detailed evidence concerning a suspected planned or attempted diversion to Mahan of an Airbus A340 subject to the Regulations that had first been mentioned in OEE's December 13, 2016 renewal request.

OEE's November 28, 2017 renewal request presented evidence that a Mahan employee attempted to initiate negotiations with a U.S. company for the purchase of an aircraft subject to the Regulations and classified under ECCN 9A610. The request also includes evidence indicating that Mahan Airways continues to operate a number of aircraft subject to the Regulations, including aircraft originally procured from or through Al Naser Airlines, on flights into and out of Iran from/to Lahore, Pakistan, Shanghai, China, Ankara, Turkey, Kabul, Afghanistan, and Baghdad, Iraq, in violation of the TDO.[32]

Additionally, multiple open sources indicate that Al Naser Airlines recently acquired, via lease, at least possession and/or control of a Boeing 737 (MSN 25361), bearing tail number YR–SEB, and an Airbus A320 (MSN 357), bearing tail number YR–SEA, from a Romanian company.[33] Publicly available flight tracking data shows, furthermore, that in November 2017, YR–SEA was operated on international flights between Baghdad and destinations including Beirut, Lebanon and Istanbul, Turkey under the International Air Transport Association (''IATA'') designator for Al Naser Airlines. These transactions thus violate the TDO.

OEE's investigation also shows that Al Naser Airlines is using the additional alias ''Al Naser Wings Airline.''

C. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that the denied persons have acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of future violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should continue to cease dealing with Mahan Airways and Al Naser Airlines and the other denied persons in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations. I also find it necessary to add ''Al Naser Wings Airline'' as an alias for Al Naser Airlines.

IV. Order

It is therefore ordered:

First, that MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran; PEJMAN MAHMOOD KOSARAYANIFARD A/K/A KOSARIAN FARD, P.O. Box 52404, Dubai, United Arab Emirates; MAHMOUD AMINI, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; KERMAN AVIATION A/K/A GIE KERMAN AVIATION, 42 Avenue Montaigne 75008, Paris, France; SIRJANCO TRADING LLC, P.O. Box 8709, Dubai, United Arab Emirates; MAHAN AIR GENERAL TRADING LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates; MEHDI BAHRAMI, Mahan Airways-Istanbul Office, Cumhuriye Cad. Sibil Apt No: 101 D:6, 34374 Emadad, Sisli Istanbul, Turkey; AL NASER AIRLINES A/K/A AL–NASER AIRLINES A/K/A AL NASER WINGS AIRLINE A/K/A ALNASER AIRLINES AND AIR FREIGHT LTD., Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq, and Al Amirat Street, Section 309, St. 3/H.20, Al Mansour, Baghdad, Iraq, and P.O. Box 28360, Dubai, United Arab Emirates, and P.O. Box 911399, Amman 11191, Jordan; ALI ABDULLAH ALHAY A/K/A ALI ALHAY A/K/A ALI ABDULLAH AHMED ALHAY, Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq, and Anak Street, Qatif, Saudi Arabia 61177; BAHAR SAFWA GENERAL TRADING, P.O. Box 113212, Citadel Tower, Floor-5, Office #504, Business Bay, Dubai, United Arab Emirates, and P.O. Box 8709, Citadel Tower, Business Bay, Dubai, United Arab Emirates; SKY BLUE BIRD GROUP A/K/A SKY BLUE BIRD AVIATION A/K/A SKY BLUE BIRD LTD A/K/A SKY BLUE BIRD FZC, P.O. Box 16111, Ras Al Khaimah Trade Zone, United Arab Emirates; and ISSAM SHAMMOUT A/K/A MUHAMMAD ISAM MUHAMMAD ANWAR NUR SHAMMOUT A/K/A ISSAM ANWAR, Philips Building, 4th Floor, Al Fardous Street, Damascus, Syria, and Al Kolaa, Beirut, Lebanon 151515, and 17–18 Margaret Street, 4th Floor, London, W1W 8RP, United Kingdom, and Cumhuriyet Mah. Kavakli San St. Fulya, Cad. Hazar Sok. No.14/A Silivri, Istanbul, Turkey, and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

[31] Publicly available flight tracking information shows that on June 22, 2017, EP–MME (MSN 371) flew from Moscow, Russia to Tehran, Iran. Additionally, between June 19, 2017, and June 20, 2017, EP–MMQ (MSN 449), an Airbus A430 also obtained from or through Al Naser Airlines, flew on routes between Shanghai, China and Tehran, Iran. Similar flight tracking information shows that on June 20, 2017, EP–MNK (MSN 618), an Airbus A300 originally acquired by Mahan via a Ukrainian company, flew between Kabul, Afghanistan and Mashhad, Iran.

[32] For example, publicly available flight tracking information shows that on December 17, 2017, EP–MNV (MSN 567) flew from Lahore, Pakistan to Tehran, Iran. On December 18–19, 2017, EP–MMQ (MSN 449) flew on routes between Istanbul, Turkey and Tehran, Iran. Additionally, on December 17, 2017, EP–MNK (MSN 618), an Airbus A300 originally acquired by Mahan via a Ukrainian company, flew on routes between Baghdad, Iraq and Mashhad, Iran.

[33] The Airbus A320 is powered with U.S.-origin engines, which are subject to the EAR and classified under Export Control Classification (''ECCN'') 9A991.d. The engines are valued at more than 10 percent of the total value of the aircraft, which consequently is subject to the EAR. The aircraft is classified under ECCN 9A991.b., and its export or reexport to Iran would require U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Sections 766.24(e) of the EAR, Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and/or Bahar Safwa General Trading may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022. In accordance with the provisions of Sections 766.23(c)(2) and 766.24(e)(3) of the EAR, Pejman Mahmood Kosarayanifard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Mahan Air General Trading LLC, Mehdi Bahrami, Sky Blue Bird Group, and/or Issam Shammout may, at any time, appeal their inclusion as a related person by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and/or Bahar Safwa General Trading as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading and each related person, and shall be published in the **Federal Register**. This Order is effective immediately and shall remain in effect for 180 days.

Dated: December 20, 2017.

Richard R. Majauskas,

Deputy Assistant Secretary of Commerce for Export Enforcement performing the non-exclusive duties and functions of the Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2017–28113 Filed 12–28–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828, A–557–809, A–565–801]

Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines: Continuation of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) and the International Trade Commission (the ITC) have determined that revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings (butt-weld fittings) from Italy, Malaysia, and the Philippines would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States. Therefore, Commerce is publishing a notice of continuation of these orders.

DATES: Effective December 29, 2017.

FOR FURTHER INFORMATION CONTACT: Madeline Heeren, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–9179.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2017, the Department initiated five-year (sunset) reviews of the *Orders* [1] on butt-weld fittings pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On June 1, 2017, the ITC instituted its review of the *Orders.*[3] Commerce conducted an expedited sunset review of the *Orders.* As a result of these sunset reviews, Commerce determined that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the dumping margins likely to prevail should the orders be revoked, pursuant to sections 751(c)(1) and 752(c)(3) of the Act.[4]

On December 20, 2017, the ITC published its determination, pursuant to section 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United Sates within a reasonably foreseeable time.[5]

Scope of the Orders

For purposes of these *Orders,* the product covered is certain stainless steel butt-weld pipe fittings (butt-weld fittings). Butt-weld fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and ''commodity'' and ''specialty'' fittings. Specifically excluded from the

[1] *See Antidumping Duty Orders: Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines,* 66 FR 11257 (February 23, 2001) (*Orders*).

[2] *See Initiation of Five-Year (''Sunset'') Review,* 82 FR 25599 (June 2, 2017) (*Sunset Initiation*).

[3] *See Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines; Institution of Five-Year Reviews,* 82 FR 25324 (June 1, 2017).

[4] *Certain Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines: Final Results of the Expedited Sunset Review of the Antidumping Duty Orders,* 82 FR 46763 (October 6, 2017), and accompanying Issues and Decision Memorandum.

[5] *See Investigation No. 731–TA–865–867 (Third Review),* 82 FR 60419 (December 20, 2017), and USITC Publication 4751 (January 2018), entitled *Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines: Investigation Nos. 731–TA–865–867 (Third Review).*

definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The butt-weld fittings subject to these *Orders* are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.,* DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Butt-weld fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by the *Orders.*

These *Orders* do not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The butt-weld fittings subject to these *Orders* are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: December 21, 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.

[FR Doc. 2017–28196 Filed 12–28–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF910

Marine Mammals; File No. 21295

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Eye of the Whale (Olga von Ziegesar, Responsible Party and Principal Investigator), P.O. Box 15191, Fritz Creek, AK 99603, has applied in due form for a permit to conduct research on humpback whales (*Megaptera novaeangliae*).

DATES: Written, telefaxed, or email comments must be received on or before January 29, 2018.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 21295 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant requests a five-year scientific research permit to continue long-term monitoring of humpback whales in Prince William Sound and adjacent waters of Alaska. Up to 300 takes for close vessel approach, photo-identification and behavioral observation of whales are requested annually to better define abundance, distribution, reoccurrence of old individuals vs. new individuals, feeding habits, associations between animals, and sex of individual whales.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 26, 2017.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–28179 Filed 12–28–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF888

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; 2018 Cost Recovery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice, 2018 cost recovery fee percentages and mothership cooperative (MS) sector pricing.

SUMMARY: This action provides participants in the Pacific coast groundfish trawl rationalization program with the 2018 fee percentages and ''MS pricing'' needed to calculate the required payments for trawl rationalization program cost recovery fees due in 2018. For calendar year 2018, NMFS announces the following fee percentages by sector: 3.0 percent for the Shorebased Individual Fishing Quota (IFQ) Sector; 0 percent for the MS sector; and 0 percent for the Catcher/Processer Cooperative (C/P) sector. For 2018, the MS pricing to be used as a proxy by the C/P sector is $0.09/lb for Pacific whiting.

DATES: Applicable January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Christopher Biegel, Cost Recovery Program Coordinator, (503) 231–6291, fax (503) 872–2737, email *Christopher.Biegel@NOAA.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires NMFS to collect fees to recover the costs directly related to the management, data collection, and enforcement of a limited access privilege program (LAPP) (16 U.S.C. 1854(d)(2)), also called ''cost recovery.'' The Pacific coast groundfish trawl rationalization program is a LAPP, implemented in 2011, and consists of three sectors: The Shorebased IFQ sector; the MS Coop sector; and the C/P Coop sector. In accordance with the MSA, and based on a recommended structure and methodology developed in coordination with the Pacific Fishery Management Council, NMFS began collecting mandatory fees of up to three percent of the ex-vessel value of groundfish from each sector in 2014. NMFS collects the fees to recover the incremental costs of management, data collection, and enforcement of the trawl rationalization program. Additional background can be found in the cost recovery proposed and final rules, 78 FR 7371 (February 1, 2013) and 78 FR 75268 (December 11, 2013), respectively. The details of cost recovery for the groundfish trawl rationalization program are in regulation at 50 CFR 660.115 (trawl fishery cost recovery program), § 660.140 (Shorebased IFQ Program), § 660.150 (MS Coop Program), and § 660.160 (C/P Coop Program).

By December 31 of each year, NMFS must announce the next year's fee percentages, and the applicable MS pricing for the C/P sector. NMFS calculated the 2018 fee percentages by sector using the best available information. For 2018, the fee percentages by sector, taking into account direct program costs (DPCs) and any adjustments, are:

- 3.0 percent for the Shorebased IFQ sector;
- 0 percent for the MS sector; and
- 0 percent for the C/P sector.

To calculate the fee percentages, NMFS used the formula specified in regulation at § 660.115(b)(1), where the fee percentage by sector equals the lower of three percent or DPC for that sector divided by total ex-vessel value (V) for that sector multiplied by 100 (Fee percentage = the lower of 3 percent or (DPC/V) x 100).

As defined in the regulations at § 660.115(b)(1)(i), DCP are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of each sector. Actual incremental costs means those net costs that would not have been incurred but for the implementation of the trawl rationalization program, including both increased costs for new requirements of the program and reduced costs resulting from any program efficiencies. NMFS only included the cost of employees' time (salary and benefits) spent working on the program in calculating DPC rather than all incremental costs of management, data collection, and enforcement.

As specified at § 660.115(b)(1)(ii), V is the total ex-vessel value, as defined at § 660.111, for each sector from the previous calendar year. To calculate V for use in determining 2018 fee percentages, NMFS used the ex-vessel value for 2016 as reported in Pacific Fisheries Information Network (PacFIN) from electronic fish tickets. The electronic fish ticket data in PacFIN is for the Shorebased IFQ sector. Therefore, the ex-vessel value for both the MS sector and the C/P sector is a proxy based on the Shorebased IFQ sector ex-vessel price and on the retained catch estimates (weight) from the observer data for the MS and C/P sectors.

Ex-vessel values and amounts landed each year fluctuate, and the amount NMFS collects each year in cost recovery fees also fluctuate accordingly. When the cost recovery fees collected by NMFS are greater or less than the actual net incremental costs incurred for a given year, the fee percentage for the following year will be adjusted as specified at § 660.115(b)(1)(i).

NMFS' internal process for categorizing and tracking employee time in the trawl rationalization program has been refined over the years. For example, the use of the ''general'' time coding option was phased out by the West Coast Region and was no longer used as of fiscal year 2015. NMFS has continued its efforts to ensure that employee time is only tracked for time spent on tasks that that would not have been incurred but for the implementation of the trawl rationalization program, taking into account reduced costs resulting from any program efficiencies.

The DPC values used to determine the 2018 fee percentages reflect any adjustments for past over or under payment. The 2018 fee is consistent with the decision in *Glacier Fish Co. LLC* v. *Pritzker,* 832 F.3d 1113 (9th Cir. 2016). Based on estimated fees received in 2017, the adjusted DPCs for 2018 are:

Shorebased IFQ Program: *$2,179,402.10*
MS Coop Program: *−$132,607.08*
C/P Coop Program: *−$132,607.08*

And the fee calculations using the adjusted 2017 DPCs are:

Shorebased IFQ sector: 3.0 percent = the lower of 3 percent or ($*2,179,402.10*/$46,206,889.00) × 100

MS sector: −1.1 percent = the lower of 3 percent or (−$*132,607.08*/$12,214,290.70) × 100

C/P sector: −0.5 percent = the lower of 3 percent or (−$*132,607.08*/$21,314,877.96) × 100.

As a fee cannot be set using a negative percentage, the 2018 fee percentages for the MS sector and the C/P sector will be set at 0.0 percent.

MS pricing is the average price per pound that the C/P sector will use to determine their fee amount due (MS pricing multiplied by the value of the aggregate pounds of all groundfish species harvested by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the C/P fee percentage, equals the fee amount due). In past years, MS pricing was based on the average price per pound of Pacific whiting as reported in PacFIN from the Shorebased IFQ Program. In other words, data from the IFQ fishery was used as a proxy for the MS average price per pound to determine the MS pricing used in the calculation for the C/P sector's fee amount due. For 2018 MS pricing, NMFS used values derived from those reported on the MS sector cost recovery form from calendar year 2016 as this was determined to be the best information available. NMFS has calculated the 2018 MS pricing to be used as a proxy by the C/P sector as: $0.09/lb for Pacific whiting.

Cost recovery fees are submitted to NMFS by Fish buyers via *Pay.gov* (*https://www.pay.gov/paygov/*). Fish buyers registered with *Pay.gov* can login in the upper left-hand corner of the screen. Fish buyers not registered with *Pay.gov* can go to the cost recovery forms directly from the website below. The links to the *pay.gov* forms for each sector (IFQ, MS, or C/P) are listed below:

IFQ: *https://www.pay.gov/public/form/start/58062865;*

MS: *https://www.pay.gov/public/form/start/58378422;*

CP: *https://www.pay.gov/public/form/start/58102817.*

As stated in the preamble to the cost recovery proposed and final rules, in the spring of each year, NMFS will release an annual report documenting the details and data used for the above calculations. The report will include information such as the fee percentage calculation, program costs, and ex-vessel value by sector. Annual reports are available at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/rules_regulations/costrecovery.html.*

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 26, 2017.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–28185 Filed 12–28–17; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2017–0041]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection, titled, ''Generic Information Collection Plan for Studies of Consumers using Controlled Trials in Field and Economic Laboratory Settings.''

DATES: Written comments are encouraged and must be received on or before January 29, 2018 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OMB:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under review,'' use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for Studies of Consumers using Controlled Trials in Field and Economic Laboratory Settings.

OMB Control Number: 3170–0048.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 42,600.

Estimated Total Burden Hours: 38,400.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bureau is tasked with researching, analyzing, and reporting on topics relating to the Bureau's mission, including developments in markets for consumer financial products and services, consumer awareness, and consumer behavior. The Bureau seeks to renew the OMB approval for a generic information collection plan to collect data from purposive samples through controlled trials in field and economic laboratory settings. This research will be used for developmental and informative purposes in order to increase the Bureau's understanding of consumer credit markets and household financial decision-making. Basic research projects will be submitted under this clearance. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number. The Bureau is not proposing any new or revised collections of information pursuant to this request.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on October 3, 2017, 82 FR 46042, Docket Number: CFPB–2017–0033. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: December 22, 2017.

Linda F. Powell,

Chief Data Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2017–28204 Filed 12–28–17; 8:45 am]

BILLING CODE 4810–AM–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: PR18–13–000.

Applicants: Montana-Dakota Utilities Co.

Description: Tariff filing per 284.123(b),(e)+(g): Revisions to SOC and Statement of Effective Rates to be effective 11/1/2017.

Filed Date: 12/7/17.

Accession Number: 201712075093.

Comments Due: 5 p.m. ET 12/28/17.

284.123(g) Protests Due: 5 p.m. ET 2/5/18.

Docket Number: PR17–57–002.

Applicants: Houston Pipe Line Company LP.

Description: Tariff filing per 284.123(b)(2),(: 2nd Amended Rate Election of Houston Pipe Line Company LP Effective 11/01/2017.

Filed Date: 12/8/17.

Accession Number: 201712085066.

Comments/Protests Due: 5 p.m. ET 12/29/17.

Docket Numbers: RP18–252–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 121517 Negotiated Rates—Mercuria Energy America, Inc. H–7540–89 to be effective 12/14/2017.

Filed Date: 12/15/17.

Accession Number: 20171215–5063.

Comments Due: 5 p.m. ET 12/27/17.

Docket Numbers: RP18–253–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Bayway Lateral Project—Negotiated Rates eff 1–1–2018 to be effective 1/1/2018.

Filed Date: 12/15/17.

Accession Number: 20171215–5200.

Comments Due: 5 p.m. ET 12/27/17.

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 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: December 18, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28200 Filed 12–28–17; 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: EC18–34–000.

Applicants: MDU Resources Group, Inc.

Description: Application of MDU Resources Group, Inc. for Authorization under FPA Section 203 and Request for Confidential Treatment.

Filed Date: 12/15/17.

Accession Number: 20171215–5228.

Comments Due: 5 p.m. ET 1/5/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2126–004.

Applicants: Idaho Power Company.

Description: Compliance filing: Compliance Filing—Revision MBR Tariff Reflect Authorized Transact in CAISO EIM to be effective 4/4/2018.

Filed Date: 12/18/17.

Accession Number: 20171218–5000.

Comments Due: 5 p.m. ET 1/8/18.

Docket Numbers: ER14–693–006.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc. submits tariff filing per 35: LBA Compliance Errata ER14–693 12–1–2017 to be effective 12/19/2013 under ER14–693. (Replaces 20171201–5399).

Filed Date: 12/18/17.

Accession Number: 20171218–5077.

Comments Due: 5 p.m. ET 1/8/18.

Docket Numbers: ER14–694–006.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc. submits tariff filing per 35: LBA Compliance Errata ER14–694 12–1–2017 to be effective 12/19/2013 under ER14–694. (Replaces 20171201–5397).

Filed Date: 12/18/17.

Accession Number: 20171218–5079.

Comments Due: 5 p.m. ET 1/8/18.

Docket Numbers: ER17–1014–001.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: Compliance filing: 2017–12–18_Compliance filing re OTP Att O and 30.9 Credits to include Basin to be effective 5/1/2017.

Filed Date: 12/18/17.

Accession Number: 20171218–5112.

Comments Due: 5 p.m. ET 1/8/18.

Docket Numbers: ER17–1394–001.

Applicants: 83WI 8me, LLC.

Description: Notice of Non-Material Change in Status of 83WI 8me, LLC.

Filed Date: 12/14/17.

Accession Number: 20171214–5184.

Comments Due: 5 p.m. ET 1/4/18.

Docket Numbers: ER18–459–000.

Applicants: PJM Interconnection, L.L.C., Ohio Valley Electric Corporation.

Description: § 205(d) Rate Filing: Revisions to PJM OATT, OA and RAA re: OVEC Integration to be effective 3/1/2018.

Filed Date: 12/15/17.

Accession Number: 20171215–5205.

Comments Due: 5 p.m. ET 1/5/18.

Docket Numbers: ER18–460–000.

Applicants: PJM Interconnection, L.L.C., Ohio Valley Electric Corporation.

Description: § 205(d) Rate Filing: Revisions to CTOA re: OVEC Integration to be effective 3/1/2018.

Filed Date: 12/15/17.

Accession Number: 20171215–5209.

Comments Due: 5 p.m. ET 1/5/18.

Docket Numbers: ER18–461–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2017–12–15 Consolidated EIM Initiatives and Resource Modeling Enhancements to be effective 2/15/2018.

Filed Date: 12/15/17.

Accession Number: 20171215–5190.

Comments Due: 5 p.m. ET 1/5/18.

Docket Numbers: ER18–462–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2017–12–15_Resource Adequacy Construct Refiling to be effective 3/1/2018.

Filed Date: 12/15/17.

Accession Number: 20171215–5199.

Comments Due: 5 p.m. ET 1/5/18.

Docket Numbers: ER18–463–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Transmission Company of Illinois.

Description: § 205(d) Rate Filing: 2017–12–15_ATXI Attachment O & MM Revisions for Transmission Rate Incentives to be effective 2/14/2018.

Filed Date: 12/15/17.

Accession Number: 20171215–5201.

Comments Due: 5 p.m. ET 1/5/18.

Docket Numbers: ER18–464–000.

Applicants: Public Service Company of New Mexico.

Description: Initial rate filing: Transmission Service Agreement between PNM and El Cabo Wind, LLC to be effective 11/29/2017.

Filed Date: 12/18/17.

Accession Number: 20171218–5057.

Comments Due: 5 p.m. ET 1/8/18.

Docket Numbers: ER18–465–000.

Applicants: Public Service Company of New Hampshire.

Description: Request for Limited Waiver of Public Service Company of New Hampshire.

Filed Date: 12/15/17.

Accession Number: 20171215–5227.

Comments Due: 5 p.m. ET 1/5/18.

Docket Numbers: ER18–466–000.

Applicants: NextEra Energy Marketing, LLC.

Description: Petition for Limited Waiver of NextEra Energy Marketing, LLC.

Filed Date: 12/15/17.

Accession Number: 20171215–5232.

Comments Due: 5 p.m. ET 1/5/18.

Docket Numbers: ER18–467–000.

Applicants: Southern California Edison Company.

Description: Tariff Cancellation: Notice of Cancellation of 5 FTSAs to be effective 1/1/2018.

Filed Date: 12/18/17.

Accession Number: 20171218–5121.

Comments Due: 5 p.m. ET 1/8/18.

Docket Numbers: ER18–468–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: PG&E Llagas Energy Storage SGIA to be effective 12/19/2017.

Filed Date: 12/18/17.

Accession Number: 20171218–5166.

Comments Due: 5 p.m. ET 1/8/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 18, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28199 Filed 12–28–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9972–60–Region 6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; TM Deer Park Services (TMDPS) Limited Partnership, Deer Park, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a UIC no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the Land Disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to TMDPS for two Class I hazardous waste injection wells located at their Deer Park, Texas facility. The company has adequately demonstrated to the satisfaction of the EPA by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by TMDPS of the specific restricted hazardous wastes identified in this exemption reissuance, into Class I hazardous waste injection wells WDW–169 and WDW–249 until December 31, 2030, unless the EPA moves to terminate this exemption or other petition condition limitations are reached. Additional conditions included in this final decision may be reviewed by contacting the EPA Region 6 Ground Water/UIC Section. A public notice was issued October 11, 2017, and the public comment period closed on November 27, 2017, and no comments were received. This decision constitutes final Agency action and there is no Administrative appeal. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

DATES: This action is applicable as of December 13, 2017.

ADDRESSES: Copies of the petition reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Division, Safe Drinking Water Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–8324.

Dated: December 13, 2017.

James R. Brown,

Associate Director, Safe Drinking Water Branch.

[FR Doc. 2017–28133 Filed 12–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2016–0404; FRL–9972–71–OEI]

Submission to OMB for Review and Approval; Comment Request; Information Collection Request for the National Study of Nutrient Removal and Secondary Technologies: Publicly Owned Treatment Works (POTW) Screener Questionnaire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that an Information Collection Request (ICR) for a voluntary survey—Information Collection Request for the National Study of Nutrient Removal and Secondary Technologies: Publicly Owned Treatment Works (POTW) Screener Questionnaire, EPA ICR No. 2553.01, OMB Control No. 2040 NEW—has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 29, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2016–0404 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW, Washington, DC 20503.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2016–0404. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Dr. Paul Shriner, Engineering and Analysis Division (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–1076; email address: *nutrient-removal-study@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2016–0404, which is available at *https://www.regulations.gov,* or for in-person viewing at the EPA Docket Center, William J. Clinton West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Use *https://www.regulations.gov* to submit or view public comments, obtain a copy of the collection of information supporting statement, including the screener survey, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

Abstract: Nutrient pollution (*e.g.* nitrogen and phosphorus) presents a growing threat to public health and local economies—contributing to toxic harmful algal blooms, contamination of drinking water sources, and costly impacts on recreation, tourism and fisheries. The EPA is collaborating with states to make greater progress in reducing nutrient loadings discharged into the nation's waters from all sources. With this goal in mind, EPA's Office of Water is planning to collect data to evaluate the nutrient removals and related technology performance of publicly owned treatment works (POTWs) with conventional secondary treatment. Currently, there are no comprehensive, nationwide data on nutrient discharges and removals at POTWs. This study will attempt to obtain nationwide data on nutrient removal to help set more realistic and achievable nutrient reduction targets than may be the case absent such data; help POTWs understand the range of opportunities to optimize nutrient removals based on data from their peers, and; encourage improved nutrient removal POTW performance with less expense. This study will not only be useful to POTWs, but will also be useful to all stakeholders involved in managing nutrients at the watershed level.

The full study is designed with multiple phases over the course of four to five years, allowing for interactions with stakeholders and experts in each phase. The first phase of the study is a screener questionnaire, which is the focus of this ICR. The goal of this first phase is to identify and characterize the full population of POTWs in the U.S. that discharge to a water of the U.S. This information will be used to help establish a baseline of nutrient performance at the national level for all POTWs. The second phase of the study will collect data from a subset of POTWs designed for secondary treatment, yet accomplishing significant nutrient removals. The study will document the capability of different types of POTWs to reduce nutrient discharges by implementing changes to operations and maintenance, but without retrofitting to biological nutrient removal (BNR), making chemical additions, or committing to extensive capital investments.

EPA is limiting the information requested by this census to that which is necessary to create a complete population of POTWs and to identify basic information about that population. Questions include those necessary to identify and stratify the universe of POTWs and, within that population, the secondary treatment POTWs not designed specifically to remove nitrogen and phosphorus.

Respondents/affected entities: Approximately 17,000 POTWs that meet the definition under 40 CFR 403.3(q), as well as up to 100 state and/or small municipal association contacts and 47 state and/or territory requests for POTW population data.

Estimated total number of respondents: 13,600 POTWs, 40 POTWs for site visits, 100 state or small municipal association contacts, and 47 states/territories for POTW population data.

Frequency of response: One-time data collection.

Estimated total respondent burden hours: 46,925.

Estimated total respondent costs: $1,606,960. This estimate reflects unit costs for labor.

Change in the estimates: This is a new collection and thus represents a one-time increase to the Agency's overall burden.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2017–28104 Filed 12–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9036–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa/*.

Weekly receipt of Environmental Impact Statements (EIS)

Filed 12/18/2017 Through 12/22/2017

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search*.

EIS No. 20170244, Draft, USFS, OR, Trout Creek, Comment Period Ends: 02/12/2018, Contact: Joan Schmidgall (541) 367–3809.

EIS No. 20170245, Draft, USFS, WI, Townsend Project, Comment Period Ends: 02/12/2018, Contact: Marilee Houtler (715) 276–6333.

EIS No. 20170246, Draft, BR, CA, Yolo Bypass Salmonid Habitat Restoration & Fish Passage, Comment Period Ends: 02/15/2018, Contact: Ben Nelson (916) 414–2424.

EIS No. 20170247, Final, FHWA, NC, Complete 540—Triangle Expressway Southeast Extension, Review Period Ends: 02/01/2018, Contact: Jennifer Harris (919) 707–2704.

EIS No. 20170248, Draft, DC, AK, Mertarvik Infrastructure Development Nelson Island, Alaska Comment Period Ends: 02/13/2018, Contact: Don Antrobus, (907) 271–3500.

Dated: December 22, 2017.

Kelly Knight,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2017–28116 Filed 12–28–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate the Receivership of 10191, Bank of Illinois, Normal, Illinois

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for Bank of Illinois, Normal, Illinois, intends to terminate its receivership for said institution. The FDIC was appointed Receiver of Bank of Illinois on March 5, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: December 26, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–28142 Filed 12–28–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB Nos. 3064–0115 and 3064–0197]

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections, as required by the Paperwork Reduction Act of 1995 (PRA). Currently, the FDIC is soliciting comment on renewal of the information collections described below.

DATES: Comments must be submitted on or before February 27, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202–898–6768), Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones (202–898–6768), at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Prompt Corrective Action.

OMB Number: 3064–0115.

Form Number: None.

Affected Public: State non-member banks and savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Frequency of response	Total annual estimated burden
Prompt Corrective Action (12 CFR parts 303, 324, and 390).	Reporting	Voluntary	17	1	4	On Occasion	68
Total Hourly Burden							68

General Description of Collection: Sec. 38 of the FDI Act requires or permits the FDIC to take certain supervisory actions when institutions fall within certain categories. The collection consists of applications to engage in otherwise restricted activities. The Prompt Corrective Action (PCA) provisions of section 38 of the Federal Deposit Insurance Act require or permit the FDIC and other federal banking agencies to take certain supervisory actions when FDIC-insured institutions fall within certain capital categories. They also restrict or prohibit certain activities and require the submission of a capital restoration plan when an insured institution becomes undercapitalized. Various provisions of the statute and the FDIC's implementing regulations require the prior approval of the FDIC before an FDIC-supervised institution, or certain insured depository institutions, can engage in certain activities, or allow the FDIC to make exceptions to restrictions that would otherwise be imposed. This collection of information consists of the applications that are required to obtain the FDIC's prior approval.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

2. *Title:* Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring (LCR).

OMB Number: 3064–0197.

Form Number: None.

Affected Public: State savings associations and State nonmember banks that (i) have total consolidated

assets equal to $250 billion or more; (ii) have total consolidated on-balance sheet foreign exposure equal to $10 billion or more; or (iii) have total consolidated assets equal to $10 billion or more and are a consolidated subsidiary of one of the following: (A) a covered depository institution holding company or depository institution that has total assets equal to $250 billion or more; (B) a covered depository institution holding company or depository institution that has total consolidated on-balance sheet foreign exposure equal to $10 billion or more; or (C) a company that has been designated by the Financial Stability Oversight Council for supervision by the Federal Reserve Board.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Frequency of response	Total annual estimated burden
Liquidity Coverage Ratio (LCR)—12 CFR 329.40(a), (b).	Reporting	Mandatory					
§ 329.40(a) Notification that liquidity coverage ratio is less than minimum in § 329.10.	Reporting	Mandatory	2	12	0.25	On Occasion	6.00
§ 329.40(b) Notification that liquidity coverage ratio is less than minimum in § 329.10 for 3 consecutive days or otherwise noncompliant.	Reporting	Mandatory	2	1	0.25	On Occasion	0.50
§ 329.40(b) Plan for achieving compliance.	Recordkeeping	Mandatory	2	1	100.00	On Occasion	200.00
§ 329.40(b)(4) Weekly report of progress toward achieving compliance.	Reporting	Mandatory	2	4	0.25	On Occasion	2.00
Liquidity Coverage Ratio (LCR)—12 CFR 329.22(a)(2), (5).	Recordkeeping	Mandatory					
§ 329.22(a)(2) Policies that require eligible HQLA to be under control of liquidity risk management function.	Recordkeeping	Mandatory	2	1	10.00	On Occasion	20.00
§ 329.22(a)(5) Documented methodology providing consistent treatment for determining whether eligible HQLA meets operational requirements.	Recordkeeping	Mandatory	2	1	10.00	On Occasion	20.00
Total Hourly Burden							248.50

General Description of Collection: The LCR rule implements a quantitative liquidity requirement and contains requirements subject to the PRA. The reporting and recordkeeping requirements are found in Sections 329.22 and 329.40. The requirement is designed to promote the short-term resilience of the liquidity risk profile of large and internationally active banking organizations, thereby improving the banking sector's ability to absorb shocks arising from financial and economic stress, and to further improve the measurement and management of liquidity risk. The LCR rule establishes a quantitative minimum liquidity coverage ratio that requires a company subject to the rule to maintain an amount of high-quality liquid assets (the numerator of the ratio) that is no less than 100 percent of its total net cash outflows over a prospective 30 calendar-day period (the denominator of the ratio).

The FDIC has reviewed its previous PRA submission and has updated its methodology for calculating the burden in order to be consistent with the Office of the Controller of the Currency and the Federal Reserve Board. The overall increase in burden hours is the result of these changes.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on December 22, 2017.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2017–28138 Filed 12–28–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL TRADE COMMISSION

[File No. 171 0140]

Becton, Dickinson and Company and C. R. Bard; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 23, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''In the Matter of Becton Dickinson and Co./Bard, Inc., File No. 171 0140'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/*

bectondickinsonconsent by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''In the Matter of Becton Dickinson and Co./Bard, Inc., File No. 171 0140'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jared Nagley, Attorney, (212–607–2813) and Geralyn Trujillo, Attorney, (212–607–2806), Northeast Region, One Bowling Green, Suite 318, New York, New York 10004.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 22, 2017), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 23, 2018. Write ''In the Matter of Becton Dickinson and Co./Bard, Inc., File No. 171 0140'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *https://www.ftc.gov/policy/public-comments.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/bectondickinsonconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you prefer to file your comment on paper, write ''In the Matter of Becton Dickinson and Co./Bard, Inc., File No. 171 0140'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *https://www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 23, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Becton, Dickinson and Company (''BD'') and C. R. Bard, Inc. (''Bard'') (collectively, the ''Respondents'') that is designed to remedy the anticompetitive effects that would likely result from BD's proposed acquisition of Bard. The proposed Decision and Order (''Order'') requires the Respondents to divest all rights and assets related to Bard's tunneled home drainage catheter business and BD's soft tissue core needle biopsy device business to Merit Medical Systems, Inc. (''Merit''). The Order To Maintain Assets requires Respondents to maintain the viability and competitiveness of the businesses pending divestiture.

Pursuant to an Agreement and Plan of Merger, dated as of April 23, 2017, BD and Lambda Corp., a wholly-owned subsidiary of BD, will acquire the issued and outstanding shares of Bard by means of a merger in exchange for cash and stock valued at approximately $24 billion (the ''Acquisition''). The Commission's Complaint alleges that the proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the U.S. markets for tunneled home drainage catheter systems and soft tissue core needle biopsy devices. The Consent Agreement

is designed to remedy the alleged violations by preserving the competition that otherwise would be lost in these markets as a result of the proposed Acquisition.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement, along with any comments received, and decide whether it should withdraw from the Consent Agreement, modify the Consent Agreement or Order, or make the Order final.

II. The Respondents

BD, headquartered in Franklin Lakes, New Jersey, is a medical technology company that manufactures and sells a broad range of medical supplies, devices, laboratory equipment, and diagnostic products throughout the world. Its operations consist of two business segments: BD Medical and BD Life Sciences. BD Medical provides a broad array of medical technologies and devices to hospitals, clinics, physicians' office practices, pharmacies, pharmaceutical companies, and healthcare workers.

Bard, headquartered in Murray Hill, New Jersey, is a medical technology company that manufactures medical, surgical, diagnostic, and patient care devices sold to hospitals, healthcare professionals, extended care facilities, and other medical facilities throughout the world. Its operations consist of four principal divisions: Bard Access Systems, Inc., Bard Medical Division, Bard Peripheral Vascular, Inc., and Bard Biopsy Systems.

III. The Relevant Markets and Structure of the Markets

A. Tunneled Home Drainage Catheter Systems

Tunneled home drainage catheter systems are medical devices used to treat recurrent fluid buildup in the lungs and abdomen, conditions known as pleural effusions and malignant ascites, respectively. Patients suffering from these conditions, often due to cancer or other serious illnesses, commonly require frequent fluid drainage. Tunneled home drainage catheter systems drain fluid from the lungs (pleural drainage) or abdomen (peritoneal drainage) through a tunneled, indwelling catheter connected to a disposable receptacle. After a medical doctor places the indwelling catheter, the device allows fluid drainage to take place conveniently in a patient's home or in a hospice setting where the patient or a caregiver can attach, remove, replace, and dispose of the drainage receptacle as frequently as needed. Although patients requiring pleural or peritoneal drainage can undergo an outpatient medical procedure when fluid build-up becomes severe, such procedures are not suitable alternatives to tunneled home drainage catheter systems, because they require a patient to make repeated trips to a healthcare facility to see a doctor. Customers likely would not substitute outpatient medical procedures in response to a small but significant increase in the price of tunneled home drainage catheter systems.

BD and Bard are the two largest manufacturers of tunneled home drainage catheter systems in the United States, with a combined market share of approximately 98%. The remaining market share is divided between Rocket Medical plc (''Rocket Medical'') and B. Braun Medical Inc. (''B. Braun''). Rocket Medical is a new entrant to the U.S. market, and both Rocket Medical and B. Braun, in addition to having a much smaller share of the market than BD and Bard, have far less recognition among U.S. customers.

B. Soft Tissue Core Needle Biopsy Devices

Soft tissue core needle biopsy devices are used by medical clinicians, typically interventional radiologists or oncologists, to remove small samples of tissue from soft tissue organs for examination and diagnosis. There are no practical alternatives to soft tissue core needle biopsy devices for clinicians seeking to perform a soft tissue biopsy. Other biopsy devices, such as bone or bone marrow biopsy devices, are not approved or intended to be used for soft tissue biopsies. Soft tissue core needle biopsy devices do not include, and are distinguished from, vacuum-assisted biopsy (''VAB'') devices which employ a vacuum to remove larger tissue samples. VAB devices are used for breast biopsies involving lesions that are difficult to locate and are not used to perform biopsies of other soft tissues and organs. VAB devices are more complex devices that are sold at a significantly higher price than soft tissue core needle biopsy devices. Accordingly, customers likely would not switch to VAB devices in response to a small but significant increase in the price of soft tissue core needle biopsy devices.

Bard and BD are the two largest manufacturers of soft tissue core needle biopsy devices in the United States, with a combined market share of 60% or greater. Other participants in the market include Cook Medical, Argon Medical Devices, Inc., and Hologic, Inc., but each of these manufacturers has a smaller market share than either Bard or BD. In addition, there is a fringe of other manufacturers with very small market shares.

C. The Relevant Geographic Market

The relevant geographic market for both tunneled home drainage catheter systems and soft tissue core needle biopsy devices is the United States. These relevant products are medical devices regulated by the U.S. Food and Drug Administration (''FDA''). Medical devices sold outside of the United States, but not approved for sale in the United States, are not viable competitive alternatives for U.S. consumers.

IV. Competitive Effects of the Transaction

The proposed Acquisition would likely substantially lessen competition in the U.S. markets for tunneled home drainage catheter systems and soft tissue core needle biopsy devices. The Acquisition would combine the largest and second-largest suppliers of both products in the United States and would substantially increase concentration in already highly concentrated markets. Under the *Horizontal Merger Guidelines,* the Acquisition would presumptively create or enhance market power. By eliminating direct and substantial competition between Respondents, the proposed Acquisition likely would allow the combined firm to exercise market power unilaterally, resulting in higher prices and/or reduced innovation.

V. Entry

Entry in the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the proposed Acquisition. New entry into the markets for each of these devices is difficult, time-consuming, and expensive, requiring a significant investment of time and money for product research and development, regulatory approval by the FDA, and the establishment of a sales and marketing infrastructure sufficient to develop customer awareness and acceptance of the products.

VI. The Proposed Consent Agreement

The Consent Agreement remedies the competitive concerns raised by the proposed Acquisition by requiring the Respondents to divest all of the assets, facilities, and resources relating to

Bard's tunneled home drainage catheter systems business and BD's soft tissue core needle biopsy devices business to Merit. The provisions of the Consent Agreement will enable Merit to become an independent, viable, and effective competitor in the respective relevant markets and maintain the competition that currently exists.

Merit, headquartered in South Jordan, Utah, is a global company with 30 years of experience in the development, manufacture, and distribution of medical devices used in interventional, diagnostic, and therapeutic procedures. Merit offers a portfolio of products that is highly complementary to the tunneled home drainage catheter systems being acquired. Merit also recently introduced its first soft tissue core needle biopsy device product. Merit possesses substantial industry expertise in these product areas and sells its products to similar customers as BD and Bard. For these reasons, Merit is well positioned to restore the benefits of competition that would be lost due to the Acquisition.

Pursuant to the Order, Merit will receive all rights and assets related to Bard's tunneled home drainage catheter system business and BD's soft tissue core needle biopsy device business, including all of the confidential business information used in those businesses. Merit will own or receive a license to all intellectual property necessary to run the businesses. It will also acquire the equipment used in the manufacturing of the products and all documentation and other information related to the products. Respondents will also contract manufacture products for Merit until it is able to manufacture them itself, and Respondents will provide transitional services to Merit to assist the company in establishing manufacturing capabilities for the divested products.

The Respondents must accomplish the divestitures no later than 10 days after the consummation of the proposed Acquisition. If the Commission determines that Merit is not an acceptable acquirer, or that the manner of the divestitures is not acceptable, the proposed Order requires the Respondents to unwind the sale of assets to Merit and then divest the assets to a Commission-approved acquirer(s) within 180 days of the date the Order becomes final. Pursuant to the Order To Maintain Assets, Respondents must maintain the businesses pending divestiture.

The Commission has agreed to appoint a Monitor to ensure that the Respondents comply with all of their obligations pursuant to the Consent Agreement and to keep the Commission informed about the status of the transfer of assets to Merit. The Commission has appointed Mazars LLP as the Monitor in this matter. The proposed Order further allows the Commission to appoint a trustee in the event the parties fail to divest the products as required.

VII. Opportunity for Public Comment

The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the Order final. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2017–28213 Filed 12–28–17; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–262]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *January 29, 2018.*

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Contract Year 2019 Plan Benefit Package (PBP) Software and Formulary Submission; *Use:* We require that Medicare

Advantage and Prescription Drug Plan organizations submit a completed PBP and formulary as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to us for review and approval. We publish beneficiary education information using a variety of formats. The specific education initiatives that utilize PBP and formulary data include web application tools on *www.medicare.gov* and the plan benefit insert in the Medicare & You handbook. In addition, organizations utilize the PBP data to generate their Summary of Benefits marketing information.

This notice replaces the 30-day **Federal Register** notice that published on December 13, 2017 (82 FR 58613) which was subsequently withdrawn on December 22, 2017 (82 FR 60744).

Form Number: CMS–R–262 (OMB control number 0938–0763); *Frequency:* Yearly; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 520; *Total Annual Responses:* 5,675; *Total Annual Hours:* 56,450. (For policy questions regarding this collection contact Kristy Holtje at 410–786–2209.)

Dated: December 26, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017–28159 Filed 12–28–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–6530]

Formal Meetings Between the Food and Drug Administration and Sponsors or Applicants of Prescription Drug User Fee Act Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products.'' This draft guidance provides recommendations to industry on formal meetings between FDA and sponsors or applicants relating to the development and review of drug or biological products (hereafter referred to as products). The previous guidance for industry ''Formal Meetings Between the FDA and Sponsors or Applicants'' published May 19, 2009, and the draft guidance for industry ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products'' published March 11, 2015, have been withdrawn.

DATES: Submit either electronic or written comments on the draft guidance by March 29, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–6530 for ''Formal Meetings Between the Food and Drug Administration and Sponsors or Applicants of Prescription Drug User Fee Act Products; Draft Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building,

4th Floor, Silver Spring, MD 20993–0002, or Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Rachel B. Kichline, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6312, Silver Spring, MD 20993–0002, 301–796–0319; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products.'' This draft guidance provides recommendations to industry on formal meetings between FDA and sponsors or applicants relating to the development and review of products regulated by the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research. This draft guidance does not apply to abbreviated new drug applications, applications for biosimilar biological products, or submissions for medical devices. For the purposes of this guidance, formal meeting includes any meeting that is requested by a sponsor or applicant following the request procedures provided in this guidance and includes meetings conducted in any format (*i.e.,* face to face, teleconference/videoconference, or written response only).

This guidance discusses the principles of good meeting management practices and describes standardized procedures for requesting, preparing for, scheduling, conducting, and documenting such formal meetings. The general principles in this guidance may be extended to other nonapplication-related meetings with external constituents, insofar as this is possible.

The previous guidance for industry ''Formal Meetings Between the FDA and Sponsors or Applicants'' published May 19, 2009, and the draft guidance for industry ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products'' published March 11, 2015, have been withdrawn.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on formal meetings between FDA and sponsors or applicants of PDUFA products. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that 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 referred to in the guidance entitled ''Formal Meetings Between the FDA and Sponsors or Applicants'' have been approved under OMB control number 0910–0429. The collections of information for Form FDA 1571 and end-of-phase 2 meetings have been approved under OMB control number 0910–0014 and collections of information for Form FDA 356h have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *https://www.regulations.gov.*

Dated: December 19, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–28140 Filed 12–28–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–6564]

Best Practices for Communication Between Investigational New Drug Application Sponsors and the Food and Drug Administration; Guidance for Industry and Review Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry and review staff entitled ''Best Practices for Communication Between IND Sponsors and FDA During Drug Development.'' Timely, transparent, and effective communications between investigational new drug application (IND) sponsors and FDA at critical junctures in drug development facilitate earlier availability of safe and effective drugs to the American public. This guidance describes FDA's philosophy regarding timely interactive communication with IND sponsors as a core activity; describes the scope of appropriate interactions between FDA review teams and IND sponsors; outlines the types of advice appropriate for sponsors to seek from FDA in pursuing their drug development programs; describes the general expectations for the timing of FDA responses to IND sponsor inquiries; describes best practices and communication methods to facilitate interactions between FDA review teams and IND sponsors during drug development; and includes expectations on appropriate methods and frequency of such communications. This guidance does not apply to communications or inquiries from industry trade organizations, consumer or patient advocacy organizations, other government agencies, or other stakeholders not pursuing a development program under an IND. This guidance finalizes the draft guidance issued on December 9, 2015.

DATES: The announcement of the guidance is published in the **Federal Register** on December 29, 2017.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or

confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–6564 for ''Best Practices for Communication Between Investigational New Drug Application Sponsors and the Food and Drug Administration; Guidance for Industry and Review Staff; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building., 4th Floor, Silver Spring, MD 20993–0002, or Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Rachel B. Kichline, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6312, Silver Spring, MD 20993–0002, 301–796–0319; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry and review staff entitled ''Best Practices for Communication Between IND Sponsors and FDA During Drug Development.'' As part of the Prescription Drug User Fee Amendments of 2012 (PDUFA V), described in PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2013 through 2017, the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) agreed to publish a joint guidance for industry and review staff on best practices for communication between IND sponsors and FDA during drug development.

To establish the best practices described in this guidance, CDER and CBER gathered the experiences of review staff and incorporated input from interested parties who responded to a notice published in the **Federal Register** of October 29, 2014 (79 FR 64397), or who provided input directly to CDER's Enhanced Communication Team. This guidance was published as a draft guidance on December 9, 2015. The following changes were made to the guidance:

• Biosimilar biological product development information was expanded and Biosimilar User Fee Act (BsUFA) meeting types were added.

• Roles and responsibilities for regulatory project managers were clarified.

• Language describing the formal communication plan for applications in PDUFA Program for Enhanced Review Transparency and Communication for NME NDAs [1] and Original BLAs [2] (also known as *the Program*) and for biologic biosimilar applications reviewed under BsUFA was added.

• Meeting request parameters were revised in alignment with PDUFA VI.

• Additional information was added to the Resources for Sponsors and Additional Contacts sections.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on best practices for communication between IND sponsors and FDA during drug development. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that 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 information collection described in 21 CFR part 312 from IND sponsors is approved by OMB

[1] New Molecular Entity New Drug Applications

[2] Biologics License Applications

under control number 0910–0014. The information collection described in the guidance for industry entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products'' is approved by OMB under control number 0910–0429. The information collection described in the guidance for industry entitled ''Formal Dispute Resolution: Sponsor Appeals Above the Division Level'' (available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM343101.pdf*) is approved by OMB under control number 0910–0430. The information collection described in the ''Evaluation of the Program for Enhanced Review Transparency and Communication for New Molecular Entity New Drug Applications and Original Biologics License Applications in Prescription Drug User Fee Acts'' is approved by OMB under control number 0910–0746. The information collection described in the guidance for industry entitled ''Expedited Programs for Serious Conditions—Drugs and Biologics'' (available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM358301.pdf*) is approved by OMB under control number 0910–0765. The information collection described in the guidance for industry entitled ''Formal Meetings Between the FDA and Biosimilar Biological Product Sponsors or Applicants'' (available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM345649.pdf*) is approved by OMB under control number 0910–0802.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *https://www.regulations.gov.*

Dated: December 19, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–28139 Filed 12–28–17; 8:45 am]

BILLING CODE 4164–01–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. This meeting will be open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meetings and/or participate in the public comment session should email *OMH-ACMH@hhs.gov*. Information about the meeting is available from the designated contact and will be posted on the website for the Office of Minority Health (OMH), *www.minorityhealth.hhs.gov.* Information about ACMH activities can be found on the OMH website under the heading *About OMH.*

DATES: The meeting will be held on Monday, March 26, 2018, from 9:00 a.m. to 5:00 p.m. and Tuesday, March 27, 2018, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the 5600 Fishers Lane Building, Room 05E29, 5600 Fishers Lane, Rockville, Maryland 20857.

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 this meeting will include strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities with an emphasis on serious mental illness. The recommendations will be given to the Deputy Assistant Secretary for Minority Health.

Public attendance at this meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person at least fourteen (14) 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 three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least seven (7) business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Designated Federal Officer, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business on Monday, March 19, 2018.

Dated: December 22, 2017.

Minh Wendt,

Designated Federal Officer, Advisory Committee on Minority Health.

[FR Doc. 2017–28161 Filed 12–28–17; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; AIDS Research Review Committee (AIDSRRC) Independent SEP.

Date: January 18, 2018.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, Room 3F40 MSC 9823, Rockville, MD 20892–9823, 240–669–5035, *unferrc@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PHS 2018–1 Topic 54 & 55: Adjuvant Discovery & Development for Autoimmune Diseases.

Date: January 31, 2018.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Dharmendar Rathore, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G30, National Institutes of Health/NIAID, 5601 Fishers Lane, Drive, MSC 9823, Bethesda, MD 20892–9823, 240–669–5058, *rathored@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 22, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28155 Filed 12–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke, Initial Review Group, Neurological Sciences and Disorders B.

Date: February 22, 2018.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: JW Marriott New Orleans, 614 Canal Street, New Orleans, LA 70130.

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, *neuhuber@ninds.nih.gov.*

Name of Committee: National Institutes of Neurological Disorders and Stroke, Special Emphasis Panel, NSD Member Conflict SEP.

Date: February 22, 2018.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: JW Marriott New Orleans, 614 Canal Street, New Orleans, LA 70130.

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, *neuhuber@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 22, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28157 Filed 12–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Behavior and Social Science of Aging Review Committee NIA–S.

Date: February 1–2, 2018.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Kimberly Firth, Ph.D., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *kimberly.firth@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 26, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28154 Filed 12–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PHS 2018–1 Topic 55: Adjuvant Development for Viral Diseases Vaccines.

Date: January 26, 2018.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Dharmendar Rathore, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G30, National Institutes of Health/NIAID, 5601 Fishers Lane, Drive, MSC 9823, Bethesda, MD 20892–9823, 240–669–5058, *rathored@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 22, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28156 Filed 12–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Evaluation of NIA Clinical Trials.

Date: January 25, 2018.

Time: 12:01 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 26, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28153 Filed 12–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council (NAC) will meet on February 14, 2018, 9:00 a.m.–5:00 p.m. (EDT).

The meeting is open and will include consideration of minutes from the SAMHSA CSAT NAC meeting of August 10, 2017, the Director's Report, a budget update, discussion on substance use disorder spending estimates, discussions with SAMHSA leadership, and discussions on the opioid epidemic.

The meeting will be held at the SAMHSA, 5600 Fishers Lane, Pavilion C, Rockville, MD 20857. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Written submissions should be forwarded to the contact person on or before February 5, 2018. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations must notify the contact person on or before February 5, 2018. Five minutes will be allotted for each presentation as time permits.

The meeting may be accessed via telephone. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA Committee website at *http://www.samhsa.gov/about-us/advisory-councils/csat-national-advisory-council* or by contacting the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Council Name: SAMHSA's Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: February 14, 2018, 9:00 a.m.–5:00 p.m. EDT, OPEN.

Place: SAMHSA, 5600 Fishers Lane, Rockville, Maryland 20857.

Contact: Tracy Goss, Designated Federal Officer, CSAT National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–0759, Fax: (240) 276–2252, Email: *tracy.goss@samhsa.hhs.gov.*

Dated: December 22, 2017.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2017–28107 Filed 12–28–17; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3391–EM; Docket ID FEMA–2017–0001]

Puerto Rico; Amendment No. 2 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 Commonwealth of Puerto Rico (FEMA–3391–EM), dated September 18, 2017, and related determinations.

DATES: This amendment was issued December 6, 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 November 15, 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. 2017–28191 Filed 12–28–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–B–1771]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before March 29, 2018.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1771, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 13, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Baldwin County, Alabama and Incorporated Areas Project: 09–04–8085S Preliminary Date: July 31, 2017	
City of Bay Minette	City Hall, 301 D'Olive Street, Bay Minette, AL 36507.
City of Daphne	City Hall, 1705 Main Street, Daphne, AL 36526.
City of Fairhope	Building Department, 555 South Section Street, Fairhope, AL 36533.
City of Foley	Community Development Building, 200 North Alston Street, Foley, AL 36535.
City of Gulf Shores	Building Department, 205 Clubhouse Drive, Suite B, Gulf Shores, AL 36542.
City of Orange Beach	Floodplain Administrator's Office, 4101 Orange Beach Boulevard, Orange Beach, AL 36561.
City of Robertsdale	City Hall, 22647 Racine Street, Robertsdale, AL 36567.
City of Spanish Fort	Building Department, 7361 Spanish Fort Boulevard, Spanish Fort, AL 36527.
Town of Elberta	Civic Center, 25070 Pine Street, Elberta, AL 36530.
Town of Loxley	Town Hall, 1089 South Hickory Street, Loxley, AL 36551.
Town of Magnolia Springs	Town Hall, 12191 Magnolia Springs Highway, Magnolia Spings, AL 36555.
Town of Perdido Beach	Town Hall, 9212 County Road 97, Perdido Beach, AL 36530.
Town of Silverhill	Town Hall, 15965 Silverhill Avenue, Silverhill, AL 36576.
Town of Summerdale	Baldwin County Building Inspection Department, 201 East Section Avenue, Foley, AL 36535.
Unincorporated Areas of Baldwin County	Baldwin County Building Inspection Department, 201 East Section Avenue, Foley, AL 36535.
New London County, Connecticut (All Jurisdictions) Project: 13–01–0378S Preliminary Date: August 9, 2017	
Town of North Stonington	Old Town Hall, 40 Main Street, North Stonington, CT 06359.
Town of Stonington	Town Hall, 152 Elm Street, Stonington, CT 06378.
Town of Voluntown	Town Hall, 115 Main Street, Voluntown, CT 06384.
Canadian County, Oklahoma and Incorporated Areas Project: 13–06–0690S Preliminary Date: February 15, 2017	
City of Piedmont	City Hall, 314 Edmond Road Northwest, Piedmont, OK 73078.
Garfield County, Oklahoma and Incorporated Areas Project: 13–06–0690S Preliminary Date: February 15, 2017	
City of Enid	City Hall, 401 West Owen K. Garriott Road, Enid, OK 73701.
Unincorporated Areas of Garfield County	Garfield County Courthouse, 114 West Broadway, Room 105, Enid, OK 73701.
Kingfisher County, Oklahoma and Incorporated Areas Project: 13–06–0690S Preliminary Date: August 10, 2017	
City of Kingfisher	City Hall, 301 North Main Street, Kingfisher, OK 73750.
Unincorporated Areas of Kingfisher County	Kingfisher County Courthouse, 101 South Main Street, Kingfisher, OK 73750.
Logan County, Oklahoma and Incorporated Areas Project: 13–06–0690S Preliminary Date: February 15, 2017	
Unincorporated Areas of Logan County	Logan County Courthouse Annex, 312 East Harrison Street, Guthrie, OK 73044.
Kent County, Rhode Island (All Jurisdictions) Project: 13–01–0378S Preliminary Date: August 9, 2017	
Town of Coventry	Planning Department, 1675 Flat River Road, Coventry, RI 02816.
Town of West Greenwich	Town Hall Annex South, Building Official's Office, 302 Victory Highway, West Greenwich, RI 02817.
Washington County, Rhode Island (All Jurisdictions) Project: 13–01–0378S Preliminary Date: August 9, 2017	
Narragansett Indian Tribe	Administration Building, 4533 South County Trail, Charlestown, RI 02813.
Town of Charlestown	Town Hall, Building Department, 4540 South County Trail, Charlestown, RI 02813.
Town of Exeter	Town Hall, Town Clerk's Office, 675 Ten Rod Road, Exeter, RI 02822.
Town of Hopkinton	Town Hall, 1 Town House Road, Hopkinton, RI 02833.

Community	Community map repository address
Town of North Kingstown	Department of Public Works, Engineering Department, 2050 Davisville Road, North Kingstown, RI 02852.
Town of Richmond	Richmond Town Hall, 5 Richmond Townhouse Road, Wyoming, RI 02898.
Town of South Kingstown	South Kingstown Town Hall, 180 High Street, Wakefield, RI 02879.
Town of Westerly	Town Hall, 45 Broad Street, Westerly, RI 02891.

[FR Doc. 2017–28186 Filed 12–28–17; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–B–1772]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 13, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Pima	City of Tucson (17–09–0333P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, 255 West Alameda Street, 10th Floor, Tucson, AZ 85701.	Planning and Development Services, 201 North Stone Avenue, 1st Floor, Tucson, AZ 85701.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 26, 2018	040076
Pima	Unincorporated Areas of Pima County (17–09–0333P).	The Honorable Sharon Bronson, Chair, Board of Supervisors Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 26, 2018	040073
California:						
Riverside	City of Banning (16–09–1555P).	The Honorable George Moyer, Mayor, City of Banning, 99 East Ramsey Street, Banning, CA 92220.	Public Works Department, 99 East Ramsey Street, Banning, CA 92220.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 22, 2018	060246
Riverside	City of Menifee (17–09–1814P).	The Honorable Neil R. Winter, Mayor, City of Menifee, 29714 Haun Road, Menifee, CA 92586.	Public Works and Engineering Departments, 29714 Haun Road, Menifee, CA 92586.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2018	060176
Riverside	City of Perris (17–09–1814P).	The Honorable Michael M. Vargas, Mayor, City of Perris, 101 North D Street, Perris, CA 92570.	Engineering Department, 170 Wilkerson Avenue, Perris, CA 92570.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2018	060258
Riverside	Unincorporated Areas of Riverside County (17–09–1800P).	The Honorable John F. Tavaglione, Chairman, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92501.	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 15, 2018	060245
Riverside	Unincorporated Areas of Riverside County (17–09–1814P).	The Honorable John F. Tavaglione, Chairman, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92501.	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2018	060245
San Diego	City of Carlsbad (17–09–0723P).	The Honorable Matt Hall, Mayor, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, CA 92008.	City Hall, 1200 Carlsbad Village Drive, Carlsbad, CA 92008.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2018	060285
San Diego	City of Oceanside (17–09–0723P).	The Honorable Jim Wood, Mayor, City of Oceanside, 300 North Coast Highway, Oceanside, CA 92054.	City Hall, 300 North Coast Highway, Oceanside, CA 92054.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2018	060294
San Diego	City of San Diego (17–09–1759P).	The Honorable Kevin L. Faulconer, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	Development Services Department, 1222 1st Avenue, 3rd Floor, MS 301, San Diego, CA 92101.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 26, 2018	060295
Florida:						
Duval	City of Jacksonville (17–04–5002P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	City Hall, 117 West Duval St, Jacksonville, FL 32202.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 1, 2018	120077
St. Johns	Unincorporated Areas of St. Johns County (17–04–5830P).	The Honorable James K. Johns, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 14, 2018	125147
St. Johns	Unincorporated Areas of St. Johns County (17–04–5919P).	The Honorable James K. Johns, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 15, 2018	125147

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
St. Johns	Unincorporated Areas of St. Johns County (17–04–6842P).	The Honorable James K. Johns, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 15, 2018	125147
Illinois: Will	City of Crest Hill (17-05-5208P).	The Honorable Ray Soliman, Mayor, City of Crest Hill, 1610 Plainfield Road, Crest Hill, IL 60403.	City Hall, 1610 Plainfield Road, Crest Hill, IL 60403.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 16, 2018	170699
Missouri: McDonald	Unincorporated Areas of McDonald County, (17–07–2074P).	Mr. Keith Lindquist, McDonald County Commissioner, 602 Main Street, Pineville, MO 64856.	County Courthouse, 602 Main Street, Pineville, MO 64854.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 16, 2018	290817
Nevada: Clark	City of Henderson, (17–09–2174P).	The Honorable Debra March, Mayor, City of Henderson, 240 South Water Street, Henderson, NV 89015.	City Hall, 240 South Water Street, Henderson, NV 89015.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 15, 2018	320005
Texas: Dallas	City of Mesquite, (17–06–3127P).	The Honorable John Monaco, Mayor, City of Mesquite, 757 North Galloway Avenue, Mesquite, TX 75149.	City Engineering Services, 1515 North Galloway Avenue, Mesquite, TX 75185.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 27, 2018	485490

[FR Doc. 2017–28174 Filed 12–28–17; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–B–1770]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any

existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 5, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama:						
Houston	City of Dothan (17–04–1523P).	The Honorable Mike Schmitz, Mayor, City of Dothan, 126 North Saint Andrews Street, Suite 201, Dothan, AL 36303.	City Hall, 126 North Saint Andrews Street, Suite 201, Dothan, AL 36303.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 9, 2018	010104
Shelby	City of Helena (17–04–6802P).	The Honorable Mark R. Hall, Mayor, City of Helena, 816 Highway 52E, Helena, AL 35080.	City Hall, 816 Highway 52E, Helena, AL 35080.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 8, 2018	010294
Shelby	City of Hoover (17–04–6802P).	The Honorable Frank Brocato, Mayor, City of Hoover, 100 Municipal Lane, Hoover, AL 35216.	City Hall, 100 Municipal Lane, Hoover, AL 35216.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 8, 2018	010123
Shelby	City of Pelham (17–04–7130P).	The Honorable Gary W. Waters, Mayor, City of Pelham, 3162 Pelham Parkway, Pelham, AL 35124.	City Hall, 3162 Pelham Parkway, Pelham, AL 35124.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 1, 2018	010193
Shelby	Unincorporated areas of Shelby County (17–04–6802P).	The Honorable Jon Parker, Chairman, Shelby County Commission, P.O. Box 467, Columbiana, AL 35051.	Shelby County Engineering Department, 506 Highway 70, Columbiana, AL 35051.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 8, 2018	010191
Arkansas: Benton	City of Rogers (17–06–3502P).	The Honorable Greg Hines, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, AR 72756.	City Hall, 301 West Chestnut Street, Rogers, AR 72756.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 2, 2018	050013
Colorado:						
Arapahoe	City of Centennial (17–08–0785P).	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 23, 2018	080315
Boulder	City of Lafayette (17–08–0625P).	The Honorable Christine Berg, Mayor, City of Lafayette, 1290 South Public Road, Lafayette, CO 80026.	City Hall, 1290 South Public Road, Lafayette, CO 80026.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 8, 2018	080026
Boulder	City of Louisville (17–08–0625P).	The Honorable Bob Muckle, Mayor, City of Louisville, 749 Main Street, Louisville, CO 80027.	City Hall, 749 Main Street, Louisville, CO 80027.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 8, 2018	085076
Boulder	Unincorporated areas of Boulder County (17–08–0625P).	The Honorable Deb Gardner, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	Boulder County Transportation Department, 2525 13th Street, Suite 203, Boulder, CO 80304.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 8, 2018	080026
Florida:						
Broward	Town of Hillsboro Beach (17–04–4804P).	The Honorable Deborah Tarrant, Mayor, Town of Hillsboro Beach, 1210 Hillsboro Mile, Hillsboro Beach, FL 33062.	Building Department, 1210 Hillsboro Mile, Hillsboro Beach, FL 33062.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2018	120040
Broward	Unincorporated areas of Broward County (17–04–4804P).	The Honorable Barbara Sharief, Mayor, Broward County Board of Commissioners, 115 South Andrews Avenue, Room 520, Ft. Lauderdale, FL 33301.	Broward County Environmental Engineering and Permitting Division, 1 North University Drive, Ft. Lauderdale, FL 33324.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2018	125093

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Collier	City of Marco Island (17–04–6180P).	The Honorable Larry Honig, Chairman, City of Marco Island Council, 50 Bald Eagle Drive, Marco Island, FL 34145.	Building Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 21, 2018	120426
Duval	City of Jacksonville (17–04–1426P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Services Department, 214 North Hogan Street, Room 2100, Jacksonville, FL 32202.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2018	120077
Hillsborough	City of Tampa (17–04–5729P).	The Honorable Bob Buckhorn, Mayor, City of Tampa, 306 East Jackson Street, Tampa, FL 33602.	Development Services Department, 1400 North Boulevard, Tampa, FL 33607.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 7, 2018	120114
Lee	Town of Fort Myers Beach (17–04–5026P).	The Honorable Dennis C. Boback, Mayor, Town of Fort Myers Beach, 2523 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2523 Estero Boulevard, Fort Myers Beach, FL 33931.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 8, 2018	120673
Manatee	City of Bradenton (17–04–8018X).	The Honorable Wayne H. Poston, Mayor, City of Bradenton, 101 Old Main Street West, Bradenton, FL 34205.	City Hall, 101 Old Main Street West, Bradenton, FL 34205.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 20, 2018	120155
Manatee	Unincorporated areas of Manatee County (17–04–8018X).	The Honorable Betsy Benac, Chair, Manatee County Board of Commissioners, P.O. Box 1000, Bradenton, FL 34206.	Manatee County Building and Development Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 20, 2018	120153
Monroe	City of Key West (17–04–6775P).	The Honorable Craig Cates, Mayor, City of Key West, P.O. Box 1409, Key West, FL 33041.	Building Department, 1300 White Street, Key West, FL 33041.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 5, 2018	120168
Monroe	City of Key West (17–04–6810X).	The Honorable Craig Cates, Mayor, City of Key West, P.O. Box 1409, Key West, FL 33041.	Building Department, 1300 White Street, Key West, FL 33041.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 5, 2018	120168
Pinellas	City of Madeira Beach (17–04–5429P).	The Honorable Maggi Black, Mayor, City of Madeira Beach, 300 Municipal Drive, Madeira Beach, FL 33708.	Community Development Center, 300 Municipal Drive, Madeira Beach, FL 33708.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2018	125127
Georgia:						
Bulloch	Unincorporated areas of Bulloch County (16–04–5191P).	The Honorable Roy Thompson, Chairman, Bulloch County Board of Commissioners, 115 North Main Street, Statesboro, GA 30459.	Bulloch County Development Services Department, 115 North Main Street, Statesboro, GA 30459.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 22, 2018	130019
Effingham	City of Guyton (16–04–5191P).	The Honorable Jeff Lariscy, Mayor, City of Guyton, 310 Central Boulevard, Guyton, GA 31312.	City Hall, 310 Central Boulevard, Guyton, GA 31312.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 22, 2018	130456
Effingham	Unincorporated areas of Effingham County (16–04–5191P).	The Honorable Wesley Corbitt, Chairman, Effingham County Board of Commissioners, 601 North Laurel Street, Springfield, GA 31329.	Effingham County Development Services Department, 601 North Laurel Street, Springfield, GA 31329.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 22, 2018	130076
Maryland: Montgomery.	Unincorporated areas of Montgomery County (17-03-0816P).	The Honorable Isiah Leggett, Montgomery County Executive, 101 Monroe Street, 2nd Floor, Rockville, MD 20850.	Montgomery County Department of Permitting Services, 255 Rockville Pike, 2nd Floor, Rockville, MD 20850.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 23, 2018	240049
North Carolina:						
Alamance	Unincorporated areas of Alamance County (16–04–8173P).	The Honorable Eddie Boswell, Chairman, Alamance County Board of Commissioners, 124 West Elm Street, Graham, NC 27253.	Alamance County Planning Department, 215 North Graham-Hopedale Road, Burlington, NC 27217.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 20, 2017	370001

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Wake	City of Raleigh (16–04–2666P).	The Honorable Nancy McFarlane, Mayor, City of Raleigh, P.O. Box 590, Raleigh, NC 27602.	Stormwater Management Division, 1 Exchange Plaza, Suite 304, Raleigh, NC 27601.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 14, 2018	370243
Wake	Town of Wake Forest (16–04–2666P).	The Honorable Vivian A. Jones, Mayor, Town of Wake Forest, 301 South Brooks Street, Wake Forest, NC 27587.	Town Hall, 301 South Brooks Street, Wake Forest, NC 27587.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 14, 2018	370244
Wake	Unincorporated areas of Wake County (16–04–2666P).	The Honorable Sig Hutchinson, Chairman, Board of Commissioners, P.O. Box 550, Raleigh, NC 27602.	Wake County, Environmental Services Department, 336 Fayetteville Street, Raleigh, NC 27601.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 14, 2018	370368
Oklahoma: Pottawatomie.	City of Shawnee (17–06–3304P).	Mr. Justin Erickson, Manager, City of Shawnee, P.O. Box 1448, Shawnee, OK 74801.	City Hall, 16 West 9th Street, Shawnee, OK 74801.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2018	400178
South Carolina: Charleston.	City of Charleston (17–04–6788P).	The Honorable John J. Tecklenburg, Mayor, City of Charleston, P.O. Box 652, Charleston, SC 29401.	Engineering Division, 2 George Street, Charleston, SC 29401.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 9, 2018	455412
Texas:						
Bexar	City of San Antonio (17–06–0477P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 6, 2018	480045
Bexar	City of San Antonio (17–06–1913P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 14, 2018	480045
Bexar	City of San Antonio (17–06–2951P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 20, 2018	480045
Denton	City of Frisco (17–06–3544P).	The Honorable Jeff Cheney, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	Engineering Services Department, 6101 Frisco Square Boulevard, 3rd Floor, Frisco, TX 75034.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2018	480134
Denton	Town of Flower Mound (17–06–3619P).	The Honorable Thomas Hayden, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	Engineering Department, 2121 Cross Timbers Road, Flower Mound, TX 75028.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 14, 2018	480777
Tarrant	City of Fort Worth (17–06–2291P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 8, 2018	480596
Tarrant	Unincorporated areas of Tarrant County (17–06–3156P).	The Honorable B. Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196.	Tarrant County Transportation Department, 100 East Weatherford Street, Suite 401, Fort Worth, TX 76196.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2018	480582
Travis	Unincorporated areas of Travis County (17–06–1733P).	The Honorable Sarah Eckhardt, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Planning Department, 700 Lavaca Street, 5th Floor, Austin, TX 78767.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2018	481026
Virginia: Fauquier	Unincorporated areas of Fauquier County (17–03–2312P).	The Honorable Richard R. Gerhardt, Chairman, Fauquier County Board of Supervisors, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	Fauquier County Circuit Court, 29 Ashby Street, 3rd Floor, Warrenton, VA 20186.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 22, 2018	510055

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Wyoming: Teton	Town of Jackson (17–08–1603P).	The Honorable Pete Muldoon, Mayor, Town of Jackson, 150 East Pearl Street, Jackson, WY 83001.	Engineering Department, 450 West Snow King Avenue, Jackson, WY 83001.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 8, 2018	560052

[FR Doc. 2017–28175 Filed 12–28–17; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3396–EM; Docket ID FEMA–2017–0001]

California; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of California (FEMA–3396–EM), dated December 8, 2017, and related determinations.

DATES: The declaration was issued December 8, 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 December 8, 2017, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of California resulting from wildfires beginning on December 4, 2017, and continuing, are of sufficient severity and magnitude to warrant an emergency 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 an emergency exists in the State of California.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. 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 emergency assistance and administrative expenses.

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, Department of Homeland Security, under Executive Order 12148, as amended, Mark Armstrong, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of California have been designated as adversely affected by this declared emergency:

Los Angeles, Riverside, San Diego, Santa Barbara, and Ventura Counties for emergency protective measures (Category B), limited to 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. 2017–28194 Filed 12–28–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4350–DR; Docket ID FEMA–2017–0001]

Mississippi; 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 Mississippi (FEMA–4350–DR), dated November 22, 2017, and related determinations.

DATES: The declaration was issued November 22, 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 November 22, 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 Mississippi resulting from Hurricane Nate during the period of October 6–10, 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 Mississippi.

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, Manny J. Toro, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Mississippi have been designated as adversely affected by this major disaster:

George, Greene, Harrison, and Jackson Counties for Public Assistance.

All areas within the State of Mississippi 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. 2017–28195 Filed 12–28–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 13, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama:					
Calhoun (FEMA Docket No.: B–1758).	City of Anniston (17–04–2695P).	The Honorable Jack Draper, Mayor, City of Anniston, P.O. Box 2168, Anniston, AL 36202.	City Hall, 1128 Gurnee Avenue, Anniston, AL 36202.	Oct. 18, 2017	010020

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Tuscaloosa (FEMA Docket No.: B–1758).	City of Northport (16–04–8221P).	The Honorable Donna Aaron, Mayor, City of Northport, 3500 McFarland Boulevard, Northport, AL 35476.	City Hall, 3500 McFarland Boulevard, Northport, AL 35476.	Oct. 24, 2017	010202
Tuscaloosa (FEMA Docket No.: B–1758).	City of Tuscaloosa (16–04–7839P).	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, 2201 University Boulevard, Tuscaloosa, AL 35401.	Engineering Department, 2201 University Boulevard, Tuscaloosa, AL 35401.	Nov. 20, 2017	010203
Tuscaloosa (FEMA Docket No.: B–1758).	City of Tuscaloosa (16–04–7840P).	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, 2201 University Boulevard, Tuscaloosa, AL 35401.	Engineering Department, 2201 University Boulevard, Tuscaloosa, AL 35401.	Nov. 20, 2017	010203
Tuscaloosa (FEMA Docket No.: B–1758).	City of Tuscaloosa (16–04–8217P).	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, 2201 University Boulevard, Tuscaloosa, AL 35401.	Engineering Department, 2201 University Boulevard, Tuscaloosa, AL 35401.	Oct. 24, 2017	010203
Tuscaloosa (FEMA Docket No.: B–1758).	City of Tuscaloosa (16–04–8221P).	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, 2201 University Boulevard, Tuscaloosa, AL 35401.	Engineering Department, 2201 University Boulevard, Tuscaloosa, AL 35401.	Oct. 24, 2017	010203
Tuscaloosa (FEMA Docket No.: B–1758).	Unincorporated areas of Tuscaloosa County (16–04–7839P).	The Honorable W. Hardy McCollum, Chairman, Tuscaloosa County Board of Commissioners, 714 Greensboro Avenue, Tuscaloosa, AL 35401.	Tuscaloosa County Public Works Department, 2810 35th Street, Tuscaloosa, AL 35401.	Nov. 20, 2017	010201
Tuscaloosa (FEMA Docket No.: B–1758).	Unincorporated areas of Tuscaloosa County (16–04–7840P).	The Honorable W. Hardy McCollum, Chairman, Tuscaloosa County Board of Commissioners, 714 Greensboro Avenue, Tuscaloosa, AL 35401.	Tuscaloosa County Public Works Department, 2810 35th Street, Tuscaloosa, AL 35401.	Nov. 20, 2017	010201
Tuscaloosa (FEMA Docket No.: B–1758).	Unincorporated areas of Tuscaloosa County (16–04–8217P).	The Honorable W. Hardy McCollum, Chairman, Tuscaloosa County Board of Commissioners, 714 Greensboro Avenue, Tuscaloosa, AL 35401.	Tuscaloosa County Public Works Department, 2810 35th Street, Tuscaloosa, AL 35401.	Oct. 24, 2017	010201
Tuscaloosa (FEMA Docket No.: B–1758).	Unincorporated areas of Tuscaloosa County (16–04–8221P).	The Honorable W. Hardy McCollum, Chairman, Tuscaloosa County Board of Commissioners, 714 Greensboro Avenue, Tuscaloosa, AL 35401.	Tuscaloosa County Public Works Department, 2810 35th Street, Tuscaloosa, AL 35401.	Oct. 24, 2017	010201
Colorado:					
Boulder (FEMA Docket No.: B–1748).	City of Louisville (17–08–0455P).	The Honorable Bob Muckle, Mayor, City of Louisville, 749 Main Street, Louisville, CO 80027.	City Hall, 749 Main Street, Louisville, CO 80027.	Nov. 16, 2017	085076
Boulder (FEMA Docket No.: B–1748).	Town of Superior (17–08–0455P).	The Honorable Clint Folsom, Mayor, Town of Superior, 124 East Coal Creek Drive, Superior, CO 80027.	Town Hall, 124 East Coal Creek Drive, Superior, CO 80027.	Nov. 16, 2017	085203
Boulder (FEMA Docket No.: B–1748).	Unincorporated areas of Boulder County (17–08–0455P).	The Honorable Deb Gardner, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	Boulder County Transportation Department, 2525 13th Street, Suite 203, Boulder, CO 80304.	Nov. 16, 2017	080023
Eagle (FEMA Docket No.: B–1740).	Town of Eagle (17–08–0450P).	Mr. John Schneiger, Manager, Town of Eagle, P.O. Box 609, Eagle, CO 81631.	Town Hall, 200 Broadway Street, Eagle, CO 81631.	Nov. 3, 2017	080238
Eagle (FEMA Docket No.: B–1740).	Unincorporated areas of Eagle County (17–08–0450P).	The Honorable Jillian H. Ryan, Chair, Eagle County Board of Commissioners, P.O. Box 850, Eagle, CO 81631.	Eagle County Engineering Department, 500 Broadway Street, Eagle, CO 81631.	Nov. 3, 2017	080238
Jefferson (FEMA Docket No.: B–1740).	Unincorporated areas of Jefferson County (17–08–0687P).	The Honorable Libby Szabo, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Planning and Zoning Department, 100 Jefferson County Parkway, Golden, CO 80419.	Nov. 3, 2017	080087
Larimer (FEMA Docket No.: B–1748).	City of Fort Collins (17–08–0075P).	The Honorable Wade Troxell, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, CO 80522.	Utilities Department, 700 Wood Street, Fort Collins, CO 80521.	Nov. 24, 2017	080102
Larimer (FEMA Docket No.: B–1748).	City of Loveland (16–08–1159P).	The Honorable Cecil Gutierrez, Mayor, City of Loveland, 500 East 3rd Street, Suite 330, Loveland, CO 80537.	Public Works Department, 2525 West 1st Street, Loveland, CO 80537.	Nov. 16, 2017	080103
Larimer (FEMA Docket No.: B–1748).	Town of Johnstown (16–08–1159P).	The Honorable Scott James, Mayor, Town of Johnstown, 450 South Parish Avenue, Johnstown, CO 80534.	Town Hall, 450 South Parish Avenue, Johnstown, CO 80534.	Nov. 16, 2017	080250
Larimer (FEMA Docket No.: B–1748).	Unincorporated areas of Larimer County (16–08–1159P).	The Honorable Lew Gaiter III, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	Larimer County Courthouse, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	Nov. 16, 2017	080101
Larimer (FEMA Docket No.: B–1748).	Unincorporated areas of Larimer County (17–08–0075P).	The Honorable Lew Gaiter III, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	Larimer County Courthouse, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	Nov. 24, 2017	.....
Florida:					
Broward (FEMA Docket No.: B–1748).	City of Plantation (17–04–1665P).	The Honorable Diane Veltri Bendekovic, Mayor, City of Plantation, 400 Northwest 73rd Avenue, Plantation, FL 33317.	Engineering Department, 401 Northwest 70th Terrace, Plantation, FL 33317.	Dec. 1, 2017	120054

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Broward (FEMA Docket No.: B–1748).	Unincorporated areas of Broward County (17–04–1665P).	The Honorable Barbara Sharief, Mayor, Broward County Board of Commissioners, 115 South Andrews Avenue, Room 437C, Fort Lauderdale, FL 33301.	Broward County Environmental Engineering and Permitting Division, 1 North University Drive, Fort Lauderdale, FL 33324.	Dec. 1, 2017	125093
Collier (FEMA Docket No.: B–1740).	Unincorporated areas of Collier County (17–04–4803P).	The Honorable Penny Taylor, Chair, Collier County Board of Commissioners, 3299 Tamiami Trail East, Suite 303, Naples, FL 34112.	Collier County Engineering Services Section Growth Management Department, 3301 Tamiami Trail East Building F, 1st Floor, Naples, FL 34112.	Oct. 31, 2017	120067
Dixie (FEMA Docket No.: B–1748).	Town of Horseshoe Beach (17–04–5093P).	The Honorable Talmadge Bennett, Mayor, Town of Horseshoe Beach, P.O. Box 86, Horseshoe Beach, FL 32648.	Town Hall, 18 5th Avenue East, Horseshoe Beach, FL 32648.	Dec. 1, 2017	120329
Dixie (FEMA Docket No.: B–1748).	Unincorporated areas of Dixie County (17–04–5093P).	The Honorable Jason Holifield, Chairman, Dixie County Board of Commissioners, 214 Northeast Highway 351, Cross City, FL 32628.	Dixie County Building and Zoning Department, 405 Southeast 22nd Avenue, Cross City, FL 32628.	Dec. 1, 2017	120336
Duval (FEMA Docket No.: B–1748).	City of Jacksonville (17–04–4095P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Services Division, 214 North Hogan Street, Suite 2100, Jacksonville, FL 32202.	Nov. 21, 2017	120077
Escambia (FEMA Docket No.: B–1748).	Unincorporated areas of Escambia County (17–04–5219P).	The Honorable Doug Underhill, Chairman, Escambia County Board of Commissioners, 221 Palafox Place, Suite 400, Pensacola, FL 32502.	Escambia County Planning and Zoning Department, 3363 West Park Place, Pensacola, FL 32505.	Dec. 1, 2017	120080
Flagler (FEMA Docket No.: B–1740).	City of Palm Coast (17–04–2665P).	The Honorable Melissa Holland, Mayor, City of Palm Coast, 160 Lake Avenue, Palm Coast, FL 32164.	City Hall, 160 Lake Avenue, Palm Coast, FL 32164.	Nov. 2, 2017	120684
Lee (FEMA Docket No.: B–1748).	City of Sanibel (17–04–4540P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Planning and Code Enforcement Department, 800 Dunlop Road, Sanibel, FL 33957.	Nov. 24, 2017	120402
Lee (FEMA Docket No.: B–1748).	Town of Fort Myers Beach (17–04–3444P).	The Honorable Dennis C. Boback, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Dec. 4, 2017	120673
Monroe (FEMA Docket No.: B–1748).	Village of Islamorada (17–04–4163P).	The Honorable Jim Mooney, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Planning and Development Department, 86800 Overseas Highway, Islamorada, FL 33036.	Dec. 1, 2017	120424
Georgia: Columbia (FEMA Docket No.: B–1748)	Unincorporated areas of Columbia County (17–04–2730P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Engineering Services Division, 630 Ronald Reagan Drive, Building A, East Wing, Evans, GA 30809.	Nov. 2, 2017	130059
Maryland: Worcester (FEMA Docket No.: B–1740)	Town of Ocean City (17–03–0551P).	Mr. Douglas R. Miller, Manager, Town of Ocean City, 301 Baltimore Avenue, Ocean City, MD 21842.	Department of Planning and Community Development, 301 Baltimore Avenue, Ocean City, MD 21842.	Nov. 3, 2017	245207
Mississippi:					
Lamar (FEMA Docket No.: B–1748).	Unincorporated areas of Lamar County (17–04–3862P).	The Honorable Joe Bounds, President, Lamar County Board of Supervisors, P.O. Box 1240, Purvis, MS 39475.	Lamar County Planning Department, 144 Shelby Speights Drive, Purvis, MS 39475.	Nov. 10, 2017	280304
Panola (FEMA Docket No.: B–1748).	City of Batesville (17–04–0231P).	The Honorable Jerry Autrey, Mayor, City of Batesville, P.O. Box 689, Batesville, MS 38606.	City Hall, 103 College Street, Batesville, MS 38606.	Nov. 6, 2017	280126
Panola (FEMA Docket No.: B–1748).	Unincorporated areas of Panola County (17–04–0231P).	The Honorable Cole Flint, President, Panola County Board of Supervisors, 151 Public Square, Batesville, MS 38606.	Panola County Building Department, 245 Eureka Street, Batesville, MS 38606.	Nov. 6, 2017	280125
Montana: Gallatin (FEMA Docket No.: B–1748)	Unincorporated areas of Gallatin County (17–08–0448P).	The Honorable Don Seifert, Chairman, Gallatin County Board of Commissioners, 311 West Main Street, Room 306, Bozeman, MT 59715.	Gallatin County Planning Department, 311 West Main Street, Room 108, Bozeman, MT 59715.	Dec. 1, 2017	300027
New Hampshire: Rockingham (FEMA Docket No.: B–1748)	Town of Plaistow (16–01–2739P).	The Honorable Mark Pearson, Manager, Town of Plaistow, 145 Main Street, Plaistow, NH 03865.	Planning Department, 145 Main Street, Plaistow, NH 03865.	Nov. 29, 2017	330138
New Mexico: Bernalillo (FEMA Docket No.: B–1748)	Unincorporated areas of Bernalillo County (17–06–0728P).	The Honorable Debbie O'Malley, Chair, Bernalillo County Board of Commissioners, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Bernalillo County Public Works Division, 2400 Broadway Boulevard Southeast, Albuquerque, NM 87102.	Nov. 30, 2017	350001
South Carolina:					
Berkeley (FEMA Docket No.: B–1748).	Unincorporated areas of Berkeley County (17–04–1961P).	The Honorable William W. Peagler, III, Chairman, Berkeley County Council, P.O. Box 6122, Moncks Corner, SC 29461.	Berkeley County Planning and Zoning Department, 1003 Highway 52, Moncks Corner, SC 29461.	Nov. 24, 2017	450029
Charleston (FEMA Docket No.: B–1748).	Town of Mount Pleasant (17–04–2666P).	The Honorable Linda Page, Mayor, Town of Mount Pleasant, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Planning and Development Department, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Nov. 20, 2017	455417

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Charleston (FEMA Docket No.: B–1748).	Unincorporated areas of Charleston County (17–04–2666P).	The Honorable J. Elliott Summey, Chairman, Charleston County Council, 4045 Bridgeview Drive, Suite B254, North Charleston, SC 29405.	Charleston County Building Inspection Services Department, 4045 Bridgeview Drive, North Charleston, SC 29405.	Nov. 20, 2017	455413
South Dakota:					
Grant (FEMA Docket No.: B–1748).	City of Milbank (16–08–1274P).	The Honorable Pat Raffety, Mayor, City of Milbank, 1001 East 4th Avenue Suite 301, Milbank, SD 57252.	City Hall, 1001 East 4th Avenue, Milbank, SD 57252.	Nov. 16, 2017	460200
Grant (FEMA Docket No.: B–1748).	Unincorporated areas of Grant County (16–08–1274P).	The Honorable Michael J. Mach, Chairman, Grant County, Board of Commissioners, 1001 South 2nd Street, Milbank, SD 57252.	Grant County Courthouse, 210 East 5th Avenue, Milbank, SD 57252.	Nov. 16, 2017	460266
Texas:					
Bandera (FEMA Docket No.: B–1748).	Unincorporated areas of Bandera County (17–06–0498P).	The Honorable Richard Evans, Bandera County Judge, P.O. Box 877, Bandera, TX 78003.	Bandera County Engineering Department, 502 11th Street, Bandera, TX 78003.	Nov. 9, 2017	480020
Bexar (FEMA Docket No.: B–1748).	City of San Antonio (16–06–3842P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Nov. 22, 2017	480045
Bexar (FEMA Docket No.: B–1748).	City of San Antonio (17–06–0569P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Stormwater Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Nov. 22, 2017	480045
Bexar (FEMA Docket No.: B–1748).	Unincorporated areas of Bexar County (17–06–2326P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78204.	Nov. 27, 2017	480035
Brazos (FEMA Docket No.: B–1740).	Unincorporated areas of Brazos County (17–06–1259P).	The Honorable Duane Peters, Brazos County Judge, 200 South Texas Avenue, Suite 332, Bryan, TX 77803.	Brazos County Road and Bridge Department, Highway 21 West, Bryan, TX 77803.	Nov. 7, 2017	481195
Collin (FEMA Docket No.: B–1748).	Unincorporated areas of Collin County (17–06–0646P).	The Honorable Keith Self, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	Nov. 20, 2017	480130
El Paso (FEMA Docket No.: B–1740).	City of El Paso (17–06–1734P).	The Honorable Oscar Leeser, Mayor, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	City Hall, 801 Texas Avenue, El Paso, TX 79901.	Oct. 31, 2017	480214
Fort Bend (FEMA Docket No.: B–1748).	Unincorporated areas of Fort Bend County (17–06–0120P).	The Honorable Robert Hebert, Fort Bend County Judge, 401 Jackson Street, Richmond, TX 77469.	Fort Bend County Engineering Department, 401 Jackson Street, Richmond, TX 77469.	Nov. 24, 2017	480228
Harris (FEMA Docket No.: B–1733).	Unincorporated areas of Harris County (16–06–3930P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	Sep. 25, 2017	480287
Harris (FEMA Docket No.: B–1735).	Unincorporated areas of Harris County (16–06–4008P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	Oct. 16, 2017	480287
Kendall (FEMA Docket No.: B–1748).	Unincorporated areas of Kendall County (17–06–0696P).	The Honorable Darrel L. Lux, Kendall County Judge, 201 East San Antonio Avenue, Suite 122, Boerne, TX 78006.	Kendall County Development and Floodplain Management Department, 201 East San Antonio Avenue, Suite 101, Boerne, TX 78006.	Nov. 13, 2017	480417
Montgomery (FEMA Docket No.: B–1748).	Unincorporated areas of Montgomery County (17–06–0033P).	The Honorable Craig B. Doyal, Montgomery County Judge, 501 North Thompson, Suite 401, Conroe, TX 77301.	Montgomery County Engineering Department, 501 North Thompson, Suite 103, Conroe, TX 77301.	Nov. 10, 2017	480483
Tarrant (FEMA Docket No.: B–1748).	City of Fort Worth (17–06–0459P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	Nov. 17, 2017	480596
Tarrant (FEMA Docket No.: B–1748).	City of Fort Worth (17–06–0497P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	Dec. 1, 2017	480596
Tarrant (FEMA Docket No.: B–1748).	City of Fort Worth (17–06–0575P).	The Honorable Betsy Price, Mayor, City of Fort, Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	Nov. 10, 2017	480596
Utah:					
Davis (FEMA Docket No.: B–1748).	City of Farmington (17–08–0203P).	The Honorable Jim Talbot, Mayor, City of Farmington, 160 South Main Street, Farmington, UT 84025.	City Hall, 160 South Main Street, Farmington, UT 84025.	Nov. 24, 2017	490044

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Washington (FEMA Docket No.: B–1748).	City of Hurricane (17–08–0479P).	The Honorable John W. Bramall, Mayor, City of Hurricane, 147 North 870 West, Hurricane, UT 84737.	Planning and Zoning Department, 147 North 870 West, Hurricane, UT 84737.	Nov. 30, 2017	490172

[FR Doc. 2017–28181 Filed 12–28–17; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–B–1773]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before March 29, 2018.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1773, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 13, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
DuPage County, Illinois and Incorporated Areas Project: 07–05–5715S Preliminary Date: June 1, 2017	
City of Aurora	City Hall, Engineering Department, 44 East Downer Place, Aurora, IL 60507.
City of Chicago	Department of Buildings, Stormwater Management, 121 North LaSalle Street, Room 906, Chicago, IL 60602.
City of Darien	City Hall, 1702 Plainfield Road, Darien, IL 60561.
City of Elmhurst	City Hall, 209 North York Street, Elmhurst, IL 60126.
City of Naperville	City Hall, 400 South Eagle Street, Naperville, IL 60540.
City of Oak Brook Terrace	City Hall, 17W275 Butterfield Road, Oakbrook Terrace, IL 60181.
City of Warrenville	City Hall, 28W701 Stafford Place, Warrenville, IL 60555.
City of West Chicago	City Hall, 475 Main Street, West Chicago, IL 60185.
City of Wheaton	City Hall, 303 West Wesley Street, Wheaton, IL 60187.
City of Wood Dale	City Hall, 404 North Wood Dale Road, Wood Dale, IL 60191.
Unincorporated Areas of DuPage County	County Administration Building, Stormwater Management, 421 North County Farm Road, Wheaton, IL 60187.
Village of Addison	Village Hall, 1 Friendship Plaza, Addison, IL 60101.
Village of Bartlett	Village Hall, 228 South Main Street, Bartlett, IL 60103.
Village of Bensenville	Village Hall, 12 South Center Street, Bensenville, IL 60106.
Village of Bloomingdale	Village Hall, 201 South Bloomingdale Road, Bloomingdale, IL 60108.
Village of Bolingbrook	Village Hall, 375 West Briarcliff Road, Bolingbrook, IL 60440.
Village of Burr Ridge	Village Hall, 7660 County Line Road, Burr Ridge, IL 60527.
Village of Carol Stream	Village Hall, 505 East North Avenue, Carol Stream, IL 60188.
Village of Clarendon Hills	Village Hall, 1 North Prospect Avenue, Clarendon Hills, IL 60514.
Village of Downers Grove	Village Hall, 801 Burlington Avenue, Downers Grove, IL 60515.
Village of Elk Grove Village	Village Hall, 901 Wellington Avenue, Elk Grove Village, IL 60007.
Village of Glendale Heights	Village Hall, 300 Civic Center Plaza, Glendale Heights, IL 60139.
Village of Glen Ellyn	Village Hall, 535 Duane Street, Glen Ellyn, IL 60137.
Village of Hanover Park	Village Hall, 2121 Lake Street, Hanover Park, IL 60133.
Village of Hinsdale	Village Hall, 19 East Chicago Avenue, Hinsdale, IL 60521.
Village of Itasca	Village Hall, 550 West Irving Park Road, Itasca, IL 60143.
Village of Lemont	Village Hall, 418 Main Street, Lemont, IL 60439.
Village of Lisle	Village Hall, 925 Burlington Avenue, Lisle, IL 60532.
Village of Lombard	Village Hall, 255 East Wilson Avenue, Lombard, IL 60148.
Village of Oak Brook	Village Hall, 1200 Oak Brook Road, Oak Brook, IL 60523.
Village of Roselle	Village Hall, 31 South Prospect Street, Roselle, IL 60172.
Village of Schaumburg	Village Hall, 101 Schaumburg Court, Schaumburg, IL 60193.
Village of Villa Park	Village Hall, 20 South Ardmore Avenue, Villa Park, IL 60181.
Village of Wayne	Village Hall, 5N430 Railroad Street, Wayne, IL 60184.
Village of Westmont	Village Hall, 31 West Quincy Street, Westmont, IL 60559.
Village of Willowbrook	Village Hall, 835 Midway Drive, Willowbrook, IL 60527.
Village of Winfield	Village Hall, 27W465 Jewell Road, Winfield, IL 60190.
Village of Woodridge	Village Hall, 5 Plaza Drive, Woodridge, IL 60517.
Charlevoix County, Michigan (All Jurisdictions) Project: 16–05–4378S Revised Preliminary Date: August 19, 2016	
Little Traverse Bay Bands of Odawa Indians	Government Center, 7500 Odawa Circle, Harbor Springs, MI 49740.
Snohomish County, Washington and Incorporated Areas Project: 12–10–0359S Preliminary Dates: July 22, 2016, January 31, 2017 and July 31, 2017	
City of Arlington	City Hall, 238 North Olympic Avenue, Arlington, WA 98223.
City of Bothell	City Hall, 18415 101st Avenue Northeast, Bothell, WA 98011.
City of Brier	City Hall, 2901 228th Street Southwest, Brier, WA 98036.
City of Edmonds	City Hall, 121 5th Avenue North, Edmonds, WA 98020.
City of Everett	City Hall, 2930 Wetmore Avenue, Suite 10–A, Everett, WA 98201.
City of Gold Bar	City Hall, 107 5th Street, Gold Bar, WA 98251.
City of Granite Falls	City Hall, 206 South Granite Avenue, Granite Falls, WA 98252.
City of Lake Stevens	City Hall, 1812 Main Street, Permit Center, Lake Stevens, WA 98258.
City of Lynnwood	City Hall, 19100 44th Avenue West, Lynnwood, WA 98036.
City of Marysville	City Hall, 1049 State Avenue, Marysville, WA 98270.
City of Mill Creek	City Hall, 15728 Main Street, Mill Creek, WA 98012.
City of Monroe	City Hall, 806 West Main Street, Engineering Department, Monroe, WA 98272.
City of Mountlake Terrace	City Hall, 6100 219th Street Southwest, Suite 200, Mountlake Terrace, WA 98043.
City of Mukilteo	City Hall, 11930 Cyrus Way, Mukilteo, WA 98275.
City of Snohomish	City Hall, 116 Union Avenue, Snohomish, WA 98290.
City of Stanwood	City Hall, 10220 270th Street Northwest, Stanwood, WA 98292.
City of Sultan	City Hall, 319 Main Street, Suite 200, Sultan, WA 98294.
Stillaguamish Tribe	3322 236th Street Northeast, Arlington, WA 98223.
Town of Darrington	Town Hall, 1005 Cascade Street, Darrington, WA 98241.

Community	Community map repository address
Town of Index	Town Hall, 511 Avenue A, Index, WA 98256.
Town of Woodway	Town Hall, 23920 113th Place West, Woodway, WA 98020.
Tulalip Tribe	Natural Resources Department, 6406 Marine Drive, Tulalip, WA 98271.
Unincorporated Areas of Snohomish County	County Emergency Management Services, 3000 Rockefeller Avenue, Everett, WA 98201.

[FR Doc. 2017–28173 Filed 12–28–17; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4342–DR; Docket ID FEMA–2017–0001]

Idaho; Amendment No. 2 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 Idaho (FEMA–4342–DR), dated October 7, 2017, and related determinations.

DATES: The change occurred on November 29, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. Dargan, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Sharon Loper as Federal Coordinating Officer for this disaster.

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. 2017–28193 Filed 12–28–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the

final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 13, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–1739).	City of Phoenix (17–09–1054P).	The Honorable Greg Stanton, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	Nov. 10, 2017	040051
Maricopa (FEMA Docket No.: B–1734).	City of Tempe (17–09–0156P).	The Honorable Mark Mitchell, Mayor, City of Tempe, P.O. Box 5002, Tempe, AZ 85280.	City Hall Engineering Department, 31 East 5th Street, Tempe, AZ 85281.	Sep. 29, 2017	040054
Maricopa (FEMA Docket No.: B–1743).	Town of Fountain Hills (17–09–0546P).	The Honorable Linda M. Kavanagh, Mayor, Town of Fountain Hills, 16705 East Avenue of the Fountains, Fountain Hills, AZ 85268.	Town Hall, 16836 East Palisades Boulevard, Fountain Hills, AZ 85268.	Nov. 24, 2017	040135
Mohave (FEMA Docket No.: B–1743).	Unincorporated Areas of Mohave County (17–09–0550P).	The Honorable Gary Watson, Chairman, Board of Supervisors Mohave County, 700 West Beale Street, Kingman, AZ 86401.	Mohave County Administration Building, 700 West Beale Street, Kingman, AZ 86401.	Nov. 24, 2017	040058
Pima (FEMA Docket No.: B–1737).	Town of Marana (17–09–0328P).	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	Engineering Department, 11555 West Civic Center Drive, Marana, AZ 85653.	Oct. 20, 2017	040118
Pima (FEMA Docket No.: B–1737).	Unincorporated Areas of Pima County (17–09–0328P).	The Honorable Sharon Bronson, Chair, Board of Supervisors Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	Oct. 20, 2017	040073
Pinal (FEMA Docket No.: B–1734).	Unincorporated Areas of Pinal County (16–09–0931P).	The Honorable Stephen Miller, Chairman, Board of Supervisors Pinal County, 135 North Pinal Street, Florence, AZ 85132.	Pinal County Engineering Department, 31 North Pinal Street, Building F, Florence, AZ 85132.	Sep. 22, 2017	040077
California:					
Fresno (FEMA Docket No.: B–1734).	City of Clovis (17–09–0445P).	The Honorable Bob Whalen, Mayor, City of Clovis, 1033 5th Street, Clovis, CA 93612.	Building Division, 1033 5th Street, Clovis, CA 93612.	Oct. 2, 2017	060044
Los Angeles (FEMA Docket No.: B–1734).	City of Santa Clarita (17–09–0916P).	The Honorable Cameron Smyth, Mayor, City of Santa Clarita, 23920 Valencia Boulevard, Suite 300, Santa Clarita, CA 91355.	City Hall Planning Department, 23920 Valencia Boulevard, Suite 300, Santa Clarita, CA 91355.	Oct. 6, 2017	060729
Riverside (FEMA Docket No.: B–1737).	Agua Caliente Band of Cahuilla Indian Reservation (16–09–1551P).	The Honorable Jeff L. Grubbe, Chairman, Agua Caliente Band of Cahuilla Indians, 5401 Dinah Shore Drive, Palm Springs, CA 92264.	Planning and Natural Resources, 5401 Dinah Shore Drive, Palm Springs, CA 92264.	Oct. 20, 2017	060763
Riverside (FEMA Docket No.: B–1737).	City of Cathedral City (16–09–1551P).	The Honorable Stanley E. Henry, Mayor, City of Cathedral City, 68700 Avenida Lalo Guerrero, Cathedral City, CA 92234.	Engineering Department, 68700 Avenida Lalo Guerrero, Cathedral City, CA 92234.	Oct. 20, 2017	060704
Riverside (FEMA Docket No.: B–1737).	City of Palm Springs (16–09–1551P).	The Honorable Robert Moon, Mayor, City of Palm Springs, 3200 East Tahquitz Canyon Way, Palm Springs, CA 92262.	City Hall, 3200 East Tahquitz Canyon Way, Palm Springs, CA 92262.	Oct. 20, 2017	060257
San Joaquin (FEMA Docket No.: B–1737).	City of Lathrop (17–09–0203P)..	The Honorable Sonny Dhaliwal, Mayor, City of Lathrop, 390 Towne Centre Drive, Lathrop, CA 95330.	City Hall, 390 Towne Centre Drive, Lathrop, CA 95330.	Oct. 23, 2017	060738
Florida: Duval (FEMA Docket No.: B–1743).	City of Jacksonville (17–04–3389P).	The Honorable Lenny Curry, Mayor, City of Jacksonville City Hall at St. James Building, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	City Hall, 117 West Duval Street, Jacksonville, FL 32202.	Nov. 2, 2017	120077
Idaho:					
Ada (FEMA Docket No.: B–1737).	City of Boise (17–10–0875P).	The Honorable David H. Bieter, Mayor, City of Boise, P.O. Box 500, Boise, ID 83701.	Planning and Development Services, City Hall, 150 North Capital Boulevard, Boise, ID 83701.	Oct. 13, 2017	160002
Kootenai (FEMA Docket No.: B–1737).	City of Coeur d'Alene (17–10–0479P).	The Honorable Steve Widmyer, Mayor, City of Coeur d'Alene, Coeur d'Alene City Hall, 710 East Mullan Avenue, Coeur d'Alene, ID 83814.	City Hall Planning Department, 710 East Mullan Avenue, Coeur d'Alene, ID 83814.	Oct. 17, 2017	160078
Kootenai (FEMA Docket No.: B–1737).	Unincorporated Areas of Kootenai County (17–10–0479P).	Mr. Marc Eberlein, Chairman, Board of Commissioners Kootenai County, 451 Government Way, Coeur d'Alene, ID 83814.	Assessors Department Kootenai County Court House, 451 Government Way, Coeur d'Alene, ID 83816.	Oct. 17, 2017	160076
Illinois: Kane (FEMA Docket No.: B–1734).	Village of Carpentersville (17–05–1258P).	The Honorable John Skillman, Village President, Village of Carpentersville, 1200 L.W. Besinger Drive, Carpentersville, IL 60110.	Village Hall, 1200 L.W. Besinger Drive, Carpentersville, IL 60110.	Oct. 5, 2017	170322

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Indiana: Marion (FEMA Docket No.: B–1739).	City of Indianapolis (17–05–3161P).	The Honorable Joe Hogsett, Mayor, City of Indianapolis, 2501 City-County Building, 200 East Washington Street, Indianapolis, IN 46204.	City Hall, 1200 Madison Avenue, Suite 100, Indianapolis, IN 46225.	Oct. 26, 2017	180159
Kansas: Johnson (FEMA Docket No.: B–1734).	City of Overland Park (16–07–1770P).	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	City Hall, 8500 Santa Fe Drive, Overland Park, KS 66212.	Sep. 14, 2017	200174
Minnesota:					
Anoka (FEMA Docket No.: B–1737).	City of Coon Rapids (17–05–2891P).	The Honorable Jerry Koch, Mayor, City of Coon Rapids, Coon Rapids City Hall, 11155 Robinson Drive, Coon Rapids, MN 55433.	City Hall, 11155 Robinson Drive, Coon Rapids, MN 55433.	Oct. 6, 2017	270011
Norman (FEMA Docket No.: B–1737).	City of Ada (17–05–1647P).	The Honorable Jim Ellefson, Mayor, City of Ada, Ada City Hall, 15 4th Avenue East, Ada, MN 56510.	City Hall, 15 4th Avenue East, Ada, MN 56510.	Sep. 20, 2017	270323
Norman (FEMA Docket No.: B–1737).	Unincorporated Areas of Norman County (17–05–1647P).	Mr. Marvin Gunderson, Chairman, Norman County Commissioners, Norman County Courthouse, 16 3rd Avenue East, Ada, MN 56510.	Norman County Courthouse, 16 3rd Avenue East, Ada, MN 56510.	Sep. 20, 2017	270322
Missouri: St. Louis (FEMA Docket No.: B–1739).	City of Chesterfield (17–07–0810P).	The Honorable Bob Nation, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, MO 63017.	Chesterfield Municipal Court, 690 Chesterfield Parkway West, Chesterfield, MO 63017.	Oct. 17, 2017	290896
Nebraska: Buffalo (FEMA Docket No.: B–1739).	City of Kearney (17–07–1116P).	The Honorable Stanley Clouse, Mayor, City of Kearney, 18 East 22nd Street, Kearney, NE 68847.	City Hall, 18 East 22nd Street, Kearney, NE 68847.	Oct. 25, 2017	310016
Nevada: Nye (FEMA Docket No.: B–1737).	Unincorporated Areas of Nye County (17–09–1129P).	The Honorable Dan Schinhofen, Chairman, Board of Commissioners, Nye County, 2100 East Walt Williams Drive, Suite 100, Pahrump, NV 89048.	Nye County Department of Planning, 250 North Highway 160, Suite 1, Pahrump, NV 89060.	Oct. 26, 2017	320018
New Jersey: Ocean (FEMA Docket No.: B–1743).	Borough of Mantoloking (17–02–1077P).	The Honorable George C. Nebel, Mayor, Borough of Mantoloking, 340 Drum Point Road, Second Floor, Brick, NJ 08723.	Mantoloking Borough Municipal Building, 202 Downer Avenue, Mantoloking, NJ 08738.	Nov. 10, 2017	340383
Ohio: Stark (FEMA Docket No.: B–1737).	Unincorporated Areas of Stark County (17–05–1880P).	The Honorable Janet Weir Creighton, President, Board of Stark County Commissioners, 110 Central Plaza South, Suite 240, Canton, OH 44702.	Stark County Office Building, 110 Central Plaza South, Canton, OH 44702.	Oct. 11, 2017	390780
Oregon:					
Lane (FEMA Docket No.: B–1737).	City of Springfield (16–10–1640P).	The Honorable Christine Lundberg, Mayor, City of Springfield, Springfield City Hall, 225 5th Street, Springfield, OR 97477.	Planning Department, 225 5th Street, Springfield, OR 97477.	Oct. 17, 2017	415592
Lane (FEMA Docket No.: B–1737).	Unincorporated Areas of Lane County (16–10–1640P).	Mr. Sid Leiken, Commissioner, Lane County, Lane County Public Service Building, 125 East 8th Avenue, Eugene, OR 97401.	Lane County Planning Department Public Service Building, 125 East 8th Avenue, Eugene, OR 97401.	Oct. 17, 2017	415591
Tennessee:					
Hamilton (FEMA Docket No.: B–1739).	City of Chattanooga (17–04–1553P).	The Honorable Andy Berke, Mayor, City of Chattanooga, 101 East 11th Street, Chattanooga, TN 37402.	Planning Department, 1250 Market Street, Chattanooga, TN 37402.	Oct. 31, 2017	470072
Smith (FEMA Docket No.: B–1734).	Unincorporated Areas of Smith County (16–04–7918P).	The Honorable Michael Nesbitt, Mayor, Smith County, 122 Turner High Circle, Carthage, TN 37030.	Smith County Turner Building, 122 Turner High Circle, Carthage, TN 37030.	Sep. 22, 2017	470283
Trousdale (FEMA Docket No.: B–1734).	Unincorporated Areas of Trousdale County (16–04–7918P).	The Honorable Carroll Carman, Mayor, Trousdale County, 328 Broadway, Room 6–10, Hartsville, TN 37074.	Trousdale County Sheriff Department, 210 Broadway, Hartsville, TN 37074.	Sep. 22, 2017	470192
Williamson (FEMA Docket No.: B–1743).	City of Franklin (17–04–2518P).	The Honorable Ken Moore, Mayor, City of Franklin, 109 3rd Avenue South, Franklin, TN 37064.	City Hall Code Department, 109 3rd Avenue South, Franklin, TN 37064.	Oct. 27, 2017	470206
Texas:					
Collin (FEMA Docket No.: B–1743).	City of Garland (17–06–2211P).	The Honorable Douglas Athas, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	City Hall, 800 Main Street, Garland, TX 75040.	Nov. 9, 2017	485471
Collin (FEMA Docket No.: B–1743).	City of Plano (17–06–2211P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	City Hall Engineering Department, 1520 K Avenue, Plano, TX 75074.	Nov. 9, 2017	480140
Collin (FEMA Docket No.: B–1743).	City of Richardson (17–06–2211P).	The Honorable Paul Voelker, Mayor, City of Richardson, 411 West Arapaho Road, Richardson, TX 75080.	Civic Center/City Hall, 411 West Arapaho Road, Room 204, Richardson, TX 75080.	Nov. 9, 2017	480184
Dallas (FEMA Docket No.: B–1737).	City of Dallas (17–06–1494P).	The Honorable Michael S. Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Suite 5en, Dallas, TX 75201.	City Hall, 320 East Jefferson Boulevard, Room 321, Dallas, TX 75203.	Oct. 12, 2017	480171
Washington:					
King (FEMA Docket No.: B–1737).	City of Lake Forest Park (17–10–0060P).	The Honorable Jeff Johnson, Mayor, City of Lake Forest Park City Hall, 17425 Ballinger Way Northeast, Lake Forest Park, WA 98155.	City Hall, 17425 Ballinger Way Northeast, Lake Forest Park, WA 98155.	Oct. 10, 2017	530082
Whatcom (FEMA Docket No.: B–1737).	City of Bellingham (17–10–0520P).	The Honorable Kellie Linville, Mayor, City of Bellingham, 210 Lottie Street, Bellingham, WA 98225.	Public Works/Engineering Department City Hall, 210 Lottie Street, Bellingham, WA 98225.	Oct. 18, 2017	530199

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Wisconsin:					
Brown (FEMA Docket No.: B–1739).	Village of Bellevue (17–05–2419P).	Mr. Steve Soukup, President, Bellevue Village Board, Village of Bellevue, 2828 Allouez Avenue, Bellevue, WI 54311.	Village Hall, 2828 Allouez Avenue, Bellevue, WI 54311.	Oct. 20, 2017	550627
Outagamie (FEMA Docket No.: B–1734).	City of Appleton (17–05–1963P).	The Honorable Timothy Hanna, Mayor, City of Appleton, 100 North Appleton Street, Appleton, WI 54911.	City Hall, 100 North Appleton Street, Appleton, WI 54911.	Sep. 29, 2017	555542
Waukesha (FEMA Docket No.: B–1734).	Village of Sussex (17–05–0632P).	The Honorable Gregory L. Goetz, President, Village of Sussex, N64W23760 Main Street, Sussex, WI 53089.	Village Hall, N64W23760 Main Street, Sussex, WI 53089.	Sep. 15, 2017	550490

[FR Doc. 2017–28183 Filed 12–28–17; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4339–DR; Docket ID FEMA–2017–0001]

Puerto Rico; 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 Commonwealth of Puerto Rico (FEMA–4339–DR), dated September 20, 2017, and related determinations.

DATES: This amendment was issued December 6, 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 disaster is closed effective November 15, 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. 2017–28192 Filed 12–28–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2017–0014; OMB No. 1660–0016]

Agency Information Collection Activities: Proposed Collection; Comment Request; Revision to National Flood Insurance Program Maps: Application Forms and Instructions for LOMRs and CLOMRs

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a reinstatement, with change, of a previously approved information collection for which approval has expired. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information required by FEMA to revise National Flood Insurance Program Maps.

DATES: Comments must be submitted on or before February 27, 2018.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2017–0014. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Koper, Emergency Management Specialist, Federal Insurance and Mitigation Administration, DHS/FEMA, 202–646–3085. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.* The Federal Emergency Management Agency (FEMA) administers the NFIP and maintains the maps that depict flood hazard information. In 44 CFR 65.3, communities are required to submit technical information concerning flood hazards and plans to avoid potential flood hazards when physical changes occur. In 44 CFR 65.4, communities are provided the right to submit technical information when inconsistencies on maps are identified. In order to revise the Base (l-percent annual chance) Flood Elevations (BFEs), Special Flood Hazard Areas (SFHAs), and floodways presented on the NFIP maps, a community must submit scientific or technical data demonstrating the need for a revision. The NFIP regulations cited in 44 CFR part 65 outline the data that must be submitted for these requests. This collection serves to provide a standard format for the

general information requirements outlined in the NFIP regulations, and helps establish an organized package of the data needed to revise NFIP maps.

This information collection expired on May 31, 2017. FEMA is requesting a reinstatement, with change, of a previously approved information collection for which approval has expired.

Collection of Information

Title: Revision to National Flood Insurance Program Maps: Application Forms and Instructions for LOMRs and CLOMRs.

Type of information collection: Reinstatement, with change, of a previously approved information collection for which approval has expired.

OMB Number: 1660–0016.

Form Titles and Numbers: FEMA Form 086–0–27, Overview and Concurrence Form; FEMA Form 086–0–27A, Riverine Hydrology and Hydraulics Form; FEMA Form 086–0–27B, Riverine Structures Form; FEMA Form 086–0–27C, Coastal Analysis Form; FEMA Form 086–0–27D, Coastal Structures Form; FEMA Form 086–0–27E, Alluvial Fan Flooding Form.

Abstract: The forms in this information collection are used to determine if the collected data will result in the modification of a BFE, a SFHA, or a floodway. Once the information is collected, it is submitted to FEMA for review and is subsequently included on the NFIP maps. Using these maps, lenders will determine the application of the mandatory flood insurance purchase requirements, and insurance agents will determine actuarial flood insurance rates. The maps are also used by communities participating in the NFIP to establish floodplain management requirements.

Affected Public: State, Local and Tribal Government and Business or Other for-Profit Institutes.

Estimated Number of Respondents: 5,291.

Estimated Number of Responses: 5,291.

Estimated Total Annual Burden Hours: 16,107.

Estimated Total Annual Respondent Cost: $1,084,308.

Estimated Respondents' Operation and Maintenance Costs: $22,010,000.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: $24,559.06.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

William Holzerland,

Director, Information Management Division, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2017–28188 Filed 12–28–17; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZC03000.17X.L12200000.EA0000; AZ–SRP–030–15–01]

Notice of Temporary Closures: Selected Public Lands in La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closures.

SUMMARY: Notice is hereby given that temporary closures will be in effect on public lands administered by the Bureau of Land Management (BLM), Lake Havasu Field Office, during the Best in the Desert (BITD) Racing Association GMZ Utility Terrain Vehicle Winter Nationals Parker ''250'' and BlueWater Resort Parker ''425'' official permitted off-highway-vehicle (OHV) events.

DATES: These temporary closures will be in effect from 2 p.m., January 5, 2018, through 10 p.m., January 6; and from 2 p.m., February 2, 2018, through 2 a.m., February 4, Mountain Standard Time.

FOR FURTHER INFORMATION CONTACT: Carrie Wostal, Acting Colorado River District Chief Ranger, email: *cwostal@blm.gov;* or Caroline Kilbane, Outdoor Recreation Planner, email: *ckilbane@blm.gov;* BLM Lake Havasu Field Office, 1785 Kiowa Avenue, Lake Havasu City, Arizona 86403; telephone 928–505–1200. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The temporary closures affect public lands that are under the administration of the Lake Havasu Field Office in La Paz County, Arizona. This action is being taken to help ensure public safety, prevent unnecessary environmental degradation, and to protect natural and cultural resources adjacent to the event site during the BITD Racing Association GMZ Utility Terrain Vehicle Winter Nationals Parker ''250'' and BlueWater Resort Parker ''425'' official permitted OHV events.

The temporary closure order is issued under the authority of 43 CFR subpart 8364.1; which allows the BLM to establish temporary closures for the protection of persons, property, and public lands and resources. Violation of any of the terms, conditions, or restrictions contained within this temporary closure order may subject the violator to citation or arrest with a penalty or fine or imprisonment or both as specified by law.

Description of Race Course Closed Area: With the exception of access to designated spectator areas, areas subject to this temporary closure include all BLM designated roads and trails on public lands situated within the interior of the race course and located within 2 miles of the designated course's perimeter. Beginning at the eastern boundary of the Colorado River Indian Tribe (CRIT) Reservation, the temporary closed area runs east along Shea Road, then east into Osborne Wash on the Parker-Swansea Road to the Central Arizona Project (CAP) Canal, then north on the west side of the CAP Canal, crossing the canal on the county-maintained road, running northeast into Mineral Wash Canyon, then southeast on the county-maintained road, through the four-corners intersection to the Midway (Pit) intersection, then east on Transmission Pass Road, through State Trust Land located in Butler Valley, turning north into Cunningham Wash to North Tank; continuing south to Transmission Pass Road and east (reentering public land) within 2 miles of Alamo Dam Road. The course turns south and west onto the Wooden Power Line Road, onto the State Trust Land in Butler Valley, turning southwest into

Cunningham Wash to the Graham Well, intersecting Butler Valley Road, then north and west on the county-maintained road to the ''Bouse Y'' intersection, 2 miles north of Bouse, Arizona. The course proceeds north, paralleling the Bouse-Swansea Road to the Midway (Pit) intersection, then west along the North Boundary (power line) Road of the East Cactus Plain Wilderness Area to Parker-Swansea Road. The course turns west into Osborne Wash crossing the CAP Canal, along the north boundary of the Cactus Plain Wilderness Study Area; it continues west staying in Osborne Wash and crossing Shea Road along the southern boundary of Gibraltar Wilderness, rejoining Osborne Wash at the CRIT Reservation boundary.

Closure Restrictions: The following acts are prohibited during the temporary land closures in order to provide for public and race participant safety:

1. Being present on or driving on the designated race course or the adjacent lands described above. All spectators must stay within the designated spectator areas. The spectator areas have protective fencing and barriers. This does not apply to race participants, race officials, or emergency vehicles authorized or operated by local, State, or Federal government agencies. Emergency medical response shall only be conducted by personnel and vehicles operating under the guidance of the La Paz County Emergency Medical Services and Fire, the Arizona Department of Public Safety, or the BLM.
2. Vehicle parking or stopping in areas affected by the closures, except where such is specifically allowed (designated spectator areas).
3. Camping in the closed area described above, except in the designated spectator areas.
4. Discharge of firearms.
5. Possession or use of any fireworks.
6. Cutting or collecting firewood of any kind, including dead and down wood or other vegetative material.
7. Operating any off-road vehicle (as defined by 43 CFR 8340.0–7(a)).
8. Operating any vehicle in the area of the temporary closure or on roads within the event area at a speed of more than 35 miles per hour. This does not apply to registered race vehicles during the race, while on the designated race course.
9. Failing to obey any official sign posted by the BLM, La Paz County, or the race promoter.
10. Parking any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property, or feature. Vehicles parked in violation are subject to citation, removal, and/or impoundment at the owner's expense.
11. Failing to obey any person authorized to direct traffic or control access to event area including law enforcement officers, BLM officials, and designated race officials.
12. Failing to observe spectator area quiet hours of 10 p.m. to 6 a.m.
13. Failing to keep campsite or race viewing site free of trash and litter.
14. Allowing any pet or other animal to be unrestrained. All pets must be restrained by a leash of not more than 6 feet in length.
15. Reserving sites within the spectator area. Spectators are prohibited from denying other visitors or parties the use of unoccupied portions of the spectator area.

Exceptions to Closure: The restrictions do not apply to emergency or law enforcement vehicles owned by the United States, the State of Arizona, or La Paz County, and designated race officials, participants, pit crews, or persons operating on their behalf. All BITD registered media personnel are permitted access to existing routes 50 feet from the race course per BITD standards. Outside of the race corridor, other lands in the Field Office will remain open and available for off-highway vehicle access and all other recreation activities.

Penalties: Any person who violates these temporary closures may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Arizona law.

Effect of Closure: The entire area encompassed by the designated course and all areas outside the course as described above and in the time period as described above are closed to all vehicles. The authorized applicant or their representatives are required to post warning signs, control access to, and clearly mark the event route and areas, common access roads, and road crossings during the closure period. Support vehicles under permit for operation by event participants must follow the race permit stipulations.

Authority: 43 CFR 8364.1.

Jason West,

Field Manager.

[FR Doc. 2017–28217 Filed 12–28–17; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR02800000, 18XR0680A1, RX.17868949.0000000]

Notice of Intent To Prepare a Draft Environmental Impact Statement, Revisions to the Coordinated Long-Term Operation of the Central Valley Project and State Water Project, and Related Facilities

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: The Bureau of Reclamation (Reclamation) intends to prepare a programmatic environmental impact statement (EIS) for analyzing potential modifications to the continued long-term operation of the federal Central Valley Project (CVP), for its authorized purposes, in a coordinated manner with the State Water Project (SWP), for its authorized purposes. Reclamation proposes to evaluate alternatives that maximize water deliveries and optimize marketable power generation consistent with applicable laws, contractual obligations, and agreements; and to augment operational flexibility by addressing the status of listed species. Reclamation is seeking suggestions and information on the alternatives and topics to be addressed and any other important issues related to the proposed action.

DATES: Submit written comments on the scope of the EIS by February 1, 2018.

ADDRESSES: Send written comments to Katrina Harrison, Project Manager, Bureau of Reclamation, Bay-Delta Office, 801 I Street, Suite 140, Sacramento, CA 95814–2536; fax to (916) 414–2425; or email at *kharrison@usbr.gov*.

FOR FURTHER INFORMATION CONTACT: Katrina Harrison at (916) 414–2425; or email at *kharrison@usbr.gov*.

SUPPLEMENTARY INFORMATION:

I. Agencies Involved

Reclamation will request the following agencies participate as cooperating agencies for preparation of the EIS in accordance with the National Environmental Policy Act (NEPA), as amended: U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), U.S. Army Corps of Engineers; Western Area Power Administration, and U.S. Environmental Protection Agency.

Reclamation has also identified Indian tribes and other Federal, State,

and local agencies (*e.g.,* public water agencies, power marketing agencies, power customers, etc.) as potential cooperating agencies, and Reclamation will invite them to participate as cooperating agencies.

II. Why We Are Taking This Action

The CVP is a major water source for agricultural, municipal and industrial (M&I), and fish and wildlife demands in California. State and Federal regulatory actions, federal trust responsibilities, and other agreements, have significantly reduced the water available for delivery south of the Sacramento-San Joaquin River Delta, in order, among other things, to protect water quality within the delta and prevent jeopardy and adverse modification of critical habitat of threatened and endangered species. This project will evaluate alternatives to restore, at least in part, water supply, in consideration of all of the authorized purposes of the CVP.

In this programmatic EIS, Reclamation will analyze potential modifications to the continued long-term operation of the CVP (proposed action), in a coordinated manner with the SWP, to achieve the following:

- Maximize water supply delivery, consistent with applicable law, contracts and agreements, considering new and/or modified storage and export facilities.
- Review and consider modifications to regulatory requirements, including existing Reasonable and Prudent Alternative actions identified in the Biological Opinions issued by the USFWS and NMFS in 2008 and 2009, respectively.
- Evaluate stressors on fish other than CVP and SWP operations, beneficial non-flow measures to decrease stressors, and habitat restoration and other beneficial measures for improving targeted fish populations.
- Evaluate potential changes in laws, regulations and infrastructure that may benefit power marketability.

Reclamation has decided to prepare an EIS. As an example for why NEPA is required related to CVP operation, in 2014, the Ninth Circuit Court of Appeals determined that the current, coordinated operation of the CVP and SWP under biological opinions issued by the USFWS and NMFS in 2008 and 2009, respectively, was a major Federal action that affected the quality of the human environment that required the preparation of an EIS. San Luis & Delta-Mendota Water Authority (SLDMWA) v. Jewell, 747 F.3d 581 (9th Cir. 2014); SLDMWA v. Locke, 776 F.3d 971 (9th Cir. 2014). This EIS is expected to be primarily programmatic in nature. It is anticipated that this current programmatic effort will be followed by tiered project-level NEPA analyses to implement various site specific projects or detailed programs that were generally described in the programmatic EIS.

III. Purpose and Need for Action

The need for the action is to increase operational flexibility, as further described in Section II above. The purpose of the action considered in this EIS is to continue the operation of the CVP in a coordinated manner with the SWP, for its authorized purposes, in a manner that enables Reclamation and California Department of Water Resources to maximize water deliveries and optimize marketable power generation consistent with applicable laws, contractual obligations, and agreements; and to augment operational flexibility by addressing the status of listed species.

IV. Project Area (Area of Analysis)

The project area includes the existing CVP and SWP Service Areas, proposed CVP Service Areas, and storage and export facilities (including potential modifications), within the Sacramento and San Joaquin watersheds (including external watersheds connected through facilities). The project area also includes potential improvements and developments of other water supply or power generation programs.

The CVP is Reclamation's largest federal reclamation project. Reclamation operates the CVP in coordination with the SWP, under the Coordinated Operation Agreement between the federal government and the State of California (authorized by Pub. L. 99–546). The CVP and SWP operate pursuant to water rights permits and licenses issued by the State Water Resources Control Board. The CVP and SWP water rights allow appropriation of water by directly using and/or diverting water to storage for later withdrawal and use, or use and re-diversion to storage further downstream for later consumptive use. Among the conditions of their water rights, are requirements of the projects to either bypass or withdraw water from storage and to help satisfy specific water quality, quantity and operations criteria in source rivers and within the Delta. The CVP and SWP are currently operated in accordance with the 2008 USFWS Biological Opinion and the 2009 NMFS Biological Opinion, both of which concluded that the coordinated long-term operation of the CVP and SWP, as proposed in Reclamation's 2008 Biological Assessment, was likely to jeopardize the continued existence of listed species and destroy or adversely modify designated critical habitat. Both Biological Opinions included Reasonable and Prudent Alternatives designed to allow the CVP and SWP to continue operating without causing jeopardy to listed species or destruction or adverse modification to designated critical habitat. Reclamation accepted and then began Project operations consistent with the USFWS and NMFS Reasonable and Prudent Alternatives.

V. Alternatives To Be Considered

As required by NEPA, the EIS will include and consider a proposed action and a reasonable range of alternatives, including a No Action Alternative. Reasonable alternatives to the proposed action may include a combination of:

- Operations in coordination with new or proposed facilities to increase water supply deliveries and marketable power generation:
  - Actions that increase storage capacity upstream of the Delta for the CVP
  - Actions that increase storage capacity south of the Delta
  - Actions that increase export capabilities through the Delta
  - Actions to generate additional water or that improve and optimize the utilization of water such as desalinization, water conservation, or water reuse
- Modified operations of the CVP and SWP with and without new or proposed facilities including possible requests to modify environmental and regulatory requirements, and sharing of water and responsibilities in the Delta
- Habitat restoration and ecosystem improvement projects intended to increase fish populations which would be factored into the regulatory process
- Modification to existing state and federal facilities to reduce impacts to listed species

The Final EIS will identify an agency-preferred alternative.

Alternatives could affect all or various facilities and/or operations of the CVP, and may also include actions that affect SWP and local project operations. Reclamation will engage with California Department of Water Resources and local stakeholders in developing the proposed action and reasonable alternatives. Reclamation will also consider reasonable alternatives identified through the scoping process.

The proposed EIS will address operations of the CVP and SWP, operations in coordination with new or proposed projects, and habitat restoration in the Project area, designed to increase operational flexibility, increase water supply for CVP

authorized purposes, and/or increase power marketability.

VI. Indian Trust Assets and Environmental Justice

There are Indian Trust Asset issues and there may be environmental justice issues related to the Trinity River, as well as potential impacts within other areas.

VII. Statutory Authority

NEPA [42 U.S.C. 4321 *et seq.*] requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. As required by NEPA, Reclamation will develop an EIS which will analyze the potential direct, indirect, and cumulative environmental effects that may result from the implementation of the proposed action and alternatives.

The Rivers and Harbors Act of August 26, 1937 (50 Stat. 844, as amended and supplemented) provides for operation of the CVP.

VIII. Request for Comments

The purposes of this notice are:

- To advise other agencies, CVP and SWP water users and power customers, affected tribes, and the public of our intention to gather information to support the preparation of an EIS;
- To obtain suggestions and information from other agencies, interested parties, and the public on the scope of alternatives and issues to be addressed in the EIS; and
- To identify important issues raised by the public related to the development and implementation of the proposed action.

Reclamation invites written comments from interested parties to ensure that the full range of alternatives and issues related to the development of the proposed action are identified. Comments during this stage of the scoping process will only be accepted in written form. Written comments may be submitted by mail, electronic mail, facsimile transmission or in person to the contact listed in the **ADDRESSES** section of this notice. Comments and participation in the scoping process are encouraged.

IX. Public Disclosure

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

X. How To Request Reasonable Accommodation

If special assistance is required, please contact Katrina Harrison at the address provided above or TDD 916–978–5608. Information regarding this proposed action is available in alternative formats upon request.

Dated: December 20, 2017.

David Murillo,

Regional Director, Mid-Pacific Region.

[FR Doc. 2017–28215 Filed 12–28–17; 8:45 am]

BILLING CODE 4332–90–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 Subsea Telecommunications Systems and Components Thereof, DN 3283*; 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 Neptune Subsea LP Ltd.; Neptune Subsea Acquisitions Ltd.; and Xtera, Inc. on December 22, 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 subsea telecommunications systems and components thereof. The complaint names as respondents Nokia Corporation, Finland; Nokia Solutions and Networks B.V., the Netherlands; Nokia Solutions and Networks Oy, Finland; Alcatel-Lucent Submarine Networks SAS, France; Nokia Solutions and Networks US LLC, Phoenix, AZ; NEC Corporation, Japan; NEC Networks & System Integration Corporation, Japan; and NEC Corporation of America, Irving, TX. 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. 3283'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electonic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 26, 2017.

Katherine M. Hiner,

Supervisory Attorney.

[FR Doc. 2017–28197 Filed 12–28–17; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1016]

Certain Access Control Systems and Components Thereof Notice of Commission Determination To Review in Part a Final Initial Determination; Schedule for Filing Written Submissions; Extension of Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on October 23, 2017, finding a violation of section 337 of the Tariff Act of 1930, as amended, as to claims 1–4, 7–12, 15, and 16 of U.S. Patent No. 7,161,319 (''the '319 patent'') and no violation of section 337 as to claim 34 of U.S. Patent No. 7,339,336 (''the '336 patent''). The Commission has also determined to extend the target date to March 2, 2018.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–3042. 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 (*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 August 9, 2016, based on a complaint filed by The Chamberlain Group, Inc. of Elmhurst, Illinois (''Chamberlain'' or ''CGI''). 81 FR 52713 (Aug. 9, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (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 access control systems and components thereof by reason of infringement of one or more of claims 1, 10–12, and 18–25 of U.S. Patent No. 7,196,611 (''the '611 patent''); claims 1–4, 7–12, 15, and 16 of the '319 patent; and claims 7, 11–13,15–23, and 34–36 of the '336 patent. *Id.* The notice of investigation named the following respondents: Techtronic Industries Company Ltd. of Tsuen Wan, Hong Kong; Techtronic Industries North America Inc. of Hunt Valley, Maryland; One World Technologies, Inc. of Anderson, South Carolina; OWT Industries, Inc. of Pickens, South Carolina; ET Technology (Wuxi). Co., Ltd. of Zhejiang, China (collectively, ''Respondents''); and Ryobi Technologies Inc. of Anderson, South Carolina (''Ryobi''). *Id.* The Office of Unfair Import Investigations is not a party to the investigation.

On October 27, 2016, the Commission determined not to review the ALJ's order (Order No. 4) granting a motion to amend the Notice of Investigation to include the following two additional respondents: Techtronic Trading Limited of Kwai Chung, Hong Kong; and Techtronic Industries Factory Outlets Inc., d/b/a Direct Tools Factory Outlet of Anderson, South Carolina (collectively, ''Techtronic''). *See* Order No. 4, Comm'n Notice of Non-Review (Oct. 27, 2016).

On November 7, 2016, the Commission determined not to review the ALJ's order (Order No. 6) terminating the investigation as to Ryobi. *See* Order No. 6, Comm'n Notice of Non-Review (Nov. 7, 2016).

On March 15, 2017, the Commission determined not to review the ALJ's order (Order No. 15) granting a motion to terminate the investigation as to Techtronic. Order No. 15, Comm'n Notice of Non-Review (Mar. 15, 2017).

On March 20, 2017, the Commission determined not to review the ALJ's order (Order No. 28) granting a motion to terminate the investigation as to the '611 patent. Order No. 28; Comm'n Notice of Non-Review (Mar. 20, 2017).

On March 27, 2017, the ALJ issued Order No. 23 granting Respondents' motion for summary determination of non-infringement of the asserted claims of the '319 patent, stemming from the ALJ's construction of the claim term ''wall console'' to mean ''a wall-mounted control unit including a passive infrared detector.'' *See* Order No. 13 (*Markman* Order at 80).

The ALJ held an evidentiary hearing from May 1, 2017 through May 3, 2017, on issues solely relating to the '336 patent.

On May 3, the Commission determined to review Order No. 23 that granted Respondents' motion for summary determination of non-infringement of the '319 patent. On review, the Commission determined to construe ''wall console'' as a ''wall-mounted control unit,'' vacated Order No. 23, and remanded the investigation as to the '319 patent to the ALJ for further proceedings. *See* Comm'n Op. (May 5, 2017) at 1–2.

The ALJ held a second evidentiary hearing from July 12, 2017, through July 13, 2017, on issues relating to the '319 patent.

On November 9, 2017, the Commission determined not to review the ALJ's order (Order No. 36) granting a motion to terminate the investigation as to certain accused products and claims 19–23 of the '336 patent. Order No. 36; Comm'n Notice of Non-Review (Nov. 9, 2017).

On October 23, 2017, the ALJ issued his final ID, finding a violation of section 337 by Respondents in connection with claims 1–4, 7–12, 15, and 16 of the '319 patent. Specifically, the ALJ found that the Commission has subject matter jurisdiction, *in rem* jurisdiction over the accused products, and *in personam* jurisdiction over Respondents. ID at 24–26. The ALJ also found that Chamberlain satisfied the importation requirement of section 337 (19 U.S.C. 1337(a)(1)(B)). *Id.* The ALJ further found that the accused products directly infringe asserted claims 1–4, 7–12, 15, and 16 of the '319 patent, and that Respondents induce infringement of those claims. *See* ID at 130–141, 144. The ALJ also found that Respondents failed to establish that the asserted claims of the '319 patent are invalid for obviousness. ID at 151–212. With respect to the '336 patent, the ALJ found that Respondents do not directly or indirectly infringe asserted claim 34 and that clam 34 is not invalid as obvious. ID at 72–74, 105–119. The ALJ further found that claims 15, 19, and 34 of the '336 patent are invalid under 35 U.S.C. 101 for reciting unpatentable subject matter and that claim 15 is invalid for anticipation but that claims 12, 14, and 19 have not been shown invalid for anticipation. ID at 74–103. Finally, the ALJ found that Chamberlain established the existence of a domestic industry that practices the asserted patents under 19 U.S.C. 1337(a)(2). *See* ID at 257–261, 288–294.

Also on October 23, 2017, the ALJ issued his recommended determination on remedy and bonding. Recommended Determination on Remedy and Bonding (''RD''). The ALJ recommends that in the event the Commission finds a violation of section 337, the Commission should issue a limited exclusion order prohibiting the importation of Respondents' accused products and components thereof that infringe the asserted claims of the '319 patent. RD at 2. The ALJ also recommends issuance of cease and desist orders against respondents Techtronic Industries Company Ltd., Techtronic Industries North America Inc., One World Technologies, Inc., and OWT Industries, Inc. based on the presence of commercially significant inventory in the United States. RD at 5. With respect to the amount of bond that should be posted during the period of Presidential review, the ALJ recommends that the Commission set a bond in the amount of zero (*i.e.,* no bond) during the period of Presidential review. RD at 6–7.

On November 6, 2017, Respondents filed a petition for review as to the '319 patent and a contingent petition for review as to the '336 patent. *See* Respondents' Petition for Review. Also on November 6, 2017, Chamberlain filed a petition for review of the ID, primarily challenging the ALJ's findings of no violation of section 337 as it pertains to the '336 patent. *See* Complainant's Petition for Review of Initial Determination on Violation of Section 337.

On November 14, 2017, Chamberlain and Respondents filed their respective responses to the petitions for review. *See* Complainant's Response to Respondents' Petition for Review of Initial Determination on Violation of Section 337; Respondents' Response to Complainant's Petition for Review.

Having examined the record of this investigation, including the ALJ's final ID, the petition for review, and the response thereto, for the '319 patent the Commission has determined to review (1) the ID's finding that a combination of prior art references Doppelt, Jacobs, and Gilbert fail to render the asserted claims obvious; and (2) the ID's finding that a combination of prior art references Matsuoka, Doppelt, and Eckel fail to render the asserted claims obvious. For the '336 patent the Commission has determined to review (1) the ID's finding that claim 34 recites ineligible patent subject matter under 35 U.S.C. § 101; and (2) the ID's finding that Pruessel, either alone or in combination with Koestler, fails to render claim 34 obvious.

In connection with its review, the Commission is interested in responses to the following question:

1. Given the ALJ's finding that Matsuoka, Doppelt, and Eckel are analogous references to the '319 patent, please discuss whether they disclose all elements of the asserted claims of the '319 patent. In particular please discuss motivations to combine them, if any.

2. Discuss whether Pruessel, either alone or in combination with Koestler, renders claim 34 of the '336 patent obvious.

The parties are requested to brief only the discrete issues above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC

Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants are requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the patent expires and the HTSUS numbers under which the accused products are imported. Complainants are further requested to supply the names of known importers of the Respondents' products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on January 5, 2018. Reply submissions must be filed no later than the close of business on January 12, 2018. Opening submissions are limited to 50 pages. Reply submissions are limited to 25 pages. Such submissions should address the ALJ's recommended determinations on remedy and bonding. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1016'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission has also determined to extend the target date for completion of the above-captioned investigation to March 2, 2018.

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.

[1] All contract personnel will sign appropriate nondisclosure agreements.

Issued: December 22, 2017.

Katherine M. Hiner,

Supervisory Attorney.

[FR Doc. 2017–28135 Filed 12–28–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on ROS-Industrial Consortium-Americas

Notice is hereby given that, on November 30, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its Membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Deere & Company, Moline, IL; Siemens Corporation, Berkeley, CA; Modbot Inc., San Francisco, CA; and Rethink Robotics, Inc., Boston, MA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and RIC-Americas intends to file additional written notifications disclosing all changes in membership or planned activities.

On April 30, 2014, RIC-Americas filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on October 18, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 13, 2017 (82 FR 52319).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–28130 Filed 12–28–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on December 5, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. (''NCOIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Marc Fiammante (individual member), Alpes Maritimes, FRANCE, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on July 11, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 15, 2017 (82 FR 38711).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–28129 Filed 12–28–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: AMPAC Fine Chemicals LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 27, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on October 28, 2016, AMPAC Fine Chemicals Virginia, LLC, 2820 North Normandy Drive, Petersburg, Virginia 23805–2380 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Methylphenidate ...	1724	II
Levomethorphan ...	9210	II
Levorphanol	9220	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Dated: December 15, 2017.

Demetra Ashley,

Acting Assistant Administrator.

[FR Doc. 2017–28178 Filed 12–28–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: ABBVIE LTD; Correction

ACTION: Notice; correction.

SUMMARY: The Drug Enforcement Administration (DEA) published a document in the **Federal Register** of December 1, 2017, concerning a notice of application that inadvertently misstated what the firm plans to do with imported tapentadol.

Correction

In the **Federal Register** of December 1, 2017, in FR Doc. 2017–25921 (82 FR 230), on page 230, in the second column, the last paragraph, correct the first sentence to read: The company plans to import bulk tapentadol (9780) to manufacture dosage form tapentadol (9780) for distribution to its customers.

Demetra Ashley,

Acting Assistant Administrator.

[FR Doc. 2017–28176 Filed 12–28–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Cambrex High Point, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 27, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on November 22, 2016, Cambrex High Point, Inc., 4180 Mendenhall Oaks Parkway, High Point, North Carolina 27265 applied to be registered as a bulk

manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Oxymorphone	9652	II
Noroxymorphone ..	9668	II

The company plans to manufacture the above-listed controlled substances in bulk for distribution to its customers.

Dated: December 15, 2017.

Demetra Ashley,

Acting Assistant Administrator.

[FR Doc. 2017–28177 Filed 12–28–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On December 22, 2017, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Middle District of Louisiana in the lawsuit entitled *United States et al.* v. *Sid Richardson Carbon, LTD.,* (M.D. La.), Civil Case. No. 3:17-cv-01792–SDD–RLB.

In this civil enforcement action under the federal Clean Air Act (''Act''), the United States, the Louisiana Department of Environmental Quality, and the State of Texas allege that Sid Richardson Carbon, LTD. (''Defendant''), failed to comply with certain requirements of the Act intended to protect air quality at three carbon black manufacturing facilities in Addis, Louisiana and Borger and Big Spring, Texas. The complaint seeks injunctive relief and civil penalties for violations of the Clean Air Act's Prevention of Significant Deterioration (''PSD'') provisions, 42 U.S.C. 7470–92; the Act's Nonattainment New Source Review provisions, 42 U.S.C. 7501–7515; the Act's National Emissions Standards for Hazardous Air Pollutants, 42 U.S.C. 7412; and various Clean Air Act implementing regulations. The complaint alleges that Defendant failed to obtain appropriate permits and failed to install and operate required pollution control devices to reduce emissions of sulfur dioxide (''SO_2''), nitrogen oxides (''NO_X''), and/or particulate matter (''PM'') at the Addis, Borger, and Big Spring facilities.

The proposed Consent Decree would resolve violations for certain provisions of the Act at the three facilities, and would require the Defendant to reduce harmful SO_2, NO_X, and PM emissions through the installation and operation of pollution controls. The Defendant will also spend $490,000 to fund environmental mitigation projects that will further reduce emissions and benefit communities adversely affected by the pollution from the facilities, and pay a civil penalty of $999,000.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Sid Richardson Carbon, LTD.,* (M.D. La.), D.J. Ref. No. 90–5–2–1–10663. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/consent-decrees.* The Justice Department will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $26.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas P. Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–28164 Filed 12–28–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

On December 21, 2017, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of California in the lawsuit entitled *United States et al.* v. *Valley Wood Preserving, Inc., et al.,* Civil Action No. 1:94–cv–05984.

This case involves claims under CERCLA relating to the costs of remediating soil and groundwater contamination at the Valley Wood Preserving Site in Turlock, California (the ''Site''). Under the proposed Consent Decree, Valley Wood Preserving, Inc. agrees to conduct the remaining cleanup work at the Site and to pay EPA's future response costs incurred in connection with the Site. In exchange, Valley Wood Preserving, Inc. receives a covenant not to sue under Sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''). A group of current and former shareholders and employees of Valley Wood Preserving, Inc.—Lynn Shurtliff, Edgar J. Langley, Cordes J. Langley, Catherine E.L. Elawadly, Edith E.. Langley, Joyce Logsdon, the Estate of Michael H. Logsdon, the Marie J. Langley Revocable Trust, and Robert Schmidt—are also parties to the proposed Consent Decree, and also receive covenants not to sue under CERCLA and RCRA.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *Valley Wood Preserving, Inc., et al.,* D.J. Ref. No. 90–11–3–835. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $60.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $27.50.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–28141 Filed 12–28–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

On December 21, 2017, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of California that would resolve the lawsuit entitled *United States* v. *Coast Wood Preserving, Inc.,* Civil Action No. 1:17–cv–01720. The proposed Consent Decree was lodged in the related case *State of California Department of Toxic Substances Control and Toxic Substances Control Account* v. *Coast Wood Preserving, et al.,* Civil Action No. CV–F–96–6055, which would also be resolved by the proposed Consent Decree. The Department of Justice has filed a motion requesting that these two cases be considered together by the court for purposes of settlement.

This case involves claims under CERCLA relating to the costs of remediating soil and groundwater contamination at the Coast Wood Preserving Site in Ukiah, California (the ''Site''). Under the proposed Consent Decree, Coast Wood Preserving, Inc. agrees to conduct the remaining cleanup work at the Site, to pay $57,450 for EPA's past response costs incurred in connection with the Site, and to pay any such costs EPA incurs in the future. In exchange, Coast Wood Preserving, Inc. receives a covenant not to sue under Sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''). A group of current and former shareholders and employees of Coast Wood Preserving, Inc.—the Michael Logsdon Wood Trust, the Schmidt Wood Trust, Joyce Logsdon, Eugene E. Pietila, and Robert Schmidt—are also parties to the proposed Consent Decree, and also receive covenants not to sue under CERCLA and RCRA.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Coast Wood Preserving, Inc.,* D.J. Ref. No. 90–11–3–835/3. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $177.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $28.25.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–28143 Filed 12–28–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification of Consent Decree Under the Clean Air Act

On December 22, 2017, the Department of Justice lodged a proposed modification to a Consent Decree with the United States District Court for the Western District of Louisiana in *United States and the Louisiana Department of Environmental Quality* v. *Cabot Corporation,* Civil Case No. 13–3095 (W.D. La.).

The original Consent Decree was entered on March 13, 2014, and resolved civil claims under the Clean Air Act at the Defendant's three carbon black manufacturing facilities located in Louisiana and Texas. The Consent Decree imposed various pollution control requirements on Defendant's facilities, including requirements related to sulfur dioxide, nitrogen oxides, and particulate matter emissions. At the Canal and Ville Platte facilities in Louisiana, these pollution control requirements included, among other requirements, installation of Wet Gas Scrubber (''WGS'') systems designed to reduce sulfur dioxide emissions, and Selective Catalytic Reduction (''SCR'') systems to reduce nitrogen oxide emissions. The WGS systems are also expected to result in an ancillary reduction in particulate matter emissions. On May 5, 2017, the Court entered a First Modification of Consent Decree extending certain compliance deadlines in the Consent Decree.

The parties have now agreed to further modify certain Consent Decree deadlines. The modification resolves issues regarding the feasibility of the affected deadlines and resolves a potential dispute between the parties concerning them. The modification does not change Defendant's ultimate obligation to install and operate pollution controls at its facilities.

The publication of this notice opens a period for public comment on the proposed further modification to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the Louisiana Department of Environmental Quality* v. *Cabot Corporation,* Civil Case No. 13–3095 (W.D. La.), D.J. Ref. No. 90–5–2–1–10355. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611

During the public comment period, the proposed modifications to the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed modifications upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–

ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas P. Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural.

[FR Doc. 2017–28105 Filed 12–28–17; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–014]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of a request for comments regarding a new information collection.

SUMMARY: We are proposing a new generic information collection request (generic ICR) entitled Generic Clearance for NARA Public and Education Program Registration. This notice announces that we plan to submit this generic ICR plan to OMB for approval under the Paperwork Reduction Act and solicits comments on specific aspects of the collection plan. We will use this to collect information from individuals registering for an education or other program at NARA.

DATES: We must receive written comments on or before February 27, 2018.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, by fax to 301–837–0319, or by email to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301–837–1694 or fax at 301–837–0319 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite comments on: (a) Whether collecting this information is necessary for proper performance of the agency's functions, including whether the information will have practical utility; (b) the accuracy of our estimate of the information collection's burden on respondents; (c) ways to enhance the quality, utility, and clarity of the information we propose to collect; (d) ways to minimize the burden on respondents of collecting the information, 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. Burden means the total time, effort, or financial resources people need to provide the information, including time to review instructions, process and maintain the information, search data sources, and respond.

Explanation of Generic ICRs

A generic ICR is a request for OMB to approve a plan for conducting more than one information collection using very similar methods when (1) we can evaluate the need for and the overall practical utility of the data in advance, as part of the review of the proposed plan, but (2) we cannot determine the details of the specific individual collections until a later time. Most generic clearances cover collections that are voluntary, low-burden (based on a consideration of total burden, total respondents, or burden per respondent), and uncontroversial. This notice, for example, describes a general plan to gather registration information from members of the public who wish to participate in programs at NARA, through a series of registration forms used for a variety of current and future education programs at different facilities. As part of this plan, we construct, distribute, and use the registration forms in a similar manner, but customize each one for the type and location of the program involved.

Because we seek public comment on the plan, we do not need to seek public comment on each specific information collection that falls within the plan when we later develop the individual information collection. This saves the Government time and burden, and it streamlines our ability to gather registration information so we can provide more responsive programs. However, we still submit each specific information collection (*e.g.,* each form) to OMB for review, in accordance with the terms of clearance set upon approval of the plan. OMB assesses the individual forms for PRA requirements, ensures that they fit within the scope of this generic ICR plan, and includes the specific forms in the PRA public docket prior to our use of them.

Specifics on This Information Collection

Title: Generic Clearance for NARA Public and Education Program Registration.

Description: This generic information collection request allows us to gather information from those members of the public who wish to register for public events, education programs, tours, and training sponsored by NARA. We will not use these forms for quantitative information collections designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

Purpose: Collecting this information allows us to register participants for NARA's public, education, and training programs throughout the agency's locations, and to collect and process credit card payments. The information is also used to develop mailing lists for distribution of education-related information and special NARA training events, based on the request or expressed interest of the person registering. Advance registration allows NARA offices to schedule the tours, training, and events to maximize the participants' time and to accommodate the participants in the space. The information collected from registrants will help ensure that users have an effective, efficient, and satisfying experience with our programs, in compliance with E.O. 12862. Without the ability to collect this information, NARA would not be able to effectively organize events, resulting in possibly turning away members of the public from events that might be overbooked.

Conditions: We will submit a specific information collection for approval under this generic clearance only if it meets the following conditions:

- The collection is voluntary;
- The collection is low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for both the respondents and the Federal Government;
- The collection is non-controversial and does not raise issues of concern to other Federal agencies;
- Personally identifiable information (PII) is collected only to the extent necessary and is retained only for the period of time required by NARA records schedules;
- Information gathered will be used only internally for program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially

informing influential policy decisions; and

• Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

As a general matter, information collections under this generic collection request will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. In this notice, NARA solicits comments concerning the following information collection:

Title: Generic Clearance for NARA Public and Education Program Registration.

OMB number: 3095–00XX.

Agency form numbers: N/A.

Type of review: Regular.

Projected affected public: Individuals or households, business or other for-profit, not-for-profit institutions, schools, Federal, state, local, or tribal government organizations.

Projected average estimates for the next three years:

Average expected annual number of forms: 6.

Average projected number of respondents per form: 1.

Estimated number of respondents in total: 1,500.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 250 hours.

Abstract: We offer a variety of education programs, public programs, tours, training, and events throughout the country. In order to register participants, we use various online and paper registration forms. Advance registration allows NARA offices to schedule the tours, training, and events to maximize the participants' time and to accommodate the participants in the space.

Kimberly Keravuori,

NARA Regulatory Officer.

[FR Doc. 2017–28137 Filed 12–28–17; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–013]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed extension request.

SUMMARY: NARA proposes to request an extension from the Office of Management and Budget (OMB) of a currently approved information collection used when veterans or other authorized individuals request information from or copies of documents in military service records. We invite you to comment on this proposed information collection.

DATES: We must receive written comments on or before February 27, 2018.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, fax them to 301–837–0319, or email them to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301–837–1694 or fax at 301–837–0319 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for NARA to properly perform its functions; (b) NARA's estimate of the burden of the proposed information collections and its accuracy; (c) ways NARA could enhance the quality, utility, and clarity of the information it collects; (d) ways NARA could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether these collections affects small businesses. We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record. In this notice, NARA solicits comments concerning the following information collection:

Title: Request Pertaining to Military Records.

OMB number: 3095–0029.

Agency form number: SF 180 & NA Form 13176.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 1,028,769.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel record).

Estimated total annual burden hours: 85,731 hours.

Abstract: The authority for this information collection is contained in 36 CFR 1233.18(d). In accordance with rules issued by the Department of Defense (DOD) and Department of Homeland Security (DHS, US Coast Guard), NARA's National Personnel Records Center (NPRC) administers military service records of veterans after discharge, retirement, and death. When veterans and other authorized individuals request information from or copies of documents in military service records, they must provide in forms or in letters certain information about the veteran and the nature of the request. Federal agencies, military departments, veterans, veterans' organizations, and the general public use Standard Form (SF) 180, Request Pertaining to Military Records, in order to obtain information from military service records stored at NPRC. Veterans and next-of-kin of deceased veterans can also use eVetRecs (*http://www.archives.gov/research_room/vetrecs/*) to order copies. A new form, NA Form 13176, Status Update to Request for Military Service Records, was added to allow the veteran or other authorized individuals to follow-up on their request.

Kimberly Keravuori,

NARA Regulatory Officer.

[FR Doc. 2017–28136 Filed 12–28–17; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313, 50–368, 72–13, 50–458, 72–49, 50–382, 72–75, 50–416, and 72–50; NRC–2017–0239]

Arkansas Nuclear One, Units 1 and 2; Grand Gulf Nuclear Station, Unit 1; River Bend Station, Unit 1; and Waterford Steam Electric Station, Unit 3 Consideration of Approval of Transfer of Licenses and Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for direct and indirect transfer of licenses; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by Entergy Operations, Inc. (EOI, the licensee), acting on behalf of the subject licensees, as well as their parent companies and itself on September 21, 2017. The application seeks NRC approval of a direct and indirect transfer of licenses for Arkansas Nuclear One, Units 1 and 2 (ANO), possible indirect transfer regarding River Bend Station, Unit 1 (RBS), and Waterford Steam Electric Station, Unit 3 (Waterford), and direct transfer of antitrust responsibilities for Grand Gulf Nuclear Station, Unit 1 (GGNS). The NRC is also considering amending the facility operating licenses for administrative purposes to reflect the proposed transfers.

DATES: Comments must be filed by January 29, 2018. A request for a hearing must be filed by January 18, 2018.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0239. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Hearingdocket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Margaret W. O'Banion, Office of Nuclear Reactor Regulation, telephone: 301–415–1233, email: *Margaret.O'Banion@nrc.gov;* or L. John Klos, Office of Nuclear Reactor Regulation, telephone: 301–415–5136, email: *John.Klos@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0239 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0239.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for direct and indirect transfer of the licenses dated September 21, 2017 is available in ADAMS under Accession No. ML17268A213.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0239 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering the issuance of an order under § 50.80 of title 10 of the *Code of Federal Regulations* (10 CFR), approving the direct transfer of Renewed Facility Operating License Nos. DPR–51 and NPF–6 and the general license for the Independent Spent Fuel Storage Installation (ISFSI) facility for ANO, from the current owner, Entergy Arkansas, Inc. to a new limited liability company, Entergy Arkansas, LLC (EAL), and the indirect transfer of membership interests of EAL to an intermediate company, Entergy Utility Holding Company, LLC (EUHC), which will be the direct parent company of the licensees of ANO. Following approval of the proposed direct transfer of control of the license for ANO, EAL would acquire ownership of the facility and EOI would remain responsible for the operation and maintenance of ANO.

In addition, Entergy Mississippi, Inc. (EMI) is expected to undertake a similar asset transfer to a newly-formed subsidiary, the membership interests of which will be contributed to EUHC. EUHC is currently the sole member of Entergy Louisiana, LLC, the owner of RBS and Waterford. The above-described actions will result in additional members of EUHC, which may require NRC approval of the transfer of Facility Operating License Nos. NPF–47 and NPF–38 and the general license for the ISFSI facility for RBS and Waterford, if the NRC deems it necessary.

Lastly, the application seeks NRC approval of the direct transfer of antitrust responsibilities for GGNS from EMI to a newly-formed subsidiary named Entergy Mississippi, LLC.

The NRC is also considering amending the facility operating licenses for administrative purposes to reflect the proposed transfers.

No physical changes to ANO, RBS, Waterford, or GGNS, or operational changes are being proposed in the application.

The NRC's regulations at 10 CFR 50.80 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the direct transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the new parent company will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility, which does no more than conform the license to reflect the transfer action, involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 20 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 20 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)''

section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application,

participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated September 21, 2017.

Dated at Rockville, Maryland, this 26th day of December 2017.

For the Nuclear Regulatory Commission.

Lee J. Klos,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–28165 Filed 12–28–17; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before January 29, 2018.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: Interview Rating Tool.

OMB Control Number: 0420–0555.

Type of Request: Review/Re-Approve.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Estimated burden (hours) of the collection of information:

a. *Number of respondents:* 10,000.

b. *Frequency of response:* One time.

c. *Completion time:* 90 minutes.

d. *Annual burden hours:* 15,000 hours.

General description of collection: The Peace Corps will use the information as an integral part of the selection process to learn whether an applicant possesses the necessary characteristics and skills to serve as a Peace Corps Volunteer. The information will be used to determine if an invitation to serve will be issued.

Request for comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on December 21, 2017.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2017–28118 Filed 12–28–17; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before January 29, 2018.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: 2018–19 Campus Ambassadors Application.

OMB Control Number: 0420–xxxx.

Type of Request: New.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Estimated burden (hours) of the collection of information:

a. *Number of respondents:* 1000.

b. *Frequency of response:* One time.

c. *Completion time:* 20 minutes.

d. *Annual burden hours:* 333 hours.

General description of collection: The information will be used by Peace Corps Recruitment and the Office of University Programs to select student campus ambassadors. The application includes questions related to relevant experience as well as requests students upload a resume. The information requested—general information, questions related to the position and a student's resume—is a standard practice to determine the best candidates for the program.

Request for comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on December 21, 2017.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2017–28119 Filed 12–28–17; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for

review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before January 29, 2018.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: 2018–19 Campus Ambassadors Onboarding form.

OMB Control Number: 0420-xxxx.

Type of Request: New.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Estimated burden (hours) of the collection of information:

a. *Number of respondents:* 1000.

b. *Frequency of response:* One time.

c. *Completion time:* 10 minutes.

d. *Annual burden hours:* 167 hours.

General description of collection: The information will be used by the Office of University Programs to collect name, mailing address, school and t-shirt sizes to send out a promotional kit to students that have accepted our offer to become a campus ambassador.

Request for comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on December 21, 2017.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2017–28120 Filed 12–28–17; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before January 29, 2018.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 0420–0545.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Estimated burden (hours) of the collection of information:

Average Expected Annual Number of Activities: 13.

Annual Number of Respondents: 85,917.

Annual Responses: 85,917.

Frequency of Response: Once per request.

Average Minutes per Response: 26.

Annual Burden Hours: 28,197.

General Description of Collection: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on Peace Corps' services will be unavailable.

Peace Corps will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population.

This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Request for comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on December 21, 2017.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2017–28117 Filed 12–28–17; 8:45 am]

BILLING CODE 6051–01–P

U.S. OFFICE OF PERSONNEL MANAGEMENT

Notice of Submission for Approval: Questionnaire for Non-Sensitive Positions (SF 85)

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The National Background Investigation Bureau (NBIB), U.S. Office of Personnel Management (OPM) is notifying the general public and other Federal agencies that OPM is seeking Office of Management and Budget (OMB) approval of a revised information collection, Questionnaire for Non-Sensitive Positions (SF 85).

DATES: Comments are encouraged and will be accepted until January 29, 2018. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting U.S. Office of Personnel Management, NBIB, 1900 E Street NW, Washington, DC 20415, Attention: Donna McLeod or by electronic mail at *FISFormsComments@opm.gov.*

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1), OPM is providing an additional 30 days for public comments. OPM previously solicited comments for this collection, with a 60-day public comment period, at 82 FR 29948 (June 30, 2017).

This notice announces that OPM has submitted to OMB a request for review and clearance of a revised information collection, OMB number 3206–0261, Questionnaire for Non-Sensitive Positions (SF 85). The public has an additional 30-day opportunity to comment.

The SF 85 is completed by applicants for, or incumbents of, Federal Government civilian positions, or positions in private entities performing work for the Federal Government under contract. For applicants, the SF 85 is to be used only after a conditional offer of employment has been made, unless OPM has granted an exception to the agency to permit questioning for certain positions earlier. e-QIP (Electronic Questionnaires for Investigations Processing) is a web-based system application that houses the SF 85. A variable in assessing burden hours is the nature of the electronic application. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent is reduced when the respondent's personal history is not relevant to particular question, since the question branches, or expands for additional details, only for those persons who have pertinent information to provide regarding that line of questioning. Accordingly, the burden on the respondent will vary depending on whether the information collection relates to the respondent's personal history.

The 60-day **Federal Register** Notice published on June 30, 2017 (82 FR 29948). Comments were received from the National Treasury Employees Union (NTEU), an individual at the Federal Aviation Administration (FAA), and an individual from the U.S. Postal Inspection Service (USPIS). Comments were also provided on behalf of the Security, Suitability, and Credentialing Performance Accountability Council Program Management Office (PAC PMO).

From the PAC PMO a recommendation was submitted to modify the explanation provided in the 'Purpose of this Form' section to explain that responses provided on the SF 85P and the SF 86 may be compared with responses to previous SF 85 questionnaires. OPM accepted this comment and will update instructions to inform individuals completing the form that responses provided may be compared with responses provided on previous investigative questionnaires.

An individual from USPIS commented that Section 6, Your Identifying Information should include marital status/history, and the Sex/Gender question should be expanded to include transgender options. OPM did not accept these comments. Marital/Relationship section will remain in a separate section. Completion of the gender information on the questionnaire is based on the gender the applicant identifies with at the time when completing the application, which includes transgender individuals.

An individual from FAA commented to include in Section 9, Citizenship, a field to request the CIS number (A#) in the Naturalization Certificate. OPM did not accept this comment as a field currently exists to provide the CIS number.

An individual from FAA suggested to clarify instructions in Section 11, Where You Have Lived, to require the applicant to enter a full address (House

#, Street name, and identifier (Lane, Avenue, etc.)). OPM did not accept this comment as the current instructions already request this information.

An individual from USPIS commented that in Section 12, Where You Went to School, degree and diploma information should remain as part of the collection to comply with the Federal Investigative Standards (FIS). No changes were needed in response to this comment because the recommended change was included in the 60 day **Federal Register** Notice of proposed changes to the SF 85.

An individual from USPIS commented that separating Section 13b, Employment Activities—Former Federal Service, from the collection of other employment information could produce a duplication of information. OPM accepted this comment, will remove Section 13b, and will require reporting of former federal service employment in Section 13a, Employment Activities.

An individual from USPIS recommends removing Section 16, ''People Who Know You Well'', because the information is not required for the background investigation at this level. OPM accepted this comment and will remove Section 16.

NTEU commented that they do not object to the addition of Section 17, Police Record, but believes that OPM requests information in this proposed section without sufficient justification. Individuals would be required to report convictions that were expunged under federal or state law or otherwise stricken from court records. It would also, in direct contrast to the current OF–306, require individuals to report charges that were dismissed. The information that the section would require, moreover, includes information about charges and proceedings (regardless of the outcome) that occurred when an individual was a minor, even if the record in the matter is under seal. OPM did not accept this comment because the questions are designed to elicit information regarding criminal history record information, to permit the individual to explain the circumstances of offenses or charges, and to obtain details to assist in locating and obtaining records for the background investigation. Collecting criminal record information from the individual provides efficiency and affords the individual the opportunity to provide contextual details about conduct. Such details are needed by agencies in applying suitability criteria and/or assessing whether granting a PIV will present an unacceptable risk to people, property, and/or information systems.

An individual from USPIS commented that in the section regarding Police Record, an applicant should be asked whether they have ever been arrested or used drugs, or that information should be collected specifically regarding the past 5 or 10 years. OPM did not accept this comment because information relating to drug related arrests is already collected in the Police Record section and information regarding drug use for a specific period is collected in Section 17, Illegal Use of Drugs and Drug Activity.

A recommendation was received from the PAC PMO to require collection of information regarding alcohol abuse based on the suitability factor identified in 5 CFR 731. OPM did not accept this change at this time, but will consider the modification as part of an additional review to occur later.

Analysis

Agency: NBIB, U.S. Office of Personnel Management.

Title: Questionnaire for Non-Sensitive Positions (SF 85).

OMB Number: 3206–0261.

Affected Public: The SF 85 is an information collections completed by applicants for, or incumbents of, Federal Government civilian positions, or positions in private entities performing work for the Federal Government under contract. The SF 85 will be used by the Federal Government in conducting background investigations and reinvestigations of persons under consideration for, or retention of, non-sensitive positions. The form may also be used by agencies in determining whether a subject performing work for, or on behalf of, the Government under a contract, should be deemed eligible for logical or physical access. For applicants, the SF 85 is to be used only after a conditional offer of employment has been made, unless OPM has granted an exception.

Number of Respondents: 55,040.

Estimated Time per Respondent: 120 minutes.

Total Burden Hours: 110,080.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–28203 Filed 12–28–17; 8:45 am]

BILLING CODE 6326–53–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required:* December 29, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 22, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 56 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–86, CP2018–128.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28109 Filed 12–28–17; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32952; 812–14805]

Validea Capital Management, LLC, et al.; Notice of Application

December 26, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the

Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds.

APPLICANTS: Validea Capital Management, LLC (the ''Initial Adviser''), a Connecticut limited liability company registered as an investment adviser under the Investment Advisers Act of 1940; ETF Series Solutions (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series; and Quasar Distributors, LLC (the ''Distributor''), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

FILING DATE: The application was filed on July 27, 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 January 19, 2018 and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: the Initial Adviser, 363 Ridgewood Road West Hartford, Connecticut 06107; the Trust, 615 East Michigan Street Milwaukee, Wisconsin 53202; the Distributor, 777 East Wisconsin Avenue, 6th Floor, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Benjamin Kalish, Attorney-Advisor, at (202) 551–7361; or Parisa Haghshenas, Branch Chief, at (202) 551–6723 (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 website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond closely to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of an Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in

[1] Applicants request that the order apply to the new series of the Trust and any additional series of the Trust, and any other open-end management investment company or series thereof (each, included in the term ''Fund''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.

[2] Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2017–28166 Filed 12–28–17; 8:45 am]

BILLING CODE 8011–01–P

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15414 and #15415; ALASKA Disaster Number AK–00037]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4351–DR), dated 12/20/2017.

Incident: Severe Storm.

Incident Period: 09/28/2017 through 09/30/2017.

DATES: Issued on 12/20/2017.

Physical Loan Application Deadline Date: 02/19/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 09/20/2018.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/20/2017, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: North Slope Borough.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.500
Non-Profit Organizations Without Credit Available Elsewhere ...	2.500
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere ...	2.500

The number assigned to this disaster for physical damage is 15414B and for economic injury is 154150.

(Catalog of Federal Domestic Assistance Number 59008)

Jerome Edwards,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2017–28162 Filed 12–28–17; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2017–0067]

Rate for Assessment on Direct Payment of Fees to Representatives in 2018

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: We are announcing that the assessment percentage rate under the Social Security Act (Act), is 6.3 percent for 2018.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Blair, Associate General Counsel for Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401.

Phone: (410) 965–3157, email *Jeff.Blair@ssa.gov.*

SUPPLEMENTARY INFORMATION: A claimant may appoint a qualified individual as a representative to act on his or her behalf in matters before the Social Security Administration (SSA). If the claimant is entitled to past-due benefits and was represented either by an attorney or by a non-attorney representative who has met certain prerequisites, the Act provides that we may withhold up to 25 percent of the past-due benefits and use that money to pay the representative's approved fee directly to the representative.

When we pay the representative's fee directly to the representative, we must collect from that fee payment an assessment to recover the costs we incur in determining and paying representatives' fees. The Act provides that the assessment we collect will be the lesser of two amounts: A specified dollar limit; or the amount determined

by multiplying the fee we are paying by the assessment percentage rate. (Sections 206(d), 206(e), and 1631(d)(2) of the Act, 42 U.S.C. 406(d), 406(e), and 1383(d)(2).)

The Act initially set the dollar limit at $75 in 2004 and provides that the limit will be adjusted annually based on changes in the cost-of-living. (Sections 206(d)(2)(A) and 1631(d)(2)(C)(ii)(I) of the Act, 42 U.S.C. 406(d)(2)(A) and 1383(d)(2)(C)(ii)(I).) The maximum dollar limit for the assessment currently is $93, as we announced in the **Federal Register** on October 30, 2017 (82 FR 50211).

The Act requires us each year to set the assessment percentage rate at the lesser of 6.3 percent or the percentage rate necessary to achieve full recovery of the costs we incur to determine and pay representatives' fees. (Sections 206(d)(2)(B)(ii) and 1631(d)(2)(C)(ii)(II) of the Act, 42 U.S.C. 406(d)(2)(B)(ii) and 1383(d)(2)(C)(ii)(II).)

Based on the best available data, we have determined that the current rate of 6.3 percent will continue for 2018. We will continue to review our costs for these services on a yearly basis.

Michelle King,

Deputy Commissioner for Budget, Finance, and Management.

[FR Doc. 2017–28218 Filed 12–28–17; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0387; FMCSA–2016–0002]

Qualifications of Drivers; Applications for Exemptions; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: The FMCSA announces its response to public comments regarding the granting of exemptions from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). Since February 2013, FMCSA has granted a number of exemptions and published numerous **Federal Register** notices requesting public comment on additional exemption applications. This notice responds to the substantive comments we received and announces our intention to continue granting additional exemptions.

DATES: This notice is applicable on December 29, 2017.

ADDRESSES: You may search background documents or comments to the docket for this notice, identified by docket numbers FMCSA–2014–0387 and FMCSA–2016–0002, by visiting the:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for reviewing documents and comments. *Regulations.gov* is available electronically 24 hours each day, 365 days a year; or
- *DOT Docket Management Facility (M–30):* U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions about viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the safety regulations if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The current provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) concerning hearing state that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

The hearing standard under 49 CFR 391.41(b)(11) was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

On May 25, 2012, FMCSA published a notice requesting public comment on the application from the National Association of the Deaf (NAD) for an exemption from the regulatory requirement in 49 CFR 391.41(b)(11) on behalf of 45 deaf drivers (77 FR 31423). The Agency received 570 comments in response to this notice, and 40 of the 45 applicants were granted exemptions (78 FR 7479). Since that time, FMCSA has granted more than 300 hearing exemptions to individuals who do not meet the hearing standard. In doing so, FMCSA has published numerous **Federal Register** notices announcing receipt of hearing exemption applications and requesting public comment.

On September 21, 2015, FMCSA published a notice of receipt of applications from 14 individuals requesting an exemption from the hearing requirement to operate a CMV in interstate commerce (80 FR 57043). The Agency requested comments from all interested parties on whether a driver who cannot meet the hearing standard should be permitted to operate a CMV in interstate commerce. Further, the Agency requested comments on whether a driver who cannot meet the hearing standard should be limited to operating only certain types of vehicles in interstate commerce, for example, vehicles without airbrakes. The public comment period ended on October 21, 2015, and four comments were received, two of which were from drivers in support of hearing exemptions. The other two commenters were the Commercial Vehicle Training Association (CVTA) and the President of the Iowa Association of the Deaf.

On August 1, 2016, FMCSA published a notice of receipt of applications from 33 individuals requesting an exemption from the hearing requirement to operate a CMV in interstate commerce (81 FR 50594). The Agency requested comments from all interested parties on whether a driver who cannot meet the hearing standard should be permitted to operate a CMV in interstate commerce. The public comment period ended on August 31, 2016, and one comment was received from the Florida Department of Highway Safety and Motor Vehicles.

II. Discussion of Comments Received

Below is a composite discussion of comments received in response to the notices identified above. The CVTA stated that FMCSA should not grant

exemptions to hard of hearing and deaf individuals for airbrake-equipped vehicles until more research can be conducted to determine safety outcomes and determine whether safe methods of training can be devised without putting the public and training staff in jeopardy on the open road. They support the granting of exemptions to individuals operating vehicles without airbrakes since the evidence FMCSA relied upon for granting previous hearing exemptions is based on a study of hard of hearing and deaf individuals in non-airbrake vehicles. CVTA's comments focused specifically on safety issues and complications unique to training providers.

CVTA commented that FMCSA did not cite any report, study, or other documentation substantiating that a hard of hearing or deaf individual can safely operate a CMV with airbrakes, or point to a technology or accommodation that would enable operation that is as safe as that of a driver without a hearing impairment. They stated that FMCSA has not examined the relevant data and demonstrated a rational connection between the data and the decision made to grant an exemption. CVTA believes that the Agency has not provided adequate empirical support for granting hearing exemptions based on the ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety'' (the 2008 Evidence Report), current medical literature, and the applicant's driving record.

CVTA believes that until such evidence demonstrating safety is obtained and presented, all non-CDL hard of hearing and deaf individuals seeking an exemption should be restricted to non-airbrake vehicles. In addition, CVTA believes that, in the absence of such evidence, the granting of any exemption involving airbrake vehicles likely would constitute an arbitrary and capricious determination by FMCSA. They argue that, in order for an agency's assessment to not run afoul of the ''arbitrary and capricious'' standard for judicial review set forth by the Administrative Procedure Act (APA), the agency must engage in reasoned decision making by examining the relevant data and articulating a satisfactory explanation for its action. Further, there must be a rational connection between the facts found and the choice made. They believe that FMCSA has not satisfied this standard.

CVTA noted several concerns related to the safety and liability of training and testing hard of hearing and deaf individuals. CVTA stated that the limitations and delays that arise when communicating with these drivers are significant and can result in an unsafe training environment. They believe that training hard of hearing and deaf drivers is a safety risk because CVTA member institutions include behind-the-wheel, on-the-road training which requires instantaneous communication while driving, for which in-cab signers or hand signals would be ineffective and unsafe. In addition, they believe that hard of hearing and deaf commercial drivers are unsafe due to their inability to hear sirens, air leaks or other sounds critical to safe operation. CVTA states that this lag time significantly increases risk of harm for the instructor, trainee, signer, and the public because the time required to give, and receive, communication is longer than the appropriate time needed to avert disaster, especially in a split-second emergency. In addition, requiring a hard of hearing or deaf trainee to avert his/her eyes to receive communication rather than focusing on the road creates an unsafe lag time and distracted driving.

CVTA pointed out the legal liability training organizations face for not accepting hard of hearing and deaf students into their school on the basis that no accommodations exist or the student would be unable to safely and successfully complete the course. Conversely, CVTA also noted the legal liability potentially precipitated by allowing an individual to complete the course, knowing that the individual may be unable to obtain certification due to factors such as the regulatory prohibition of allowing interpreters during certain portions of CDL testing.

Ms. Kathy Miller, President of the Iowa Association of the Deaf, submitted comments in response to CVTA's comments. Ms. Miller stated that all evidence supports the fact that drivers who can satisfy all the physical qualification standards except hearing can safely operate vehicles, including those with airbrakes, and should be granted hearing exemptions. She points out that FMCSA's 2008 Evidence Report concluded that an inability to satisfy the hearing requirement does not result in any increased safety risk and that the actual experiences of hard of hearing and deaf drivers, including many of the exemption applicants, who already operate CMVs in intrastate commerce, confirms the accuracy of the conclusions reached by FMCSA's Evidence Report. Ms. Miller stated that she believes that drivers who are hard of hearing or deaf do not face the same distractions on the road as do many hearing drivers. She provided the example that drivers who are deaf or hard of hearing are not distracted by conversations in the vehicle, the radio, music, and ringing phones, and that when off the road, they can communicate with the dispatcher using smart phone technologies. She points out they have deaf truckers in Iowa with intrastate hearing exemptions that have operated for many years with good driving skills and without any accidents. She mentions that she is deaf and carries a Class D Chauffer license and has held an intrastate hearing exemption since 2013 without any accidents. Ms. Miller states that she believes that hard of hearing and deaf drivers should be permitted to operate any vehicle, and that they should not be limited to driving only certain types of vehicles. She points out that DOT has never before restricted drivers to a certain class of vehicle based on a disability and should not do so for hard of hearing and deaf drivers.

The Florida Department of Highway Safety and Motor Vehicles (FDHSMV) requested that the 30-day comment period be extended to 60 days, and its comments duplicated most of the comments received from CVTA. The FDHSMV stated that, medically, ''deaf'' means severe hearing loss with no functional hearing and that, without appropriate medical information on the extent of hearing loss, the FDHSMV has no way to know how to test these individuals. They pointed out that interpreters are prohibited during the skills test under 49 CFR 383.133(c)(5) and that applicants must respond to verbal commands and instructions in English by the skills test examiner. Therefore, a person who is deaf is unable to successfully complete the required skills test in accordance with these regulations. The FDHSMV further noted that, along with other States and the American Association of Motor Vehicle Administrators (AAMVA), the organization has repeatedly sought guidance from FMCSA on testing methodology and that FMCSA's position has been to not provide such guidance because it would be setting a precedent that is in direct conflict with FMCSA's regulatory position of providing guidance. FDHSMV requested that, rather than grant ad hoc exemptions, FMCSA should commission a study to determine whether deaf and hard of hearing drivers pose additional risk to the motoring public. If the study demonstrates that these drivers do not pose addition risk, and should be exempted, FMCSA then should provide the States with a methodology and

standards for testing these drivers to ensure safety is not compromised.

FDHSMV also specifically mentioned airbrake-equipped vehicles as an area of concern, recommending that FMCSA not entertain applications for exemptions filed by hard of hearing and deaf individuals for purposes of operating airbrake-equipped vehicles.

III. FMCSA Response

FMCSA does not agree with the suggestion to restrict exemption applications from all hard of hearing and deaf individuals to non-airbrake vehicles only, because such a restriction is not necessary. The applicable regulation at 49 CFR 393.51(c) states that a CMV equipped with service brakes activated by compressed air (airbrakes) or a CMV towing a vehicle with service brakes activated by airbrakes must be equipped with a pressure gauge and a warning signal. This regulation also incorporates Federal Motor Vehicle Safety Standards (FMVSS) No. 121 S5.l.5, stating that the warning signal is required to be either: (a) Visible within the driver's forward field of view, or (b) both audible and visible. Given that the airbrake warning signal is visible to hard of hearing and deaf individuals, no exemptions from or modifications to section 393.51 are necessary for such individuals.

In reaching the decision to grant hearing exemption requests, FMCSA considers available current scientific information and literature, including the 2008 ''Evidence Report: Hearing, Vestibular Function and Commercial Motor Vehicle Driver Safety'' (Evidence Report), and its own internal data. The Evidence Report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) ''No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified''; and (2) ''Evidence from studies of the private driver license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash.''

While a search of the literature still does not reveal any studies analyzing crash risk among deaf and hard of hearing CMV drivers, the FMCSA did review a 2014 doctoral dissertation by Birgitta Thorslund from the Department of Behavioural Sciences and Learning at Linköping University, Sweden, entitled, ''Effects of Hearing Loss on Traffic Safety and Mobility.'' Dr. Thorslund concluded that ''drivers with (hearing loss) cannot be considered an increased traffic safety risk. . . .'' In fact, Dr. Thorslund noted, drivers with hearing loss are more likely to be more cautious and adopt coping strategies such as reducing speed, ''using a more comprehensive visual search behavior,'' and avoiding distracting activities. This is corroborated, albeit with minimal numbers, by FMCSA's own internal data. A 2016 Analysis Brief, ''Safety Performance of Drivers with Medical Exemptions,'' analyzed the records of 218 CDL holders with hearing exemptions. Drivers with hearing exemptions had a lower crash rate than the national average, had a lower violation rate than the control group, and had fewer driver out-of-service violations. FMCSA acknowledges that the numbers involved in the comparison are small and will endeavor to provide updated information as numbers grow.

To further support a decision to grant a hearing exemption, the Agency reviews each applicant's driving record found in the Commercial Driver's License Information System (CDLIS), for CDL holders, as well as inspections recorded in the Motor Carrier Management Information System (MCMIS). For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). The records for each applicant who has been granted a hearing exemption demonstrate that the driver has a safe driving history. Therefore, based upon the information above, including individual driving histories, the Agency believes that these drivers do not pose a risk to public safety and that granting the exemption achieves a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.

As described above, most of CVTA's comments focused specifically on safety issues and complications unique to CDL training providers. The lack of any technology or accommodations that would enable CVTA's member institutions to train hard of hearing and deaf drivers is not evidence that FMCSA should no longer grant hearing exemptions or limit these drivers to non-airbrake vehicles. As previously mentioned, FMCSA is not aware of any report, study, or other documentation substantiating that hard of hearing or deaf individuals are at an increased risk of a crash and does not believe that any additional studies are necessary.

There are several States that currently conduct CDL skills testing on hard of hearing and deaf drivers, each utilizing different methods. In an effort to make this information available to others, FMCSA is working with the AAMVA to develop a resource guide for administering the CDL skills test to hard of hearing and deaf drivers.

In response to CVTA's legal liability concerns, both public and private CDL training organizations and SDLAs should understand the requirements and prohibitions placed upon them by the Americans with Disabilities Act and the Rehabilitation Act of 1973 pertaining to hard of hearing and deaf individuals who have been granted an exemption by FMCSA. Further, any entity receiving Federal funding from FMCSA is required to comply with these laws under the terms of the grant agreement. These entities are advised to consult with private counsel in addressing their legal responsibilities and concerns.

While most of the FDHSMV's comments mirrored those of the CVTA, they note two additional arguments as to why exemptions should not be granted: First, that skills testing deaf and hard of hearing drivers cannot be completed without violating the regulation prohibiting the use of interpreters; and, second, that FMCSA should provide States with a methodology and standards for skills testing deaf and hard of hearing drivers. As noted, 49 CFR 383.133 prohibits interpreters during the administration of the skills test and requires applicants to understand and respond to verbal direction. This does not mean, however, that a skills test cannot be accomplished with a deaf or hard of hearing individual. Generally, FMCSA has addressed this issue in formal guidance, which is found at Question 7 to 49 CFR 391.11(b)(2) (published on October 1, 2014 at 79 FR 59139). The guidance is premised on the position that the term ''speak,'' as used with the associated rule, should not be construed so narrowly as to find a deaf driver who does not use oral communication in violation of that regulation. Similarly, the term ''verbal'' in 49 CFR 383.133 should not be construed so narrowly when examiners are administering skills tests to applicants with a hearing exemption, and should be applied to permit communication in forms other than verbal. If the actual skills tests are administered without the aid of an interpreter, the State is in compliance with 49 CFR 383.133(c)(5). Additionally, as noted above, there are no prohibitions against the use of an interpreter prior to the skills test generally or in between the three segments of the test. Use of a skills test examiner who is capable of communicating via American Sign Language is also an option.

Beyond the current regulations pertaining to skills testing CDL

applicants, it is not appropriate for FMCSA to mandate additional standards or strict methodology. A State must, under 49 CFR 383.73(b)(1), require the applicant to pass a skills test in accordance with subparts F, G, and H of 49 CFR part 383. These standards remain the same for any CDL applicant, regardless of exemptions that may have been granted by the agency. As to a specific methodology that would apply to all States and all applicants, the FMCSA declines to apply a ''one size fits all'' solution. The question of reasonable accommodation for a deaf or hard of hearing applicant is highly fact specific, for both the applicant and the examining entity. The FMCSA remains committed to its partnerships with AAMVA, the FDHSMV, and other states working toward the development of best practices related to the skills testing of deaf and hard of hearing drivers.

IV. Conclusion

FMCSA has considered the available current medical information and literature and is not aware of any data to support the contention that hard of hearing and deaf individuals are at an increased risk for a crash. In addition, the comments discussed above do not include any evidence that FMCSA should no longer grant hearing exemptions or limit exempted drivers to non-airbrake vehicles. The Agency therefore will continue to consider each application for a hearing exemption on an individual basis and will continue exempting those drivers who do not pose a risk to public safety when granting the exemption achieves a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.

Issued on: December 20, 2017.

Cathy F. Gautreaux,

Deputy Administrator.

[FR Doc. 2017–28128 Filed 12–28–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0326]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from six individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. If granted, the exemptions would enable these individuals with implantable cardioverter defibrillators (ICDs) to operate CMVs in interstate commerce.

DATES: Comments must be received on or before January 29, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2017–0326 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov,* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224,Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The six individuals listed in this notice have requested an exemption from 49 CFR 391.41(b)(4). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard found in 49 CFR 391.41(b)(4) states that a person is physically qualified to drive a CMV if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate

[1] See *http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a* and *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section *D. Cardiovascular: § 391.41(b)(4),* paragraph 4.] The advisory criteria states that ICDs are disqualifying due to risk of syncope.

II. Qualifications of Applicants

Frank D'Ercole

Mr. D'Ercole is a 77 year old CDL holder in New Jersey. An October 30, 2017 letter from his cardiologist states that his ICD was implanted in June 2017 and that since that time he has had no event on his AICD implant. His exercise test in May 2017 showed good exercise capacity.

Myles Goodwin

Mr. Goodwin is a 54 year old driver in New Hampshire. A May 2017 letter from his cardiologist states that his ICD was implanted in February 2015 and at the time of the letter had not deployed. As of February 2017, his cardiac issues were well controlled.

Cody Hairr

Mr. Hairr is a 23 year old driver in North Carolina. Medical documentation from his cardiologist dated September 2017 and a cardiologist letter without a date indicates that his ICD was implanted in 2013 and has not discharged since it was implanted. The letter states that he has no dizziness, lightheadedness, palpitations, chest pain, undue shortness of breath, exercise intolerance or syncope since ICD placement. His cardiologist states that from a cardiac standpoint, we have not limited [him] from any activities or concerns related to syncope.

Dennis R. Pickett

Mr. Pickett is a 78 year old Class A CDL holder in Indiana. An April 2017 letter from his cardiologist indicates that his permanent pacemaker was upgraded to a biventricular automatic implantable cardioverter defibrillator in February 2017 and has not deployed since that time. His cardiologist states that Mr. Pickett has not reported any syncopal episodes and that he plans to follow up visits for him every three months.

Terry Stephens

Mr. Stephens is a 54 year old Class A CDL holder in Virginia. An August 2017 letter from his cardiologist states that his biventricular ICD was implanted in April 2015. The cardiologist's letter also states that Mr. Stephens does not have symptoms related to his underlying condition, has not had any episodes of loss of consciousness, has an ejection fraction of 45 per cent on echocardiogram, and is NYHA class I symptomatically.

Jeffrey A. Weiner

Mr. Weiner is a 56 year old driver in Minnesota. A May 2017 letter from his cardiologist states that his ICD was implanted in July 2014, has not deployed since it was implanted, and is now asymptomatic. The letter states that his current underlying heart condition is well compensated.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0326 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0326 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: December 22, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–28127 Filed 12–28–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 26, 2017, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked pursuant to the relevant sanctions authorities listed below.

Individuals

1. KIM, Jong Sik (a.k.a. KIM, Cho'ng-sik), Korea, North; DOB 01 Jan 1967 to 31 Dec 1969; Gender Male; Deputy Director of the Workers' Party of Korea Military Industry Department (individual) [DPRK2].

Designated pursuant to Section 1(a)(ii) of Executive Order 13687 of January 6, 2015, ''Imposing Additional Sanctions With Respect to North Korea'' (Executive Order 13687) for being an official of the Government of North Korea.

2. RI, Pyong Chol (a.k.a. RI, Pyo'ng-ch'o'l), Korea, North; DOB 01 Jan 1948 to 31 Dec 1948; Gender Male; First Vice Department Director of the Workers' Party of Korea Central Committee (individual) [DPRK2].

Designated pursuant to Section 1(a)(ii) of Executive Order 13687 for being an official of the Government of North Korea.

Dated: December 26, 2017.

John Battle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2017–28210 Filed 12–28–17; 8:45 am]

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Part II

Department of Labor

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2017–03, JPMorgan Chase & Co., D–11906; 2017–04, Deutsche Investment Management Americas Inc. (DIMA) and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG, D–11908; 2017–05, Citigroup Inc., D–11909; 2017–06, Barclays Capital Inc., D–11910; 2017–07, UBS Assets Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O'Connor LLC; and Certain Future Affiliates in UBS's Asset Management and Wealth Management Americas Divisions, D–11907.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. One request for a hearing was received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011) [1] and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

JPMorgan Chase Co. (JPMC or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption 2017–03; Exemption Application No. D–11906]

Discussion

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed exemption in the **Federal Register** at 81 FR 83372, for certain entities with specified relationships to JPMC to continue to rely upon the relief provided by PTE 84–14 for a period of five years,[2] notwithstanding JPMC's criminal conviction, as described herein. The Department is granting this exemption in order to ensure that Covered Plans [3] whose assets are managed by a JPMC Affiliated QPAM or JPMC Related QPAM may continue to benefit from the relief provided by PTE 84–14. The exemption is effective from January 10, 2018 through January 9, 2023 (the Exemption Period).

No relief from a violation of any other law is provided by this exemption, including any criminal conviction described in the proposed exemption. Furthermore, the Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the JPMC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period. The terms of this exemption have been specifically designed to promote conduct that adheres to basic fiduciary standards under ERISA and the Code. The exemption also aims to ensure that plans and IRAs can terminate relationships in an orderly and cost effective fashion in the event a plan or IRA fiduciary determines it is prudent for the plan or IRA to sever its relationship with an entity covered by the exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published in the **Federal Register** at 81 FR 83372 on November 21, 2016. All comments and requests for a hearing were due by January 20, 2017.[4] The Department received written comments from the Applicant, members of the U.S. Congress, and a number of plan and IRA clients of JPMC. After considering these submissions, the Department has determined to grant the exemption, with revisions, as described below.

Comment 1—Term of the Exemption

The Applicant requests that the Department extend the term of the exemption from five years to nine years from the Conviction Date. The Applicant states that the five year term is inconsistent with precedent and ''appears punitive.'' The Applicant further states that ''exemptions should reflect the underlying facts that necessitated the exemption [and] [h]ere, those facts are as follows: JPMC was convicted of a single crime, based solely on the misconduct of a single individual who was not employed by the Applicant's asset management businesses and who has been terminated by a firm that has dedicated and continues to dedicate significant resources to enhancing the relevant

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[2] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14 or the QPAM exemption.

[3] The term ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to Section 4975 of the Code (''IRA'') with respect to which a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the JPMC Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA. See further discussion in this Preamble under the heading Comment 8—Policies and Procedures Relating to Compliance with ERISA and the Code—Section I(h)(1)(ii)–(v).

[4] The Department received additional comments from Applicant after the close of the comment period.

controls to prevent future instances of similar misconduct.'' The Applicant states that ''the exemption imposes additional and burdensome requirements on the asset management businesses of the applicant-businesses entirely uninvolved with the criminal conduct.''

Although the Applicant characterizes the conduct as involving the isolated actions of one individual, the Department does not agree with the apparent suggestion that the Applicant bears little or no responsibility for the criminal conduct. For example, JPMC's Plea Agreement contains the following statement, under the heading Other Relevant Conduct: ''the defendant [JPMC], through its currency traders and sales staff, also engaged in other currency trading and sales practices in conducting FX Spot Market transactions with customers via telephone, email, and/or electronic chat, to wit: (i) Intentionally working customers' limit orders one or more levels, or 'pips,' away from the price confirmed with the customer; (ii) including sales markups, through the use of live hand signals or undisclosed prior internal arrangements or communications, to prices given to customers that communicated with sales staff on open phone lines; (iii) accepting limit orders from customers and then informing those customers that their orders could not be filled, in whole or in part, when in fact the defendant was able to fill the order but decided not to do so because the defendant expected it would be more profitable not to do so; and (iv) disclosing non-public information regarding the identity and trading activity of the defendant's customers to other banks or other market participants, in order to generate revenue for the defendant at the expense of its customers.''

In developing this exemption, the Department also considered statements made by other regulators. The Financial Conduct Authority's (FCA) Final Notice states: ''[d]uring the Relevant Period, JPMorgan did not exercise adequate and effective control over its G10 spot FX trading business. . . . The front office failed adequately to discharge these responsibilities with regard to obvious risks associated with confidentiality, conflicts of interest and trading conduct.'' The Notice further states: ''These failings occurred in circumstances where certain of those responsible for managing front office matters were aware of and/or at times involved in behaviors described above.''

By way of further example, the Consent Order of the Office of the Comptroller of the Currency (OCC) states: ''[t]he OCC's examination findings established that the Bank [the Applicant's Corporate and Investment Banking line of business] had deficiencies in its internal controls and had engaged in unsafe or unsound banking practices with respect to the oversight and governance of the Bank's FX trading business such that the Bank failed to detect and prevent the conduct set forth in paragraph twelve (12). The deficiencies and unsafe or unsound practices include the following: (a) The Bank's oversight and governance of its FX trading business were weak and lacked adequate formal guidance to mitigate and manage risks related to market conduct in FX Trading with respect to sales, trading and supervisory employees in that business . . . .''

The Department also notes the size of relevant fines imposed by various regulators: The Department of Justice imposed a $550 million fine; The Board of Governors of the Federal Reserve Board imposed a $342 million fine; and the OCC, the Commodity Futures Trading Commission, and the FCA imposed fines of $350 million, $310 million, and £222,166,000, respectively.

This exemption is not punitive; instead, its five-year term and protective conditions reflect the Department's intent to protect Covered Plans that entrust substantial assets to a JPMC Affiliated QPAM, despite the serious misconduct and supervisory failures described above. The limited term of this exemption gives the Department the opportunity to review the adherence by the JPMC Affiliated QPAMs to the conditions set out herein. If the Applicant seeks an extension of this exemption, the Department will examine whether the compliance and oversight changes mandated by various regulatory authorities are having the desired effect on JPMC entities.

The relationship between the JPMC Affiliated QPAMs and the Applicant's Corporate and Investment Banking line of business (CIB) is substantial. The Applicant states, ''As of the date of the Applicant's application, JPMC Affiliated QPAMs managed approximately $100 billion in plan assets through collective investment trusts that use the custody and administration services of the Applicant's Corporate and Investment Banking line of business (CIB), operating through the Bank. Similarly, certain plans managed by JPMC Affiliated QPAMs through separate accounts have independently selected CIB (operating through the Bank) as their trustee and/or custodian, and transactions directed by JPMC Affiliated QPAMs on behalf of such plans would necessarily require the trustee/custodian to provide services for a direct or indirect fee.'' The Applicant also states, ''Because of all of the services CIB necessarily provides to client accounts, the wording of this proposed exemption [that excludes the business line from providing services to funds managed by the Affiliated QPAMs] is tantamount to a denial.''

Notwithstanding the above, as noted below, the Department has determined to revise this exemption to permit CIB to continue to provide services to funds managed by JPMC Affiliated QPAMs, based on the Department's determination that the conditions set forth herein are sufficiently protective of the Covered Plans, and given the type of transactions covered by this exemption and the Applicant's representations regarding the types of services provided by CIB. The Department notes that the JPMC Affiliated QPAMs' substantial and substantive dependency on the JPMC CIB when managing plan and IRA assets also supports the Department's conclusion that the conditions of the exemption are necessary and appropriate.

Comment 2—Description of Criminal Conduct—Section I

The prefatory language to Section I of the proposed exemption provides, ''*If the proposed five-year exemption is granted, certain asset managers with specified relationships to JPMC (the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined further in Sections II(a) and II(b), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the judgment of conviction against JPMC (the Conviction), as defined in Section II(e)), for engaging in a conspiracy to: (1) fix the price of, or (2) eliminate competition in the purchase or sale of the Euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market, for a period of five years beginning on the date the exemption is granted.*''

The Applicant requests that the description of the charged conduct—the clause beginning ''for engaging in a conspiracy''—be omitted. The Applicant states that this description is inaccurate and incomplete, will lead to disputes with counterparties to the detriment of plans, and will make it unlikely that plans will benefit from or be protected by this exemption.

After consideration of the Applicant's comment, the Department has revised the exemption in the manner requested by the Applicant.

Comment 3—Knowing or Tacit Approval—Sections I(a) and I(c)

Section I(a) of the proposed five-year exemption provides, ''*(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction. For purposes of this paragraph (a), 'participate in' includes the knowing or tacit approval of the misconduct underlying the Conviction;*''

Section I(c) of the proposed exemption provides, ''*(c) The JPMC Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction. For the purposes of this paragraph (c), 'participated in' includes the knowing or tacit approval of the misconduct underlying Conviction;*''

The Applicant requests that the words ''or tacit'' in the phrase ''knowing or tacit approval'' be deleted in Sections I(a) and I(c). The Applicant states that the term tacit approval ''is undefined and ambiguous, and potentially encompasses a broad range of conduct that could become the subject of disputes with counterparties.''

After consideration of the Applicant's comment, the Department has revised the condition in the manner requested by the Applicant.

Comment 4—Receipt of Compensation—Section I(b)

Section I(b) of the proposed five-year exemption provides, ''(b) *Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction.*''

The Applicant states that Section I(b) is not practically workable because an individual can receive compensation only if the entity he or she works for receives funds. The Applicant requests that this condition be modified to reflect that, although undefinable, a non-fiduciary business within JPMorgan Chase Bank may have indirectly received funds in connection with the criminal conduct that is the subject of the Conviction. The Applicant requests that the Department modify this condition as follows:

The JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction, other than a non-fiduciary line of business within JPMorgan Chase Bank.

The Department has revised the condition in the manner requested by the Applicant. As revised, the condition precludes relief if any asset management personnel of JPMC received direct compensation, or knowingly received indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.

Comment 5—Inclusion of ''Investment Banking Division of JPMorgan Chase Bank''—Sections I(d), I(g), and I(h)(1)(i)

Section I(d)of the proposed five-year exemption provides, ''*(d) A JPMC Affiliated QPAM will not use its authority or influence to direct an 'investment fund' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM, to enter into any transaction with JPMC or the Investment Banking Division of JPMorgan Chase Bank, or engage JPMC or the Investment Banking Division of JPMorgan Chase Bank to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;*''

Section I(g)of the proposed five-year exemption provides, ''*(g) JPMC and the Investment Banking Division of JPMorgan Chase Bank will not provide discretionary asset management services to ERISA-covered plans or IRAs, and will not otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets;*''

Section I(h)(1)(i) of the proposed five-year exemption provides, ''*(h)(1)(i) The asset management decisions of the JPMC Affiliated QPAM are conducted independently of JPMC's management and business activities, including the corporate management and business activities of the Investment Banking Division of JPMorgan Chase Bank;*''

The Applicant requests that these sections be revised to allow the Investment Banking Division of JPMorgan Chase Bank to provide services, including the following services, to investment funds managed by the JPMC Affiliated QPAMs: Safekeeping; settlement; administration; full service class action filing service; overdraft protection; sweep and deposit services; portfolio accounting and reporting services; payment processing services; and foreign custodial services. The Applicant states that not allowing the Investment Banking Division of JPMorgan Chase Bank to provide, or to continue to provide, these services would be harmful to more than a thousand plans.

After considering the Applicant's comment, the Department has revised the exemption in the manner requested by the Applicant such that the condition does not apply to the Investment Banking Division of JPMorgan Chase Bank. In addition, the Department has clarified that Section I(d) applies to an ''investment fund'' that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM with respect to Covered Plans. Finally, as requested by the Applicant, Section I(g) has been modified to clarify that JPMC will not violate this condition in the event that it inadvertently becomes an investment advice fiduciary and that JPMC can act as a fiduciary for plans that it sponsors for its own employees or employees of an affiliate.

Comment 6—Exercising Authority Over Plan Assets—Section I(f)

Section I(f)of the proposed five-year exemption provides, ''*(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the JPMC QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction.*''

The Applicant requests that Section I(f) be deleted, stating that it is duplicative of Section I(b), ambiguous,

and not administrable or in the interests of plans. The Applicant states that the first clause of the condition does not differ in any material way from the very first and most basic condition of the exemption: That the asset management businesses of the Affiliated QPAMs did not know of or participate in the conduct that is the subject of the Conviction. The Applicant also states that the second clause of the condition which states, ''*or cause the JPMC QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct,*'' is confusing and repetitive of the condition in section I(b).

The Department declines to make the Applicant's requested revisions. The Department does not view Condition I(f) (which relates to exercising authority) as ambiguous or duplicative of Section I(b) (which relates to compensation). Further, Condition I(f) is consistent with the Applicant's prior representation that, ''other than a single individual who worked for a nonfiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Affiliated QPAMs did not participate in the Conduct and (ii) no current or former employee of JPMC or of any Affiliated QPAM who previously has been or who subsequently may be identified by JPMC, or any U.S. or non-U.S. regulatory or enforcement agencies, as having been responsible for the Conduct will have any involvement in providing asset management services to plans and IRAs or will be an officer, director, or employee of the Applicant or of any Affiliated QPAM.'' However, for clarity, the Department has deleted the term ''related parties.'' [5]

Comment 7—Time to Implement Policies and Training—Section I(h)(1)–(2)

Section I(h) of the proposed five-year exemption provides, ''*(h)(1) Within four (4) months of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies). . . (2) Within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel . . .*''

[5] See JPMC Exemption Application (May 20, 2015) at page 11.

The Applicant requests that the Department increase the development period associated with the Policies and Training Requirement (the Development Period) from four (4) months to six (6) months. The Applicant also seeks confirmation that, following the Development Period, it will have twelve (12) months to complete the Training for all relevant employees, and that it must do so again in every succeeding twelve (12) month period. In support of this request, the Applicant represents that JPMC Affiliated QPAMs manage assets for hundreds of ERISA-covered plans, through separate accounts; over a thousand plans, through collective investment trusts; and more than 160,000 IRAs, through various lines of business. The Applicant states that it may take up to six (6) months for all of these asset management staffs to satisfy the conditions set out in subparagraph(h) and then an additional twelve (12) months to accomplish all of the training. The Applicant further requests that Section I(h) be streamlined to match the requirements of PTE 2016–15.

The Department emphasizes that the JPMC QPAMs must comply with the Policies and Training requirements within both PTE 2016–15 and this exemption. To this end, the Department has revised the policies and training requirements of Section I(h) to conform with PTE 2016–15. The two exemptions now follow this timeline: (i) Each JPMC Affiliated QPAM must have developed the Policies and Training required by PTE 2016–15 by July 9, 2017; (ii) the first annual Training under PTE 2016–15 must be completed by July 9, 2018; (iii) each JPMC Affiliated QPAM must develop the Policies and Training required by this exemption, as necessary, by July 9, 2018; and (iv) the first Training under this exemption must be completed by July 9, 2019. By the end of this 30-month period, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice.

Comment 8—Policies and Procedures Relating to Compliance With ERISA and the Code—Section I(h)(1)(ii)–(v)

Section I(h)(1)(ii)–(v) of the proposed five-year exemption provides,''*(h)(1) Within four (4) months of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:*

. . . (ii) The JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The JPMC Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the JPMC Affiliated QPAM to regulators including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time; [and]

(v) The JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plans and IRA clients.''

The Applicant requests that these subparagraphs be stricken as duplicative and already mandated by statute. The Applicant states that these conditions could be read to apply the fiduciary duties of ERISA to IRAs, which it claims would be overly broad, punitive, and not rationally related to asset management under the exemption. In the event the Department declines to strike the above subsections, the Applicant requests the following revisions to subsections (ii)–(v):

Subsection (ii): The Applicant requests that JPMC Affiliated QPAMs be required to comply with ERISA's fiduciary duties, ''with respect to ERISA-covered plans managed in reliance on PTE 84–14,'' and with ERISA and the Code's prohibited transaction provisions, ''as applicable, with respect to ERISA-covered plans and IRAs managed in reliance on PTE 84–14.''

Subsection (iii): The Applicant requests the removal of ''or the Code,'' and ''IRAs.'' With the Applicant's requested revision, subsection (iii) would read, ''The JPMC Affiliated QPAM does not knowingly participate in any other person's violation of ERISA with respect to ERISA-covered plans.''

Subsection (iv): The Applicant requests that the phrase, ''on behalf of ERISA-covered plans or IRAs,'' be changed to, ''on behalf of ERISA-covered plans or IRAs for which a JPMC Affiliated QPAM provides asset

management or other discretionary fiduciary services in reliance on PTE 84–14.''

Subsection (v): The Applicant requests that the subparagraph be revised to, ''(v) The JPMC Affiliated QPAM does not intentionally make material misrepresentations or omit material information, to the best of such QPAM's knowledge at that time, in its communications with ERISA-covered plans and IRA clients, the assets of which are managed by such JPMC Affiliated QPAM in reliance on PTE 84–14.''

In response to the Applicant's comments, the Department has modified the Policies' requirement of adherence to the fiduciary and prohibited transaction provisions of ERISA and the Code so that the Policies expressly focus on the provisions only to the extent ''applicable'' under ERISA and the Code. In general, however, the Department has otherwise retained the stringency and breadth of the Policies requirement, which is more than justified by the compliance and oversight failures exhibited by JPMC throughout the long period of time during which the criminal misconduct persisted.

The specific elements of the Policies requirement as set forth in this exemption are essential to its protective purposes. In approving this exemption, the Department significantly relies upon conditions designed to ensure that those relying upon its terms for prohibited transaction relief will adopt a culture of compliance centered on basic fiduciary norms and standards of fair dealing, as reflected in the Policies. These standards are core protections of this exemption.

The Department has made some additional changes, however, which should not detract from the Policies' protective purpose. Thus, as requested by the Applicant, subsection (v) has been revised to contain the ''to the best of QPAM's knowledge at the time'' concept found in subsection (iv); and the applicability of subsections (iv) and (v) has been narrowed to ERISA-covered plans and IRAs with respect to which a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption in its dealings with the ERISA-covered plan or IRA (hereinafter, a Covered Plan). To the extent a JPMC QPAM would prefer not to be subject to this provision, however, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with the Covered Plan. This revision is consistent with the Department's intent to protect ERISA-covered plans and IRAs that may have hired a JPMC Affiliated QPAM based on the manager's express representation that it relies on or qualifies under PTE 84–14.

As explained in more detail below, the Department will not strike a condition merely because it is also a statutory requirement. It is the express intent of the Department to preclude relief for a JPMC affiliated QPAM that fails to meet the requirements of this exemption, including those derived from basic standards codified in statute, as applicable.

Comment 9—Correction of Violations and Failures To Comply—Section I(h)(1)(vii)

Section I(h)(1)(vii) of the proposed five-year exemption provides, ''*Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of JPMC; however, with respect to any ERISA-covered plan or IRA sponsored by an 'affiliate' (as defined in Section VI(d) of PTE 84–14) of JPMC or beneficially owned by an employee of JPMC or its affiliates, such fiduciary does not need to be independent of JPMC. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii).*''

The Applicant cites this condition as an example of how the Department made the proposed exemption ''inexplicably'' and ''arbitrarily'' more burdensome and onerous than other such exemptions it has granted previously. More specifically, the Applicant seeks several revisions to Section I(h)(vii), stating that its notification requirements are overbroad, and that terms such as ''appropriate corporate officers'' and ''corrected promptly'' are either vague or undefined. The Applicant requests that ''subparagraphs (ii) through (vi)'' be revised to read ''subparagraphs (i) through (vi).'' The Applicant also requests that the last sentence of the subparagraph (h) be revised, because it is ''overly broad and does not meaningfully provide relief in instances where a violation or compliance failure is corrected.'' The Applicant suggests the subparagraph (h) be revised to read, ''Within sixty (60) days of discovery of any violation of, or failure to comply with, an item in subparagraphs (i) through (vi), the JPMC QPAM will formulate, in writing, a plan to address such violation or failure (a Correction Plan). To the extent any such Correction Plan is not formulated within sixty (60) days of discovery, the JPMC Affiliated QPAM will report in writing such violation of, or failure to comply with, the item in subparagraphs (i) through (vi) to the head of compliance . . . .''

In response to the Applicant's general comment, the Department has based the conditions of this exemption on both the particular facts of this case and its experience over time with previous exemptions. For the reasons set out herein, the Department has concluded that the specific conditions of this exemption are appropriate and give the Department a reasonable basis for concluding that the exemptions are appropriately protective of affected plans and IRAs. As noted above, a central aim of the exemption is to ensure that those relying upon the exemption for relief from the prohibited transaction rules will consistently act to promote a culture of fiduciary compliance, notwithstanding the conduct that violated Section I(g) of PTE 84–14.

After considering the Applicant's specific requests for revisions, however, the Department has replaced ''appropriate corporate officers'' with ''the head of compliance and the General Counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure.'' The Department also will not condition the exemption on a requirement for notification of violations to an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of JPMC.

However, the Department is not revising the ''subparagraphs (ii) through (vi)'' reference to include ''subparagraph (i)'' because the Department intends to preclude relief to the extent a JPMC Affiliated QPAM fails to develop, implement, maintain, and follow written policies and procedures. Clearly, it is not enough merely to develop policies and procedures,

without also implementing, maintaining, and following the terms of those policies and procedures. Covered Plans do not benefit from the creation of strong policies and procedures, unless they are actually followed.

The Department has revised the term ''corrected promptly'' for consistency with the Department's intent that violations or compliance failures be corrected ''as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier).'' However, contrary to the Applicant's suggestion, the Department intends to preclude relief to the extent violations or failures are not corrected as required by the exemption. Therefore, the Department has not adopted the Applicant's proposed subparagraph (vii), which requires little more than the formulation of a correction plan, without any corresponding obligation to actually implement the plan.

Comment 10—Training Incorporated in Policies—Section I(h)(2)(i)

Section I(h)(2)(i) of the proposed five-year exemption provides, ''. . . *The Training must: (i) Be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this five-year exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.*''

The Applicant states that the requirement in Section I(h)(2)(i) that the Training must be ''set forth in'' the Policies is impracticable and may cause significant logistical challenges over time. Accordingly, the Applicant requests that Section I(h)(2)(i) be revised as follows:

> ''. . . The Training must, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this permanent exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.''

After considering this comment, the Department has revised the condition as requested by the Applicant.

Comment 11—Training by Independent Professional—Section I(h)(2)(ii)

Section I(h)(2)(ii) of the proposed five-year exemption provides, ''. . . The Training must: . . . (ii) Be conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.''

The Applicant requests that Section I(h)(2)(ii) be deleted, stating that requiring an independent professional is likely to be ''counterproductive, a waste of time and resources, and less effective than using internal personnel who are familiar with Applicant's processes and staff . . . .''

Although the Department does not agree with the Applicant's characterization that hiring an appropriate independent professional, prudently-selected, would be counterproductive and a waste of resources, the Department is persuaded that appropriate JPMC personnel, prudently selected, should be allowed to conduct the training, and has revised the condition accordingly.

Comment 12—Audit—Section I(i)(1)

Section I(i)(1) of the proposed five-year exemption requires that each *JPMC Affiliated QPAM* ''submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the JPMC Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve (12) month period starting with the twelve (12) month period that begins on the effective date of the five-year exemption, and each annual audit must be completed no later than six (6) months after the period to which the audit applies;''

The Applicant requests that the audit requirement be deleted from the exemption in its entirety. The Applicant states that requiring the audit of asset management units that were not accused of wrongdoing is unnecessary and essentially seeks to punish businesses that have not been convicted of a crime. The Applicant requests that, if the audit condition is not omitted, the annual audit should be performed by the Applicant's Internal Audit function. The Applicant also requests the removal of the requirement mandating incorporation of the audit conditions into the Policies, as the Applicant believes such inclusion serves no purpose and does not further the interest of plans. Additionally, the Applicant requests the removal of the phrase ''technical training and proficiency,'' because it is redundant and undefined.

The Department declines to delete the audit requirement in its entirety. A recurring, independent, and prudently conducted audit of the JPMC Affiliated QPAMs is critical to ensuring the QPAMs' compliance with the Policies and Training mandated by this exemption, and the adequacy of the Policies and Training. The required discipline of regular audits underpins the Department's finding that the exemption should help prevent the sort of compliance failures that led to the Conviction and is protective of Covered Plans and their participants, beneficiaries, and beneficial owners, as applicable.

The Department views the audit requirement as an integral component of the exemption, without which the Department would be unable to make its finding that the exemption is protective of Covered Plans and their participants, beneficiaries, and beneficial owners, as applicable. A recurring, independent audit of the JPMC Affiliated QPAMs is a critical means by which to verify the adequacy of, and compliance with, the Policies and Training mandated by this exemption.

This exemption's conditions are based, in part, on the Department's assessment of the seriousness and duration of the misconduct that resulted in the violation of Section I(g) of PTE 84–14, as well as the apparent inadequacy of the controls and oversight mechanisms at JPMC to prevent the misconduct. The FCA's Final Notice states: ''[d]uring the Relevant Period, JPMorgan did not exercise adequate and effective control over its G10 spot FX trading business,'' and that, ''[t]he front office failed adequately to discharge these responsibilities with regard to obvious risks associated with confidentiality, conflicts of interest and trading conduct.'' The OCC states: ''the Bank had deficiencies in its internal controls and had engaged in unsafe or unsound banking practices with respect to the oversight and governance of the Bank's FX trading business . . . .'' Accordingly, the Department declines to delete the audit requirement in its entirety.

The Department, however, recognizes that, notwithstanding JPMC's oversight failures, only a small number of individuals at JPMC directly engaged in the misconduct at issue. Thus, the United States District Court for the District of Connecticut stated, in connection with the sentencing of JP Morgan Chase & Co., that ''the conduct at issue here was engaged in by a very small number of individuals'' and ''we do not have banks who appear to have condoned conduct at any high-ranking

level.'' [6] Accordingly, the Department has determined to change the audit interval under this exemption, from annual to biennial. Section I(i)(1) of the exemption, therefore, now requires that each JPMC Affiliated QPAM ''*submits* to *an audit conducted every two years by an independent auditor.*'' Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2018 through July 9, 2019, and must be completed by January 9, 2020. The second audit must cover the period from July 10, 2020 through July 9, 2021, and must be completed by January 9, 2022. In the event that the Exemption Period is extended or a new exemption is granted, the third audit would cover the period from July 10, 2022 through July 9, 2023, and would be completed by January 9, 2024, unless the Department chose to alter the audit requirement in the new or extended exemption; [7]

The Department declines to revise Section I(i)(1) to permit the Applicant's Internal Audit Department to carry out this exemption's required audit functions, as such a revision would not be protective of Covered Plans. Auditor independence is essential to this exemption, as it allows for an impartial analysis of the JPMC Affiliated QPAMs. Permitting the Applicant's Internal Audit Department to carry out this exemption's required audit functions would be insufficiently protective of Covered Plans. The independence of the auditor is the cornerstone of the integrity of the audit process and is of primary importance to avoid conflicts of interest and any inappropriate influence on the auditor's findings. The fundamental importance of auditor independence to the integrity of the audit process is well established. For example, the United States Securities and Exchange Commission (SEC) promulgated regulations at 17 CFR 210.2–01 to ensure auditors are independent of their clients, and under 17 CFR 240.10A–2, it is unlawful for an auditor not to be independent in certain circumstances. Likewise, the Public Company Accounting Oversight Board's (PCAOB) Rule 3520 states that a public accounting firm and its associated persons must be independent of the firm's audit client. When working on an audit or attest engagement, the Association of Independent Certified Public Accountants' (AICPA) Code of Professional Conduct, Objectivity and Independence Principle (AICPA, Professional Standards, ET section 0.300.050.01) states that members should be independent in fact and appearance. Moreover, ERISA section 103(a)(3)(A) requires an accountant hired by an employee benefit plan to examine the plan's financial statements to be independent. Notwithstanding the Applicant's representations regarding the staff size and internal policies of JPMC's Internal Audit Department, serious misconduct occurred over an extended period of time at a JPMC entity.

The Department also disagrees with the Applicant's assertion that the phrase ''technical training and proficiency'' is redundant. The two terms are not synonymous, as a person may have taken technical training in a given subject matter but may not be proficient in that subject matter. The exemption requires that the auditor be both technically trained and proficient in ERISA as well as the Code. Accordingly, the Department declines to change the phrase ''technical training and proficiency'' as used in Section I(i)(1).

The Department also declines to delete the requirement that the audit conditions be incorporated in the Policies. The audit requirement provides a critical independent check on compliance with this exemption's conditions, and helps ensure that the basic protections set forth in the Policies are taken seriously. Accordingly, the specifics of the audit requirement are important components of the Policies. Their inclusion in the Policies promotes compliance and sends an important message to the institutions' employees and agents, as well as to Covered Plan clients, that compliance with the policies and procedures will be subject to careful independent review.

After consideration of the Applicant's concerns regarding the annual audit, the Department is revising the audit condition to require an audit on at least a biennial basis. The Departments notes that if the audit uncovers material deficiencies with JPMC's compliance with this exemption, then the Applicant should consider conducting an additional audit after making corrections to ensure that it remains in compliance with the exemption. In any event, the Department emphasizes that it retains the right to conduct its own investigation of compliance based on any such indicators of problems.

Comment 13—Access to Business—Section I(i)(2)

Section I(i)(2) of the proposed five-year exemption requires that ''*as permitted by law, each JPMC Affiliated QPAM and, if applicable JPMC, will grant the auditor unconditional access to its business . . .*''

The Applicant requests that the access granted by Section I(i)(2) be limited to: (1) Relevant materials reasonably necessary to conduct the audit; and (2) non-privileged materials that do not contain trade secrets. The Applicant argues that the ''unconditional access'' required by this condition is too broad and that the absence of specific exclusions could lead to confusion, dispute, and infringement on the JPMC Affiliated QPAMs' right to protect privileged communications, confidential supervisory information with other regulators (for which the privilege is held by others), irrelevant materials, and trade secrets.

In the Department's view, to ensure a thorough and robust audit, the independent auditor must be granted access to information it deems necessary to make sound conclusions. Access to such information must be within the scope of the audit engagement and denied only to the extent any disclosure is not permitted by state or federal statute. Enumerating specific restrictions on the accessibility of certain information may have a dampening effect on the auditor's ability to perform the procedures necessary to make valid conclusions and therefore undermine the effectiveness of the audit. The auditor's access to such information, however, is limited to information relevant to the auditor's objectives as specified by the terms of this exemption and to the extent disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege. In this regard, the Department has modified Section I(i)(2) accordingly.

Comment 14—Engagement Letter—Section I(i)(3)

Section I(i)(3) of the proposed five-year exemption requires the auditor's engagement to ''*specifically require the auditor to determine whether each JPMC Affiliated QPAM has developed, implemented, maintained, and followed the Policies . . . and has developed and implemented the Training, as required herein.*''

The Applicant requests that Section I(i)(3) be deleted in its entirety, stating

[6] *See* TRANSCRIPT of Proceedings: as to JP Morgan Chase & Co. (January 5, 2017 at pages 29–30).

[7] The third audit referenced above would not have to be completed until after the Exemption Period expires. If the Department ultimately decides to grant relief for an additional period, it could decide to alter the terms of the exemption, including the audit conditions (and the timing of the audit requirements). Nevertheless, the Applicant should anticipate that the Department will insist on strict compliance with the audit terms and schedule set forth above. As it considers any new exemption application, the Department may also contact the auditor for any information relevant to its determination.

that it is unnecessarily duplicative of the substantive requirements of the exemption and that the Applicant will be bound by the conditions of the exemption, whether or not they also appear in the auditor's engagement letter.

The Department does not concur with the Applicant's request. By including a statement of the audit's intended purpose and required determinations in the auditor's agreement, the Applicant ensures that both the auditor and the JPMC Affiliated QPAMs a have clear understanding of the purpose and expectations of the audit process. Therefore, the Department declines to omit Section I(i)(3) from the exemption.

Comment 15—Auditor's Test of Operational Compliance—Section I(i)(4)

Section I(i)(4) of the proposed five-year exemption provides that, ''*[t]he auditor's engagement must specifically require the auditor to test each JPMC Affiliated QPAM's operational compliance with the Policies and Training*'' and ''*the auditor must test a sample of each QPAM's transactions involving ERISA-covered Plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine operational compliance with the Policies and Training.*''

The Applicant requests that Section I(i)(4) be deleted in its entirety. The Applicant argues that this Section is unnecessarily duplicative, as other conditions of the exemption govern the audit's scope, the auditor's technical skill, and the prudence of the selection process. The Applicant also argues that the second sentence of Section I(i)(4) unnecessarily intrudes upon the auditor's function and independence. Additionally, the Applicant states that auditors should be granted discretion as to when to sample transactions, as an auditor may not have the capacity to test significant data within the time periods required under this exemption.

The Department declines to make the Applicant's requested revisions with respect to Section I(i)(4). The inclusion of written audit parameters in the auditor's engagement letter is necessary both to document expectations regarding the audit work and to ensure that the auditor can responsibly perform its important work. As stated above, clearly defined audit parameters will minimize any potential for dispute between the Applicant and the auditor. It is appropriate and necessary for the exemption to require a certain amount, and type, of audit work to be performed. Similarly, given the scope and number of relevant transactions, proper sampling is necessary for the auditor to reach reasonable and reliable conclusions. Although the Department has declined to delete this section in its entirety, as requested by the Applicant, the Department has revised this condition for consistency with other conditions of this exemption which are tailored to the Department's interest in protecting Covered Plans. Therefore, the condition now applies to Covered Plans (*i.e.,* ERISA-covered plans and IRAs with respect to which the JPMC Affiliated QPAM relies on PTE 84–14 or has expressly represented that it qualifies as a QPAM or relies on the QPAM class exemption in its dealings with the ERISA-covered plan or IRA).

The Department notes that Section I(i)(4) does not specify the number of transactions that the auditor must test, but rather requires, for each QPAM, that the auditor test a sample of each such QPAM's transactions involving Covered Plans, ''sufficient in size and nature to afford the auditor a reasonable basis to determine operational compliance with the Policies and Training.''

Comment 16—Draft of the Audit Report—Section I(i)(5)

Section I(i)(5) of the proposed five-year exemption requires that ''*. . . on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to JPMC and the JPMC Affiliated QPAM . . .*''

The Applicant requests a modification of Section I(i)(5) that would allow the Applicant sufficient time to correct any findings of noncompliance by the auditor before the issuance of the final Audit Report and its provision to the Department. The Applicant states that permitting it to review a draft of the Audit Report well in advance of its submission to the Department would allow the Applicant to implement plans to correct any violations or findings of noncompliance identified by the auditor. The Applicant states that communication with the audited entity is an appropriate audit procedure which ensures that the auditor's factual premises are correct. The Applicant also states that the time required to review the audit should be in advance of the Audit Report's submission and should not take away from the six (6) months given to complete the audit and the thirty (30) days to submit the Audit Report to the Department. The Applicant therefore requests that Section I(i)(5) contain a provision: (1) Requiring the auditor to issue a draft Audit Report to the Applicant and the JPMC Affiliated QPAMs at the end of the period for the completion of the audit, as described in Section I(i)(1); and (2) providing the Applicant and the JPMC Affiliated QPAM thirty (30) days to review such draft Audit Report. Additionally, the Applicant requests that the exemption allow the auditor to issue one consolidated Audit Report covering all the JPMC Affiliated QPAMs.

The Department agrees that it is appropriate and beneficial for the auditor and the entity being audited to communicate during the audit process. Such communication allows for a dialog regarding, among other things, factual premises, findings, and conclusions. With regard to issues of noncompliance, communication should take place as soon as possible, but in no case later than five (5) days following the discovery of such noncompliance (see Section I(i)(6)) to allow time for the Applicant to provide additional information to the auditor and correct the noncompliance. However, the Department considers a requirement directing the auditor to provide a draft Audit Report to the audited entity in all cases to be inappropriate, as it is a matter best determined by the Applicant and the auditor. The Department notes that, while contemplating the time frames for completion and submission of the Audit Report, it did take into account the auditor's procedural work and communications with the Applicant. The Applicant has not demonstrated the need for additional time to complete and submit the Audit Report. The Department therefore declines to modify Section I(i)(5) as requested by the Applicant.

Lastly, the Department has accepted the Applicant's recommendation that the auditor be allowed to issue one consolidated Audit Report and has modified Section I(i)(5) accordingly.

Comment 17—Auditor's Determination of Compliance—I(i)(5)(i)

Section I(i)(5)(i) of the proposed five-year exemption provides, in part: ''*Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective JPMC Affiliated QPAM must be promptly addressed by such JPMC Affiliated QPAM, and any action taken by such JPMC Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below).*''

The Applicant asserts that Section I(i)(5)(i) is arbitrary, capricious, and

ambiguous and requests that the term ''promptly'' be omitted from the condition because it will cause disputes over its meaning. The Applicant argues that this perceived ambiguity is problematic in this context because addressing the auditor's recommendation could be a lengthy process.

In addition, Section I(i)(5)(i) states: ''*Furthermore, the auditor must not rely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section I(m) below in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above.*''

The Applicant requests that this provision of Section I(i)(5) be deleted, as it imposes a counterproductive limitation on the auditor's use of the Annual Review and usurps the auditor's judgment regarding how to perform its role, and whether and when to rely upon any and all resources. The Applicant further states, that denying the auditor the opportunity to fully use its judgment as to which resources it will rely upon contradicts the underlying purpose of this exemption's broader audit condition, especially in light of the requirements relating to the auditor's selection and qualifications. Moreover, the Applicant states that the language of this condition will interfere with the workability of the exemption and its use by plans. To that end, the Applicant states that if counterparties cannot determine whether this requirement has been complied with, the exemption will not be used, to the detriment of plans.

The Department acknowledges that the Applicant's efforts to address the auditor's recommendations regarding any inadequacy in the Policies and Training identified by the auditor, may take longer to implement than the time limits mandated by the proposed exemption. Accordingly, the Department is modifying Section I(i)(5)(i) to reflect the possibility that the JPMC Affiliated QPAMs' efforts to address the auditor's recommendations regarding inadequacies in the Policies and Training identified by the auditor, may not be completed by the submission date of the Audit Report and may require a written plan to address such items. However, any noncompliance identified by the auditor must be promptly addressed. The Department does not agree that the word ''promptly'' creates inappropriate ambiguity in the condition and declines to remove the word.

The final sentence of Section I(i)(5)(i) expresses the Department's intent that the auditor not rely solely on the work of the Compliance Officer and the contents of the Annual Report in formulating its conclusions or findings. The auditor must perform its own independent testing to formulate its conclusions. This exemption does not prohibit the auditor from considering the Compliance Officer's Annual Report in carrying out its audit function, including the formulation of an audit plan. This exemption, however, does prohibit the auditor from reaching conclusions that are exclusively based upon the contents of the Compliance Officer's Annual Report. The Department has modified Section I(i)(5)(i) to more clearly reflect these views.

Included with its comment on Section I(i)(5)(i), the Applicant requests the deletion of the Compliance Officer and Annual Review requirements set out in Section I(m). The Department's response to this request is discussed below.

Comment 18—Adequacy of the Annual Review—Section I(i)(5)(ii)

Section I(i)(5)(ii) of the proposed five-year exemption provides that ''*[t]he Audit Report must include the auditor's specific determinations regarding: . . . (ii) The adequacy of the Annual Review described in Section I(m) and the resources provided to the Compliance Officer in connection with such Annual Review.*''

The Applicant asserts that requiring the auditor to assess the adequacy of the resources provided to the Compliance Officer is overreaching and should be deleted. The Applicant states that, while the auditor function requires proficiency in ERISA, it does not require sophistication or expertise on resource allocation. According to the Applicant, the question of whether the Compliance Officer has met its obligations under this exemption will be subject to the auditor's review. The Applicant states that if the auditor finds any deficiencies in the review, the Applicant will address such issues including any allocation of resources.

As discussed in detail below, the Department views the Compliance Officer and the Annual Review as integral to ensuring compliance with the exemption. An independent assessment by the auditor of the adequacy of the Annual Review is essential to providing the Department with the assurance that the Applicant and the JPMC Affiliated QPAMs have given these matters the utmost priority and have taken the actions necessary to comply with the exemption. However, the Department agrees that the QPAMs need not require the auditor to opine on the adequacy of the resources allocated to the Compliance Officer and has modified Section I(i)(5)(ii) accordingly. If, however, the auditor observes compliance issues related to the Compliance Officer or available resources, it would be appropriate for the auditor to opine on those problems.

Comment 19—Certification of the Audit—Section I(i)(7)

Section I(i)(7) of the proposed five-year exemption provides, in part, that ''*. . . the General Counsel, or one of the three most senior executive officers of the JPMC Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalties of perjury, that the officer has reviewed that Audit Report and this exemption; addressed, corrected, or remedied any inadequacy identified in the Audit Report . . .*''

The Applicant requests that this condition be modified to remove ambiguity, enhance workability, and avoid aspects that could be interpreted as punitive. The Applicant claims that the requirements of Section I(i)(7) should take into account JPMC's business structure and allow the Applicant to determine which senior officers will review the Audit Report. The Applicant states that it would be preferable that an executive related to an asset/investment management business operating through the QPAM review the Audit Report. In this regard, the Applicant requests Section I(i)(7) be modified in part as follows: ''the General Counsel or one of the three most senior executives of the line of business engaged in discretionary assets management activities through the JPMC Affiliated QPAM with respect to which the Audit Report applies . . .''.

The Department concurs that a senior executive officer with knowledge of the asset management business within the QPAM should be allowed to review the Audit Report, and has modified the language of Section I(i)(7), accordingly.

The Applicant also requests that the timing of Section I(i)(7) be clarified. In this regard, the Applicant states that compliance with this condition would be impossible if, for example, a recommendation takes longer to implement than the 30-day period contemplated in Section I(i)(9) for the Audit Report to be certified and provided to the Department.

While the Department does not view Section I(i)(7) as ambiguous, the Department is aware, as stated above, that the Applicant's efforts to address the auditor's recommendations regarding inadequacies in the Policies and Training identified by the auditor may take longer to implement than the

timeframe to submit the certified Audit Report. With respect to this issue, the Department did not intend to limit corrective actions to those that could only be completed prior to the submission of the Audit Report. Therefore, the Department has modified Section I(i)(7) to reflect that the senior officer may certify that a written plan to address the inadequacies regarding the Policies and Training identified in the auditor's Report is in place.

The Applicant also states that this condition should clarify that it may appropriately ''address'' an inadequacy by noting that an alternative action to the auditor's recommendation, or even no action, is a preferable means of protecting ERISA plan clients and IRAs. The Applicant states that this condition is intrusive, as it invites the auditor, through its conclusions and recommendations, to micromanage the business of the relevant JPMC QPAM. The Applicant claims that, with broad access to a JPMC Affiliated QPAM's records, the auditor could identify any number of potential inadequacies, all of which the JPM Affiliated QPAM should not be required to accept unconditionally.

As mentioned above, the Department has determined that it is necessary for the auditor to be afforded unfettered access to JPMC Affiliated QPAM records, to the extent that the analysis of such records falls within the twelve month period to which the audit relates. For the first audit required by this exemption, that period runs from January 10, 2018 through January 9, 2019. The conditions of this exemption do not prohibit the Applicant from disagreeing with the auditor with respect to whether certain practices fail to comply with the terms of this exemption. However, in those circumstances where the auditor is not persuaded to change its position on a matter the auditor considers noncompliant, the Applicant will be responsible to correct such matters. Nor do the conditions of this exemption prohibit the Applicant from disagreeing with the auditor with respect to the appropriate method for correcting or addressing issues of noncompliance. The Department would expect the Applicant and the auditor to have meaningful communications on such differences of opinion. In the event the Applicant chooses to apply a corrective method that differs from that recommended by the auditor, the Audit Report and the Addendum attached thereto should explain in detail the noncompliance, the auditor's recommended action, the corrective method chosen, and, if applicable, why the Applicant chose a corrective method different from that recommended by the auditor.

Lastly, the Applicant requests deletion of the requirement in Section I(i)(7) for certification by the senior executive officer under penalties of perjury. The Applicant argues that this requirement is unnecessary and inappropriate as this exemption already requires accuracy in communications with regulators and clients.

The Department declines to remove this requirement, which makes clear the importance of the correction process and creates a strong incentive going forward to take seriously the audit process—and compliance generally.

Comment 20—Review and Certification of Audit Report—Section I(i)(8)

Section I(i)(8) the proposed five-year exemption provides that ''*[t]he Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal officer of JPMC must review the Audit Report for each JPMC Affiliated QPAM . . .*''

The Applicant requests that the requirement to provide the Audit Report to the Risk Committee of JPMC's Board of Directors be omitted. The Applicant states that the Department, in imposing this condition, is acting beyond the scope of its authority. The Applicant also represents that this condition constitutes micromanaging by the Department and is inappropriate and unnecessary. The Applicant further states that this requirement does not protect plans and participants and is duplicative of other conditions contained in this exemption. The Applicant argues that a mandate by the Department concerning JPMC's internal processes for handling information is outside the scope of the exemption and does not further the statutory goal of protecting plans.

The Applicant requests that the exemption provide that the certifying reviewer be a senior executive officer. The Applicant further states that the exemption should not mandate that the certifying reviewer be a senior executive officer in the direct reporting line to the highest ranking legal officer of JPMC.

Finally, the Applicant requests the requirement in Section I(i)(8) that the certification by the senior executive officer be made under penalty of perjury be deleted, as it is unnecessary.

The Department notes that in its application and related materials, the Applicant has represented that it has established, or is in the process of establishing comprehensive changes to processes and procedures that are, in part, intended to change the culture at JPMC from the top down. As represented by the Applicant, these changes are focused on enhancements in: (1) Supervision, controls, and governance; (2) compliance risk assessment; (3) transaction monitoring and communications surveillance; (4) compliance testing; and (5) internal audit.[8]

The Department has developed this exemption to ensure that the highest levels of management are aware of on-going matters concerning JPMC, the JPMC Affiliated QPAMs, and compliance with this exemption. Requiring the provision of the Audit Report to the Board of Directors and certification by a senior executive officer in the reporting line of the highest legal compliance officer provides assurance that the highest levels of management within JPMC stay informed about JPMC's and the JPMC Affiliated QPAMs' compliance with the terms of this exemption. In the Department's view, such officials are in the best position to ensure that any inadequacy identified by the auditor is appropriately addressed and that necessary changes to corporate policy are effectuated if and where necessary. Requiring certification under penalty of perjury is consistent with the Department's longstanding view that basic requirements of compliance and integrity are fundamental to an entity's ability to qualify as a QPAM.

Comment 21—Availability of the Audit Report—Section I(i)(9)

The Applicant claims that the requirements in Section I(i)(9) that ''*each JPMC Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such JPMC Affiliated QPAM*'' is outside the scope of the exemption and is unnecessary. The Applicant states that the availability of the Audit Report should be limited to ERISA-covered plans and IRAs for which the Applicant relies on PTE 84–14. The Applicant argues that it is overly-broad, punitive and not related to the relief provided in the exemption to extend this condition to plans and IRAs for which the Affiliated JPMC QPAMs do not rely on PTE 84–14. Additionally, the Applicant requests that the Audit Report should be made

[8] See JPMC Exemption Application (May 20, 2015) at page 12.

available upon request and that any such provision of the Audit Report may be facilitated via electronic delivery.

The Department does not agree that the condition in Section I(i)(9) is punitive. As the Applicant recognized in its application, ERISA-covered plans, IRAs, and counterparties routinely rely on QPAM status before entering into agreements with financial institutions, even if those institutions do not believe compliance with PTE 84–14 is strictly necessary for any particular transaction. Accordingly, the Department has an interest in ensuring that the conditions of this exemption broadly protect ERISA-covered plans and IRAs that have relied on QPAM status in deciding to enter into an agreement with the Applicant or the Affiliated JPMC QPAMs.

Nevertheless, the Department has revised Section I(i)(9) to clarify that the JPMC Affiliated QPAMs are required to make the documents available to any fiduciary of a Covered Plan. The Audit Report, in any event, will be incorporated into the public record attributable to this exemption, under Exemption Application Number D–11906, and, therefore, independently accessible by members of the public. Accordingly, the Department has determined to revise the condition by replacing the phrase ''an ERISA-covered plan or IRA, the assets of which are managed by such JPMC Affiliated QPAM'' with the term ''Covered Plan'' (as defined in Section II(c)). Lastly, the Department agrees that access to the Audit Report need only be upon request and such access can be electronic, and has revised the exemption accordingly.

Comment 22—Engagement Agreements—Section I(i)(10)

The Applicant claims that the requirement under Section I(i)(10)(B) which provides, ''*[e]ach JPMC Affiliated QPAM and the auditor must submit to OED . . . (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this five-year exemption, no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter)*'' should be omitted as it is unnecessary, punitive, and not in the interest of plans or their participants. The Applicant states that the terms of engagement between the JPMC Affiliated QPAMS and the auditor and trainer should be left to the discretion of the parties to such engagement agreements. The Applicant maintains that it is intrusive to mandate that every service provider contract that relates to the Policies and the Training be provided to the Department. Additionally, the Applicant requests that the timeframe for provision of the auditor's engagement be modified to no later than six (6) months after execution of such engagement agreement.

In coordination with the Department's modification of Section I(h)(2)(ii) to remove the requirement that the Training must be conducted by an independent professional, the Department has determined to remove the requirement in Section I(i)(10)(B) to provide to the Department the engagement agreements entered into with entities retained in connection with compliance with the Training or Policies conditions. Furthermore, to remove any confusion and uncertainty regarding the timing of the submission of the auditor's engagement agreement, the Department has modified Section I(i)(10) to require that the auditor's engagement agreement be submitted to the Office of Exemption Determinations no later than two (2) months after the engagement agreement is entered into by the Applicant and the independent auditor.

Comment 23—Auditor's Workpapers—Section I(i)(11)

Section I(i)(11) the proposed five-year exemption provides that the ''*auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant JPMC Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable JPMC Affiliated QPAM.*'' The Applicant states that Section I(i)(11) is duplicative and could cause the Applicant to lose the exemption due to the auditor's actions or inaction. Additionally, the Applicant notes that this condition should account for workpapers which the auditor does not want to submit to the public file on the basis of confidentiality or privacy of information. The Applicant argues that such workpapers may contain information such as client data, employee personal information, and other sensitive information. The Applicant therefore requests that the Department exempt such workpapers in a manner that does not compromise the Department's ability to review such workpapers. Finally, the Applicant claims that by stating ''all of the workpapers'' and then providing list of what ''all'' might encompass, the Department is being overzealous and duplicative.

The Department acknowledges that certain information contained in the workpapers may be confidential and proprietary, and having that information in a public file may create needless or avoidable disclosure issues. The Department has determined to modify Section I(i)(11) to remove the requirement that the auditor provide the workpapers to OED,[9] and instead require that the auditor provide access to the workpapers for the Department's review and inspection. However, given the importance of the workpapers to the Department's own review and the Applicant's contractual relationship with the auditor, the Department declines to include, as requested by the Applicant, a statement in Section I(i)(11) that a failure on behalf of the auditor to meet this condition will not violate the exemption.

Comment 24—Replacement of Auditor—Section I(i)(12)

Section I(i)(12) of the proposed five-year exemption states that: ''*JPMC must notify the Department at least thirty (30) days prior to any substitution of an auditor . . . and that JPMC demonstrate[e] to the Department's satisfaction that such new auditor is independent of JPMC, experienced in the matters that are the subject of the exemption, and capable of making the determination required by [the] exemption.*''

The Applicant requests that this Section I(i)(12) be deleted as it is inconsistent with the condition for the initial selection of an auditor and duplicative of other substantive terms of the exemption. Initially, the Applicant notes that permitting JPMC's internal audit department to perform the audit functions required under this exemption would render this condition unnecessary. The Applicant states that requiring JPMC to demonstrate the independence and qualifications of the auditor prior to a substitution serves no useful purpose, given the audit process timeline laid out under this exemption. The Applicant states that, since the exemption does not grant the Department the authority to approve the initial auditor selection, likewise the Department should not have the authority to approve the selection of a subsequent auditor. The Applicant states that many circumstances which could necessitate an auditor change would not relate to compliance with the terms of the exemption. The Applicant

[9] OED is the Office of Exemption Determinations within the Employee Benefits Security Administration agency of the United States Department of Labor.

states that if the Department's concern is the removal of a critical auditor, this condition is not rationally related to such an issue.

As explained above, the Department does not agree that the internal audit department of JPMC is the appropriate entity to perform the audit. The auditor's independence is critical to the Department's determination that the exemption protects Covered Plans. This exemption is not unique in requiring the Department be notified of changes to service providers (see, *e.g.,* the requirement of Schedule C of the Form 5500 Annual Return/Report for the Plan Administrator of certain plans to report to the Department a termination of the plan's auditor and/or enrolled actuary and to provide an explanation of the reasons for the termination, including a description of any material disputes or matters of disagreement concerning the termination). Furthermore, requiring the Applicant to notify the Department of the substitution of an auditor serves to ensure that the JPMC Affiliated QPAMs are attentive to the audit process and the protections it provides; and that the Department has the information it needs to review compliance. The Department has determined to modify Section I(i)(12) to remove the requirement for JPMC to demonstrate the independence and qualifications of the auditor, however, and requires instead that JPMC, no later than two months from the engagement of the replacement auditor, notify the Department of a change in auditor and of the reason(s) for the substitution including any material disputes between the terminated auditor and JPMC. JPMC's fiduciary obligations with respect to the selection of the auditor, as well as the significant role a credible selection plays in reducing the need for more extensive oversight by the Department, should be sufficient to safeguard the selection process.

Comments 25–26—Contracts With Plans and IRAs—Section I(j)

Section I(j) of the proposed five-year exemption provides: ''*Effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees and warrants:*

(1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(2) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a JPMC Affiliated QPAM's violation of applicable laws, a JPMC Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction;

(3) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the JPMC Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of JPMC, and its affiliates;

(5) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

(6) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and

(7) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of JPMC, and its affiliates;

(8) Within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which an JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services, the JPMC Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement''.

The Applicant states that Section I(j) of the proposed exemption is overbroad, entirely inappropriate, not rationally-related to asset management, inconsistent with the Administrative Procedure Act (the APA), an attempt to create a private right of action for IRAs, and punitive; that it should be limited to ERISA-covered plans and IRAs with respect to which the Applicant relies on the QPAM Exemption; and that it is not reasonably designed to protect plans or their participants. The Applicant also requests that the condition clarify that it supersedes the analogous condition in PTE 2016–15, so as not to impose duplicative requirements, and also be modified to read as follows: ''*This subparagraph supersedes Section I(i) of PTE 2016–15, as of the date of the exemption's publication in the* **Federal Register**. *Effective as of the publication date, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services in reliance on PTE 84–14 . . . .*''

As explained above, ERISA-covered plans and IRAs routinely rely on QPAM status as a condition of entering into transactions with financial institutions, even with respect to transactions that do not require adherence to PTE 84–14. Indeed, the Applicant recognized this fact in its application (see, *e.g.,* Applicant's statement that ''[w]hile

equity strategies rarely rely on the QPAM Exemption, plans invested in such strategies could decide to find other managers or pooled funds if the affiliated investment managers were no longer QPAMs''). In addition, it may not always be clear whether the JPMC Affiliated QPAM intends to rely upon PTE 84–14 for any particular transaction. Accordingly, it is critical to ensure that protective conditions are in place to safeguard the interests of ERISA-covered plans and IRAs that are acting in reliance on the availability of this exemption, particularly those who may not have entered into the transaction in the first place, but for the Department's grant of this exemption.

The Department has a clear interest in protecting such Covered Plans that enter into an asset management agreement with a JPMC Affiliated QPAM in reliance on the manager's qualification as a QPAM. Moreover, when a Covered Plan terminates its relationship with an asset manager, it may incur significant costs and expenses as its investments are unwound and in connection with finding a new asset manager. The Department rejects the view that it acts outside its authority by protecting ERISA-covered plans and IRAs that rely on JPMC's asset managers' eligibility for this exemption, and reemphasizes the seriousness of the criminal misconduct that caused JPMC to need this exemption. The Department may grant an exemption under Section 408(a) of ERISA or Section 4975(c)(2)(C) of the Code only to the extent the Secretary finds, among other things, that the exemption is protective of the affected plan(s) or IRA(s). As noted by regulators, personnel at JPMorgan Chase Bank, a QPAM, engaged in serious misconduct over an extended period of time at the expense of their own clients. This misconduct appears to have stemmed, in part, from deficiencies in control and oversight.

Notwithstanding the misconduct, which resulted in violation of Section I(g) of PTE 84–14, the Department has granted this exemption based, in significant part, upon the inclusion of Section I(j)(1) in the exemption, which protects Covered Plans by, among other things, requiring JPMC Affiliated QPAMs to make an express commitment to their customers to adhere to the requirements of ERISA and the Code, as applicable. As previously indicated, the Department has concluded that a culture of compliance, centered on adherence to basic standards of fair dealing as set forth in this exemption, gives the Department a compelling basis for making the required statutory findings that the exemption is in the interests of plan and IRA investors and protective of their rights. Absent such findings, the exemption would have been denied.

In response to the Applicant's comments, however, the Department has required an express commitment to comply with the fiduciary standards and prohibited transaction rules only to the extent these provisions are ''applicable'' under ERISA and the Code. This section, as modified, should serve its salutary purposes of promoting a culture of compliance and enhancing the ability of plans and IRA customers to sever their relationships with minimal injury in the event of non-compliance. This conclusion is reinforced, as well, by the limited nature of the relief granted by this exemption, which generally does not extend to transactions that involve self-dealing.

In response to the Applicant's comments, the Department also notes that nothing in ERISA or the Code prevents the Department from conditioning relief on express contractual commitments to adhere to the requirements set out herein. The QPAMs remain free to disclaim reliance on the exemption and to avoid such express contractual commitments. To the extent, however, that they hold themselves out as fiduciary QPAMs, they should be prepared to make an express commitment to their customers to adhere to the requirements of this exemption. This commitment strengthens and reinforces the likelihood of compliance, and helps ensure that, in the event of noncompliance, customers—particularly IRA customers—will be insulated from injuries caused by non-compliance. These protections also ensure that customers will be able to extricate themselves from transactions that become prohibited as a result of the QPAMs' misconduct, without fear of sustaining additional losses as a result of the QPAMs' actions. In this connection, however, the Department emphasizes that the only claims available to the QPAMs' customers pursuant to these contractual commitments are those separately provided by ERISA or other state and federal laws that are not preempted by ERISA. As before, private litigants have only those causes of action specifically authorized by laws that exist independent of this exemption.

Comment 27—Indemnity Provision—Section I(j)(2).

Section I(j)(2) of the proposed five-year exemption provides that ''*[e]ffective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees and warrants: . . . (2) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a JPMC Affiliated QPAM's violation of applicable laws, a JPMC Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I (g) of PTE 84–14 other than the Conviction.*''

The Applicant requests that this condition be deleted because it is punitive, beyond the Department's authority, and provides for damages that are excessive and/or not reasonably related to any conduct of the JPMC Affiliated QPAMs. In addition, the Applicant represents that the condition may operate in a manner that is fundamentally unfair because it is not limited to clients who are harmed through a direct, causal link to the loss of exemptive relief provided by PTE 84–14.

Also with respect to section I(j)(2), the Applicant requests clarifying language stating that the JPMC Affiliated QPAM indemnification obligations under this exemption do not extend to damages resulting from, or caused by forces beyond the control of JPMC, including certain acts of government authorities and acts of God.

In this regard, the Applicant requests a revision of section I(j)(2) such that each JPMC Affiliated QPAM must agree and warrant to indemnify and hold harmless the ERISA-covered plan or IRA, ''*for any reasonable losses involving such arrangement, agreement or contract and resulting directly from a JPMC Affiliated QPAM's violation of ERISA, or, to the extent the JPMC Affiliated QPAM relies on the exemptive relief provided by PTE 84–14 under the arrangement, agreement or contract for any explicit transactional exit costs of any instrument with respect to which PTE 84–14 was expressly relied upon and for which no other exemption is available, resulting directly and solely from the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14, other than as a result of the Conviction.*''

As explained above, the intended purpose of this exemption is to protect

ERISA-covered plans and IRAs who entrust the JPMC Affiliated QPAMs with the management of their retirement assets. To this end, the Department believes that the protective purpose of this exemption is furthered by Section I(j)(2). The Department emphasizes that this condition is not punitive, but rather ensures that, when an ERISA-covered plan or IRA enters into an asset management agreement with a JPMC Affiliated QPAM in reliance on the manager's qualification as a QPAM, it may expect adherence to basic fiduciary norms and standards of fair dealing, notwithstanding the prior conviction. The condition also ensures that the ERISA-covered plan or IRA will be able to disengage from that relationship in the event that the terms of this exemption are violated without undue injury. Accordingly, the Department has revised the applicability of this condition to more closely reflect this interest. In particular, the condition applies only to Covered Plans. As indicated above, if the asset manager would prefer not to be subject to these provisions as exemption conditions, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with the ERISA-covered plan or IRA (in that case, however, it could not rely on the exemption for relief). The Department has made certain further changes to this condition upon consideration of the Applicant's comment. These changes include: renumbering the condition for clarity; replacing ''applicable laws'' with clarifying language that conforms to the one-year exemption; and replacing ''any damages'' with ''actual losses resulting directly from'' certain acts or omissions of the JPMC Affiliated QPAMs. Because I(j)(2) extends only to actual losses resulting directly from the actions of the JPMC Affiliated QPAMs, it does not encompass losses solely caused by other parties, events, or acts of God.

Comment 28—Limits on Liability—Section I(j)(3) and I(j)(7).[10]

Sections I(j)(3) and I(j)(7) of the proposed five-year exemption provide that ''*[e]ffective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees and warrants:*

. . . (3) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; [and] . . . (7) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of JPMC, and its affiliates.''

The Applicant requests that these conditions be deleted because they: duplicate the statutory requirements in ERISA and the Code, which ensure that the JPMC Affiliated QPAMs remain liable to their plan or IRA clients for the asset manager's violations of the law; do not afford plans and IRAs any greater protection; and amount to unnecessary overregulation. To the extent there is a violation of a contract, the Applicant represents that adequate causes of action exist to remedy the issue.

Alternatively, the Applicant requests that, if the Department declines to amend Section I(j)(7) as requested, this Section be revised to clarify that losses caused by counterparties, trading venues, or acts of terrorism, war, etc., are carved out of the QPAM's liability.

The Department declines to delete Section I(j)(3) from the final exemption. As the Applicant points out, ERISA already precludes ERISA fiduciaries from disclaiming obligations under ERISA. See ERISA section 410 (prohibiting exculpatory clauses as void against public policy). To the extent the exemption condition prevents the JPMC Affiliated QPAMs from including contractual provisions that are void as against public policy there is no legitimate basis for objection. Such exculpatory language should not be in the governing documents in the first place and is potentially misleading because it suggests disclaimer of obligations that may not be disclaimed.

Outside the context of ERISA section 410, the provision's requirement that the JPMC Affiliated QPAMs retain accountability for adherence to the basic obligations set forth in this exemption is justified by the misconduct that led to the Conviction as discussed above, and by the need to ensure that ERISA-covered plan and IRA customers may readily obtain redress and exit contracts with JPMC Affiliated QPAMs without harm in the event of violations.

The Department has determined that Section I(j)(4), as proposed, is duplicative of the exemption's prohibition on exculpatory clauses, described below. Thus, that subsection has been deleted. Accordingly, the subsections in Section I(j) have been renumbered.

The Department has modified Section I(j)(6) (formerly (j)(7)) to clarify that the prohibition on exculpatory provisions does not extend to losses that arise from an act or event not caused by JPMC. Nothing in this section alters the prohibition on exculpatory provisions set forth in ERISA Section 410.

Comment 29—Termination and Withdrawal Restriction

Under Sections I(j)(5) and I(j)(6) of the proposed five-year exemption, the JPMC Affiliated QPAMs agree: ''*. . . (5) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; [and] . . . (6) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors.*''

The Applicant represents that these conditions should be deleted because they are harmful to ERISA-covered plans and IRAs and their participants and beneficiaries, and are punitive to the Applicant. Withdrawal provisions, according to the Applicant, should be designed to protect all investors in a pooled fund or in a particular strategy. The Applicant states that the proposed restrictions here would disrupt the JPMC Affiliated QPAMs' existing relationships with and contractual obligations to their clients, notwithstanding the fact that plans and IRAs have determined that such

[10] The Department has determined that subsection (4) is duplicative of the exemption's prohibition on exculpatory clauses, described below. Thus, the subsection has been deleted.

relationships are in their best interests. The Applicant represents that lockup provisions are commonly used, designed to protect all investors in a pooled fund, and applied evenly to all investors. If conditions relating to withdrawal are not permitted, the Applicant asserts that ERISA-covered plans and IRAs will not be able to invest in their desired alternatives or strategies.

The Applicant requests that, should these conditions be retained, they be modified as follows: Under renumbered Sections I(j)(4) and (j)(5), the JPMC Affiliated QPAMs agree: ''*. . . (4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors; [and] . . . (5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors.*''

The Department has revised renumbered Section I(j)(4) in partial satisfaction of the Applicant's request. This section now provides, ''Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming Covered Plan's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.''

Renumbered Section I(j)(5) is consistent with the Applicant's request.

Comment 30—Updated Investment Management Agreement

Section I(j)(8) of the proposed five-year exemption provides that ''*[w]ithin four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which an JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services, the JPMC Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement.*''

The Applicant represents that this condition is duplicative and ''potentially inconsistent'' with PTE 2016–15, and could cause the Applicant to lose the exemption through the actions of another. The Applicant requests that the Department publish a notice of technical correction to PTE 2016–15 to eliminate the notice to clients under that exemption so that only one notice with the final obligations will be provided to clients. The Applicant states that it should not be required to issue two sets of potentially inconsistent notices to clients. Instead, once the final exemption is published in the **Federal Register**, the Applicant suggests that the condition be modified to require that the notices, and the proposed and final exemptions, be sent to clients within six (6) months. The Applicant asserts that this request will alleviate client confusion. Alternatively, the Applicant requests that the Department modify renumbered Section I(j)(7) so that it will deem any notices and mailings under PTE 2016–15 to meet the requirements of the final exemption. In addition, the Applicant requests that the Department modify renumbered Section I(j)(7) to clarify that it is limited to agreements, arrangements, or contracts in which a JPMC Affiliated QPAM provides services in reliance on PTE 84–14, and where the Applicant has a direct contractual relationship with the plan or IRA. Finally, the Applicant represents that a bilateral investment management agreement containing the obligations under Section I(j) should not be required. If the client refuses to sign an updated agreement, the Applicant states that the JPMC Affiliated QPAM unintentionally may be in violation of this condition even where it has met the substantive requirements of Section I(j). The Applicant represents that its compliance with the exemption should not depend on action by its clients. Therefore, the Applicant requests that this requirement be eliminated, and that renumbered Section I(j)(7) be revised as follows to reflect the Applicant's aforementioned changes: ''*Within six (6) months of the date of this exemption's publication in the* **Federal Register**, *each JPMC Affiliated QPAM will provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services in a direct contractual relationship and in reliance on PTE 84–14 as of the date of the notice. The Applicant shall be deemed to have met this condition if, with respect to any plan or IRA client, the Applicant met the requirements of PTE 2016–15. For all other ERISA-covered plan and IRA clients (i.e., those plans and IRAs that become direct contractual clients after the time the notice described in PTE 2016–15 is provided to existing clients) for which a JPMC Affiliated QPAM provides asset management or other discretionary services in reliance on PTE 84–14, the JPMC Affiliated QPAM will provide a notice of its obligations under this Section I(j) to such clients within six (6) months after the date of publication of this exemption.*'' [11]

The Department declines to make a change to PTE 2016–15, since, among other things, the change the Applicant seeks is not a technical correction, but rather would require amending that exemption. Accordingly, the Applicant must fully comply with the terms of PTE 2016–15, including Section I(j). However, the Department has modified renumbered Section I(j)(7) for better coordination with PTE 2016–15. As modified, the exemption's text now

[11] In a letter to the Department dated March 7, 2017, the Applicant expresses similar concerns about the perceived inconsistencies, duplicative nature, and administrative challenges created by the client notification requirement in Section I(i) of PTE 2016–15 as well as in the proposed exemption. In the letter, the Applicant recommends that the notice be provided to clients *only after* the final exemption has been granted. This is consistent with the Applicant's proposed revisions to renumbered Section I(j)(7).

provides that a notice that satisfies Section I(i)(2) of that exemption will satisfy renumbered Section I(j)(7) of this exemption, unless the notice contains any language that limits, or is inconsistent with, the scope of this exemption.

As noted above, the Department has an interest in protecting an ERISA-covered plan or IRA that enters into an asset management agreement with a JPMC Affiliated QPAM in reliance on the manager's qualification as a QPAM, regardless of whether the QPAM relies on the class exemption when managing the ERISA-covered plan's or IRA's assets. The Department has revised the applicability of this condition to more closely reflect this interest, and the condition now applies to Covered Plans. The Department has also modified the condition so that a JPMC Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. In addition, the JPMC Affiliated QPAM must give notice of its obligations under Section I(j) to each Covered Plan by July 9, 2018, consistent with the applicant's request for additional time to provide the notice.

Comment 31—Notice to Plan Clients—Section I(k)(1) [12]

Section I(k)(1) of the proposed five-year exemption provides that ''*[w]ithin thirty (30) days of the publication of this proposed five-year exemption in the* ***Federal Register****, each JPMC Affiliated QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary services, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the* ***Federal Register*** *copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the* ***Federal Register****, and may be delivered electronically (including by an email that has a link to the exemption). Any prospective clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM.*''

The Applicant requests that (k)(1) be changed to require each existing and prospective client with respect to which the Applicant has a direct contractual relationship and relies on the QPAM exemption, to be provided with a link to the proposed and final exemption within six (6) months after publication; and prospective clients after six (6) months should receive the proposed and final exemptions through any reasonable delivery method (such as a written notice of the applicable website where the exemptions can be found). The Applicant asserts that the provision, as proposed, is overbroad and punitive and not rationally related to the use of the QPAM Exemption. The Applicant also states that, for prospective clients, it is duplicative to provide the Summary and the copies of the proposal and final grant, which both state the same facts and will be burdensome to prospective clients due to the size of the asset management agreement.

The Department notes that the proposed exemption provides details of the facts and circumstances underlying the Conviction not found in the Summary or this exemption. One of the purposes of such a complete disclosure is to ensure that all interested parties are aware of and attentive to the complete facts and circumstances surrounding JPMC's application for exemption. Requiring the disclosure of the Summary, proposal, and grant provides the opportunity for all parties to have knowledge of these facts and circumstance. Notwithstanding this, the Department has modified the condition to clarify that disclosures may be provided electronically. Further, the notice requirement has been narrowed to ERISA-covered plans and IRAs that would benefit from this knowledge (*i.e.,* Covered Plans).

Comment 32—Notice to Non-Plan Clients—Section I(k)(2)

Section I(k)(2) of the proposed five-year exemption provides, ''*[e]ach JPMC Affiliated QPAM will provide a* ***Federal Register*** *copy of the proposed five-year exemption, a* ***Federal Register*** *copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM. For purposes of this subparagraph (2), a Current Non-Plan Client means a client of a JPMC Affiliated QPAM that: is neither an ERISA-covered plan nor an IRA; has assets managed by the JPMC Affiliated QPAM as of the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the JPMC Affiliated QPAM that such JPMC Affiliated QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14 . . . .*''

The Applicant requests that Section (I)(k)(2) be deleted in its entirety because, in its opinion, the provision is punitive and beyond the Department's authority. The Applicant requests that any notice requirement be limited to ERISA-covered plans and IRAs that have a direct contractual relationship with a JPMC Affiliated QPAM and actually rely on PTE 84–14.

Given the breadth of the notice requirements otherwise mandated by the exemption, and its decision to restrict the requirements to those arrangements for which QPAM status plays an integral role (*i.e.,* the QPAM represents or relies upon its QPAM status), the Department has determined to delete this provision.

Comment 33—Compliance Officer—Section I(m)

Section I(m) of the proposed five-year exemption provides, in part, ''*JPMC designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements describe herein. The Compliance Officer must conduct an annual review (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training . . . .*''

The Applicant requests that the conditions relating to the Compliance Officer be deleted because they are punitive, inconsistent with precedent, and inconsistent with the APA. The Applicant states that the criminal conduct that necessitated the exemption did not involve in any way JPMC's asset management business, and that the QPAMs already have very robust compliance departments. The Applicant states that it is duplicative to have another layer of compliance and the condition substitutes the Department's

[12] The Department has renumbered this condition as section I(k) in this exemption.

judgment for that of the Applicant and its many other regulators. Furthermore, the Applicant states that the criminal conduct was the result of one single former FX trader, and that the inclusion of this condition is without any precedent, and is arbitrary and capricious. Finally, the Applicant states that every compliance officer is not a lawyer, and that the condition's time frames are inconsistent, and not practicable.

The Department is removing the requirement that the Compliance Officer be a legal professional (*i.e.,* a lawyer), but declines to make the Applicant's other requested changes. JPMC personnel engaged in serious misconduct that was not limited to one trader and that was caused, at least in part, by serious failures of compliance and oversight. The misconduct relevant to the development of this exemption spanned multiple years and involved repeated failures by JPMC personnel, in supervisory and oversight positions. The Department's determination to grant this exemption is based in part on the Department's view that an internal compliance officer with responsibility for the policies and procedures mandated by this exemption will provide the level of oversight necessary to ensure that such Policies and Training are properly implemented.

Comment 34—Deferred Prosecution Agreement/Non-Prosecution Agreement—Section I(o)

Section I(o) of the proposed five-year exemption provides, with respect to any Deferred Prosecution Agreement or Non-Prosecution Agreement: ''*During the effective period of the five-year exemption JPMC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by JPMC or any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. After review of the information, the Department may require JPMC, its affiliates, or related parties, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in the new application, or does not grant such relief within twelve months of application, the relief described herein is revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier.*''

The Applicant requests that this condition be deleted because it is punitive, and is inconsistent with the APA, statutory authority, and the Department's own regulatory authority. The Applicant states that the condition contravenes the DOL's exemption procedure regulation at 29 CFR part 2570, which requires that the Department propose a notice of termination of an exemption for public comment. The Applicant also states that the provision could create risk and uncertainty, including uncertainty for counterparties, with respect to the very transactions that this exemption is designed to prevent from suddenly expiring. According to the Applicant, the condition itself could have the effect of causing plans to terminate such transactions at significant cost. The Applicant also suggests that parties could enter into an NPA or a DPA for investigations where a bank is not convicted, and in some cases, not even charged with, a felony. The Applicant states further that the timing and factual basis of the NPA/DPA could be distant in time or place from the current plan management operations that should be the Department's concern. Finally, the Applicant states that the provision is inconsistent with the anti-criminal provisions of Section I(g) of PTE 84–14 or section 411 of ERISA, which both require actual convictions, whereas an NPA/DPA is related to a decision by the DOJ not to prosecute.

The Department in no way intended that this condition be read as providing for an automatic revocation of this exemption, and in light of the Applicant's comments, has revised the condition accordingly. As revised, the condition simply requires that the Applicant notify the Department if and when it or any of its affiliates enter into a DPA or NPA with the U.S. Department of Justice for conduct described in section I(g) of PTE 84–14 or ERISA Section 411 and immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. The Department retains the right to propose a withdrawal of the exemption pursuant to its procedures contained at 29 CFR 2570.50, should the circumstances warrant such action.

Comment 35—Right to Copies of Policies and Procedures—Section I(p)

Section I(p) of the proposed five-year exemption provides that, ''*[e]ach JPMC Affiliated QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, and then at least once annually, will clearly and prominently: Inform the ERISA-covered plan and IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with the exemption.*''

The Applicant requests that this condition be deleted because it is impracticable, duplicative, and punitive, and not reasonably designed to be protective of plans and their participants. The Applicant states that it has over 300 policies and procedures that touch on ERISA and the Code and it is not reasonable to require the disclosure and provision of all the policies. Furthermore, the Applicant states that it cannot provide notice sixty (60) days prior to the time that the exemption is used because that date will precede the final exemption. Finally, the Applicant states that the number of notices required to be provided to clients is overly burdensome and excessive, and will lead to confusion and clients ignoring the mailings.

The Department disagrees, in part, with the Applicant's comment. Affording ERISA covered-plan and IRA clients a means by which to review and understand the Policies implemented in connection with this exemption is a vital protection that is fundamental to this exemption's purpose. However, the Department has modified the condition so that the QPAMs, at their election, may instead provide Covered Plans disclosure that accurately describes or summarizes key components of the Policies, rather than provide the Policies in their entirety. The Department has also determined that such disclosure may be continuously maintained on a website, provided that the website link to the summary of the written Policies is clearly and prominently disclosed to those Covered Plan clients to whom this section applies. The Department also agrees with the Applicant that the timing requirement for disclosure should be revised and, accordingly, has modified the condition of Section I(p) to require notice regarding the information on the website within six months of the initial effective date of this exemption, and thereafter to the extent certain

material changes are made to the Policies.

Comment 36—No-Fault Provision—Section I(q)

Section I(q) of the proposed five-year exemption provides that, ''[a] *JPMC Affiliated QPAM or a JPMC Related QPAM will not fail to meet the terms of this exemption solely because a different JPMC Affiliated QPAM or JPMC Related QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (n) and (p).*''

The Applicant requests that the relief provided under Section I(q) be extended to cover Sections I(e), (f), (g), and (m). The Applicant states that the failure of one JPMC Affiliated QPAM to meet these conditions should not disqualify all other JPMC Affiliated QPAMs from reliance on this exemption. The Applicant also states that the auditor's failure to fulfill its requirements under this exemption should not disqualify the JPMC Affiliated QPAMs from relying on the exemption.

The Department declines to extend the relief provided under Section I(q) to Sections I(e), (f), (g), and (m).

Section I(e) provides that any failure of a JPMC Affiliated QPAM or JPMC Related QPAM to comply with Section I(g) of PTE 84–14 arose solely from the Conviction. As set forth in the Applicant's materials, the Conviction is the sole reason a new exemption is necessary for the JPMC Affiliated QPAMs. If there were a new or additional conviction of a crime described in Section I(g) of PTE 84–14, the Department would need to assess the misconduct, its scope, and its significance. Without such an assessment, the Department could not be confident of the adequacy of the conditions set forth herein with respect to the JPMC Affiliated QPAMs and Related QPAMs. Indeed, depending on the particular facts, a subsequent criminal conviction could be strong evidence of the inadequacy of this exemption's conditions to protect Covered Plans. Further, as stated above, the Department is not obligated to grant further relief to the extent such a conviction occurs.

Section I(f) provides that no JPMC Affiliated QPAM or JPMC Related QPAM exercised authority over the assets of any ERISA-covered plan or IRA in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Conviction; or cause the JPMC QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction. The Applicant has, in its application and in its response to questions raised by the Department, provided statements under penalty of perjury, that they are in compliance with this condition, and the Department relied upon those statements in granting this relief. Based on these statements, the Department determines that there is no reason to include relief from Section I(f) in Section I(q).

Section I(g) requires two specific entities, JPMC and the Investment Bank of JPMorgan Chase Bank, refrain from providing investment management services to plans. Section I(m) requires JPMC to install a Compliance Officer to undertake various compliance and reporting obligations. Thus, with respect to Sections I(g) and (m), the obligations imposed extend exclusively to JPMC and the Investment Bank of JPMorgan Chase Bank. Consequently, if the relief under I(q) were extended to Sections I(g) and I(m), it would render them virtually meaningless. There would be little or no effective penalty for the failure to comply with the conditions, as the Affiliated and Related QPAMs would remain free to rely on the exemption's terms. The Department also believes that the potential for disqualification of all JPMC Affiliated QPAMs under this agreement will serve as additional incentive for JPMC and JPMorgan Chase Bank to comply in good-faith with the provisions of Sections I(g) and (m).

Finally, except as noted in Comment 23 above, the Department accepts the Applicant's comment that failure of the auditor to comply with any of the conditions of the exemption, should not be treated as a failure by the JPMC Affiliated QPAMs to comply with the conditions of the exemption provided that such failure was not due to the actions or inactions of JPMC or its affiliates, and Section I(q) is amended, accordingly.

Comment 37—Definition of Affiliated QPAM—Section II(a)

Section II(a) of the proposed five-year exemption provides: ''*(a) The term ''JPMC Affiliated QPAM'' means a ''qualified professional asset manager''(as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which JPMC is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). The term ''JPMC Affiliated QPAM'' excludes the parent entity, JPMC, the division implicated in the criminal conduct that is the subject of the Conviction.*''

The Applicant states that the last sentence of proposed Section II(a) contains an unintended error, as JPMC is not a division but is the parent company in the affiliated group.

The Department agrees with this comment and has modified the Section accordingly. The Department has reordered Section II, as described below.

Comment 38—Definition of Conviction—Section II(e)

Section II(e) of the proposed five-year exemption provides: ''*The term 'Conviction' means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15-cr-79-SRU), in connection with JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this exemption, 'conduct' of any person or entity that is the 'subject of [a] Conviction' encompasses any conduct of JPMC and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record.*''

The Applicant states that this definition inaccurately paraphrases the Plea Agreement and significantly expands the conduct to which JPMC was charged and pleaded guilty. The Applicant states that it is neither appropriate nor accurate for the Department to expand the definition beyond the charge that was the subject of the Plea Agreement.

After considering this comment, the Department has revised the definition accordingly.

Comment 39—Notice to Interested Persons

The Applicant requests that the Department confirm, and the Department so confirms, that the Applicant had 30 days after **Federal Register** publication of the proposal to notify interested persons.

Comment 40—Summary of Facts and Representations

The Applicant seeks certain clarifications to the Summary of Facts and Representations that the Department does not view as relevant to its determination whether to grant this exemption. Those requested

clarifications may be found as part of the public record for Application No. D–11906, in a letter to the Department, dated January 20, 2017.

Comment of John Williams (December 7, 2016)

Mr. Williams comments that it is unclear ''how an entity which has been convicted of wrong-doing should be granted a 5-year exemption from regulations that it has already violated.''

The Applicant responds that Mr. Williams' statement is based on an erroneous view that the Applicant has entered into a guilty plea with the Department. With regard to the notice to interested persons, the Applicant states that Mr. Williams' comment misconstrues, and improperly conflates, the criminal proceedings and the purpose of the proposed exemption. The Applicant states that it is not seeking, and the proposed exemption does not grant, relief from regulations that have already been violated. The Applicant further states that, although the JPMC Affiliated QPAMs did not participate in or know of the misconduct, the conviction of the non-asset manager affiliate would nevertheless disqualify the uninvolved asset managers from relying on the QPAM exemption. The Department reiterates that it determined that this exemption is protective of, and in the interest of, Covered Plans given the enhanced compliance and oversight requirements it imposes on JPMC Affiliated QPAMs.

Comment of Lauri Robinson (December 12, 2016)

Ms. Robinson states that it ''is very difficult for laypersons to understand how I can be adversely affected by this,'' and requests that the Department ''make it easier to understand or elaborate on how it effects [sic] current IRAs.'' Ms. Robinson believes that the Applicant ''should have informed customers of the violation and 550 million dollar fine.''

In response, the Applicant states that, among other things, the conviction was a matter of public record as of the date on which the plea agreement was entered, and that Ms. Robinson was notified, as an interested person, in accordance with the terms of the proposed exemption.

The Department notes that each JPMC Affiliated QPAM must provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor or beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests.

Comment of Mark Levy (December 20, 2016)

Mr. Levy, who states that he owns a Chase investment account, urges the Department not to ''grant[the Applicant] a 'pass' for their wrong doing [sic],'' because ''[n]o institution should be considered 'too big' to pay its share of imposed fines/penalties.''

In response, the Applicant states that, among other things, JPMC is liable for approximately $1.9 billion in monetary penalties imposed by the Department of Justice and other regulators; and that the asset management businesses of the JPMC affiliated QPAMs had no involvement in, or knowledge of, the misconduct. The Department reiterates that this exemption is not punitive and is instead designed to protect Covered Plans.

Comment of Dan Cable (December 22, 2016)

Mr. Cable objects to the exemption in general by stating he does not believe that: (i) The Applicant is taking its criminal behavior seriously, (ii) the QPAM exemption is not customarily and routinely used, and (iii) the Applicant has not adequately demonstrated harm to clients if the exemption is not granted.

In response, the Applicant states that, among other things, the Department of Justice, the District Court, and other applicable regulators already have imposed upon the Applicant certain monetary penalties and other sanctions intended to punish the Applicant and deter future wrongdoing. The Applicant states that it has taken responsibility for the conduct that was the basis of the plea agreement, that the JPMC Affiliated QPAMs had no involvement in the conduct, and that such conduct violated neither ERISA nor the Department's regulations. As such, the Applicant states that Department should not use the exemption process to further punish these uninvolved asset managers, and that to do so would only harm the plan and IRA clients of the uninvolved JPMC Affiliated QPAMs.

The commenter also expresses concern that the training and audit requirements of the proposed exemption are inadequate. In response, the Applicant disagrees and states that these proposed requirements are imposed on entities that had no involvement in the criminal conduct and that these requirements add to pre-existing robust and comprehensive training, audit, and compliance functions — both firm-wide and specific to the asset management businesses.

The commenter also expresses concern that the JPMC Affiliated QPAMs benefited from the criminal conduct that is the subject of the Conviction. In response, the Applicant notes that the proposed exemption contains the following condition: ''(b) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction.'' The Applicant states that it is able to and will comply with this condition.

The commenter expresses skepticism that the JPMC Affiliated QPAMs will not ''hire any of the crooks.'' In response, the Applicant states that the proposed exemption contains the following condition: ''The JPMC Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction.'' The Applicant states that it is able to and will comply with this condition.

The commenter states that the QPAM exemption is not routinely relied upon by the Applicant. According to the Applicant, practically all retirement plans expect their asset managers to use the QPAM exemption, and many counterparties expect representations from the Applicant that it applies.

Finally, the commenter states that it is unclear how a client of the JPMC Affiliated QPAMs would be harmed in the event that the Department does not grant the requested exemption. In response, the Applicant states that the loss of QPAM status for the JPMC Affiliated QPAMs would have a very substantial impact, affecting a significant number of ERISA plans and IRAs. The Applicant notes that, as of the time its application was filed, the Applicant managed approximately $65.5 billion in assets for ERISA plans, and over $12 billion in IRA assets for over 32,000 IRAs.

Comment of Sharon Bushman (December 26, 2016)

The commenter, who states she is the holder of an IRA managed by the

Applicant, states that she does not understand the notice to interested persons, and requests that no action be taken on the exemption until a full explanation is provided regarding the implications for individual clients. In response, the Applicant states that the Department fully explained the purpose and effect of the exemption in the preamble to the **Federal Register** notice.

As noted above, each JPMC Affiliated QPAM must provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor or beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests.

Comment of Cynthia Beaver (January 18, 2017)

The commenter states that she does not understand the notice to interested persons and requests clarification regarding whether she will be required to move her account if the exemption is not granted. If the exemption is granted, the commenter asks whether there will be adequate ''outside oversight'' to ensure that her account is safe.

In response, the Applicant expresses the view that the proposed exemption's conditions (taking into account the Applicant's comments with respect to the proposal) are sufficient and are designed to protect clients such as the commenter from the any adverse effects of the JPMC Affiliated QPAMs losing the QPAM exemption.

The Department notes that the exemption requires an extensive audit every two years by a qualified auditor who is independent of JPMC.

Comment—Letter From House Committee on Financial Services

The Department also received a comment letter from certain members of Congress (the Members) regarding this exemption, as well as regarding other QPAM-related proposed one year exemptions. In the letter, the Members stated that certain conditions contained in these proposed exemptions are crucial to protecting the investments of our nation's workers and retirees, referring to proposed conditions which require each bank to: (a) Indemnify and hold harmless ERISA-covered plans and IRAs for any damages resulting from the future misconduct of such bank; and (b) disclose to the Department any Deferred Prosecution Agreement or a Non-Prosecution Agreement with the U.S. Department of Justice. The Members also requested that the Department hold hearings in connection with the proposed exemptions.

The Department acknowledges the Members' concerns regarding the need for public discourse regarding proposed exemptions. To this end, the Department's procedures regarding prohibited transaction exemption requests under ERISA (the Exemption Procedures) afford interested persons the opportunity to request a hearing. Specifically, section 2570.46(a) of the Exemption Procedures provides that, ''[a]ny interested person who may be adversely affected by an exemption which the Department proposes to grant from the restrictions of section 406(b) of ERISA, section 4975(c)(1)(E) or (F) of the Code, or section 8477(c)(2) of FERSA may request a hearing before the Department within the period of time specified in the **Federal Register** notice of the proposed exemption.'' The Exemption Procedures provide that ''[t]he Department will grant a request for a hearing made in accordance with paragraph (a) of this section where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing.'' The Exemption Procedures also provide that ''[t]he Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements of paragraph (a) of this section; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.'' [13]

While the Members' letter raises important policy issues, it does not appear to raise specific material factual issues. The Department previously explored a wide range of legal and policy issues regarding Section I(g) of the QPAM Exemption during a public hearing held on January 15, 2015 in connection with the Department's proposed exemption involving Credit Suisse AG, and has determined that an additional hearing on these issues is not necessary.

After giving full consideration to the record, the Department has decided to grant the exemption, as described above. The complete application file (Application No. D–11906) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 21, 2016 at 81 FR 83372.

Exemption

Section I: Covered Transactions

Certain entities with specified relationships to JPMC (hereinafter, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined in Sections II(g) and II(h), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the Conviction, as defined in Section II(a), during the Exemption Period,[14] provided that the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction. For purposes of this paragraph (a), ''participate in'' means the knowing approval of the misconduct underlying the Conviction;

(b) Apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(c) The JPMC Affiliated QPAMs will not employ or knowingly engage any of

[13] 29 CFR part 2570, published at 76 FR 66653 (October 27, 2011).

[14] Section I(g) of PTE 84–14 generally provides relief only if ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

the individuals that participated in the criminal conduct that is the subject of the Conviction. For the purposes of this paragraph (c), ''participated in'' means the knowing approval of the misconduct underlying the Conviction;

(d) At all times during the Exemption Period, no JPMC Affiliated QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with JPMC, or to engage JPMC to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a JPMC Affiliated QPAM or a JPMC Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Conviction; or cause the JPMC Affiliated QPAM, the JPMC Related QPAM, or their affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, JPMC will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that JPMC will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) or section 4975(e)(3)(B) of the Code;

(h)(1) By July 9, 2018, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC;

(ii) The JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The JPMC Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the JPMC Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the JPMC Affiliated QPAM's knowledge at the time, the JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans;

(vi) The JPMC Affiliated QPAM complies with the terms of this exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the General Counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) By July 9, 2018, each JPMC Affiliated QPAM must develop a program of training (the Training), to be conducted at least annually, for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The first Training under this Final Exemption must be completed by all relevant JPMC Affiliated QPAM personnel by July 9, 2019 (by the end of this 30-month period, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice: the first time under PTE 2016–15; and the second time under this exemption). The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i)(1) Each JPMC Affiliated QPAM submits to an audit conducted every two years by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each JPMC Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2018 through July 9, 2019, and must be completed by January 9, 2020. The second audit must cover the period from July 10, 2020 through July 9, 2021, and must be completed by January 9, 2022. In the event that the Exemption Period is extended or a new exemption is granted, the third audit would cover the period from July 10, 2022 through July 9, 2023, and would have to be completed by January 9, 2024 (unless the Department chooses to alter the biennial audit requirement in the new or extended exemption);'' [15]

(2) Within the scope of the audit and to the extent necessary for the auditor,

[15] The third audit referenced above would not have to be completed until after the Exemption Period expires. If the Department ultimately decides to grant relief for an additional period, it could decide to alter the terms of the exemption, including the audit conditions (and the timing of the audit requirements). Nevertheless, the Applicant should anticipate that the Department will insist on strict compliance with the audit terms and schedule set forth above. As it considers any new exemption application, the Department may also contact the auditor for any information relevant to its determination.

in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each JPMC Affiliated QPAM and, if applicable, JPMC, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each JPMC Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each JPMC Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each QPAM, a sample of such QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to JPMC and the JPMC Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the JPMC Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each JPMC Affiliated QPAM's Policies and Training; each JPMC Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective JPMC Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The JPMC Affiliated QPAM must promptly address any noncompliance. The JPMC Affiliated QPAM must promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Affiliated QPAM. Any action taken or the plan of action to be taken by the respective JPMC Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective JPMC Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a JPMC Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular JPMC Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor, as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the most recent Annual Review described in Section I(m);

(6) The auditor must notify the respective JPMC Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the JPMC Affiliated QPAM with respect to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that such JPMC Affiliated QPAM has addressed, corrected or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of JPMC must review the Audit Report for each JPMC Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each JPMC Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210; or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109. This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each JPMC Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each JPMC Affiliated QPAM and the auditor must submit to OED: Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in the course of the audit, provided such access and inspection is otherwise permitted by law; and

(12) JPMC must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and JPMC;

(j) As of January 10, 2018 and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a JPMC Affiliated

QPAM and a Covered-Plan, the JPMC Affiliated QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a JPMC Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction. This condition applies only to actual losses caused by the JPMC Affiliated QPAM's violations.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the initial effective date of this exemption, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of JPMC and its affiliates, or damages arising from acts outside the control of the JPMC Affiliated QPAM;

(7) By July 9, 2018, each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the JPMC Affiliated QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–15 that meets the terms of this condition. Notwithstanding the above, a JPMC Affiliated QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement;

(k) By March 10, 2018, each JPMC Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective client for which a JPMC Affiliated QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM. Disclosures may be delivered electronically.

(l) The JPMC Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction;

(m)(1) By July 9, 2018, JPMC designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each annual period beginning on January 10, 2018, (the Annual Review) [16] to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management;

(2) With respect to each Annual Review, the following conditions must be met:

(i) The Annual Review includes a review of: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the relevant business activities of the JPMC Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the JPMC Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Review (each, an Annual Report) that (A) summarizes his or her material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training,

[16] Such Annual Review must be completed with respect to the annual periods ending January 9, 2019; January 9, 2020; January 9, 2021; January 9, 2022; and January 9, 2023.

procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; and (D) the JPMC Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or is correcting) any instances of noncompliance in accordance with Section I(h) above;

(iv) Each Annual Report must be provided to appropriate corporate officers of JPMC and each JPMC Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM; and must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed within three (3) months following the end of the period to which it relates;

(n) Each JPMC Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such JPMC Affiliated QPAM relies upon the relief in the exemption;

(o) During the Exemption Period, JPMC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by JPMC or any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(p) By July 9, 2018, each JPMC Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (''Summary Policies'') which accurately summarizes key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.[17] With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or the Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(q) A JPMC Affiliated QPAM or a JPMC Related QPAM will not fail to meet the terms of this exemption solely because a different JPMC Affiliated QPAM or JPMC Related QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (n) and (p); or if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of JPMC or its affiliates.

Section II: Definitions

(a) The term ''Conviction'' means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, entered in the District Court for the District of Connecticut (the District Court) (case number 3:15–cr–79–SRU). For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in case number 3:15–cr–79–SRU; and

(b) The term ''Conviction Date'' means the date of the judgment of the trial court. For avoidance of confusion, the Conviction Date is January 10, 2017, as set forth on page 3 of Dkt. 49, in case number 3:15–cr–79–SRU.

(c) The term ''Covered Plan'' means a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to Section 4975 of the Code (''IRA'') with respect to which a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the JPMC Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA;

(d) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code.

(e) The term ''Exemption Period'' means January 10, 2018, through January 9, 2023;

(f) The term ''JPMC'' means JPMorgan Chase and Co., the parent entity, but does not include any subsidiaries or other affiliates;

(g) The term ''JPMC Affiliated QPAM'' means a ''qualified professional asset manager,'' as defined in Section VI(a) of PTE 84–14, that relies on the relief provided by PTE 84–14 and with respect to which JPMC is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). The term ''JPMC Affiliated QPAM'' excludes the parent entity, JPMC, the entity implicated in the criminal conduct that is the subject of the Conviction

(h) The term ''JPMC Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which JPMC owns a direct or indirect five percent or more interest, but with respect to which JPMC is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

Effective Date

This exemption is effective on January 10, 2018. The term of the exemption is from January 10, 2018, through January 9, 2023 (the Exemption Period).

Department's Comment: The Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the JPMC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period. Although JPMC could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

[17] In the event Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

Further Information

For more information on this exemption, contact Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

Deutsche Investment Management Americas Inc. (DIMA) and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG (collectively, the Applicant or the DB QPAMs), Located in New York, New York

[Prohibited Transaction Exemption 2017–04; Exemption Application No. D–11908]

Discussion

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed exemption in the **Federal Register** at 81 FR 83400, for certain entities with specified relationships to Deutsche Securities Korea, Co. (DSK) [18] or DB Group Services (UK) Limited (DB Group Services) [19] to continue to rely upon the relief provided by PTE 84–14 for a period of five years,[20] notwithstanding certain criminal convictions, as described herein (the Convictions).

The Department is granting this exemption to ensure that Covered Plans [21] with assets managed by an asset manager within the corporate family of Deutsche Bank AG (together with its current and future affiliates, Deutsche Bank) may continue to benefit from the relief provided by PTE 84–14. The effective date of this exemption is April 18, 2018, and the exemption is effective from April 18, 2018 through April 17, 2021 (the Exemption Period).

No relief from a violation of any other law is provided by this exemption, including any criminal conviction described in the proposed exemption. Furthermore, the Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the Deutsche Bank corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions) during the Exemption Period. The terms of this exemption are designed to promote adherence to basic fiduciary standards under ERISA and the Code. This exemption also aims to ensure that Covered Plans can terminate relationships in an orderly and cost effective fashion in the event the fiduciary of a Covered Plan determines it is prudent to terminate the relationship with a DB QPAM.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published in the **Federal Register** at 81 FR 83400 on November 21, 2016. All comments and requests for a hearing were due by January 5, 2017.[22] The Department received written comments from the Applicant, members of the U.S. Congress, and a number of plan and IRA clients of Deutsche Bank. After considering these submissions, the Department has determined to grant the exemption, with revisions, as described below.

Comment 1—Knowing or Tacit Approval—Sections I(a) and I(c)

Section I(a) of the proposed exemption provides, ''*(a) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK and DB Group Services that is the subject of the Convictions (for purposes of this Section I(a), ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Convictions).*''

Section I(c) of the proposed exemption provides, ''*(c) The DB QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Convictions (for the purposes of this Section I(c), ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Convictions).*''

The Applicant requests that the parenthetical explanation for ''participated in'' be deleted in both Section I(a) and I(c). The Applicant states that the language in both sections preceding the parentheticals is clear and unambiguous, rendering the parentheticals unnecessary. Alternatively, the Applicant requests that, should the parenthetical remain in the exemption, the Department removes the words ''or tacit'' in the phrase ''knowing or tacit approval'' in Sections I(a) and I(c). The Applicant states that the term ''is undefined and ambiguous, and potentially encompasses a broad range of conduct that could become the subject of disputes with counterparties.'' The Applicant also states that ''tacit approval'' should not be replaced with the term ''condone'' (as the Department did in paragraph (c) in the Final Temporary Exemption), as it is duplicative of and has the same meaning as ''approve''.

The Department declines to delete the parenthetical explanations in Sections I(a) and I(c). Rather, after consideration, the Department removed ''or tacit'' from both conditions so that ''participated in'' means the ''knowing approval of the misconduct underlying the Convictions.''

Comment 2—Exercising Authority Over Plan Assets—Section I(f)

Section I(f) of the proposed exemption provides, ''*(f) A DB QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Convictions; or cause the QPAM, affiliates, or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Convictions.*''

Deutsche Bank requests that the phrase ''related parties'' in Condition I(f) be deleted as the term ''is undefined and could lead to confusion.'' The Applicant also states that this condition may be interpreted as implicating the purchase, for a plan or IRA, of any instrument linked to a benchmark rate. Deutsche Bank requests that the Department add clarification language which ''[provides] that this condition is not violated solely because an ERISA-covered plan or IRA managed by a DB QPAM purchased, sold or held an economic interest in a security or product, the value of which was tied to a benchmark interest rate implicated in the conduct that is the subject of the Convictions.''

[18] Deutsche Securities Korea, Co. is a South Korean ''affiliate'' (as defined in Section VI(c) of PTE 84–14) of Deutsche Bank AG.

[19] DB Group Services (UK) Limited is United Kingdom-based ''affiliate'' (as defined in Section VI(c) of PTE 84–14) of Deutsche Bank AG.

[20] (49 FR 9494, March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14 or the QPAM exemption.

[21] ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to section 4975 of the Code (''IRA'') with respect to which a DB QPAM relies on PTE 84–14, or with respect to which a DB QPAM (or any Deutsche Bank affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the DB QPAM has expressly disclaimed reliance on the QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA. See further discussion in this preamble under the heading Comment 5—Policies and Procedures related to DB QPAM Disclosures—Section I(h)(1)(iv)–(v).

[22] The comment period was subsequently extended by the Department to January 17, 2017. However, the Department received additional comments from the Applicant after the close of the extended comment period.

After consideration, the Department deleted the phrase ''related parties'' for clarity. However, the Department declines to make the Applicant's other requested revisions. The Department does not view Condition I(f) (which relates to exercising authority) as confusing. Further, Condition I(f) is consistent with the Applicant's prior representation that, with respect to the conviction of DB Group Services (UK) Limited (DB Group Services) for LIBOR manipulation (the US Conviction), ''[no] current or former employee of [DB Group Services] or of any affiliated QPAM who previously has been or who subsequently may be identified by [DB Group Services], Deutsche Bank AG or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the [LIBOR-related misconduct] will be an officer, director, or employee of any Applicant or of any other current or future affiliated QPAM; and . . . no employee of [DB Group Services] or of any affiliated QPAM who was involved in the [LIBOR-related misconduct] had any, or will have any future, involvement in the current or future affiliated QPAMs' asset management activities.'' [23] With respect to the conviction of Deutsche Securities Korea Co. (DSK) for market manipulation (the Korean Conviction), the Applicant has represented that ''Deutsche Bank's [Asset & Wealth Management] Division had no involvement whatsoever in the conduct or compliance issues that formed the basis for the LIBOR and South Korea matters . . . .'' [24]

Furthermore, the Department does not believe that the proposed carve-out for transactions involving the sale, purchase or holding of instruments tied to a benchmark interest rate is necessary. The Applicant has informed the Department that, with respect to condition I(a), the Applicant can represent the following: ''Other than certain individuals who worked for non-asset management business within DBSI and/or DBAG and [who] had no responsibility for, and exercised no authority in connection with, the management of plan assets, and are no longer employed by DBSI and DBAG, the DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK and DB Group Services that is the subject of the Convictions.'' [25] The Department believes that this representation obviates the need for a carve-out, regardless of whether the instrument involved in the transaction is tied to a benchmark interest rate.

In addition, the Department clarified that Section I(d) applies (a) to ''investment funds'' managed by the DB QPAM with respect to Covered Plans, and (b) at all times during the Exemption Period.

Comment 3—Restriction on Provision of Discretionary Asset Management Services—Section I(g)

Section I(g) of the proposed exemption provides, ''*(g) DSK and DB Group Services will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan and IRA assets.*''

Deutsche Bank states that the phrase ''otherwise act as a fiduciary'' precludes DSK and DB Group Services from acting as a fiduciary in any way with respect to ERISA-covered plans and IRA assets, including under the Department's new ''Definition of the Term 'Fiduciary';'' ''Conflict of Interest Rule—Retirement Investment Advice,'' 81 FR 200946 (April 8, 2016), and including with respect to DSK's and DB Group Services' own internal plans. Deutsche Bank represents that because DSK acts as a broker-dealer and may provide investment advice, such conduct will require DSK to acknowledge that it is acting as a fiduciary once the new fiduciary rule becomes effective, and this condition would make it impossible for plans to engage DSK for any services at all. The Applicant states that, while DSK and DB Group Services should not be permitted to act as discretionary asset managers of ERISA-covered plans and IRAs because of the crimes which led to the Convictions, the Department should not preclude ERISA-covered plans or IRAs from independently engaging DSK for other services or limit the activities of any entity other than those so convicted. The Applicant requests that ''provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan and IRA assets'' be replaced with ''act as fiduciaries within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets.''

Also, the Applicant requests that the Department provide a carve-out ''with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate.''

Furthermore, Deutsche Bank states that it, like many foreign banks, uses foreign service companies, like DB Group Services, to hire and pay employees who then work for, and are supervised by, other entities in the Deutsche Bank controlled group. The Applicant represents that DB Group Services provides employees to Deutsche Bank asset management affiliates, and that these employees are then responsible for the employees' training, supervision, compliance, etc., as if they were employed by such affiliates. Accordingly, Deutsche Bank requests confirmation that the fact that DB Group Services employs and pays such individual employees will not cause a DB QPAM to fail to meet this condition. Specifically, the Applicant requests that the Department qualify Section I(g) by ''[providing] that DSK and DB Group Services will not be treated as violating this condition solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii), or Section 4975(e)(3)(B) of the Code, or because DB Group Services employees may be double-hatted, seconded, supervised or otherwise subject to the control of a DB QPAM, including in a discretionary fiduciary capacity with respect to the DB QPAM clients.''

The Department concurs with the Applicant, and has modified Section I(g) of the final exemption accordingly.

The Department has also clarified that this condition does not apply with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate of DSK or DB Group Services.

Comment 4—Policies and Procedures Relating to Compliance With ERISA and the Code—Section I(h)(1)(ii)–(iii)

Sections I(h)(1)(ii)–(iii) of the proposed exemption provide, ''*(h)(1) Each DB QPAM must immediately develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:*

(ii) The DB QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs;

[23] See DIMA Exemption Application (April 23, 2015), at 12–13.

[24] *See* Deutsche Bank AG Submission to the Department of Labor in Further Support of Applications for Conditional Exemption (September 18, 2015), at 8.

[25] Applicant Submission to the Department (May 25, 2017), at 3.

(iii) The DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;''

The Applicant requests that the subparagraph I(h)(1)(iii) be stricken as duplicative. The Applicant states that the requirement that a DB QPAM ''not knowingly participate in any other person's violation'' is ''subsumed within the requirement'' that such DB QPAM ''not knowingly participate in any violation'' of the duties and provisions set forth in ERISA and the Code (including Section 405 of ERISA).

The Department declines to make this deletion. The specific elements of the Policies requirement as set forth in this exemption are essential to its protective purposes. In approving this exemption, the Department significantly relies upon conditions designed to ensure that those relying upon its terms for prohibited transaction relief will adopt a culture of compliance centered on basic fiduciary norms and standards of fair dealing, as reflected in the Policies. These standards are core protections of this exemption. The Department does not view subparagraph (iii) of Section I(h)(1), which relates to a DB QPAM's compliance with ERISA or the Code, as duplicative of subparagraph (ii), which includes also a DB QPAM's full compliance with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions. Subparagraph (ii) is based on the DB QPAM's management of assets of Covered Plans. On the other hand, subparagraph (iii) focuses on the DB QPAM's diligence in collaborating with third parties in the management of assets of Covered Plans.

The Department modified the Policies' requirement of adherence to the fiduciary and prohibited transaction provisions of ERISA and the Code in subparagraph (ii) so that the Policies expressly focus on the provisions only to the extent ''in each such case as applicable with respect to each Covered Plan . . . .'' In general, however, the Department has otherwise retained the stringency and breadth of the Policies requirement, which is more than justified by the compliance and oversight failures exhibited by Deutsche Bank throughout the long period of time during which the criminal misconduct persisted. The Department notes that it made minor revisions to reflect the fact that DB QPAMs may already have Policies under the previous exemption, in which case, they are required to ''maintain'' such Policies.

Comment 5—Policies and Procedures Related to DB QPAM Disclosures—Section I(h)(1)(iv)–(v)

Sections I(h)(1)(iv)–(v) of the proposed exemption provide, ''*(h)(1) Each DB QPAM must immediately develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:*

(iv) Any filings or statements made by the DB QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients.''

The Applicant states that Sections I(h)(1)(iv) I(h)(1)(v) are ''overlapping, duplicative and extend beyond the scope of exemptive relief'' to instances where the Applicant is not acting in reliance on PTE 84–14. The Applicant requests that the subparagraphs be limited to situations where the Applicant is relying on PTE 84–14 and this exemption. Also, Deutsche Bank states that the distinction between subparagraph (iv)'s requirement that information provided to regulators be materially accurate and complete and subparagraph (v)'s requirement that such communications may not have material misrepresentations or omissions is unclear, and suggests the reference in (v) be deleted. Finally, Deutsche Bank requests that the phrase ''to the best of such QPAM's knowledge at that time'' should appear in subparagraph (h)(1)(v) as it does in subparagraph (h)(1)(iv), but is absent from condition (h)(1)(v).

The Department notes that the Section I(h) requirement that the policies and procedures developed by the DB QPAM adhere to basic fiduciary norms is a protective measure that is necessary in light of the substantial compliance and oversight failures exhibited by Deutsche Bank throughout the long period of time during which the misconduct persisted. Notwithstanding this, the Department is revising the condition, in part, as requested by the Applicant.

Subsection (v) has been revised to contain the ''to the best of QPAM's knowledge at the time'' concept found in subsection (iv); and the applicability of subsections (iv) and (v) has been narrowed to ERISA-covered plans and IRAs with respect to which a DB QPAM relies on PTE 84–14, or with respect to which a DB QPAM has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption in its dealings with the ERISA-covered plan or IRA (hereinafter, a Covered Plan). To the extent a DB QPAM would prefer not to be subject to this provision, however, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with an ERISA-covered plan or IRA, and such plan or IRA is not a Covered Plan.[26] This revision is consistent with the Department's intent to protect Covered Plans that may have hired a DB QPAM based on the understanding that the manager qualifies as a QPAM or relies on PTE 84–14.

As noted in more detail below, the Department will not strike a condition merely because it is also a statutory requirement. It is the express intent of the Department to preclude relief for a DB QPAM that fails to meet the requirements of this exemption, including those derived from basic norms codified in statute, as applicable.

Comment 6—Corrections of Violations and Failures To Comply—Section I(h)(1)(vii)

Section I(h)(1)(vii) of the proposed exemption provides, ''*(vii) Any violation of, or failure to comply with, an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant DB QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of Deutsche Bank; however, with respect to any ERISA-covered plan or IRA sponsored by an 'affiliate' (as defined in Section VI(d) of PTE 84–14) of Deutsche Bank or beneficially owned by an employee of Deutsche Bank or its affiliates, such fiduciary does not need to be independent of Deutsche Bank. A DB*

[26] Of course, neither may the QPAM rely on PTE 84–14 or this exemption with respect to any such ERISA-covered plan or IRA for which it has expressly disclaimed reliance on QPAM status or PTE 84–14.

QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii).''

The Applicant states that Section I(h)(1)(vii) extends beyond the scope necessary to ensure compliance with other requirements in condition (h). Deutsche Bank states that the reporting requirement is not needed given the ''multiple, overlapping requirements'' related to the Annual Review and the Audit Report.

Deutsche Bank also references several ''ambiguities'' in subparagraph (vii). The Applicant states that the term ''promptly'' is undefined, and, as a result, it is unclear when a violation must be corrected and when the reporting obligation is triggered. Similarly, the phrases ''appropriate corporate officers . . . of the relevant DB QPAM'' and ''appropriate fiduciary of any affected ERISA-covered plan or IRA'' are undefined. The Applicant states that the last sentence of subparagraph (vii) does not provide meaningful relief because some corrections will take longer to complete than the exemption appears to permit.

The Applicant suggests that the correction procedure provided in subparagraph (vii) should apply to any violation of or failure to comply with subparagraph (i) regarding the policy governing independence in asset management decisions as well. The Applicant further suggests that it should be allowed to correct any errors under the policy, as with the other errors. Deutsche Bank states that the Department has not explained why a failure under subparagraph (i), however inadvertent, should result in an automatic loss of the exemption.

Deutsche Bank suggests the following language: ''(vii) Within sixty (60) days of its discovery of any violation of, or failure to comply with, an item in subparagraphs (i) through (vi), such DB QPAM will formulate, in writing, a plan to address such violation or failure (a Correction Plan). To the extent any such Correction Plan is not formulated within sixty (60) days of the DB QPAM's discovery of such violation or failure, the DB QPAM will report in writing such violation or failure to the head of compliance or the General Counsel (or their functional equivalents) of the relevant line of business that engaged in such violation or failure.''

The Department has based the conditions of this exemption on both the particular facts underlying the Convictions and its experience over time with previous exemptions. For the reasons set out herein, the Department has concluded that the specific conditions of this exemption are appropriate and give the Department a reasonable basis for concluding that the exemptions are appropriately protective of affected plans and IRAs. As noted above, a central aim of the exemption is to ensure that those relying upon the exemption for relief from the prohibited transaction rules will consistently act to promote a culture of fiduciary compliance, notwithstanding the conduct that violated Section I(g) of PTE 84–14.

The Department does not agree with the Applicant's contention that the Section I(h)(1)(vii) extends beyond the scope necessary to ensure compliance with other requirements in Section I(h), or that it is duplicative of the Annual Report and Audit Report requirements. The Department considers the Policies, and the DB QPAM's compliance therewith, to be a fundamental component of exemptive relief, and this Section I(h)(1)(vii) emphasizes the importance of this compliance, including the correction process. Further the Department notes that the audits and Annual Reports are periodic and do not reflect the timeframe that this condition is intended to reflect.

Regarding the Applicant's requests for revisions, the Department is replacing ''appropriate corporate officers'' with ''the head of compliance and the General Counsel (or their functional equivalent) of the relevant DB QPAM that engaged in the violation or failure.'' The Department also will not condition the exemption on a requirement for notification of violations to an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of Deutsche Bank.

However, the Department is not revising the ''subparagraphs (ii) through (vi)'' reference to include ''subparagraph (i)'' because the Department intends to preclude relief to the extent a DB QPAM fails to develop, implement, maintain, and follow written policies and procedures. Clearly, it is not enough merely to develop policies and procedures, without also implementing, maintaining, and following the terms of those policies and procedures. Covered Plans do not benefit from the creation of strong policies and procedures, unless they are actually followed.

The Department has revised the term ''corrected promptly'' for consistency with the Department's intent that violations or compliance failures be corrected ''as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance (whichever is sooner).'' However, the Department intends to preclude relief to the extent violations or failures are not corrected as required by the exemption. Therefore, the Department has not adopted the Applicant's proposed subparagraph (vii), which requires little more than the formulation of a correction plan, without any corresponding obligation to actually implement the plan.

Comment 7—Time to Implement Training—Section I(h)(2)

The prefatory language in Section I(h)(2) provides, ''*(2) Each DB QPAM must immediately develop and implement a program of training (the Training), conducted at least annually, for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel.*''

Deutsche Bank requests that, in order to avoid confusion over whether Applicant must train the same pool of employees multiple times in a year, the Department add a clarifying proviso to this requirement, specifically, at the end of the first sentence in the prefatory language: ''(this condition in paragraph (h)(2) shall be deemed to be met with respect to any employee trained in accordance with the requirements of PTE 2016–12 or the temporary one-year exemption within the prior 12 months).'' The Applicant states that it is also subject to a similar training requirement under the temporary exemption. Deutsche Bank represents that, during the period covered by PTE 2015–15, it trained more than 1,000 of its employees.

The Department clarifies that, to the extent that the Training requirements in Section I(h)(2) of the exemption, and the corresponding requirements in PTE 2016–13 and PTE 2016–12 are consistent, such provisions should be harmonized so that the sequential exemptions do not inadvertently require multiple trainings per year. Consistent with this requested change in the prefatory language, the Department has added further clarity on the timeline with respect to the Training. The Department is specifying that ''the first Training under this Exemption must be completed by all relevant DB QPAM personnel by April 17, 2019.'' Furthermore, the Department specifies that, by April 17, 2019, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were

employed from April 18, 2017 through April 17, 2019 must have been trained at least twice: the first time under PTE 2016–13; and the second time under this exemption. The Department notes that it made minor revisions to reflect the fact that DB QPAMs may already have Training under the previous exemption, in which case, they are required to ''maintain.''

Comment 8—Training Set Forth in Policies—Section I(h)(2)(i)

Section I(h)(2)(i) of the proposed exemption provides, ''*(2) Each DB QPAM must immediately develop and implement a program of training (the Training), conducted at least annually, for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:*

(i) Be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;''

The Applicant states that the requirement in Section I(h)(2)(i) that the Training must be ''set forth in'' the Policies may cause significant logistical challenges over time. The Applicant requests that the section be clarified, such that only the requirement of the Training should be set forth in the Policies.

The Department concurs with the Applicant's comment and has revised the condition accordingly.

Comment 9—Training by Independent Professional—Section I(h)(2)(ii)

Section I(h)(2)(ii) of the proposed exemption provides, ''*. . . The Training must: . . . (ii) Be conducted by an independent professional who has been prudently selected and who has appropriate technical and training and proficiency with ERISA and the Code.*''

The Applicant requests that Section I(h)(2)(ii) be deleted, stating that it is not necessary for the Department to specify who conducts the Training, what the professional's background is, how the Training is conducted or when the independent auditor is required under Section I(i)(1) to evaluate the adequacy of DB QPAMs' compliance with the Training requirement. Deutsche Bank further states that the requirement may be ''counterproductive, as the most effective trainer may be someone with detailed knowledge of the DB QPAMs' business and compliance practices that an 'independent' trainer may lack.'' Finally, Deutsche Bank states that the term ''independent professional'' is also undefined. Alternatively, Deutsche Bank suggests, the Training must ''(ii) Be conducted by an individual(s) (either in person, remotely or electronically, such as through live or recorded web-based training) who has appropriate proficiency with ERISA and the Code.''

Although the Department does not agree with the Applicant's characterization that hiring an appropriate independent professional, prudently selected, would be counterproductive, the Department is persuaded that appropriate Deutsche Bank personnel, prudently selected, should be allowed to conduct the training, and has revised the condition accordingly. The Department declines to incorporate the Applicant's requested language regarding the use of electronic or web-based methods in conducting the Training. The revised I(h)(2)(ii) now states that the Training ''[b]e conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.''

Comment 10—Audit—Section I(i)(1)

Section I(i)(1) of the proposed exemption requires that each Deutsche Bank QPAM ''*submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code. . . .*'' Section I(i)(1) also provides that ''*[t]he audit requirement must be incorporated in the Policies . . . .*''

The Applicant requests deletion of the requirement that the audit requirement be incorporated in the Policies, as its duplication in the Policies serves no apparent purpose. The Applicant further suggests that the auditor should be given discretion to define the precise audit period under this exemption (which may be more or less than 12 months), so as to avoid a short audit period in the event that this exemption is granted before the expiration of the first audit period under the final temporary exemption. To this end, the Applicant requests the following be added to the condition: ''(provided that the first audit period hereunder may be longer or shorter than 12 months at the election of the auditor to avoid an unreasonably short audit period).'' The Applicant requests that the reference to ''appropriate technical training'' be deleted, as it appears ''duplicative of proficiency in ERISA.''

The Department does not agree with the Applicant's assertion that the phrase ''technical training and proficiency'' is duplicative. In this regard, the Department does not believe that the two terms are synonymous, as a person may have taken technical training in a given subject matter but may not be proficient in that subject matter. The exemption requires that the auditor be both technically trained and proficient in ERISA as well as the Code. Accordingly, the Department declines to change the phrase ''technical training and proficiency'' as used in Section I(i)(1).

The Department also declines to delete the requirement that the audit conditions be incorporated in the Policies. The audit requirement provides a critical independent check on compliance with this exemption's conditions, and helps ensure that the basic protections set forth in the Policies are taken seriously. Accordingly, the specifics of the audit requirement are important components of the Policies. Their inclusion in the Policies promotes compliance and sends an important message to the institutions' employees and agents, as well as to Covered Plan clients, that compliance with the policies and procedures will be subject to careful independent review.

The Department further declines to incorporate the Applicant's suggested language regarding the timeline of the audit required by the temporary exemption. The audit required under the temporary exemption covers a period from October 24, 2016 until April 17, 2018, which is not an unreasonably short audit period.

Each audit must cover the preceding 12-month period. The first audit must cover the period from April 18, 2018 through April 17, 2019, and must be completed by October 17, 2019. The second audit must cover the period from April 18, 2019 through April 17, 2020, and must be completed by October 17, 2020. In the event that the Exemption Period is extended or a new exemption is granted, the third audit would cover the period from April 18, 2020 through April 17, 2021, and would have to be completed by October 17, 2021, unless the Department chooses to alter the annual audit requirement in any potential new or extended exemption.

Comment 11—Access to Business—Section I(i)(2)

Section I(i)(2) of the proposed exemption requires that ''*as permitted by law, each DB QPAM and, if applicable Deutsche Bank, will grant the auditor unconditional access to its business . . . .*''

The Applicant requests that the access granted by Section I(i)(2) be limited to

non-privileged materials relevant to the scope of exemptive relief that do not contain trade secrets. The Applicant states that, with the breadth of the ''unconditional access'' described in the proposed exemption, ''the absence of a specific limitation could lead to confusion, disputes, and infringement on DB or a DB QPAM's rights to protect its privileged communications and trade secrets or intrusion into activities falling outside the scope of exemptive relief.'' The Applicant states that the condition, as written in the proposed exemption, leaves the determination of necessity solely to the auditor. The Applicant suggests the following revised condition: ''(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each DB QPAM and, if applicable, and solely to determine if the provisions of the exemption involving Deutsche Bank are met, Deutsche Bank, will grant the auditor unconditional access to its relevant business, including, but not limited to: Its relevant computer systems; relevant business records; transactional data relating to ERISA plans and IRAs managed by a DB QPAM in reliance on PTE 84–14 and this exemption; workplace locations; relevant training materials; and personnel (for avoidance of doubt, this condition does not require access to privileged, trade secret and other similarly sensitive business information).''

In the Department's view, to ensure a thorough and robust audit, the auditor must be granted access to information the auditor deems necessary for the auditor to make sound conclusions. Access to such information must be within the scope of the audit engagement and denied only to the extent any disclosure is not permitted by state or federal statute. Enumerating specific restrictions on the accessibility of certain information would have a dampening effect on the auditor's ability to perform the procedures necessary to make valid conclusions and would therefore undermine the effectiveness of the audit. The auditor's access to such information, however, is limited to information relevant to the auditor's objectives as specified by the terms of this exemption and to the extent disclosure is not prevented by state or federal statute or involves communications subject to attorney client privilege. In this regard, the Department has modified Section I(i)(2) accordingly.

Comment 12—Auditor's Test of Operational Compliance—Section I(i)(4)

Section I(i)(4) of the proposed exemption provides that, ''*[t]he auditor's engagement must specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training*'' *and* ''*the auditor must test a sample of each QPAM's transactions involving ERISA-covered Plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine operational compliance with the Policies and Training.*''

The Applicant requests that Section I(i)(4) be deleted in its entirety. The Applicant states that other conditions of the exemption govern the audit's scope, the auditor's technical skill, and the prudence of the selection process. The Applicant also states that the second sentence of Section I(i)(4) unnecessarily intrudes upon the auditor's function and independence. The Applicant asserts that the Department should defer to the judgment of the auditor whether and when to sample transactions.

The Department declines to make the Applicant's requested revision with respect to Section I(i)(4). The requirements of this exemption concerning the content of the auditor's engagement are necessary to ensure administrative feasibility and to protect Covered Plans. The inclusion of written audit parameters in the auditor's engagement letter is necessary both to document expectations regarding the audit work and to ensure that the auditor can responsibly perform its important work. As stated above, clearly defined audit parameters will minimize any potential for dispute between the Applicant and the auditor. Also, given the scope and number of relevant transactions, proper sampling is necessary for the auditor to reach reasonable and reliable conclusions. Although the Department has declined to delete this section in its entirety, as requested by the Applicant, the Department has revised this condition for consistency with other conditions of this exemption which are tailored to the Department's interest in protecting Covered Plans. Therefore, the condition now applies to Covered Plans (*i.e.,* ERISA-covered plans and IRAs with respect to which the DB QPAM relies on PTE 84–14 or has expressly represented that it qualifies as a QPAM or relies on the QPAM class exemption in its dealings with the ERISA-covered plan or IRA).

The Department notes that Section I(i)(4) does not specify the number of transactions that the auditor must test, but rather requires, for each QPAM, that the auditor test a sample of such QPAM's transactions involving Covered Plans, ''sufficient in size and nature to afford the auditor a reasonable basis to determine operational compliance with the Policies and Training.''

Comment 13—Auditor's Determination of Compliance—I(i)(5)(i)

Section I(i)(5)(i) of the proposed exemption provides, ''*(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding:*

(i) The adequacy of the DB QPAM's Policies and Training; the DB QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective DB QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM must be promptly addressed by such DB QPAM, and any action taken by such DB QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the DB QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not rely on the Annual Report created by the Compliance Officer as described in Section I(m) below in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above.''

The Applicant requests deletion of the term ''promptly'' because it is undefined and will cause disputes over its

meaning. The Applicant states that this perceived ambiguity is problematic in this context because addressing the auditor's recommendation could be a lengthy process.

In addition, the Applicant requests that Section I(i)(5) be modified because it imposes a counterproductive limitation on the auditor's use of the Annual Review and usurps the auditor's judgment regarding how to perform its role. According to the Applicant, it is ''unnecessary'' for the Department to specify how the auditor performs its work in light of the requirements relating to the auditor's selection and qualifications. The Applicant also states that denying the auditor the discretion to rely on the Annual Report undermines the protection the Annual Report gives plans, as the Annual Report may identify issues the auditor did not independently discover. To this end, the Applicant suggests the following revised sentence regarding the Auditor's use of the Annual Report: ''Furthermore, in conducting the required audit, the auditor may consider the Annual Report created by the Compliance Officer as described in Section I(m) below, as the auditor deems appropriate.''

The Department acknowledges that the Applicant's efforts to address the auditor's recommendations regarding any inadequacy in the Policies and Training identified by the auditor, may take longer to implement than the time limits mandated by the proposed exemption. Accordingly, the Department is modifying Section I(i)(5)(i) to reflect the possibility that the DB QPAMs' efforts to address the auditor's recommendations regarding inadequacies in the Policies and Training identified by the auditor, may not be completed by the submission date of the Audit Report and may require a written plan to address such items. However, any noncompliance identified by the auditor must be promptly addressed. The Department does not agree that the word ''promptly'' creates inappropriate ambiguity in the condition and declines to remove the word.

The final sentence of Section I(i)(5)(i) expresses the Department's intent that the auditor not rely solely on the work of the Compliance Officer and the contents of the Annual Report in formulating its conclusions or findings. The Auditor must perform its own independent testing to formulate its conclusions. This exemption does not prohibit the Auditor from considering the Compliance Officer's Annual Report in carrying out its audit function, including the formulation of an audit plan. This exemption, however, does prohibit the Auditor from basing its conclusions exclusively on the contents of the Compliance Officer's Annual Report. The Department has modified Section I(i)(5)(i) to more clearly reflect these views.

Included with its comment on Section I(i)(5)(i), the Applicant notes its request for the deletion of the Compliance Officer and Annual Review requirements set out in Section I(m). The Department's response to this request is discussed below.

The Department also modified Section I(i)(5) to provide that ''the auditor, at its discretion, may issue a single consolidated Audit Report which covers all the DB QPAMs.'' The Department notes the potential logistical advantage and administrative feasibility with respect to the Department's receipt of the audit report pursuant to Section I(i)(9) if there is one report encompassing all of the DB QPAMs.

Comment 14—Adequacy of the Annual Review—Section I(i)(5)(ii)

Section I(i)(5)(ii) of the proposed exemption provides that ''*[t]he Audit Report must include the auditor's specific determinations regarding: . . . (ii) The adequacy of the Annual Review described in Section I(m) and the resources provided to the Compliance Officer in connection with such Annual Review.*''

The Applicant requests deletion of the Compliance Officer and Annual Review provisions in Section I(i)(5)(ii) of the proposed exemption. If the Compliance Officer and Annual Review provisions do remain in the exemption, the Applicant requests that the Annual Report is provided to the auditor, who then can make a determination as to the adequacy of the report.

The Applicant also asserts that the proposed exemption contains multiple conditions relating to the auditor's selection and qualifications, and the auditor should be trusted in its judgment. Accordingly, the Applicant argues that the phrase ''and the resources provided to the Compliance officer in connection with such Annual Review'' should be deleted, because, according to the Applicant, resource requests by the Compliance Officer should not translate into a public debate with the Department and the auditor on whether the DB QPAMs should be allowed to use PTE 84–14. The Applicant states that this condition interferes with the administrability of the exemption and its use by plans, if counterparties cannot understand the requirement or test whether it has been complied with.

As discussed in detail below, the Department views the Compliance Officer and the Annual Review as integral to ensuring compliance with the exemption. A recurring, independent, and prudently conducted audit of the DB QPAMs is critical to ensuring the QPAMs' compliance with the Policies and Training mandated by this exemption, and the adequacy of the Policies and Training. The required discipline of regular audits underpins the Department's finding that the exemption is protective of plans and their participants, and should help prevent the sort of compliance failures that led to the Conviction. The Department agrees, however, that the auditor need not opine on the adequacy of the resources allocated to the Compliance Officer. Thus, the Department modified Section I(i)(5)(ii) accordingly. If, however, the auditor observes compliance issues related to the Compliance Officer or available resources, it would be appropriate for the auditor to opine on those problems.

Comment 15—Certification of the Audit—Section I(i)(7)

Section I(i)(7) of the proposed exemption provides, ''*(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption and with the applicable provisions of ERISA and the Code.*''

The Applicant requests that this condition be modified to account for Deutsche Bank's business structure and permit the Applicant to decide which senior officers should review the Audit Report. Deutsche Bank requests that the reviewing individual be ''one of the three most senior officers with responsibility for the asset management business of the DB QPAM (or, to the extent no such senior officer has responsibility for the asset management business of the DB QPAM, one of the three most senior executives of the line of business engaged in discretionary asset management activities through the DB QPAM).'' Deutsche Bank further requests that the timing of this provision be clarified, as remedying issues found during the course of the Audit may prove to be a lengthier process than the

30-day certification period as required in Section I(i)(9). The Applicant states that the provision should require only that a process for remedying issues should be initiated in a timely fashion.

Deutsche Bank also requests that the condition clarify that ''addressing'' an inadequacy may constitute either accepting the auditor's recommendation, pointing out that alternative action is appropriate, or disagreeing with the auditor. The Applicant states that the auditor is not a monitor or part of the Applicant's management, and thus should not dictate how the Applicant runs its asset management business.

The Applicant also requests the following addition to the condition: ''For purposes of this condition, a DB QPAM does not fail to address a potential inadequacy identified by the auditor by proposing an alternative means of protecting relevant ERISA plan clients and IRAs.''

The Applicant further requests deletion of the requirement that the Audit Report be certified under penalty of perjury.

The Department concurs that a senior executive officer engaged in the asset management business within the QPAM should be allowed to review the Audit Report, and has modified the language of Section I(i)(7), accordingly.

While the Department does not view Section I(i)(7) as ambiguous, the Department is aware, as stated above, that the Applicant's efforts to address the auditor's recommendations may take longer to implement than the timeframe to submit the certified Audit Report. With respect to this issue, the Department did not intend to limit corrective actions to those that could only be completed prior to the submission of the Audit Report. Therefore, the Department has modified Section I(i)(7) to reflect that the senior officer may certify that a written plan to address the inadequacies regarding the Policies and Training identified in the Auditor's Report is in place.

As mentioned above, the Department has determined that it is necessary for the Auditor to be afforded unfettered access to DB QPAM records, to the extent that the analysis of such records falls within the twelve-month period to which the audit relates. For the first audit required by this exemption, that period runs from April 18, 2018 through April 17, 2019. The conditions of this exemption do not prohibit the Applicant from disagreeing with the auditor with respect to whether certain practices fail to comply with the terms of this exemption. However, in those circumstances where the auditor is not persuaded to change its position on a matter the auditor considers noncompliant, the Applicant will be responsible to correct such matters. Nor do the conditions of this exemption prohibit the Applicant from disagreeing with the auditor with respect to the appropriate method for correcting or addressing issues of noncompliance. The Department would expect the Applicant and the auditor to have meaningful communications on such differences of opinion. In the event the Applicant chooses to apply a corrective method that differs from that recommended by the Auditor, the Audit Report and the Addendum attached thereto should explain in detail the noncompliance, the auditor's recommended action, the corrective method chosen, and why the Applicant chose a corrective method different from that recommended by the Auditor. The Department declines to remove the requirement for certification by the senior executive officer under penalty of perjury, which makes clear the importance of the correction process and creates a strong incentive to take seriously the audit process and compliance generally.

Comment 16—Review and Certification of Audit Report—Section I(i)(8)

Section I(i)(8) of the proposed exemption provides, ''*(8) The Risk Committee of Deutsche Bank's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.*''

In its comment, Deutsche Bank requests that the condition be revised to conform with Deutsche Bank's corporate structure. Specifically, the Applicant states that Deutsche Bank's Audit Committee would be an appropriate recipient of the Audit Report given Deutsche Bank's current structure. The Applicant represents that ''the Audit Committee supports the Supervisory Board in, among other things, the following matters: Monitoring the financial accounting process; the effectiveness of the risk management system, particularly of the internal control system and the internal audit system; the auditing of the financial statements, especially with regard to the auditor's independence and the additional services provided by the auditor; and the Management Board's prompt remediation—through suitable measures—of the deficiencies identified by the auditor. Furthermore, the Audit Committee is informed about special audits, substantial complaints and other exceptional measures on the part of bank regulatory authorities.''

The Applicant requests flexibility in determining which committee should review the Audit Report in the event of future corporate restructuring or transferring of responsibility. Deutsche Bank requests the following addition to the condition: ''another committee as reasonably selected by the Supervisory Board.''

Finally, the Applicant requests the requirement in Section I(i)(8) that the certification by the senior executive officer be made under penalty of perjury be deleted, as it is unnecessary.

The Department is revising Section I(i)(8) of the exemption to require that ''[t]he Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.'' Furthermore, the Department agrees to allow for flexibility in choosing the committee. In this regard, the exemption now requires notice to the Department prior to any change in the committee that receives the Audit Report.

The Department has developed this exemption to ensure that the highest levels of management are aware of ongoing matters concerning Deutsche Bank, the DB QPAMs, and compliance with this exemption. Requiring the provision of the Audit Report to the Audit Committee and certification by a senior executive officer in the reporting line of the highest legal compliance officer provides assurance that the highest levels of management within Deutsche Bank stay informed about Deutsche Bank's and the DB QPAMs' compliance with the terms of this exemption. In the Department's view, such officials are in the best position to ensure that any inadequacy identified by the auditor is appropriately addressed and that necessary changes to corporate policy are made if and where necessary. Requiring certification under penalty of perjury is consistent with the Department's longstanding view that basic requirements of compliance and integrity are fundamental to an entity's ability to qualify as a QPAM.

Comment 17—Availability of the Audit Report—Section I(i)(9)

Section I(i)(9) of the proposed exemption provides, ''*(9) Each DB*

QPAM provides its certified Audit Report, by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109, no later than 45 days following its completion. The Audit Report will be part of the public record regarding this exemption. Furthermore, each DB QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such DB QPAM;''

The Applicant states that the availability of the Audit Report should be limited to ERISA-covered plans and IRAs for which the Applicant relies on PTE 84–14. The Applicant argues that it is overly-broad, punitive and not related to the relief provided in the exemption to extend this condition to plans and IRAs for which the DB QPAMs do not rely on PTE 84–14.

The Department does not agree that the condition in Section I(i)(9) is punitive. As the Applicant recognized in its application, ERISA-covered plans, IRAs, and counterparties routinely rely on QPAM status before entering into agreements with financial institutions, even if those institutions do not believe compliance with PTE 84–14 is strictly necessary for any particular transaction. Accordingly, the Department has an interest in ensuring that the conditions of this exemption broadly protect ERISA-covered plans and IRAs that have relied on QPAM status in deciding to enter into an agreement with the Applicant or the DB QPAMs.

Nevertheless, the Department has revised Section I(i)(9) to clarify that the DB QPAMs are required to make the documents available to any fiduciary of a Covered Plan. The Audit Report, in any event, will be incorporated into the public record attributable to this exemption, under Exemption Application Number D–11908, and, therefore, independently accessible by members of the public. Accordingly, the Department has determined to revise the condition by replacing the phrase ''an ERISA-covered plan or IRA, the assets of which are managed by such DB QPAM'' with the term ''Covered Plan'' (as defined in Section II(b)). Lastly, the Department is modifying the condition such that access to the Audit Report need only be upon request and such access can be electronic, and has revised the exemption accordingly.

Comment 18—Engagement Agreements—Section I(i)(10)

Section I(i)(10) of the proposed exemption provides, ''*(10) Each DB QPAM and the auditor must submit to OED: (A) Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed exemption, no later than six (6) months after the effective date of this exemption (and one month after the execution of any agreement thereafter).*''

The Applicant requests deletion of clause (B) related to engagement agreements entered into with respect to the Training or Policies conditions. Deutsche Bank cites the multiple conditions in the exemption for the qualifications of the trainer, the contents of the Policies, and the auditor's review of the adequacy of the Training and Policies, and submits that this condition duplicates part of the auditor's role and is burdensome. The Applicant states that this condition as written could require filing of numerous consultant and service provider engagement letters associated with developing the Training and Policies. The Applicant asserts that there is no reason for the Department to see and review, and make available to the public, every service provider contract that could relate to policies, procedures or training. The Applicant further requests that any engagement agreements submitted to the Department be redacted to protect confidential business terms.

In coordination with the Department's modification of Section I(h)(2)(ii) to remove the requirement that the Training must be conducted by an independent professional, the Department has determined to remove the requirement in Section I(i)(10)(B) to provide to the Department the engagement agreements entered into with entities retained in connection with compliance with the Training or Policies conditions.

Furthermore, to remove any confusion and uncertainty regarding the timing of the submission of the auditor's engagement agreement, the Department has modified Section I(i)(10) to require that the auditor's engagement agreement be submitted to the Office of Exemption Determinations no later than two (2) months after the execution of any such engagement agreement.

Comment 19—Auditor's Workpapers—Section I(i)(11)

Section I(i)(11) of the proposed exemption provides, ''*(11) The auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: the audit plan; audit testing; identification of any instance of noncompliance by the relevant DB QPAM; and an explanation of any corrective or remedial action taken by the applicable DB QPAM.*''

The Applicant requests that this language be limited to ensure that any confidential or otherwise sensitive business information is redacted prior to any disclosure of the workpapers in a public file. The Applicant cites the sensitive information to which the auditor will have access, such as client information, marketing data, personal information of the QPAM's employees, and other business details. The Applicant states that the condition can be limited to allow the auditor, and OED,[27] to inspect such information without it being disclosed in the public record. Furthermore, the Applicant requests for all of the provisions in the exemption that relate to the auditor to make it clear that Applicant will not lose the benefit of the exemption for failures of the auditor. The Applicant requests that the Department either not include the workpapers as part of the public file, or provide that ''any confidential business or personal information of the DB QPAMs, Deutsche Bank, and their clients (or the officers, directors, employees or agents thereof) reflected in the workpapers, including, without limitation, client communications, shall be redacted, and provided further that nothing herein shall be deemed to limit any authority the Department may otherwise have to inspect such information without making it part of the public file.''

The Department acknowledges that certain information contained in the workpapers may be confidential and proprietary, and having that information in a public file may create needless or avoidable disclosure issues. The Department has determined to modify Section I(i)(11) to remove the requirement that the auditor provide the workpapers to OED, and instead require that the auditor provide access to the workpapers for the Department's review and inspection. However, given the importance of the workpapers to the Department's own review and the

[27] OED is the Office of Exemption Determinations within the Employee Benefits Security Administration agency of the United States Department of Labor.

Applicant's contractual relationship with the auditor, the Department declines to include, as requested by the Applicant, a statement in Section I(i)(11) that a failure on behalf of the auditor to meet this condition will not violate the exemption.

Comment 20—Replacement of the Auditor—Section I(i)(12)

Section I(i)(12) of the proposed exemption provides, ''*(12) Deutsche Bank must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Deutsche Bank demonstrates to the Department's satisfaction that such new auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the exemption and capable of making the determinations required of this exemption.*''

The Applicant requests that this condition be deleted, as the exemption requires the auditor to satisfy multiple conditions with respect to qualifications, and it serves no useful purpose to require the Applicant to demonstrate that the auditor satisfies such additional standards before substitution, particularly given the timeline of the audit process. The Applicant states that the Department has not required its approval of the initial choice of auditor. The Applicant states that there is a multitude of possible reasons that an auditor would need to be replaced, including the auditor being unable to complete an audit timely.

This exemption is not unique in requiring the Department be notified of changes to service providers (See, *e.g.,* the requirement of Schedule C of the Form 5500 Annual Return/Report for the Plan Administrator of certain plans to report to the Department a termination of the plan's auditor and/or enrolled actuary and to provide an explanation of the reasons for the termination, including a description of any material disputes or matters of disagreement concerning the termination). Furthermore, requiring the Applicant to notify the Department of the substitution of an auditor serves to ensure that the DB QPAMs are attentive to the audit process and the protections it provides; and that the Department has the information it needs to review compliance. However, the Department has determined to modify Section I(i)(12) to remove the requirement for Deutsche Bank to demonstrate the independence and qualifications of the auditor, and requires instead that Deutsche Bank, no later than two months from the engagement of a substitute or subsequent auditor, notify the Department of a change in auditor and of the reason(s) for the substitution including any material disputes between the terminated auditor and Deutsche Bank.

Comment 21—Contracts with ERISA-Covered Plans and IRAs—Section I(j)

The prefatory language to Section I(j) of the proposed exemption provides, ''*(j) Effective as of the effective date of this exemption, with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees and warrants:*''

In its comment, Deutsche Bank requests that this condition be limited to ERISA-covered plans and IRAs with respect to which the Applicant relies on PTE 84–14 and this exemption. Deutsche Bank states that extending this provision to ERISA-covered plans and IRAs for which the DB QPAMs do not rely on it is overly broad, punitive, and not related to asset management or the scope of the exemptive relief.

As explained above, Plans and IRAs routinely rely on QPAM status as a condition of entering into transactions with financial institutions, even with respect to transactions that do not require adherence to PTE 84–14. As the Applicant represented to the Department on December 24, 2015, ''plan investors may rely on the availability of the QPAM exemption even for pooled funds intended to qualify for an exception under the Department's plan asset regulation. The QPAM exemption provides a broad, effective back-stop against non-exempt prohibited transactions in the event a pooled fund inadvertently ceases to meet the conditions of that exception.'' In addition, it may not always be clear whether the DB QPAM intends to rely upon PTE 84–14 for any particular transaction. Accordingly, it is critical to ensure that protective conditions are in place to safeguard the interests of ERISA-covered plans and IRAs that are acting in reliance on the availability of this exemption, particularly those who may not have entered into the transaction in the first place, but for the Department's grant of this exemption.

The Department has a clear interest in protecting such ERISA-covered plans and IRAs that enter into an asset management agreement with a Deutsche Bank asset manager in reliance on the manager's qualification as a QPAM. Moreover, when an ERISA-covered plan or IRA terminates its relationship with an asset manager, it may incur significant costs and expenses as its investments are unwound and in connection with finding a new asset manager. The Department has revised this condition for consistency with its interest in protecting ERISA-covered plans and IRAs that rely upon QPAM status. Therefore, the Department has substituted the term ''Covered Plan'' for ''an ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services'' to memorialize this interest so that the condition now applies to ERISA-covered plans and IRAs only when the Deutsche Bank asset manager relies on PTE 84–14 or has expressly represented that it qualifies as a QPAM or relies on the QPAM class exemption in its dealings with the ERISA-covered plan or IRA.

To the extent a DB QPAM would prefer not to be subject to these conditions, however, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with the ERISA-covered plan or IRA.

Comment 22—Contracts with ERISA-Covered Plans and IRAs—Section I(j)(1)

Section I(j)(1) of the proposed exemption provides, ''*(j) Effective as of the effective date of this exemption, with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees and warrants:*

(1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA;''

In its comment, Deutsche Bank requests that Section I(j)(1) be deleted, as it constitutes an attempt to provide a private right of action for IRAs that Congress did not require. The Applicant states that the provision imposes legal requirements on IRAs, such as duties of prudence and loyalty, that Congress did not require; for plans subject to ERISA, this provision is entirely duplicative of the private right of action in ERISA. The Applicant states that the exemption proposes to change the enforcement of ERISA and the Code for all asset management clients and to create private rights of action above and beyond ERISA and the Code. The

Applicant states that this exemption did not arise out of a violation of ERISA, and the Department's grant or denial of an exemption is not aimed at punishing institutions for criminal conduct under laws other than ERISA, especially when they have already been punished under those other laws.

If this provision is not deleted, the Applicant requests that ''promptly'' be deleted for similar reasons as noted earlier, and that the condition be revised as follows: ''(1) To comply with ERISA and the Code, as applicable, with respect to such ERISA-covered plan or IRA, [and] to refrain from engaging in prohibited transactions that are not otherwise exempt (and to correct any inadvertent prohibited transactions).''

The Department rejects the view that it acts outside its authority by protecting ERISA-covered plans and IRAs that rely on Deutsche Bank's asset managers' eligibility for this exemption, and reemphasizes the seriousness of the criminal misconduct that created the need for this exemption. The Department may grant an exemption under section 408(a) of ERISA or section 4975(c)(2)(C) of the Code only to the extent the Secretary finds, among other things, that the exemption is protective of the affected ERISA-covered plan(s) and/or IRA(s) (*i.e.,* the Covered Plans). As noted in the exemption application, personnel at Deutsche Bank, including at different Deutsche Bank divisions acting as QPAMs, engaged in serious misconduct over an extended period of time. This misconduct appears to have stemmed, in part, from deficiencies in control and oversight.

Notwithstanding the misconduct, which resulted in violations of Section I(g) of PTE 84–14, the Department has determined that this exemption is protective of Covered Plans and in the interest of participants, beneficiaries, and beneficial owners of such Covered Plans. The Department made this determination based, in significant part, upon the protections of Section I(j) that require DB QPAMs to make an express commitment to Covered Plans to adhere to the requirements of ERISA and the Code, as applicable. As previously indicated, the Department has concluded that a culture of compliance, centered on adherence to basic standards of fair dealing as set forth in this exemption, gives the Department a compelling basis for making the required statutory findings that the exemption is in the interest of, and protects the rights of, participants, beneficiaries, and beneficial owners of Covered Plans. Absent such findings, the exemption would have been denied.

The Department does not accept the view that an exemption may not contain a condition, such as an obligation to adhere to basic fiduciary norms of prudence and loyalty, to the extent that it duplicates a statutory requirement. Nothing in the ERISA or the Code suggests that the Department is forbidden, in exercising its discretion to craft protective exemption conditions, from basing its conditions on protective conditions that Congress itself has adopted in related contexts. Nor has the Department created any new causes of action through this exemption. As before, private litigants would have only those causes of action specifically authorized by laws that exist independent of this exemption.

The Department declines to delete the term ''promptly'' for the same reasons as noted previously. Furthermore, for the reasons set forth above, the Department has modified the clause ''and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA.'' Instead, with respect to this clause, the Department has required an express commitment to comply with the fiduciary standards and prohibited transaction rules only to the extent these provisions are ''applicable'' under ERISA and the Code. The revised terms, together with this exemption's limited relief (*e.g.,* this exemption generally does not extend to transactions that involve self-dealing) should serve to promote a culture of compliance and protect Covered Plans and their participants, beneficiaries, and beneficial owners.

In response to the Applicant's comments, the Department also notes that nothing in ERISA or the Code prevents the Department from conditioning relief on express contractual commitments to adhere to the requirements set out herein. The DB QPAMs remain free to disclaim reliance on the exemption and to avoid such express contractual commitments. To the extent, however, that they hold themselves out as fiduciary QPAMs, they should be prepared to make an express commitment to their customers to adhere to the requirements of this exemption. This commitment strengthens and reinforces the likelihood of compliance, and helps ensure that, in the event of noncompliance, Covered Plans are insulated from injuries caused by noncompliance. These protections also ensure that Covered Plans are able to extricate themselves from transactions that become prohibited as a result of the QPAMs' misconduct, without fear of sustaining additional losses as a result of the QPAMs' actions. In this connection, however, the Department emphasizes that the only claims available to the QPAMs' Covered Plans customers pursuant to these contractual commitments are those separately provided by ERISA or other state and federal laws that are not preempted by ERISA.

Comment 23—Indemnity and Limits on Liability—Sections I(j)(2), (3), (6), and (7)

Sections I(j)(2), (3), (6) and (7) of the proposed exemption provide, ''*(j) Effective as of the effective date of this exemption, with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees and warrants:*

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(3) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the DB QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the DB QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank and its affiliates; and

(7) To indemnify and hold harmless the ERISA—covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions;''

In its comment, the Applicant requests that the indemnity required by Section I(j)(7) be deleted as it may operate in a manner that is fundamentally unfair. The Applicant views the indemnity provision as not being limited to clients who are harmed through a direct, causal link to the loss of the exemptive relief provided by PTE 84–14. According to the Applicant, the condition appears to protect plans and

IRAs against damages well beyond those provided under Section 409(a) of ERISA, for all sort of harms, including those (i) that arise from violations and breaches by third parties, (ii) that arise only tenuously from the manager's conduct, (iii) that may be grossly unreasonable in amount, (iv) for claims without merit and (v) for claims in connection with accounts that do not rely on the relief provided by PTE 84–14.

The Applicant requests that, if the Department decides to retain the provision, the Department should expressly tie the indemnity to damages with a proximate, causal connection to relevant conduct of the manager. The Applicant provides the following revisions: ''(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any reasonable damages involving such arrangement, agreement or contract and resulting directly from a violation of ERISA by such DB QPAM, or, to the extent the DB QPAM relies on the exemptive relief provided by PTE 84–14 and this exemption under the arrangement, agreement or contract, the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 and this exemption as a result of a violation of Section I(g) of PTE 84–14 other than as a result of the Convictions. This condition does not require indemnification for indirect, special, consequential or punitive damages.''

The Applicant contends that the other provisions enumerated above extend beyond the scope of relief and contain duplicative requirements, both internally and with respect to requirements that are already in ERISA. The Applicant states that the broad indemnity in subsection (7) substantively provides all of the protections contained in subsections (2), (3) and (6) (*i.e.,* if the client is to be indemnified, it is confusing and unnecessary to restate that protection multiple times in multiple ways). The Applicant further states that if Section I(j)(7) remains, Sections I(j) (2), (3) and (6) should be deleted. Alternatively, if the Department decides to delete Section I(j)(7), while retaining Sections I(j)(3) and (6), Section I(j)(2) should be deleted because it is subsumed within the more detailed and qualified condition in Section I(j)(3).

The Department has determined that Section I(j)(3), as proposed, is duplicative of the exemption's prohibition on exculpatory clauses, described below, and has deleted subsection (j)(3). The Department has made certain further changes to this condition upon consideration of the Applicant's comment. These changes include: Renumbering the condition for clarity; replacing ''applicable laws'' with clarifying language that conforms to the one-year exemption; replacing ''any damages'' with ''actual losses resulting directly from'' certain acts or omissions of the DB QPAMs; and adding language which affirms that the obligations under this condition do not extend to damages caused by acts that are beyond the control of the DB QPAMS. However, with respect to the indemnification clause, now renumbered Section I(j)(2), the purpose of this exemption is to protect Covered Plans. Section I(j)(2) is essential to achieving that purpose. The Department emphasizes that this condition is not punitive, but rather ensures that, a Covered Plan may expect a DB QPAM to adhere to basic fiduciary norms and standards of fair dealing, notwithstanding the Convictions. The condition also ensures that Covered Plans have the ability to disengage from a relationship with a DB QPAM without undue injury if Deutsche Bank violates the terms of this exemption. Accordingly, the Department has revised the applicability of this condition to more closely reflect this interest. In particular, the condition applies to Covered Plans. As indicated above, if the asset manager would prefer not to be subject to these provisions as exemption conditions, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with an ERISA-covered plan or IRA (in that case, however, it could not rely on the exemption for relief).

The Department also modified former Section I(j)(6) (now I(j)(2)) to clarify that the prohibition on exculpatory provisions does not extend to losses that arise from an act or event not caused by Deutsche Bank. Nothing in this section alters the prohibition on exculpatory provisions set forth in ERISA Section 410.

The Department declines to delete former Section I(j)(2), now (j)(3), from the final exemption. As the Applicant points out, ERISA already precludes ERISA fiduciaries from disclaiming obligations under ERISA. See ERISA section 410 (prohibiting exculpatory clauses as void against public policy). To the extent the exemption condition prevents the DB QPAMs from including contractual provisions that are void as against public policy there is no legitimate basis for objection. Such exculpatory language should not be in the governing documents in the first place and is potentially misleading because it suggests disclaimer of obligations that may not be disclaimed.

Outside the context of ERISA section 410, the provision's requirement that the DB QPAMs retain accountability for adherence to the basic obligations set forth in this exemption is justified by the misconduct that led to the Convictions as discussed above, and by the need to ensure that Covered Plan customers may readily obtain redress and exit contracts with DB QPAMs without harm in the event of violations.

Comment 24—Termination and Withdrawal Restrictions—Sections I(j)(4) and (5)

Sections I(j)(4) and (5) of the proposed exemption provide, ''*(j) Effective as of the effective date of this exemption, with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees and warrants:*

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;''

In its comment, the Applicant requests that Sections I(j)(4) and (5) be deleted entirely. The Applicant states that lockup provisions in facilitating the investment strategies are used to protect all investors in a pooled fund and applied evenhandedly to all investors. However, the Applicant states, the conditions would provide ERISA-covered plan and IRA clients investing

in the fund with an advantage, to the detriment of public plans and other investors. The Applicant states that the conditions are unnecessary. If the Department declines to delete the provisions, the Applicant requests that they be revised to allow restrictions related to liquidity issues as well as those related to ensuring compliance with regulatory requirements, addressing valuation issues, and permitting the fund to pursue the investors' chosen investment strategy. Specifically, with respect to subsection (j)(4), the Applicant requests that the language ''as a result of an actual lack of liquidity of the underlying assets'' be stricken from the condition. Furthermore, with respect to subsection (j)(5), the Applicant requests that ''prevent generally recognized abusive investment practices or specifically designed to'' be removed.

The Department declines to delete Sections I(j)(4) and (5) from this exemption. The Department has revised subsection (j)(4) to further clarify the Department's intent, but refuses to remove the concept entirely. Therefore, the Department has replaced ''as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors'' with ''In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.'' Finally, the Department declines to make the Applicant's requested change to subsection I(j)(5).

Comment 25—Updated Investment Management Agreement—Section I(j)(8)

Section I(j)(8) of the proposed exemption provides, ''*(8) Within four (4) months of the effective date of this proposed exemption, each DB QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which the DB QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a DB QPAM provides asset management or other discretionary fiduciary services, the DB QPAM must agree in writing to its obligations under this Section I(j) in an updated investment management agreement or advisory agreement between the DB QPAM and such clients or other written contractual agreement.*''

The Applicant states that the provision is overly broad because it is not limited to ERISA-covered plans and IRAs for which DB QPAMs rely on PTE 84–14 and this exemption. The Applicant requests that this provision be limited to such ERISA-covered plan and IRA clients. The Applicant states that the four-month notice period is too short, and requests the Department extend the notice period to at least six months.

The Applicant also requests that the Department provide a carve-out such that the Applicant does not need to provide any notices under this provision to existing clients to which it provided notice under Section I(j) of PTE 2016–13, assuming that the notice required in the current provision here is substantially similar to that required under PTE 2016–13. To this end, the Applicant requests the following language be added to this condition: ''(For avoidance of doubt, notices provided to existing clients under Section I(j) of PTE 2016–13 will be deemed to satisfy this requirement).''

Furthermore, the Applicant states that a bilateral management agreement containing the obligations under Section I(j) should not be mandated. The Applicant states that the DB QPAM would be in violation of this condition if a client refuses to sign the updated agreement. The Applicant asserts that its compliance with the exemption should not depend on action by its clients. Accordingly, the Applicant requests that this requirement be eliminated, and that this condition instead require the DB QPAMS to ''provide a written notice of its obligations under this Section I(j)'' to its prospective ERISA-covered plan and IRA clients.

The Department has modified Section I(j)(8), now renumbered as Section I(j)(7), for better coordination with PTE 2016–13. As modified, the exemption's text now provides that a notice that satisfies Section I(i)(2) of PTE 2016–13 will satisfy renumbered Section I(j)(7) of this exemption, unless the notice contains any language that limits, or is inconsistent with, the scope of this exemption. Additionally, the time period for providing the notice is now six months, although the Department has specified the exact six-month deadline for such notice, which is October 17, 2018.

As noted above, the Department has an interest in protecting an ERISA-covered plan or IRA that enters into an asset management agreement with a Deutsche Bank asset manager in reliance on the manager's qualification as a QPAM, regardless of whether the QPAM relies on the class exemption when managing the ERISA-covered plan's or IRA's assets. The Department has revised the applicability of this condition to more closely reflect this interest, and the condition now applies to ERISA-covered plans and IRAs for which a DB QPAM expressly represents that the manager qualifies as a QPAM or relies on the QPAM class exemption. The condition does not apply to an ERISA-covered plan or IRA with respect to which the Deutsche Bank asset manager has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract with the ERISA-covered plan or IRA. The Department has also modified the condition such that a DB QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

Comment 26—Notice to Plan Clients—Section I(k)(1)

Section I(k)(1) of the proposed exemption provides that, ''*(k)(1) Notice to ERISA-covered plan and IRA clients. Within fifteen (15) days of the publication of this proposed exemption in the* ***Federal Register****, each DB QPAM will provide a notice of the proposed exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84–14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, or the sponsor of an investment fund in any case where a DB QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed exemption is granted, the* ***Federal Register*** *copy of the notice of final exemption must be delivered to such clients within sixty (60) days of its publication in the* ***Federal Register****, and may be delivered electronically (including by an email that has a link to the exemption). Any prospective clients for which a DB QPAM provides asset management or other discretionary fiduciary services must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's*

receipt of a written asset management agreement from the DB QPAM.''

In its comment, the Applicant contends that this condition should be limited to ERISA-covered plans and IRAs with respect to which the Applicant relies on PTE 84–14 and this exemption, as not applying such a limitation is overly broad, punitive, and not related to the use of this exemption. Furthermore, the Applicant states it should not be required to provide to clients a separate summary of facts in addition to the notice of the proposed exemption, which contains the facts and representations set forth in the preamble and ''is a far more fulsome and complete explanation.'' The Applicant requests that the condition make clear that the condition may be satisfied through other documentation, such as a subscription agreement. The Applicant further requests flexibility with respect to the fifteen-day time-period for providing the notice, suggesting the following language be added: ''or such longer period as agreed to with the Department.'' The Applicant also requests that ''the client's receipt of a written asset management agreement'' be replaced with ''the client's signing of a written asset management agreement (or other written documentation).''

The Department notes that the proposed exemption provides details of the facts and circumstances underlying the conviction not found in the Summary or the final grant. One of the purposes of such a complete disclosure is to ensure that all interested parties are aware of and attentive to the complete facts and circumstances surrounding Deutsche Bank's application for exemption. In this regard, these parties include clients that receive an asset management agreement, which is why the Department is not revising the provision in the manner requested. Requiring the disclosure of the Summary, proposal, and this final grant provides the opportunity for all parties to have knowledge of these facts and circumstances. Notwithstanding this, the Department has modified the condition to clarify that disclosures may be provided electronically. Further, the Department is narrowing the notice requirement to each ''sponsor and beneficial owner of a Covered Plan.'' Notice does not need to be given to a client with respect to whom a DB QPAM has expressly disclaimed reliance on QPAM status or reliance on PTE 84–14.

With respect to the Applicant's requested change regarding the timeframe, the Department believes that requiring that delivery be completed in 60 days following the publication of this exemption in the **Federal Register** provides sufficient time for the Applicant to prepare the Summary and effect delivery. The Department has moved this 60-day requirement to the beginning of Section I(k) by specifying a specific date upon which notice should be completed, June 17, 2018.

Comment 27—Notice to Non-Plan Clients—Section I(k)(2)

Section I(k)(2) of the proposed exemption provides, ''*[e]ach DB QPAM will provide a* ***Federal Register*** copy of the proposed exemption, a ***Federal Register*** *copy of the final exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement, or other written contractual agreement, from the DB QPAM. For purposes of this subparagraph (2), a Current Non-Plan Client means a client of a DB QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the DB QPAM as of the effective date, if any, of a final exemption; and has received a written representation (qualified or otherwise) from the DB QPAM that such DB QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14. For purposes of this subparagraph (2), a Future Non-Plan Client means a prospective client of a DB QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the DB QPAM after the effective date, if any, of a final exemption; and has received a written representation (qualified or otherwise) from the DB QPAM that such DB QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14.*''

The Applicant requested that Section I(k)(2) be deleted in its entirety. Given the breadth of the notice requirement otherwise mandated by the exemption, and its decision to restrict the requirement to those arrangements for which QPAM status plays an integral role (*i.e.,* the DB QPAM represents or relies upon its QPAM status), the Department has determined to delete this provision.

Comment 28—Compliance Officer—Section I(m)

Section I(m) of the proposed exemption outlines the requirements associated with appointment of a Compliance Officer and an accompanying Annual Review.

In its comment, Deutsche Bank argues that Section I(m) is duplicative of the audit, unfair and punitive. The Applicant states that no conduct by the DB QPAMs merits a separate Annual Review dedicated to ERISA. The Applicant asserts that the provision assumes facts unsupported by the record, namely: (1) That DB QPAMs will not comply with ERISA or the Code and applicable exemptions; (2) that their existing compliance structure, even when enhanced by the conditions of this exemption and earlier ones, are insufficient; and (3) that the auditor is either incapable of adequately testing the DB QPAMs' compliance with ERISA, the Code and applicable exemptions or the auditor cannot be trusted to conduct this testing. The Applicant states that this provision also appears in none of the earlier individual exemptions that allowed applicants to rely on PTE 84–14 notwithstanding a criminal conviction violating Section I(g) of PTE 84–14. The Applicant asserts that the inclusion of this condition treats the Applicant unfairly and is inconsistent with the Administrative Procedure Act and Section 408(a) of ERISA and Section 4975 of the Code.

Deutsche Bank states that, if the Department declines to delete Section I(m), the provision should be modified so as to not interfere with the auditor, reduce the time that auditor has to complete its work or impose on the DB QPAMs duplicative or irrelevant and, therefore, unnecessary conditions. Furthermore, the Applicant states that Department should not require the Compliance Officer to complete substantially similar work that it expects of the auditor in a substantially shorter timeframe. The Applicant states that the Compliance Officer should report to an officer with familiarity with asset management, not some unrelated business. The Applicant asserts that the Annual Review should be concerned only with the subject matter of this exemption, such as material compliance with ERISA and the Code, and not gauge the adequacy of the resources provided to the Compliance Officer.

The Department discusses the Applicant's overarching concerns with Section I(m) in response to the individual changes to specific provisions below.

Section I(m)(1)(ii) of the proposed exemption states, in relevant part, ''*(1) Deutsche Bank designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review (the Annual Review) to determine the adequacy and effectiveness of the implementation of*

the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance that is independent of Deutsche Bank's other business lines;''

With respect to subsection I(m)(1)(ii), the Applicant requests that ''of legal compliance that is independent of Deutsche Bank's other business lines'' be replaced with ''of compliance for asset management.'' The Department has made changes in line with the Applicant's request, but has not removed the word ''legal.''

Section I(m)(2) of the proposed exemption states, ''*(2) With respect to each Annual Review, the following conditions must be met:*

(i) The Annual Review includes a review of: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the business activities of the DB QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the DB QPAMs;''

With respect to this section, the Applicant requests: substituting ''Any *material* compliance matter'' for ''Any compliance matter''; deletion of ''or others within the compliance and risk control function (or its equivalent);'' and clarification that the Annual Review encompass ''any material change in the business activities of the DB QPAMs that may impact their compliance with ERISA or Section 4975 of the Code.''

The Department declines to add the word ''material'' due to the focused scope of the Annual Review on the Policies and Training required under this exemption. The Department also declines to delete the phrase ''or others within the compliance and risk control function (or its equivalent)'' because it is important that all relevant compliance matters be properly accounted for, not simply those that make their way to the Compliance Officer. The Department has added the word ''relevant'' to clarify that any changes to the QPAM's business activities should be relevant to the scope and coverage of this exemption.

Section I(m)(2)(ii) of the proposed exemption states, ''*The Compliance Officer prepares a written report for each Annual Review (each, an Annual Report) that (A) summarizes his or her material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;''*

With respect to this section, the Applicant suggests that the Annual Report ''(A) summarizes his or her material activities in connection with any compliance matter related to the Policies or Training during the preceding year; (B) sets forth any material instance of noncompliance related to the Policies or Training discovered during the preceding year, and any related corrective action; (C) details any material change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems relating to the Policies or Training, and management's actions on such recommendations.''

The Department declines to make these changes because Section (m)(1) properly sets out the scope of the Annual Review in that it is meant ''to determine the adequacy and effectiveness of the implementation of the Policies and Training.'' Any additional requirements outlined with respect to the Annual Review should be handled accordingly.

Section I(m)(2)(iii) of the proposed exemption states, ''*In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; (D) the DB QPAMs have complied with the Policies and Training in all respects, and/or corrected any instances of noncompliance in accordance with Section I(h) above; and (E) Deutsche Bank has provided the Compliance Officer with adequate resources, including, but not limited to, adequate staffing;*

With respect to this section, the Applicant requests that ''certify in writing'' be replaced with ''state,'' that ''any known instances of noncompliance'' be ''related to the Policies or Training,'' and that the review of whether ''Deutsche Bank has provided the Compliance Officer with adequate resources, including, but not limited to, adequate staffing'' be deleted.

The Department has deleted paragraph (E) regarding staffing and resources, as requested by the Applicant, but has not made the other requested changes because these provisions are properly limited in scope to the Policies and Training as outlined in Section I(m)(1).

Section I(m)(2)(v) of the proposed exemption states, ''*Each Annual Review, including the Compliance Officer's written Annual Report, must be completed at least three (3) months in advance of the date on which each audit described in Section I(i) is scheduled to be completed;''*

With respect to this section, the Applicant requests that the Annual Review, including the Annual Report, be completed ''at least one (1) month in advance of the date on which each audit described in Section I(i) is scheduled to be completed.''

The Department has modified this section slightly so that it is no longer tied to completion of the audit, but rather the end of the period to which the Annual Report and Annual Review relates.

Comment 29—Deferred Prosecution Agreement/Non-Prosecution Agreement—Section I(p)

Section I(p) of the proposed exemption provides, ''*(p)(1) During the effective period of this exemption, Deutsche Bank immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) entered into by Deutsche Bank or any of its affiliates with the U.S Department of Justice, in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding such agreement and/or conduct and allegations that led to the agreement. After review of the information, the Department may require Deutsche Bank or its affiliates, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in the new application,*

or does not grant such relief within twelve (12) months of the application, the relief described herein is revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier;''

In its comment, the Applicant requests that the Department delete Section I(p). The Applicant asserts that the condition does not meet the requirements of either the Administrative Procedure Act or the Department's own regulations, specifically with regards to withdrawal or revocation of an exemption. The Applicant also takes issue with the substance of the Department's proposed informal termination. Specifically, according to the Applicant, its inclusion in the exemption raises the risk of an immediate loss of exemptive relief and related uncertainty in connection with thousands of transactions and investments with respect to its plan asset clients.

Deutsche Bank also contends that the timing of NPAs and DPAs is uncertain, as the activities under investigation also may be remote, historical, or unrelated to DB QPAMs' activities. The Applicant notes that the condition does not build in any notice to plan fiduciaries, counterparties, or other parties in interest that rely on QPAM, and as such is not administrable or protective of plans.

The Applicant asserts that Section I(p) is inconsistent with the anti-criminal rules of Section I(g) of PTE 84–14 and Section 411 of ERISA as neither NPAs nor DPAs rise to the level of convictions. Moreover, this condition establishes a precedent to be inserted into every one of these matters—regardless of how attenuated the conduct is from plans and participants, and even if it is clearly in the interest of plans and participants to keep the individual QPAM exemption in place, and not to have uncertainty around this outcome.

The Applicant suggests revisions if the Department declines to delete the condition. Specifically, the Applicant seeks to clarify that the Applicant will ''[provide] the Department any non-privileged information requested by the Department, as permitted by law, regarding such agreement and/or conduct and allegations that led to the agreement.'' Furthermore, the Applicant seeks deletion of the following: ''After review of the information, the Department may require Deutsche Bank or its affiliates, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in the new application, or does not grant such relief within twelve (12) months of the application, the relief described herein is revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier.''

The Department in no way intended the condition to be read as providing for an automatic revocation of this exemption and, in light of the Applicant's comments, has revised the condition accordingly. As revised, the condition simply requires that the Applicant notify the Department if and when it or any of its affiliates enter into a DPA or NPA with the U.S. Department of Justice for conduct described in section I(g) of PTE 84–14 or ERISA section 411 and immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. The Department retains the right to propose a withdrawal of the exemption pursuant to its procedures contained at 29 CFR 2570.50, should the circumstances warrant such action.

Regarding the Applicant's comment that the timing and factual basis of the NPA or DPA could be far removed or distant in time or place from current plan management operations, the Department notes that entering into a DPA or NPA may reflect conduct that could have sustained a criminal conviction, and such conduct would be relevant to the Department's determination whether to allow an entity to continue to rely on this exemption or to grant a subsequent exemption when this exemption expires. Such agreements are not entered into lightly and can stem from misconduct that reflects directly on the parties' willingness and ability to adhere to the standards set forth herein. Similarly, such agreement can have a direct bearing on the efficacy of the affected institution's policies and procedures in preventing misconduct, such as the policies and procedures mandated by this exemption.

The Department declines to specify that the DB QPAMs need only provide ''non-privileged information'' upon request by the Department. As stated above, the Department will evaluate the conduct underlying the new DPA or NPA and will review all relevant information.

Comment 30—Right to Copies of Policies and Procedures—Section I(q)

Section I(q) of the proposed exemption provides, ''*(q) Each DB QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, and then at least once annually, will clearly and prominently inform the ERISA-covered plan and IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with this exemption.*''

In its comment, the Applicant states that there are difficulties in informing ERISA-covered plan and IRA clients within sixty (60) days prior to the period the exemption is relied on because the Applicant intends to rely on the exemptive relief provided hereunder as soon as possible to ensure efficient trading on behalf of ERISA plan and IRA clients. The Applicant requests that the initial informing of clients be ''prior to or concurrently with the initial transaction upon which relief hereunder is relied.'' The Applicant also states that the annual notification requirements represent another duplicative and overlapping notice requirement to clients, which are burdensome and potentially confusing to clients, and requests that the annual notification requirement be deleted. The Applicant argues that providing the client with the exemption notice, which in turn informs the client that it can request and receive the policies and procedures upon request should obviate the need for additional mailings.

Affording ERISA-covered plan and IRA clients a means by which to review and understand the Policies implemented in connection with this exemption is a vital protection that is fundamental to this exemption's purpose. However, the Department has modified the condition so that the QPAMs, at their election, may instead provide Covered Plans disclosure that accurately describes or summarizes key components of the Policies, rather than the policies in their entirety. The Department has also determined that such disclosure may be continuously maintained on a website, provided that the website link to the summary of the written Policies is clearly and prominently disclosed to those ERISA-covered plan and IRA clients to whom this section applies. The Department also agrees with the Applicant that the timing requirement for disclosure should be revised and, accordingly, has modified Section I(q) to require notice regarding the information on the website within 6 months of the effective date of this exemption (by October 17, 2018), and thereafter to the extent

certain material changes are made to the Policies.

Comment 31—Definition of Convictions—Section II(a)

Section II(a) of the proposed exemption provides, ''*(a) The term 'Convictions' means (1) the judgment of conviction against DB Group Services, in Case 3:15–cr–00062–RNC to be entered in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. 1343, and (2) the judgment of conviction against DSK entered on January 25, 2016, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation. For all purposes under this exemption, 'conduct' of any person or entity that is the 'subject of [a] Conviction' encompasses any conduct of Deutsche Bank and/or their personnel, that is described in the Plea Agreement (including the Factual Statement thereto), Court judgments (including the judgment of the Seoul Central District Court), criminal complaint documents from the Financial Services Commission in Korea, and other official regulatory or judicial factual findings that are a part of this record,*''

In its comment, the Applicant states that this definition inaccurately paraphrases the Plea Agreement and Seoul Central District Court decision and significantly expands the conduct with respect to both the Conviction and the Korean Conviction. The Applicant requests that the language ''any conduct of Deutsche Bank and/or their personnel, that is described in the Plea Agreement (including the Factual Statement thereto), Court judgments (including the judgment of the Seoul Central District Court), criminal complaint documents from the Financial Services Commission in Korea, and other official regulatory or judicial factual findings that are part of this record'' be replaced with ''the factual allegations described in Paragraph 13 of the Plea Agreement filed in the District Court in Case Number 3:15-cr-00062–RNC, and in the 'Criminal Acts' section pertaining to 'Defendant DSK' in the Decision of the Seoul Central District Court.''

After considering this comment, the Department has revised the definition to be consistent with the definition of ''Convictions'' in the temporary exemption.

Comments 32 and 38—Definition of DB QPAM—Section II(b)

Section II(b) of the proposed exemption provides, ''*(a) The term 'DB QPAM' means a 'qualified professional asset manager' (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which DSK or DK Group Services is a current or future 'affiliate' (as defined in Section VI(d) of PTE 84–14). For purposes of this exemption, Deutsche Bank Securities, Inc. (DBSI), including all entities over which it exercises control; and Deutsche Bank AG, including all of its branches, are excluded from the definition of a DB QPAM*'' (footnote omitted).

In its comment, the Applicant requests that the reference to Section VI(d) of PTE 84–14 be specified as Section VI(d)(1) because Deutsche Bank is seeking relief only for control ''affiliates'' as defined in Section VI(d)(1). The Department agrees this is the intended scope of relief and has revised the definition accordingly.

The Applicant requests that Deutsche Bank Services Inc. (DBSI) be permitted to act as a QPAM. However, as noted in the proposal to this exemption, Deutsche Bank had previously advised the Department that ''[t]he DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the Conviction.'' Then, in a letter to the Department dated July 15, 2016, Deutsche Bank raised the possibility that an individual (John Ripley), while employed at DBSI, may have known or had reason to know of the criminal conduct of DSK that is the subject of the Korean Conviction. Similarly, the Applicant further noted that, with respect to the LIBOR-related misconduct, ''certain sell side employees of DBSI, the dual registrant, may have known about the conduct that is the subject of the plea agreement.''

For nearly nine months, following the publication of PTE 2015–15, the Applicant failed to raise with the Department the ''interpretive'' issue regarding whether an individual or individuals employed at DBSI may have known or had reason to know of the criminal conduct at DSK, notwithstanding the previous representation, and whether DBSI was still eligible to act as a QPAM. Consequently, the Department is not persuaded that DBSI should be permitted to act as a QPAM.

The Applicant also suggests that, while the Definition of QPAM could be revised to preclude relief for DSK and DB Group Services, Deutsche Bank AG should be permitted to act as a QPAM, stating that Deutsche Bank AG and its branches were not convicted of a crime, and excluding those entities is unfair given the scope of relief provided to other banks subject to a disqualifying conviction. The Applicant, however, has not demonstrated that the exemption's existing conditions would adequately protect affected ERISA-covered plans and IRAs to the extent Deutsche Bank AG is permitted to act as a QPAM. Accordingly, the Department has not revised the exemption as requested.

Comments 33, 35–37, 40—Summary of Facts and Representations

The Applicant seeks certain factual updates and clarifications and statements regarding the Summary of Facts and Representations. The Department notes that the factual updates and clarifications may be found as part of the public record for Application No. D–11908, in its comment letter to the Department, dated January 17, 2017.

Comment 34—DBSI

The preamble to the proposed exemption states: ''In a letter to the Department dated July 15, 2016, Deutsche Bank raised the possibility that an individual [John Ripley], while employed at DBSI, may have known or had reason to know of the criminal conduct of DSK that is the subject of the Korean Conviction.'' (footnote omitted). The preamble also states that DB did not raise any ''interpretive questions regarding Section I(a) of PTE 2015–15, or express any concerns regarding DBSI's possible noncompliance, during the comment period for PTE 2015–15,'' and that ''a period of approximately nine months passed before Deutsche Bank raised an interpretive question regarding Section I(a) of PTE 2015–15.''

In its comment letter, the Applicant contests the suggestion of the statements above that Deutsche Bank had failed to previously disclose Mr. Ripley's knowledge of the conduct and his employment with DBSI to the Department. The Applicant asserts that it identified Mr. Ripley both as an employee of DBSI and a subject of the Korean case on numerous prior occasions, as far back as 2011. The Department referenced these disclosures by identifying Mr. Ripley, his employment at DBSI, and his involvement in the case in the proposed exemption on behalf of Deutsche Bank

AG related to exemption application no. D–11696, at 80 FR 51314 (August 24, 2015) (the DSK Proposal). The Applicant contends that it did not raise any interpretative question on Section I(a) of PTE 2015–15 earlier because Deutsche Bank assumed that the Department would not impose an exemption condition that the Department knew Deutsche Bank could not meet.

The Department acknowledges the disclosures by the Applicant regarding Mr. Ripley, his employment at DBSI, and his alleged role in the conduct underlying the Korean Conviction. However, the Department emphasizes that, despite the references to Mr. Ripley in the DSK Proposal and the proposed condition I(a) that the ''[t]he DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the Conviction,'' the Applicant did not submit a comment highlighting this concern. The Department notes that, pursuant to the DSK Proposal, the Applicant had seven (7) days to submit a comment. It did not do so. Furthermore, following the grant of PTE 2015–15, if the Applicant believed that the Department had included ''an exemption condition that . . . [Deutsche Bank] could not meet,'' the Applicant could have asked the Department for clarification at any time. The Department further notes that, at the time of the grant of PTE 2015–15, the Department was processing Exemption Application no. D–11956, and was in regular contact with the Applicant regarding that submission. In fact, a tentative denial conference was held on November 9, 2015, between representatives of the Department and the Applicant, pursuant to a tentative denial letter dated July 16, 2015. In addition to the tentative denial conference, the Applicant submitted substantial information in support of the application, and to address the Department's concerns raised both in the letter and at the November 9, 2015, conference. However, the Applicant did not raise this potential concern for approximately nine months and elaborated in the July 15, 2016 letter referenced in the summary of facts and representations in the proposed exemption.

In the July 15, 2016, letter, the Applicant further noted that, with respect to the LIBOR-related misconduct, ''certain sell side employees of DBSI, the dual registrant, may have known about the conduct that is the subject of the plea agreement.'' In a follow-up submission to the Department dated August 19, 2016, the Applicant represented that ''[to] the best of the Applicant's knowledge, no person employed by DBSI was determined to be responsible for the LIBOR misconduct, although one person who worked for the Bank may have been dual hatted to DBSI prior to 2008.''

Comments 39, 41, 42—Technical Corrections in the Operative Language

In Section II(i) of the exemption, formerly Section II(g) in the proposed exemption, the Department has replaced the term ''Factual Statement'' with ''Agreed Statement of Facts.'' The Department has also replaced the term ''action'' with ''charge.'' Finally, the Department has deleted the phrase ''related to the manipulation of the London Interbank Offered Rate (LIBOR).'' The Department notes that the modified Section II(i) in the exemption is consistent with Section II(g) in the temporary exemption.

The Department has modified both the prefatory language of Section I and Section II(e) of the exemption to reflect the fact that the full name of DB Group Services is ''DB Group Services (UK) Limited.''

The Department has further modified the prefatory language of Section I to reflect the correct date of the Korean Conviction as January 25, 2016.

The Department also notes that the defined terms in Section II have been reordered in their entirety so that they now appear in alphabetical order.

Comment 43—Term of the Exemption

In its comment, the Applicant requests that the Department extend the term of the exemption to the remaining 9 years. The Applicant states that the conduct underlying the Convictions was isolated and limited to business not related to Deutsche Bank's asset management business, which is separate from the business of both DB Group Services and DSK. The Applicant further states that the Department historically has granted ten-year exemptions for cases involving serious criminal conduct and the present exemption should be disposed of in a like manner. The Applicant notes that the differences in the standards seem ''arbitrary, and unrelated to the conduct,'' as ''the Department has departed from its historic practice of granting exemptions for similar circumstances with similar conditions.'' The Applicant states that the Department has not provided an explanation for the conditions new to this exemption ''other than its belief that crimes are serious.'' The Applicant states that ''the exemption is not a proper place to further punish Applicant and it should not be treated more harshly than prior applicants.'' Rather, the Applicant represents that it has entered into agreements with prosecutors and regulators and paid fines to address the subject misconduct. The Applicant asserts that ''[t□he exemption process is not an appropriate place to re-examine those resolutions.''

The Applicant further states: ''ERISA was not violated here, and the asset management and wealth management businesses were not implicated in the criminal proceedings. It is thus unfortunate that the Department has chosen to impose conditions that suggest that the DB affiliated asset managers have violated some provision of ERISA that requires punitive conditions moving forward. There is simply no reason that Applicant should not receive the traditional ten-year exemption that the Department has historically granted to applicants for QPAM exemptions.'' The Applicant states that the crimes did not occur in asset management. Rather, the Applicant states that ''[t]he auditor's report, which will be available to plan fiduciaries and to the Department, will be a sufficient indicator of the DB QPAMs' compliance with the exemption, without requiring reapplication after 5 years.''

Although the Applicant characterizes the conduct as unrelated to Deutsche Bank's asset management business, the Department does not agree with the apparent suggestion that the Applicant bears little or no responsibility for the criminal conduct, or that the misconduct amounted to mere isolated instances. This exemption was developed based on the Department's view that the misconduct relevant to the Convictions occurred at Deutsche Bank entities. With respect to the Korean Conviction, the record includes the Decision by the Seoul Central District Court (the Korean Court) dated January 25, 2016. The Korean Court decision notes: ''Defendant DSK could have anticipated and prevented in advance its officers and employees' violation of the [Korean Financial Investment Services and Capital Markets Act] in light of the size of its business, the number of its officers and employees, and its past experiences of engaging in the financial investment business in Korea.''

With respect to the US Conviction, the record includes the Plea Agreement between the DOJ and DB Group Services and the accompanying Agreed Statement of Facts, as well as the

Deferred Prosecution Agreement entered into by Deutsche Bank AG. The Plea Factual Statement states: ''From at least 2003 through at least 2010, [Deutsche Bank] derivatives traders engaged in a scheme to defraud [Deutsche Bank's] counterparties by secretly attempting to manipulate and manipulating U.S. Dollar, Yen, and Pound Sterling LIBOR, as well as EURIBOR [IBOR]. They carried out this scheme by attempting to manipulate and manipulating the various IBOR submissions. These derivatives traders requested that the [Deutsche Bank] IBOR submitters send in benchmark interest rates that would benefit the traders' trading positions, rather than rates that complied with the definitions of the IBORs. These derivatives traders either requested a particular IBOR contribution for a particular tenor and currency, or requested that the rate submitter contribute a higher, lower, or unchanged rate for a particular tenor and currency . . . In the instances when the published benchmark interest rates were manipulated in [Deutsche Bank's] favor due to [Deutsche Bank's] manipulation of its own or other banks' submissions, that manipulation benefitted DB derivatives traders, or minimized their losses, to the detriment of counterparties located in Connecticut and elsewhere, at least with respect to the particular transactions comprising the trading positions that the traders took into account in making their requests to the rate submitters. Certain [Deutsche Bank] pool and MMD derivatives traders who tried to manipulate LIBOR and EURIBOR submissions understood the features of the derivatives products tied to these benchmark interest rates; accordingly, they understood that to the extent they increased their profits or decreased their losses in certain transactions from their efforts to manipulate rates, their counterparties would suffer corresponding adverse financial consequences with respect to those particular transactions. The derivatives traders did not inform their counterparties that the traders were engaging in efforts to manipulate the IBORs to which the profitability of their trades was tied.'' The Plea Factual Statement further states that ''[t]his deceptive scheme involved efforts by [DB Group Services] derivatives traders to manipulate hundreds of IBORs.''

The Deferred Prosecution Agreement further notes: ''Although Deutsche Bank's cooperation was often helpful, Deutsche Bank's cooperation also fell short in some important respects. First, Deutsche Bank was slow to cooperate fully with the Department's investigation. For example, Deutsche Bank did not timely produce certain information, including key information related to Deutsche Bank's Euro traders. As another example, in a telephone conversation, two executive level managers discussed knowing that the Department asked for relevant information and that the information had been withheld from the Department and other U.S. authorities while acknowledging they probably would have to give the information to the European Union. Second, Deutsche Bank was not, by comparison to previously settling institutions, proactive in its investigation and disclosure. For example, Deutsche Bank's conduct included interbank coordination between it and other institutions, but it was the other institutions, not Deutsche Bank, that provided that information to the Department. Third, Deutsche Bank's investigation was hampered by numerous unintentional but significant mistakes in the preservation, collection, and production of documents, audio, and data. For example, Deutsche Bank destroyed thousands of hours of potentially responsive audio recordings due to the negligent execution of certain discovery holds. As another example, Deutsche Bank discovered an important communications platform more than two years after receiving the Department's initial request for information, which platform contained some of the most explicit documents. Fourth, Deutsche Bank caused the Department to be misinformed that the bank was not permitted to provide to the Department a report by Deutsche Bank's primary domestic regulator, BaFin, that discussed shortcomings in Deutsche Bank's internal investigation of IBOR related misconduct.''

In developing this exemption, the Department also considered statements made by other regulators. The United Kingdom's Financial Conduct Authority's (FCA) Final Notice states: ''The lack of appropriate systems to retrieve recorded Trader telephone calls and to map trading books and trades constituted a serious failure on the part of Deutsche Bank to [organize] and control its affairs responsibly and effectively, and to manage risks adequately . . . These failings demonstrate that there was a lack of appreciation within Deutsche Bank of the need to ensure systems are suitable for risk management and compliance purposes, enabling appropriate and timely investigations of potential Trader misconduct. The shortcomings of these particular systems came to light during the course of the Authority's investigation, but these systems issues would have been equally problematic in relation to any internal or regulatory agency enquiries or investigations concerning the possible misconduct of individual Traders.''

The Consent Order of the New York State Department of Financial Services states that, ''[the] culture within the Bank valued increased profits with little regard to the integrity of the market.''

The Consent Order of the United States Commodities Futures Trading Commission (CFTC) with Deutsche Bank states that, ''Deutsche Bank engaged in this wrongful conduct even after the [CFTC] Division of Enforcement requested in April 2010 that Deutsche Bank conduct an internal investigation of its U.S. Dollar LIBOR submission practices. In fact, Deutsche Bank did not make meaningful improvements in its internal controls until mid-2011 and did not formalize a policy about conflicts of interest among traders and submitters relating to benchmark submissions until February, 2013.''

The Department also notes the size of relevant fines imposed by various regulators: the Seoul Central District Court imposed a fine of KRW 43,695,371,124 on Deutsche Bank and KRW 1,183,362,400 on DSK; the Department of Justice imposed a $150 million fine on DB Group Services and a $625 million penalty on Deutsche Bank; the New York State Department of Financial Services imposed a penalty of $600 million; and the CFTC and the FCA imposed fines of $800 million and £226.8 million, respectively.

After deliberating on all the considerations above, the Department decided the appropriate term for this exemption is three years. This exemption is not punitive. In the Department's view, the 3-year term of this exemption and its numerous protective conditions reflect the Department's intent to protect Covered Plans that entrust substantial assets with a Deutsche Bank asset manager, following serious misconduct, supervisory failures, and two criminal convictions. The limited term of this exemption gives the Department the opportunity to review the adherence by the DB QPAMs to the conditions set out herein. The Department has decided it is necessary to limit the term of relief to facilitate the Department's ability to ensure that the circumstances that allowed the prior bad conduct to occur have been adequately addressed. Because two separate convictions within the Deutsche Bank corporate

structure create the need for this exemption, the Department has concluded that future review of the relief provided by this exemption should occur within a shorter timeframe.

The Applicants may apply for an additional extension when they believe appropriate. Before granting an extension, however, the Department expects to carefully consider the efficacy of this exemption and any public comments on additional extensions, particularly including comments on how well the exemption has or has not worked to safeguard the interests of Covered Plans. If the Applicant seeks an extension of this exemption, the Department will examine whether the compliance and oversight changes mandated by various regulatory authorities are having their desired effect on Deutsche Bank entities.

Section I(r)

The Department, in order to avoid inadvertent violations of the exemption that are outside the Applicant's control, has determined to modify Section I(r) such that a failure of the auditor to comply with any of the conditions in Section I(i) of the exemption, except for subsection I(i)(11), should not be treated as a failure by the DB QPAMs to comply with the conditions of the exemption provided that such failure was not due to the actions or inactions of Deutsche Bank or its affiliates, and Section I(r) is amended, accordingly.

Comment—Letter From House Committee on Financial Services

The Department also received a comment letter from certain members of Congress (the Members) regarding this exemption, as well as regarding other QPAM-related proposed one-year exemptions. In the letter, the Members recognized that certain conditions contained in these proposed exemptions are crucial in protecting the investments of workers and retirees. In particular, they referred to proposed conditions which require each bank to: (a) Indemnify and hold harmless ERISA-covered plans and IRAs for any damages resulting from the future misconduct of such bank; and (b) disclose to the Department any Deferred Prosecution Agreement or a Non-Prosecution Agreement with the U.S. Department of Justice. The Members also requested that the Department hold hearings in connection with the proposed exemptions.

The Department acknowledges the Members' concerns regarding the need for public discourse regarding proposed exemptions. To this end, the Department's procedures regarding prohibited transaction exemption requests under ERISA (the Exemption Procedures) afford interested persons the opportunity to request a hearing. Specifically, section 2570.46(a) of the Exemption Procedures provides that, ''[a]ny interested person who may be adversely affected by an exemption which the Department proposes to grant relief from the restrictions of section 406(b) of ERISA, section 4975(c)(1)(E) or (F) of the Code, or section 8477(c)(2) of FERSA may request a hearing before the Department within the period of time specified in the **Federal Register** notice of the proposed exemption.'' The Exemption Procedures provide that ''[t]he Department will grant a request for a hearing made in accordance with paragraph (a) of this section where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing.'' The Exemption Procedures also provide that ''[t]he Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements of paragraph (a) of this section; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.'' [28]

While the Members' letter raises policy issues, it does not appear to raise specific material factual issues. The Department previously explored a wide range of legal and policy issues regarding Section I(g) of the QPAM Exemption during a public hearing held on January 15, 2015 in connection with the Department's proposed exemption involving Credit Suisse AG, and has determined that an additional hearing on these issues is not necessary.

Public Comments

The Department received three comments from two members of the public.

One commenter, Theo Allen, objects to the Department's proposed exemption on the basis that President Trump owes ''hundreds of millions of dollars of debt to Deutsche Bank'' and in his view, that debt should be ''divested'' before the exemption is granted.

Arthur Lipson of Western Investment LLC (Western) submitted two comment letters regarding the proposed exemption. The first letter states that Western is a shareholder in two closed-end funds managed by Deutsche Bank affiliates. He states that these funds are not subject to ERISA but are subject to the Investment Company Act of 1940, as amended. Mr. Lipson objects to a recent election of the closed-end fund trustees. Western sued the funds in connection with that election.

Mr. Lipson's second letter additionally states that Deutsche Bank should not be granted an exemption unless it ensures ''compliance with the principle of directorial accountability in the funds that it manages.''

Conclusion

After giving full consideration to the record, the Department has decided to grant the exemption, as described above. The complete application file (Application No. D–11908) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 21, 2016 at 81 FR 83400.

Exemption

Section I: Covered Transactions

Certain entities with specified relationships to Deutsche Bank AG (hereinafter, the DB QPAMs, as defined in Section II(d)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding: (1) The ''Korean Conviction'' against Deutsche Securities Korea Co., a South Korean affiliate of Deutsche Bank AG (hereinafter, DSK, as defined in Section II(f)), entered on January 25, 2016; and (2) the ''US Conviction'' against DB Group Services (UK) Limited, an affiliate of Deutsche Bank based in the United Kingdom (hereinafter, DB Group Services, as further defined in Section II(e)), during the Exemption Period,[29] provided that the following conditions are satisfied:

(a) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such QPAMs) did not know of, have reason to know of, or participate in the

[28] 29 CFR part 2570, published at 76 FR 66653 (October 27, 2011).

[29] Section I(g) of PTE 84–14 generally provides relief only if ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including fraud.

criminal conduct of DSK and DB Group Services that is the subject of the Convictions. For purposes of this paragraph I(a), ''participate in'' means the knowing approval of the misconduct underlying the Convictions;

(b) The DB QPAMs (including their officers, directors, and agents other than Deutsche Bank, and employees of such DB QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Convictions;

(c) The DB QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Convictions. For the purposes of this paragraph (c), ''participated in'' means the knowing approval of the misconduct underlying the Convictions;

(d) At all times during the Exemption Period, no DB QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such DB QPAM with respect to one or more Covered Plans, to enter into any transaction with DSK or DB Group Services, or to engage DSK or DB Group Services to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the DB QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

(f) A DB QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Convictions; or cause the QPAM or their affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Convictions;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, DSK and DB Group Services will not act as fiduciaries within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that DSK and DB Group Services will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of section 3(21)(A)(ii) of ERISA, or section 4975(e)(3)(B) of the Code, or because DB Group Services employees may be double-hatted, seconded, supervised or otherwise subject to the control of a DB QPAM, including in a discretionary fiduciary capacity with respect to the DB QPAM clients;

(h)(1) Each DB QPAM must continue to maintain or immediately implement and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the DB QPAM are conducted independently of the corporate management and business activities of DB Group Services and DSK;

(ii) The DB QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, in each such case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the DB QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the DB QPAM's knowledge at the time, the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs with respect to Covered Plans;

(vi) The DB QPAM complies with the terms of this exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the General Counsel (or their functional equivalent) of the relevant DB QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A DB QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each DB QPAM must develop and implement a program of training (the Training), to be conducted at least annually, for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The first Training under this Final Exemption must be completed by all relevant DB QPAM personnel by April 18, 2019 (by the end of this 30-month period, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice: the first time under PTE 2016–13; and the second time under this exemption). The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i)(1) Each DB QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each DB QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from April 18, 2018 through April 17, 2019, and must be completed by October 17, 2019. The second audit must cover the period from April 18, 2019 through April 17, 2020, and must be completed by October 17, 2020. In the event that the Exemption Period is extended or a new exemption is granted, the third audit would cover the period from April 18, 2020 through April 17, 2021, and would have to be

completed by October 17, 2021 (unless the Department chooses to alter the annual audit requirement in the new or extended exemption); [30]

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each QPAM, a sample of such QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the DB QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each DB QPAM's Policies and Training; each DB QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective DB QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The DB QPAM must promptly address any noncompliance. The DB QPAM must promptly address or prepare a written plan of action to address any determination of inadequacy by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective QPAM. Any action taken or the plan of action to be taken by the respective DB QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the audit report, the following period's audit report, must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a DB QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above;

(ii) The adequacy of the most recent Annual Review described in Section I(m);

(6) The auditor must notify the respective DB QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the DB QPAM with respect to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that such DB QPAM has addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code;

(8) The Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report. Deutsche Bank must provide notice to the Department in the event of a switch in the committee to which the Audit Report will be provided;

(9) Each DB QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210; or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109. This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each DB QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each DB QPAM and the auditor must submit to OED any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in the course of the audit, provided such access and inspection is otherwise permitted by law; and

[30] The third audit referenced above would not have to be completed until after the Exemption Period expires. If the Department ultimately decides to grant relief for an additional period, it could decide to alter the terms of the exemption, including the audit conditions (and the timing of the audit requirements). Nevertheless, the Applicant should anticipate that the Department will insist on strict compliance with the audit terms and schedule set forth above. As it considers any new exemption application, the Department may also contact the auditor for any information relevant to its determination.

(12) Deutsche Bank must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and Deutsche Bank;

(j) As of April 18, 2018 and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a DB QPAM and a Covered Plan, the DB QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, with respect to each such ERISA-covered plan and IRA to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a DB QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions. This condition applies only to actual losses caused by the DB QPAM's violations.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the DB QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the DB QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank, and its affiliates, or damages arising from acts outside the control of the DB QPAM;

(7) By October 17, 2018, each DB QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the DB QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the DB QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–13 that meets the terms of this condition. Notwithstanding the above, a DB QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement;

(k) By June 17, 2018, each DB QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Convictions result in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a DB QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective client for which a DB QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the DB QPAM. Disclosures may be delivered electronically.

(l) The DB QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions;

(m)(1) By October 17, 2018, Deutsche Bank designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each annual period beginning on April 18, 2018, (the Annual Review) [31] to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a legal professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management;

(2) With respect to each Annual Review, the following conditions must be met:

(i) The Annual Review includes a review of: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the relevant business activities of the DB QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the DB QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Review (each, an Annual Report) that (A) summarizes his or her material activities

[31] Such Annual Review must be completed with respect to the annual periods ending April 17, 2019; April 17, 2020; and April 17, 2021.

during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; and (D) the DB QPAMs have complied with the Policies and Training, and/or corrected (or is correcting) any instances of noncompliance in accordance with Section I(h) above;

(iv) Each Annual Report must be provided to appropriate corporate officers of Deutsche Bank and each DB QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant DB QPAM; and must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed within three (3) months following the end of the period to which it relates;

(n) Deutsche Bank disgorged all of its profits generated by the spot/futures-linked market manipulation activities of DSK personnel that led to the Conviction against DSK entered on January 25, 2016, in Seoul Central District Court;

(o) Each DB QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the exemption;

(p) During the Exemption Period, Deutsche Bank: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Deutsche Bank or any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(q) By October 17, 2018, each DB QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.[32] With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or the Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(r) A DB QPAM will not fail to meet the terms of this exemption, solely because a different DB QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (o), and (q); or if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of Deutsche Bank or its affiliates.

Section II: Definitions

(a) The term ''Convictions'' means (1) the judgment of conviction against DB Group Services, in case number 3:15–cr–00062–RNC to be entered in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. 1343, and (2) the judgment of conviction against DSK entered on January 25, 2016, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation. For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the factual allegations described in Paragraph 13 of the Plea Agreement filed in the District Court in case number 3:15–cr–00062–RNC, and in the ''Criminal Acts'' section pertaining to ''Defendant DSK'' in the Decision of the Seoul Central District Court.

(b) The term ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to Section 4975 of the Code (''IRA'') with respect to which a DB QPAM relies on PTE 84–14, or with respect to which a DB QPAM (or any Deutsche Bank affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the DB QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The term ''DB Group Services'' means DB Group Services (UK) Limited, an ''affiliate'' of Deutsche Bank (as defined in Section VI(c) of PTE 84–14) based in the United Kingdom.

(d) The term ''DB QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a)[33] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which DSK or DB Group Services is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). For purposes of this exemption, Deutsche Bank Securities, Inc. (DBSI), including all entities over which it exercises control; and Deutsche Bank AG, including all of its branches, are excluded from the definition of a DB QPAM.

(e) The term ''Deutsche Bank'' means Deutsche Bank AG but, unless indicated otherwise, does not include its subsidiaries or affiliates.

(f) The term ''DSK'' means Deutsche Securities Korea Co., a South Korean ''affiliate'' of Deutsche Bank (as defined in Section VI(c) of PTE 84–14).

(g) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code.

(h) The term ''Exemption Period'' means April 18, 2018, through April 17, 2021.

(i) The term ''Plea Agreement'' means the Plea Agreement (including the

[32] In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

[33] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

Agreed Statement of Facts), dated April 23, 2015, between the Antitrust Division and Fraud Section of the Criminal Division of the U.S. Department of Justice (the DOJ) and DB Group Services resolving the charge brought by the DOJ in case number 3:15–cr–00062–RNC against DB Group Services for wire fraud in violation of Title 18, United States Code, Section 1343.

Effective Date

The effective date of this exemption is April 18, and the exemption will be effective from April 18, 2018, through April 17, 2021 (the Exemption Period).

Department's Comment: The Department cautions that the relief in this exemption will terminate immediately if an entity within the Deutsche Bank corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions) during the Exemption Period. Although Deutsche Bank could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

Further Information

For more information on this exemption, contact Mr. Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Citigroup Inc. (Citigroup or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption 2017–05; Exemption Application No. D–11909]

Discussion

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed exemption in the **Federal Register** at 81 FR 83416, for certain entities with specified relationships to Citigroup to continue to rely upon the relief provided by PTE 84–14 for a period of five years,[34] notwithstanding Citicorp's criminal conviction, as described herein. The Department is granting this exemption in order to ensure that Covered Plans [35] whose assets are managed by a Citigroup Affiliated QPAM or Citigroup Related QPAM may continue to benefit from the relief provided by PTE 84–14. This exemption is effective from January 10, 2018 through January 9, 2023 (the Exemption Period).

No relief from a violation of any other law is provided by this exemption, including any criminal conviction described in the proposed exemption. Furthermore, the Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the Citigroup corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period. The terms of this exemption have been specifically designed to promote conduct that adheres to basic fiduciary standards under ERISA and the Code. The exemption also aims to ensure that plans and IRAs can terminate relationships in an orderly and cost-effective fashion in the event a plan or IRA fiduciary determines it is prudent for the plan or IRA to sever its relationship with an entity covered by the exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published in the **Federal Register** at 81 FR 83416 on November 21, 2016. All comments and requests for a hearing were due by March 1, 2017.[36] The Department received written comments from the Applicant, members of the U.S. Congress, and a number of plan and IRA clients of Citigroup. After considering these submissions, the Department has determined to grant the exemption, with revisions, as described below.

Term of the Exemption and Conditions

The Applicant requests that the exemption's term and underlying conditions be revised to conform with certain exemptions issued by the Department prior to 2014. The Applicant cites 16 individual exemptions granted by the Department prior to 2014 involving financial institutions that could not satisfy Section I(g) of PTE 84–14 (the Pre-2014 Exemptions) because of criminal convictions. The Applicant states that the conditions included within the Pre-2014 Exemptions remained materially unchanged during this time. The Applicant additionally cites PTE 2015–06 and 2015–14 (the 2015 Exemptions) which, like the Pre-2014 Exemptions, permitted certain financial institutions to continue to rely upon the relief provided by PTE 84–14, notwithstanding judgments of conviction against such institutions.

The Applicant states that, with respect to the 2015 Exemptions, the Department adopted certain additional conditions not previously included in the Pre-2014 Exemptions, including: (1) Shortening the period of relief from 10 years to 5 years; (2) particularized requirements relating to policies, procedures, and annual training; and (3) an annual audit requirement. The Applicant states that the public record underlying the 2015 Exemptions does not present any demonstrated deficiency with respect to the Pre-2014 Exemptions that warranted the adoption of these additional conditions in the 2015 Exemptions. Nor, according to the Applicant, are the 2015 Exemptions' additional conditions explained by any change in relevant laws or guidance, or any distinction between the conduct that gave rise to the need for the 2015 Exemptions compared to the conduct that gave rise to the need for the Pre-2014 Exemptions.

The Applicant also cites a Presidential Memorandum and two Executive Orders: (1) Presidential Memorandum on Fiduciary Duty Rule, dated February 3, 2017; (2) Presidential Executive Order on Core Principles for Regulating the United States Financial System, dated February 3, 2017; and (3) Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs, dated January 30, 2017 (the Executive Orders). The Applicant states that these Executive Orders suggest a compelling reason for the Department to revert to the approach reflected in the Pre-2014 Exemptions.

The Applicant further states that the individual exemptions granted by the Department in connection with criminal convictions fall into two different categories. In one category, the applicant's underlying misconduct is integral to corporate business activity.

[34] (49 FR 9494, March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14 or the QPAM Exemption.

[35] ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to Section 4975 of the Code (''IRA''), with respect to which a Citigroup Affiliated QPAM relies on PTE 84–14, or with respect to which a Citigroup Affiliated QPAM (or any Citigroup affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the Citigroup Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA covered plan or IRA.

[36] The Department received additional comments from the Applicant, however, after the close of the comment period.

In the other category, according to the Applicant, the applicant's underlying misconduct is non-integral and isolated to a small number of employees. The Applicant states that the conduct underlying this exemption resembles the facts underlying those exemptions in which misconduct was non-integral and isolated to a small number of employees, as it was ''limited to one London-based euro/U.S. dollar trader and the unit he worked in was distant and separate from the Applicant's businesses that rely on PTE 84–14.''

The Applicant states that, taken together and considered against the historical backdrop of the individual exemptions and Executive Orders summarized above, there are compelling reasons for the Department to revert to the approach reflected in the Pre-2014 Exemptions, including: (1) Extending the exemption from a 5-year term to a 9-year term, and (2) eliminating the independent audit and compliance officer requirements under the exemption. The Applicant states that the Department's past practice for these types of exemptions has been to provide for ten-year relief and that the rationale for abbreviating the term in this exemption does not appear to be connected to the nature or severity of the misconduct at issue.

The Department declines to extend the term of this exemption to ten years. Although the Applicant characterizes the conduct as involving the isolated actions of one individual, the Department does not agree with the apparent suggestion that the Applicant bears little or no responsibility for the criminal conduct. In considering the misconduct, the Department did not limit its analysis to the acts of the single trader identified by the Applicant. The Department also considered the period of time during which the misconduct persisted, the compliance and supervisory mechanisms within Citigroup that failed to detect and prevent the misconduct, and certain other relevant misconduct identified in Citicorp's Plea Agreement.

Citicorp's Plea Agreement identifies misconduct that extended beyond the isolated acts of the single London-based euro/U.S. dollar trader. For example, Citicorp's Plea Agreement contains the following statement under the heading Other Relevant Conduct: ''the defendant [Citicorp], through its currency traders and sales staff, also engaged in other currency trading and sales practices in conducting FX Spot Market transactions with customers via telephone, email, and/or electronic chat, to wit: (i) Intentionally working customers' limit orders one or more levels, or ''pips,'' away from the price confirmed with the customer; (ii) including sales markup, through the use of live hand signals or undisclosed prior internal arrangements or communications, to prices given to customers that communicated with sales staff on open phone lines; (iii) accepting limit orders from customers and then informing those customers that their orders could not be filled, in whole or in part, when in fact the defendant was able to fill the order but decided not to do so because the defendant expected it would be more profitable not to do so; and (iv) disclosing non-public information regarding the identity and trading activity of the defendant's customers to other banks or other market participants, in order to generate revenue for the defendant at the expense of its customers.''

In developing this exemption, the Department also considered statements made by regulators concerning the compliance and supervisory mechanisms within Citigroup that failed to detect and prevent the misconduct. For example, the Financial Conduct Authority's (FCA) Final Notice to Citibank N.A., states: ''[d]uring the Relevant Period, Citi did not exercise adequate and effective control over its G10 spot FX trading business,'' and, ''[t]hese failings occurred in circumstances where certain of those responsible for managing front office matters were aware of and/or at times involved in behaviours described above.'' The Notice further states: ''They also occurred despite the fact that risks around confidentiality were highlighted when in August 2011 Citi became aware that a trader in its FX business outside London had inappropriately shared confidential client information in a chat room with a trader at another firm.''

By way of further example, the Consent Order of the Office of the Comptroller of the Currency (OCC) states: ''[t]he OCC's examination findings established that the Bank had deficiencies in its internal controls and had engaged in unsafe or unsound banking practices with respect to the oversight and governance of the Bank's FX Trading such that the Bank failed to detect and prevent the conduct. . . .'' The OCC's Consent Order also states that, ''deficiencies and unsafe or unsound practices include the following: (a) The Bank's compliance risk assessment lacked sufficient granularity and failed to identify the risks related to market conduct in FX Trading with respect to sales, trading and supervisory employees in that business; (b) The Bank's transaction monitoring and communications surveillance were inadequate to detect potential Employee market misconduct in FX Trading. . . .''

With respect to the severity of the misconduct, the Department notes the magnitude of the relevant fines imposed by various regulators, which include: $925 million by the Department of Justice; $342 million by the Board of Governors of the Federal Reserve; $350 million by the OCC; $310 million by the Commodity Futures Trading Commission; and £225,575,000 by the FCA.

The Department also notes that this exemption's five-year term and protective conditions reflect the Department's intent to protect Covered Plans that entrust substantial assets to a Citigroup Affiliated QPAM, despite the serious nature of the misconduct and the compliance and oversight failures exhibited by Citigroup throughout the extended period of time during which the criminal misconduct persisted. The term of this exemption gives the Department the opportunity to review the adherence by the Citigroup Affiliated QPAMs' to the conditions set out herein. If the Applicant seeks to extend this exemption beyond this five year term, the Department will examine whether the compliance and oversight changes mandated by the various regulatory authorities are having the desired effect on the Citigroup entities.

Description of Criminal Conduct—Sections I and II(e)

The prefatory language to Section I of the proposed five-year exemption provides that, ''*the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as defined in Sections II(f) and II(g), respectively, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the judgment of conviction against Citicorp (the Conviction), as defined in Section II(a)), for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market, for a period of five years beginning on the date the exemption is granted.*''

Section II(e) of the proposed five year exemption provides that, in relevant part, ''*[t]he term 'Conviction' means the judgment of conviction against Citigroup for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15–cr–78–SRU), in connection with Citigroup, through one of its euro/U.S. dollar*

(EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this five-year, 'conduct' of any person or entity that is the 'subject of [a] Conviction' encompasses any conduct of Citigroup and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record.''

The Applicant incorporates by reference its comment letter submitted to the Department in connection with PTE 2016–14 (PTE 2016–14 Comment Letter),[37] in which the Applicant requested that references to the Conviction be limited to the actual judgment of conviction against Citicorp. The Applicant states that the references to the Conviction in the prefatory language of Section I and Section II would cause confusion for Plans and counterparties transacting with Plans. The Applicant also requests that the Department revise Section II(e) by replacing ''Citigroup'' with ''Citicorp,'' as Citicorp was the entity charged in connection with the Plea Agreement.

After consideration of the Applicant's comment, the Department has revised the exemption to provide that ''[t]he term 'Conviction' means the judgment of conviction against Citicorp for violation of the Sherman Antitrust Act, 15 U.S.C. 1, entered in the District Court for the District of Connecticut (the District Court) (case number 3:15–cr–78 –SRU). For all purposes under this exemption, 'conduct' of any person or entity that is the 'subject of [a] Conviction' encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in case number 3:15–cr–78–SRU.'' The Department has also revised Section II(e) by replacing ''Citigroup'' with ''Citicorp.'' The Department has also renumbered the definition of Conviction as Section II(a) in the final exemption.

Knowing or Tacit Approval—Sections I(a) and I(c)

Section I(a) of the proposed five-year exemption provides, ''*(a) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (a), 'participate in' includes the knowing or tacit approval of the misconduct underlying the Conviction).*''

With regard to Section I(a), the Applicant requests the deletion of the parenthetical, which reads, ''(for purposes of this paragraph (a), 'participate in' includes the knowing or tacit approval of the misconduct underlying the Conviction).'' [38] The Department declines to delete this definition of ''participate in,'' but has replaced ''knowing or tacit approval,'' with ''knowing approval.''

Section I(c) of the proposed exemption provides, ''*(c) The Citigroup Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for the purposes of this paragraph (c), 'participated in' includes the knowing or tacit approval of the misconduct underlying Conviction).*''

With regard to Section I(c), the Applicant requests that the definition of ''participated in'' be changed from, ''the knowing or tacit approval of the misconduct underlying the Conviction'' to, ''approving or condoning the misconduct underlying the Conviction.''

After consideration of the Applicant's comment, the Department has revised Section I(c) in a manner that is consistent with Section I(a), as described above. Accordingly, the relevant part of Section I(c) now reads, ''For the purposes of this paragraph (c), 'participated in' means the knowing approval of the misconduct underlying the Conviction.''

Receipt of Compensation—Section I(b)

Section I(b) of the proposed five-year exemption provides, ''*(b) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, and agents other than Citigroup, and employees of such Citigroup QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction.*''

The Applicant requests the replacement of ''Citigroup'' with ''Citicorp'' in the phrase, ''*(including their officers, directors, and agents other than Citigroup. . . .*'' After considering the Applicant's comment, the Department has revised the exemption in the manner requested by the Applicant.

Use of Authority or Influence—Section I(d)

Section I(d) of the proposed exemption provides that, ''*(d) A Citigroup Affiliated QPAM will not use its authority or influence to direct an 'investment fund' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Citigroup Affiliated QPAM, to enter into any transaction with Citicorp or the Markets and Securities Services business of Citigroup, or to engage Citicorp or the Markets and Securities Services business of Citigroup, to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption.*''

In the PTE 2014 Comment Letter, the Applicant represented that a sudden cessation of services by the Markets and Securities Services Business of Citigroup to affected plans, such as agency securities lending services, would be disruptive to such plans. In this regard, the Applicant seeks deletion of the condition's reference to ''the Markets and Securities Services Business of Citigroup.''

After considering the Applicant's comment, the Department has revised the exemption in the manner requested by the Applicant such that the condition does not apply to the Markets and Securities Services Business of Citigroup. The Department has also revised Section I(d) by clarifying that it applies to, ''an 'investment fund'. . . . managed by such Citigroup Affiliated QPAM with respect to Covered Plans.'' This modification to Section I(d) reflects the Department's interest in ensuring

[37] See Citigroup PTE 2016–14 Comment Letter, dated November 25, 2016.

[38] Certain of the Applicant's requested revisions, including its requested revision with respect to Section I(a), are reflected in a red-lined draft attachment which the Applicant provided to the Department with its comment letter.

that the conditions included herein broadly protect Covered Plans.

Provision of Asset Management Services—Section I(g)

Section I(g) of the proposed exemption provides that ''*(g) Citicorp and the Markets and Securities Services Business of Citigroup will not provide discretionary asset management services to ERISA-covered plans or IRAs, or otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets.*''

In the PTE 2016–14 Comment Letter, the Applicant represented that the function of the Markets and Securities Services Business of Citigroup may be deemed to involve fiduciary conduct and that requiring those services to be terminated suddenly would be disruptive to affected plans. The Applicant therefore seeks the deletion of the condition's reference to the Markets and Securities Services Business of Citigroup.

The Applicant also requests that Section I(g) be revised to read, ''Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, Citicorp will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, Citicorp will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Section 4975(e)(3)(B) of the Code.''

After considering the Applicant's comment regarding disruption and damages to affected ERISA-covered plans and IRAs, the Department has revised the exemption in the manner requested by the Applicant. Additionally, the Department has revised Section I(g) to clarify that Citigroup will not violate this condition in the event that it inadvertently becomes an investment advice fiduciary or acts as a fiduciary for plans that it sponsors for its own employees or employees of an affiliate.

Policies and Procedures Relating to Compliance with ERISA and the Code—Section I(h)(1)–(2)

Section I(h) of the proposed five-year exemption provides that, ''*(h)(1) Within four (4) months of the Conviction, each Citigroup Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) . . . (2) Within four (4) months of the date of the Conviction, each Citigroup Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. . . .*''

The Applicant requests that the Department increase the development period associated with the Policies and Training Requirements (the Development Period) from four (4) months to six (6) months from the date of the Conviction. The Applicant also requests clarification that a Citigroup Affiliated QPAM's obligation to ''develop'' the Policies and Training under this section can be satisfied to the extent that such Citigroup Affiliated QPAM has developed Policies and Training independent of this exemption, including Policies and Training developed in connection with PTE 2016–14. The Applicant further requests that the Department clarify that the Applicant shall have up to twelve (12) months to train all relevant employees following the Development Period, and that such Training will then be conducted at least annually, in accordance with Section I(h)(2).

The Department emphasizes that the Citigroup QPAMs must comply with the Policies and Training requirements within both PTE 2016–14 and this exemption. To this end, the Department has revised the policies and training requirements of Section I(h) to conform with PTE 2016–14. The two exemptions now follow this timeline: (i) Each Citigroup Affiliated QPAM must have developed the Policies and Training required by PTE 2016–14 by July 9, 2017; (ii) the first annual Training under PTE 2016–14 must be completed by July 9, 2018; (iii) each Citigroup Affiliated QPAM must develop the Policies and Training required by this exemption, as necessary, by July 9, 2018; and (iv) the first Training under this exemption must be completed by July 9, 2019. By the end of this 30-month period, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice.

In addition, Section I(h)(1)(i) of the proposed five-year exemption provides that the Policies must be reasonably designed to ensure that: ''*(i) The asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate management and business activities, including the corporate management and business activities of the Markets and Securities Services business of Citigroup.*''

The Applicant requests the deletion of the condition's reference to the Markets and Securities Services Business of Citigroup. In the PTE 2016–14 Comment letter, the Applicant stated that such revision is necessary in order to avoid disruption to affected plans and IRAs. The Department concurs with this comment, and has revised the condition to state that, ''[t]he Policies must require, and must be reasonably designed to ensure that: (i) The asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate, management, and business activities of Citigroup.''

Section I(h)(1)(ii) of the proposed five-year exemption provides that the Policies must be reasonably designed to ensure that: ''*(ii) The Citigroup Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs.*''

The Department has determined to revise Section I(h)(1)(ii) to clarify this exemption's expectations regarding the substance of the Policies. In this regard, the Department has added the term, ''as applicable with respect to each Covered Plan,'' following the phrase, ''ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions.''

Section I(h)(1)(iv) of the proposed five-year exemption provides that the Policies must be reasonably designed to ensure that: ''*(iv) Any filings or statements made by the Citigroup Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time.*''

The Department has determined to revise Section I(h)(1)(iv) to better coordinate with the other conditions of this exemption. In this regard, the Department has revised the condition to read, ''. . . . on behalf of or in relation to Covered Plans. . . .''

Section I(h)(1)(v) of the proposed five-year exemption provides that the Policies must be reasonably designed to ensure that: ''*(v) The Citigroup Affiliated QPAM does not make material misrepresentations or omit material information in its communications with*

such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plans and IRA clients.''

The Department has revised Section I(h)(1)(v) in the same manner as it revised Section I(h)(1)(iv). The Department has also revised Section I(h)(1)(v) by adding the following language to the beginning of the section: ''To the best of the Citigroup Affiliated QPAM's knowledge at the time. . . .''

Incorporating the Training into the Policies—Section I(h)(2)(i)

Section I(h)(2)(i) of the proposed five-year exemption provides, ''. . . *The Training must: (i) Be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this five-year exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.*''

The Department has revised Section I(h)(2)(i) by removing the requirement that the Training must be set forth in the Policies. As revised, Section I(h)(2)(i) provides that the Training must, ''(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.''

Training by Independent Professional—Section I(h)(2)(ii)

Section I(h)(2)(ii) of the proposed five-year exemption provides that the Training must, ''*(ii) Be conducted by an independent professional who has been prudently selected and who has appropriate technical and training and proficiency with ERISA and the Code.*''

The Applicant requests that the requirement that the professional be ''independent'' be omitted, on the basis that the ''independence'' of the trainer will not enhance the quality or effectiveness of the training, and may in fact detract from it. In this regard, the Applicant states that the training will be monitored by the Compliance Officer, subject to annual review by the Compliance Officer (the Annual Review), and audited by the independent auditor. The Applicant states that a professional trainer who is familiar with the Applicant's operations, culture, and management is less likely to be independent, but is more likely to be effective in its role. The Applicant also states that the compliance and audit functions mandated under this exemption will provide adequate safeguards that are sufficient to address any concern arising from a lack of independence on the part of the professional trainer. In sum, the Applicant requests that it be permitted to implement the required training within the context of its own existing training regime.

Although the Department disagrees with the Applicant's assertion that hiring a prudently-selected, independent professional may in fact detract from the quality and effectiveness of the training required under this exemption, the Department is persuaded that Citigroup personnel who are prudently-selected and have appropriate technical training and proficiency with ERISA and the Code may conduct the training. The Department has revised the condition accordingly.

Audit Requirement—Section I(i).

Section I(i)(1) of the proposed five-year exemption provides that, ''*(i)(1) Each Citigroup Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the Citigroup Affiliated QPAM's compliance with, the Policies and Training described herein.*''

As stated above, the Applicant requests that the audit requirement be deleted from the exemption in its entirety. In support of its request, the Applicant states that the audit requirement is burdensome, costly, and redundant. The Applicant also states that it has comprehensive compliance and internal audit departments, and that these departments should be responsible for carrying out the audit requirements under this exemption.

The Department declines to delete the audit requirement in its entirety. A recurring, independent, and prudently-conducted audit of the Citigroup Affiliated QPAMs is critical to ensuring the QPAMs' compliance with the Policies and Training mandated by this exemption, and the adequacy of the Policies and Training. The required discipline of regular audits underpins the Department's finding that the exemption is protective of Covered Plans, their participants, beneficiaries, and beneficial owners, as applicable. Strong independent audits should help prevent the sort of compliance failures that led to the Conviction.

The Department views the audit requirement as an integral component of the exemption, without which the Department would be unable to make its finding that the exemption is protective of Covered Plans and their participants, beneficiaries, and beneficial owners, as applicable. This exemption's conditions are based, in part, on the Department's assessment of the seriousness and duration of the misconduct that resulted in the violation of Section I(g) of PTE 84–14, as well as the apparent inadequacy of control and oversight mechanisms at Citigroup to prevent the misconduct. The Department, however, recognizes that, notwithstanding Citigroup's oversight failures, only a small number of individuals at Citigroup directly engaged in the misconduct at issue. Thus, the United States District Court for the District of Connecticut stated, in connection with the sentencing of Citicorp, that: ''the conduct at issue here was engaged in by a very small number of individuals,'' and that, ''we do not have banks who appear to have condoned conduct at any high-ranking level.'' [39]

Accordingly, the Department has determined to change the audit interval under this exemption from annual to biennial. Section I(i)(1) of the exemption, therefore, now requires that each Citigroup Affiliated QPAM submit ''to *an audit conducted every two years by an independent auditor.*'' *Each* audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2018 through July 9, 2019, and must be completed by January 9, 2020. The second audit must cover the period from July 10, 2020 through July 9, 2021, and must be completed by January 9, 2022. In the event that the Exemption Period is extended or a new exemption is granted, the third audit would cover the period from July 10, 2022 through July 9, 2023, and would be completed by January 9, 2024, unless the Department chose to alter the audit requirement in the new or extended exemption.[40]

[39] See TRANSCRIPT of Proceedings: as to Citicorp (January 5, 2017 at pages 29–30).

[40] The third audit referenced above would not have to be completed until after the Exemption Period expires. If the Department ultimately decides to grant relief for an additional period, it could decide to alter the terms of the exemption, including the audit conditions (and the timing of the audit requirements). Nevertheless, the Applicant should anticipate that the Department will insist on strict compliance with the audit terms and schedule set forth above. As it considers any new exemption application, the Department may also contact the auditor for any information relevant to its determination.

The Departments notes that if the audit uncovers material deficiencies with Citigroup's compliance with this exemption, then the Applicant should consider conducting an additional audit after making corrections to ensure that it remains in compliance with the exemption. In any event, the Department emphasizes that it retains the right to conduct its own investigation of compliance based on any such indicators of problems.

The Department declines to revise Section I(i) in a manner that would permit the Applicant's Internal Audit Department to carry out this exemption's required audit functions. Permitting the Applicant's internal audit department to carry out this exemption's required audit functions would be insufficiently protective of Covered Plans. Auditor independence is essential to this exemption, as it allows for an impartial analysis of the Citigroup Affiliated QPAMs. The independence of the auditor is the cornerstone of the integrity of the audit process and is of primary importance to avoid conflicts of interest and any inappropriate influence on the auditor's findings.

The fundamental importance of auditor independence to the integrity of the audit process is well established. For example, the United States Securities and Exchange Commission (SEC) promulgated regulations at 17 CFR 210.2–01 to ensure that auditors are independent of their clients, and under 17 CFR 240.10A–2, it is unlawful for an auditor not to be independent in certain circumstances. Likewise, the Public Accounting Oversight Board's (PCAOB) Rule 3520 states that a public accounting firm and its associated persons must be independent of the firm's audit clients. The Association of Independent Certified Public Accountants' (AICPA) Code of Professional Conduct, Objectivity and Independence Principle (AICPA, Professional Standards, ET section 0.300.050.01) requires members working on an audit or attest engagement to be independent, in fact and appearance. Moreover, ERISA section 103(a)(3)(A) requires an accountant hired by an employee benefit plan to examine the plan's financial statements to be independent.

Entities Subject to Audit—Section I(i)

Section I(i)(1) of the proposed five-year exemption provides, ''*(i)(1) Each Citigroup Affiliated QPAM submits to an audit conducted annually by an independent auditor. . . .*''

The Applicant requests that only the particular Citigroup Affiliated QPAMs and Citigroup Related QPAMs actually relying upon PTE 84–14 and this exemption when providing services to, or engaging in transactions as an agent for, their clients, should be subject to the audit requirement under this exemption, and not every entity within the Citigroup-affiliated group that could be eligible to be a ''qualified professional asset manager,'' as defined in PTE 84–14. The Applicant also requests that Section I(i)(1) be revised to state that the Citigroup entities subject to the audit requirement are Citigroup Affiliated QPAM's, ''which the Applicant has identified in a certificate signed by the officer who will review and certify the Audit Report (as defined in Section I(i)(5)) pursuant to Section I(i)(8).'' In support of its request, the Applicant states that the purpose of the independent audit is to ensure that Citigroup entities relying upon PTE 84–14 are in compliance with the conditions of PTE 84–14 and the conditions of this exemption. The Applicant also states that it would identify the relevant entities to the independent auditor in a certificate signed by the compliance officer who will review the Audit Report.

The Department has determined to revise Section I(i)(1) in the manner requested by the Applicant. The Department acknowledges that the independent auditor will need to be provided with the identities of the Citigroup Affiliated QPAMs to be audited and that the Applicant is best positioned to provide such information. The Department notes that Section I(i) requires the audit of each Citigroup entity that relies upon QPAM status, or expressly represents to ERISA-covered plan or IRA clients that it qualifies as a QPAM.

Auditor Information Access—Section I(i)(2)

Section I(i)(2) of the proposed five-year exemption provides, ''*(i)(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each Citigroup Affiliated QPAM and, if applicable, Citigroup, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel.*''

The Applicant requests that the phrase ''as permitted by law'' be clarified by the addition of the following proviso: ''provided, that the auditor shall not have access to any privileged information or confidential supervisory information.'' The Applicant states that certain privileged or confidential supervisory information which would be ''permitted by law'' to be shared with the auditor could result in the loss of the attorney-client or other privilege, or regulatory interest in maintaining confidentiality. The Applicant states that the purposes of the independent audit can be fully accomplished without requiring the Applicant to bear such costs. The Applicant also states that relevant privileges, and in particular, the attorney-client privilege, are based on important policy interests that routinely are thought to outweigh other critically important legal and social interests.

In the Department's view, to ensure a thorough and robust audit, the independent auditor must be granted access to information it deems necessary to make sound conclusions. The auditor's access to such information must be within the scope of the audit engagement and denied only to the extent that such disclosure is not permitted by state or federal statute. Designating specific restrictions on information accessibility may hinder the auditor's ability to perform the procedures necessary to make informed conclusions, thus undermining the effectiveness of the audit. The auditor's access to such information, however, is limited to information relevant to the auditor's objectives as specified by the terms of this exemption and to the extent disclosure is not prevented by state or federal statute or involves communications subject to attorney client privilege. In this regard, the Department has modified Section I(i)(2) accordingly.

Audit Transaction Sampling—Section I(i)(4)

Section I(i)(4) of the proposed five-year exemption provides, ''*(4) The auditor's engagement must specifically require the auditor to test each Citigroup Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training.*''

The Applicant requests that the Department clarify that audit ''samples'' pursuant to this condition need only apply to transactions undertaken in reliance on PTE 84–14. The Applicant states that the purpose of the independent audit is to confirm compliance with the conditions required under the exemption and permit the Applicant to continue to

utilize PTE 84–14 on behalf of Covered Plans.

The Department has revised this condition for consistency with other conditions of this exemption which are tailored to the Department's interest in protecting Covered Plans. Therefore, the condition now applies only to Covered Plans. The Department additionally notes that Section I(i)(4) does not specify the number of transactions that the auditor must test, but rather requires, for each QPAM, that the auditor test a sample of each such QPAM's transactions involving Covered Plans, ''sufficient in size and nature to afford the auditor a reasonable basis to determine operational compliance with the Policies and Training.''

Audit Report—Section I(i)(5)

Section I(i)(5) of the proposed five-year exemption provides that, ''*[f]or each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Citigroup and the Citigroup Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding:*

(i) The adequacy of the Citigroup Affiliated QPAM's Policies and Training; the Citigroup Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective Citigroup Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Citigroup Affiliated QPAM must be promptly addressed by such Citigroup Affiliated QPAM, and any action taken by such Citigroup Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective Citigroup Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the Citigroup Affiliated QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the Citigroup Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Furthermore, the auditor must not solely rely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section I(m) below as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Annual Review described in Section I(m) and the resources provided to the Compliance Officer in connection with such Annual Review.''

To improve consistency between the audit conditions of this exemption, the Department has modified Section I(i)(5) to clarify that the auditor may issue one consolidated Audit Report covering all the Citigroup QPAMS for the period of time being audited. The Department also acknowledges that the Citigroup Affiliated QPAMs' efforts to address the auditor's recommendations regarding any inadequacy in the Policies and Training identified by the auditor may take longer to implement than the time limits mandated by the proposed exemption. Accordingly, the Department is modifying Section I(i)(5)(i) to reflect the possibility that the Citigroup Affiliated QPAMs' efforts to address the auditor's recommendations regarding any inadequacy in the Policies and Training may not be completed by the submission date of the Audit Report and may involve a written plan to address such items. However, any noncompliance identified by the auditor must be promptly addressed.

The revised Section also requires that if such a written plan of action to address the auditor's recommendation as to the adequacy of the Polices and Training is not completed by the submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Additionally, the Department has modified the final sentence in Section I(i)(5)(i) to more clearly express the Department's intent that the auditor must not rely solely on the work of the Compliance Officer and the Compliance Officer's Annual Report in formulating its conclusions or findings. The auditor must perform its own independent testing to formulate its conclusions. This exemption does not prohibit the auditor from considering the Compliance Officer's Annual Report in carrying out its audit function, including its formulation of an audit plan. This exemption, however, does prohibit the auditor from reaching conclusions that are exclusively based upon the contents of the Compliance Officer's Annual Report.

Finally, while an independent assessment by the auditor of the adequacy of the Annual Review is essential to providing the Department with the assurance that the Applicant and the Citigroup QPAMs have given these matters the utmost priority and have taken the necessary actions to comply with the exemption, the Department has determined that the auditor should not be responsible for opining on the adequacy of the resources allocated to the Compliance Officer and has modified Section I(i)(5)(ii) accordingly. If, however, the auditor observes compliance issues related to the Compliance Officer or available resources, it would be appropriate for the auditor to opine on those problems.

Certification of Audit Report—Section I(i)(7)–(8)

Section I(i)(7) of the proposed five-year exemption provides that, ''*(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the Citigroup Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption, and with the applicable provisions of ERISA and the Code.*''

Section I(i)(8) of the proposed five-year exemption provides, ''*(i)(8) The Risk Committee of Citigroup's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Citigroup must review the Audit Report for each Citigroup Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.*''

With respect to Section I(i)(7), the Applicant requests clarification that the certifying official who must ''certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption. . . .'' should be the general counsel or one of the three most senior executive officers of the Citigroup Affiliated QPAM itself

(and not of the ultimate parent of the Citigroup-affiliated corporate group, Citigroup Inc.).

With respect to Section I(i)(8), the Applicant requests that, ''a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Citigroup,'' be revised to, ''a senior executive officer of Citigroup or one of its affiliates who reports directly to, or reports to another executive who reports directly to, the highest ranking compliance officer of Citigroup. . . .''

The Department agrees that the obligation under Section I(i)(7) to review the Audit Report and identify and remedy deficiencies may be carried out by the general counsel or one of the three most senior executive officers of the Citigroup Affiliated QPAM itself. The Department also agrees that the obligation under Section I(i)(8) to review the Audit Report may be carried out by a senior executive officer of Citigroup or one of its affiliates who reports directly to, or reports to another executive who reports directly to, the highest ranking compliance officer of Citigroup. The Department has revised Sections I(i)(7) and (8) accordingly.

Additionally, to coordinate with the revisions applied to Section I(i)(5), as discussed above, the Department has revised Section I(i)(7) to acknowledge that the Applicant's efforts to address the auditor's recommendations regarding inadequacies in the Policies and Training may take longer to implement than the required timeframe for submission of the certified Audit Report. In this regard, the Department did not intend to limit the Applicant's ability to implement corrective measures by requiring that such efforts be completed prior to the submission of the Audit Report. Therefore, the Department has modified Section I(i)(7) to reflect that the senior executive officer may certify that a written plan to address the inadequacies regarding the Policies and Training identified in the auditor's report is in place.

Availability of the Audit Report—Section I(i)(9)

Section I(i)(9) of the proposed exemption provides in part, ''*. . . each Citigroup Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such Citigroup Affiliated QPAM in reliance of PTE 84–14.*''

Throughout this exemption, the Department has discussed its interest in ensuring that the conditions included herein broadly protect ERISA-covered plans and IRAs that enter into an asset management agreement with a Citigroup Affiliated QPAM in reliance on such QPAM's qualification under PTE 84–14. However, the Department recognizes that, under certain circumstances, extending the Applicant's disclosure obligations beyond the plan and IRA clients that this exemption is designed to protect does not contribute to this exemption's intended purpose. With regard to Section I(i)(9), the Department has adopted revisions which require the Citigroup Affiliated QPAMs to make the Audit Report available to any fiduciary of a Covered Plan. Accordingly, the Department has revised this condition by replacing the phrase ''an ERISA-covered plan or IRA, the assets of which are managed by such Citigroup Affiliated QPAM'' with the term ''Covered Plan'' (as defined in Section II(b)). Lastly, the Department has revised Section I(i)(9) to require that access to the Audit Report need only be provided upon request and such access can be electronic. The Department notes that the Audit Report, in any event, will be incorporated into the public record attributable to this exemption, under Exemption Application Number D–11909, and, therefore, independently accessible by members of the public.

Engagement Agreements—Section I(i)(10)

Section I(i)(10) of the proposed exemption provides that ''*[e]ach Citigroup Affiliated QPAM and the auditor must submit to OED: (A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this five-year exemption, no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter).*''

In coordination with the Department's modification of Section I(h)(2)(ii), which permits prudently-selected Citigroup personnel to conduct the training, the Department has determined to remove the Section I(i)(10)(B) requirement for Citigroup Affiliated QPAMs and the auditor to provide the Department with engagement agreements entered into with entities retained in connection with the Training or Policies conditions. Furthermore, to remove any confusion and uncertainty regarding the timing of the submission of the auditor's engagement agreement, the Department has modified Section I(i)(10) to require that the auditor's engagement agreement be submitted to the Office of Exemption Determinations no later than two (2) months after the engagement agreement is entered into by the Applicant and the independent auditor.

Audit Workpapers—Section I(i)(11)

Section I(i)(10) of the proposed exemption requires ''*[t]he auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant Citigroup Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable Citigroup Affiliated QPAM.*''

The Department acknowledges that certain information contained in the audit workpapers may be confidential and proprietary, and that the inclusion of such information in the public file may create avoidable disclosure issues. The Department has modified Section I(i)(11) to remove the requirement that the auditor provide the workpapers to OED,[41] and instead require that the auditor provide access to the workpapers for the Department's review and inspection.

Substitution of the Auditor—Section I(i)(12)

Section I(i)(12) of the proposed exemption provides ''*Citigroup must notify the Department at least thirty (30) days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Citigroup demonstrates to the Department's satisfaction that such new auditor is independent of Citigroup, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption.*''

The Department has revised this condition for consistency with its interest in protecting Covered Plans. As revised, Section I(i)(12) now requires that Citigroup, no later than two (2) months following the engagement of a replacement auditor, must notify the Department of the auditor substitution and the reason(s) for the substitution, including any material disputes between the terminated auditor and Citigroup. The Department has also

[41] OED is the Office of Exemption Determinations within the Employee Benefits Security Administration agency of the United States Department of Labor.

revised Section I(i)(12) to remove the requirement for Citigroup to demonstrate the independence and qualifications of the auditor. Citigroup's fiduciary obligations with respect to the selection of the auditor, as well as the significant role a credible selection plays in reducing the need for more extensive oversight by the Department, should be sufficient to safeguard the selection process.

Contractual Commitments to Covered Plans—Section I(j)

Section I(j) of the proposed five-year exemption provides, ''*(j) Effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and an ERISA-covered plan or IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, each Citigroup Affiliated QPAM agrees and warrants:*

(1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(2) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a Citigroup Affiliated QPAM's violation of applicable laws, a Citigroup Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction;

(3) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the Citigroup Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Citigroup Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Citigroup, and its affiliates;

(5) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

(6) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(7) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of Citigroup, and its affiliates; and

(8) Within four (4) months of the date of the Conviction, each Citigroup Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a Citigroup Affiliated QPAM provides asset management or other discretionary services, the Citigroup Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and such clients or other written contractual agreement.''

The Applicant states that the creation of new contractual rights as contemplated under Section I(j) is inappropriate and unnecessary for the protection of ERISA-covered plan and IRA clients. The Applicant states that Section (j) would require the creation of new contractual commitments in favor of ERISA-covered Plan and IRA clients that would be substantially similar to the contractual commitments contemplated by the Best Interest Contract Exemption (the ''BIC Exemption'') published in the **Federal Register** on April 18, 2016. The Applicant states that the proposed extension of these BIC Exemption provisions to this exemption is inappropriate, because the BIC Exemption is intended to address circumstances in which a fiduciary may have a conflict of interest, while this exemption would apply only in contexts in which no such conflict exists. The Applicant further states that, under the circumstances, it is appropriate at a minimum for Section I(j) of the exemption to be revised to provide that in no circumstance shall the contractual commitments required therein extend beyond the contractual commitments required to be made to a fiduciary seeking to rely on the BIC Exemption, if any, as the BIC Exemption is in effect from time to time.

The Applicant also requests that the requirements of Section I(j) be limited to services that are rendered to Plan clients in reliance on PTE 84–14. Accordingly, the Applicant requests that Section I(j) should be clarified by adding the phrase, ''in reliance on PTE 84–14,'' immediately following the phrase, ''asset management or other discretionary fiduciary services,'' in the leading paragraph and in two other places in Section I(j)(8). The Applicant states that the effect of the Exemption is to permit the Applicant to continue to use PTE 84–14 and that imposing conditions relating to conduct that is not connected to the relief being provided exceeds the statutory mandate of Section 408(a).

The Department may grant an exemption under Section 408(a) of ERISA or Section 4975(c)(2)(C) of the Code only to the extent the Secretary finds, among other things, that the exemption is protective of the affected plan(s) or IRA(s). Notwithstanding the misconduct, which resulted in violation of Section I(g) of PTE 84–14, the Department has granted this exemption based, in significant part, upon the inclusion of Section I(j), which protects Covered Plans by, among other things, requiring the Citigroup Affiliated QPAMs to make express commitments to adhere to the requirements of ERISA and the Code, as applicable.

As previously indicated, the Department has concluded that a culture of compliance, centered on

adherence to basic standards of fair dealing as set forth in this exemption, gives the Department a compelling basis for making the required statutory findings that the exemption is in the interests of plan and IRA investors and protective of their rights. Absent such findings, the exemption would have been denied.

The Department has required an express commitment to comply with the fiduciary standards and prohibited transaction rules only to the extent these provisions are ''applicable'' under ERISA and the Code. This section, as modified, should serve its salutary purposes of promoting a culture of compliance and enhancing the ability of plans and IRA customers to sever their relationships with minimal injury in the event of non-compliance. This conclusion is reinforced, as well, by the limited nature of the relief granted by this exemption, which generally does not extend to transactions that involve self-dealing.

The Department notes that nothing in ERISA or the Code prevents the Department from conditioning relief on express contractual commitments to adhere to the requirements set out herein. The QPAMs remain free to disclaim reliance on the exemption and to avoid such express contractual commitments. To the extent, however, that they hold themselves out as fiduciary QPAMs, they should be prepared to make an express commitment to their customers to adhere to the requirements of this exemption. This commitment strengthens and reinforces the likelihood of compliance, and helps ensure that, in the event of noncompliance, customers, including IRA customers, will be insulated from injuries caused by non-compliance.

These protections also ensure that customers will be able to extricate themselves from transactions that become prohibited as a result of the QPAMs' misconduct, without fear of sustaining additional losses as a result of the QPAMs' actions. In this connection, however, the Department emphasizes that the only claims available to the QPAMs' customers pursuant to these contractual commitments are those separately provided by ERISA or other state and federal laws that are not preempted by ERISA. As before, private litigants have only those causes of action specifically authorized by laws that exist independent of this exemption.

As explained above, ERISA-covered plans and IRAs routinely rely on QPAM status as a condition of entering into transactions with financial institutions, even with respect to transactions that do not require adherence to PTE 84–14. In addition, it may not always be clear whether a Citigroup Affiliated QPAM intends to rely upon PTE 84–14 for any particular transaction. Accordingly, it is critical to ensure that protective conditions are in place to safeguard the interests of ERISA-covered plans and IRAs that are acting in reliance on the availability of this exemption, particularly with respect to plans and IRAs that may not have entered into a transaction in the first place, but for the Department's grant of this exemption.

The Department has revised this condition for consistency with its interest in protecting Covered Plans. The condition now applies to ERISA-covered plans and IRAs only when the Citigroup Affiliated QPAM relies on PTE 84–14 or has expressly represented that it qualifies as a QPAM or relies on the QPAM class exemption in its dealings with the ERISA-covered plan or IRA (*i.e.,* a Covered Plan). To the extent a Citigroup QPAM would prefer not to be subject to these conditions, however, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with the ERISA-covered plan or IRA.

Contractual Commitments—Section I(j)(1)

Section I(j)(1) of the proposed five-year exemption provides that each Citigroup Affiliated QPAM agrees and warrants: ''*(1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA.*''

The Applicant requests the phrase, ''as applicable'' be moved to follow the phrase, ''. . . .with respect to such ERISA-covered plan or IRA.'' The Department has determined to revise Section I(j)(1) by adding ''to the extent that Section is applicable,'' following the phrase, ''with respect to each such ERISA-covered plan and IRA'' at the end of the condition. As written, the text expressly focuses on provisions of ERISA and the Code only to the extent those provisions are applicable to the conduct at issue.

Indemnity Provision—Section I(j)(2)

Section I(j)(2) of the proposed five-year exemption provides that each Citigroup Affiliated QPAM agrees and warrants: ''*(2) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a Citigroup Affiliated QPAM's violation of applicable laws, a Citigroup Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction.*''

The Applicant requests that Section I(j)(2) be revised to read: ''To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction;''

As explained above, the intended purpose of this exemption is to protect Covered Plans that entrust the Citigroup Affiliated QPAMs with the management of their retirement assets. To this end, the Department believes that the protective purpose of this exemption is furthered by Section I(j)(2). This condition ensures that, when a Covered Plan enters into an asset management agreement with a Citigroup Affiliated QPAM in reliance on the manager's qualification as a QPAM, it may expect adherence to basic fiduciary norms and standards of fair dealing, notwithstanding the prior conviction. This condition also ensures that the Covered Plan will be able to disengage from that relationship without undue injury in the event that the terms of this exemption are violated.

Accordingly, the Department has revised the applicability of this condition to more closely reflect this interest. In particular, the condition applies to Covered Plans. As indicated above, if the asset manager would prefer not to be subject to these provisions as exemption conditions, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with an ERISA-covered plan or IRA (in that case, however, it could not rely on the exemption for relief). The Department has made certain further changes to this condition, which include: Replacing ''applicable laws'' with clarifying language that conforms to PTE 2016–14; and replacing ''any damages'' with ''actual losses resulting directly from'' certain acts or omissions of the Citigroup Affiliated QPAMs. Because I(j)(2) extends only to actual

losses resulting directly from the actions of the Citigroup Affiliated QPAMs, it does not encompass losses solely caused by other parties, events, or acts of God.

Contractual Commitments—Section I(j)(4)

Section I(j)(4) of the proposed five-year exemption provides that each Citigroup Affiliated QPAM agrees and warrants: ''*(4) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Citigroup Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Citigroup, and its affiliates.*''

The Department has determined that Section I(j)(4), as proposed, is duplicative of the exemption's prohibition on exculpatory clauses under Section I(j)(7). The Department therefore has deleted Section I(j)(4)and renumbered the subsequent subsections in Section I(j) accordingly.

Contractual Commitments—Section I(j)(5) [42]

Section I(j)(5) of the proposed five-year exemption provides that each Citigroup Affiliated QPAM agrees and warrants: ''*(5) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors.*''

The Applicant requests that I(j)(5) be revised by replacing, ''including'' with ''with respect to,'' and replacing, ''as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;'' with ''in connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the Conviction Date, the adverse consequences must relate to a lack of liquidity of the pooled fund's underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions are applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.''

The Department has modified this condition (renumbered in this exemption as Section I(j)(4)) to clarify the circumstances under which reasonable restrictions are necessary to protect the remaining investors in a pooled fund and to also clarify that, in any such event, the restrictions must be reasonable and last no longer than reasonably necessary to remedy the adverse consequences. The revised and renumber Section I(j)(4) provides, ''Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.''

Limits on Liability—Section I(j)(7)

Section I(j)(7) of the proposed five-year exemption provides that each Citigroup Affiliated QPAM agrees and warrants: ''*(j)(7) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of Citigroup, and its affiliates.*''

The Department has modified Section I(j)(6) (formerly (j)(7)) to clarify that the prohibition on exculpatory provisions does not extend to losses that arise from an act or event not caused by Citigroup, and that nothing in this section alters the prohibition on exculpatory provisions set forth in ERISA Section 410.

Notice and Updated Investment Management Agreement—Section I(j)(8)

Section I(j)(8) of the proposed five-year exemption provides that, ''*(j)(8) Within four (4) months of the date of the Conviction, each Citigroup Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a Citigroup Affiliated QPAM provides asset management or other discretionary services, the Citigroup Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and such clients or other written contractual agreement.*''

The Applicant requests that Section I(j)(8) be revised to extend the applicable notification period from 4 months to 6 months. The Applicant also requests that I(j)(8) be limited to ERISA-covered plans and IRAs for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services ''*in reliance on PTE 84–14.*''

As noted above, the Department has an interest in protecting an ERISA-covered plan or IRA that enters into an asset management agreement with a Citigroup Affiliated QPAM in reliance on the manager's qualification as a QPAM, regardless of whether the QPAM relies on the class exemption when managing such ERISA-covered plan's or IRA's assets. The Department has revised the applicability of this condition to more closely reflect this interest, and the condition now applies only to Covered Plans. The Department has also modified the condition so that a Citigroup Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. In addition, the Department has revised Section I(j)(8) to provide that the Citigroup Affiliated QPAM must provide notice to each Covered Plan by July 9, 2018.

[42] The Department has renumbered this section as Section I(j)(4) in this final exemption.

Notice to Covered Plan Clients—Section I(k)(1) [43]

Section I(k)(1) of the proposed five-year exemption provides, in relevant part that, ''*Within fifteen (15) days of the publication of this proposed five-year exemption in the* ***Federal Register****, each Citigroup Affiliated QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14,. . . . In the event that this proposed five-year exemption is granted, the* ***Federal Register*** *copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the* ***Federal Register***''

The Applicant requests that Section I(k)(1) be revised to read, in relevant part, ''Each Citigroup Affiliated QPAM has provided a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary). . . . In addition, the **Federal Register** copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the **Federal Register**. . . .''

The Department notes that the proposed exemption provides details of the facts and circumstances underlying the Conviction not found in the Summary or the final grant. One of the purposes of such a complete disclosure is to ensure that all interested parties are aware of, and attentive to, the complete facts and circumstances surrounding Citigroup's application for exemption. Requiring the disclosure of the Summary, proposal, and grant provides the opportunity for all parties to have knowledge of these facts and circumstance.

Notwithstanding this, the Department has modified the condition to clarify that disclosures under this condition may be provided electronically. Further, the notice requirement under this condition has been narrowed to ERISA-covered plans and IRAs that would benefit from this knowledge (*i.e.,* Covered Plans).

Notice to Non-Plan Clients—Section I(k)(2)

Section I(k)(2) of the proposed five-year exemption provides, in relevant part that, ''*Each Citigroup Affiliated QPAM will provide a* ***Federal Register*** *copy of the proposed five-year exemption, a* ***Federal Register*** *copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Citigroup Affiliated QPAM.*''

Given the breadth of the notice requirements otherwise mandated by the exemption, and the decision to restrict such requirements to arrangements for which QPAM status plays an integral role (*i.e.,* the QPAM represents or relies upon its QPAM status), the Department has determined to delete this provision.

Compliance Officer—Section I(m)

Section I(m)(1) of the proposed five-year exemption provides, ''*(m)(1) Citigroup designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. . . (i) The Compliance Officer must be a legal professional with extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and (ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance that is independent of Citigroup's other business lines.*''

As stated above, the Applicant requests that the compliance officer requirement of Section I(m) be deleted from the exemption in its entirety. In support of its request, the Applicant states that this requirement is burdensome, costly, and redundant. The Applicant states that it has comprehensive compliance and internal audit departments that should be responsible for developing and implementing the necessary policies and procedures under this exemption.

The Department declines to eliminate the compliance officer requirement under this exemption. Citigroup personnel engaged in serious misconduct that was caused, at least in part, by compliance and oversight failure. The Department's determination to grant this exemption is based in part on the view that an internal compliance officer with responsibility for the Policies and Training mandated by this exemption will provide the level of oversight necessary to ensure that such Policies and Training are properly developed and implemented throughout the term of this exemption.

The Applicant also requests that Section I(m)(1) be clarified by deleting the word ''legal'' from the phrase ''legal compliance'' in clause (ii). In this regard, the Applicant states that the Citigroup's compliance function is separate from its legal function. The Applicant also requests that Section I(m) be revised to clarify that the Compliance Officer will be a senior compliance officer of Citigroup Inc. or one of its affiliates, and that such senior compliance officer will be an officer who reports directly to, or reports to another compliance officer who reports directly to, Citigroup Inc.'s highest ranking compliance officer (whose title is currently Global Chief Compliance Officer of Citigroup Inc.).

After consideration of the Applicant's comment, the Department has revised Section I(m)(1) in the manner requested by the Applicant.

Deferred Prosecution/Non-Prosecution Agreements—Section I(o)

Section I(o) of the proposed five-year exemption provides, ''*(o) During the effective period of the five-year exemption, Citigroup: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Citigroup or any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. The Department may, following its review of that information, require Citigroup or a party specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in that application, or does not grant such relief within twelve (12) months of the application, the relief described herein would be revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier.*''

The Applicant requests that Section I(o)(2) be revised to read substantially the same as Section I(l) of PTE–2016–14, subject to the following additional changes. The Applicant requests the replacement of the word ''immediately'' with ''promptly'' in subsections (1) and (2); the insertion of the word ''reasonably'' before the phrase

[43] The Department has renumbered this section as Section I(k) in this final exemption.

''requested by the Department'' in subsection (2); and the deletion of the final sentence of subsection (2), which reads ''If the Department denies the relief requested in that application, or does not grant such relief within twelve (12) months of the application, the relief described herein would be revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier.''

The Department in no way intended that this condition be read as providing for an automatic revocation of this exemption, and in light of the Applicant's comments, has revised the condition accordingly. As revised, the condition requires that the Applicant notify the Department if and when it, or any of its affiliates enter into a DPA or NPA with the U.S. Department of Justice for conduct described in section I(g) of PTE 84–14 or ERISA section 411; and immediately provide, upon request by the Department, any information, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. The Department, however, retains the right to propose a withdrawal of the exemption pursuant to its procedures contained at 29 CFR 2570.50, should circumstances warrant such action.

Right to Copies of Policies and Procedures—Section I(p)

Section I(p) of the proposed five-year exemption provides that, ''*[e]ach Citigroup Affiliated QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, and then at least once annually, will clearly and prominently: Inform the ERISA-covered plan and IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with the exemption.*''

Ensuring that ERISA covered-plan and IRA clients have a means by which to review and understand the Policies implemented in connection with this exemption is a vital protection that is fundamental to this exemption's purpose. The Department has modified Section I(p) to provide that the Citigroup Affiliated QPAMs, at their election, may provide Covered Plans with a disclosure that accurately describes or summarizes key components of the Policies. As revised, Section I(p) does not require the Citigroup Affiliated QPAMs to provide the Policies in their entirety. The Department has also determined that such disclosure may be continuously maintained on a website, provided that a website link to the summary of the written Policies is clearly and prominently disclosed to those Covered Plan clients to whom this section applies. The Department has also modified Section I(p) to require that the Citigroup Affiliated QPAMs provide notice regarding the information on the website within 60 days of the effective date of this exemption, and thereafter to the extent certain material changes are made to the Policies.

New Definition of Citcorp

In the PTE 2016–14 Comment Letter, the Applicant requested that the Department add a definition for the term ''Citicorp'' to read as: ''The term 'Citicorp' means, a financial services holding company organized and existing under the laws of Delaware and does not include any subsidiaries or other affiliates.'' After consideration of the Applicant's comment, the Department has added a new Section II(e) to this exemption defining Citicorp in the manner requested by the Applicant.

Summary of Facts and Representations

The Applicant seeks certain clarifications to the Summary of Facts and Representations which the Department does not view as relevant to its determination whether to grant this exemption. Those requested clarifications may be found as part of the public record for Application No. D–11909, in a letter to the Department, dated February 28, 2017.

Letter From House Committee on Financial Services

The Department also received a comment letter from certain members of Congress (the Members) regarding this exemption, as well as other QPAM-related proposed one year exemptions. In the letter, the Members stated that certain conditions contained in these proposed exemptions are crucial to protecting the investments of our nation's workers and retirees, referring to proposed conditions which require each bank to: (a) Indemnify and hold harmless ERISA-covered plans and IRAs for any damages resulting from the future misconduct of such bank; and (b) disclose to the Department any Deferred Prosecution Agreement or a Non-Prosecution Agreement with the U.S. Department of Justice. The Members also requested that the Department hold hearings in connection with the proposed exemptions.

The Department acknowledges the Members' concerns regarding the need for public discourse regarding proposed exemptions. To this end, the Department's procedures regarding prohibited transaction exemption requests under ERISA (the Exemption Procedures) afford interested persons the opportunity to request a hearing. Specifically, section 2570.46(a) of the Exemption Procedures provides that, ''[a]ny interested person who may be adversely affected by an exemption which the Department proposes to grant from the restrictions of section 406(b) of ERISA, section 4975(c)(1)(E) or (F) of the Code, or section 8477(c)(2) of FERSA may request a hearing before the Department within the period of time specified in the **Federal Register** notice of the proposed exemption.'' The Exemption Procedures provide that ''[t]he Department will grant a request for a hearing made in accordance with paragraph (a) of this section where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing.'' The Exemption Procedures also provide that ''[t]he Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements of paragraph (a) of this section; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.'' [44]

While the Members' letter raises important policy issues, it does not appear to raise specific material factual issues. The Department previously explored a wide range of legal and policy issues regarding Section I(g) of the QPAM Exemption during a public hearing held on January 15, 2015 in connection with the Department's proposed exemption involving Credit Suisse AG, and has determined that an additional hearing on these issues is not necessary.

Comments From Interested Persons

The Department also received comment letters from certain interested persons. With respect to each, the commenter sought a further explanation regarding the proposed exemption.

After giving full consideration to the record, the Department has decided to grant the exemption, as described above. The complete application file (Application No. D–11909) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200

[44] 29 CFR part 2570, published at 76 FR 66653, October 27, 2011.

Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 21, 2016 at 81 FR 83416.

Exemption

Section I: Covered Transactions

Certain entities with specified relationships to Citigroup (hereinafter, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as defined in Sections II(f) and II(g), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the Conviction, as defined in Section II(a), during the Exemption Period,[45] provided that the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction. For purposes of this paragraph (a), ''participate in'' means the knowing approval of the misconduct underlying the Conviction;

(b) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services Business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, and agents other than Citicorp, and employees of such Citigroup QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction;

(c) The Citigroup Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction. For the purposes of this paragraph (c), ''participated in'' means the knowing approval of the misconduct underlying the Conviction;

(d) At all times during the Exemption Period, no Citigroup Affiliated QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Citigroup Affiliated QPAM in reliance on PTE 84–14, or with respect to which a Citigroup Affiliated QPAM has expressly represented to an ERISA-covered plan or IRA with assets invested in such ''investment fund'' that it qualifies as a QPAM or relies on PTE 84–14, to enter into any transaction with Citicorp, or to engage Citicorp to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Citigroup Affiliated QPAM or a Citigroup Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A Citigroup Affiliated QPAM or a Citigroup Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the Citigroup Affiliated QPAM, the Citigroup Related QPAM, or their affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, Citicorp will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that Citicorp will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) or section 4975(e)(3)(B) of the Code;

(h)(1) By July 9, 2018, each Citigroup Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate management and business activities of Citigroup;

(ii) The Citigroup Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The Citigroup Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the Citigroup Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at the time;

(v) To the best of the Citigroup Affiliated QPAM's knowledge at the time, the Citigroup Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans;

(vi) The Citigroup Affiliated QPAM complies with the terms of this exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the General Counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A Citigroup Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known

[45] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) By July 9, 2018, each Citigroup Affiliated QPAM must develop a program of training (the Training), to be conducted at least annually, for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The first Training under this Final Exemption must be completed by all relevant Citigroup Affiliated QPAM personnel by July 9, 2019 (by the end of this 30-month period, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice: The first time under PTE 2016–15; and the second time under this exemption). The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i)(1) Each Citigroup Affiliated QPAM, which the Applicant has identified in a certificate signed by the officer who will review and certify the Audit Report (as defined in Section I(i)(5)) pursuant to Section I(i)(8), submits to an audit conducted every two years by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each Citigroup Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2018 through July 9, 2019, and must be completed by January 9, 2020. The second audit must cover the period from July 10, 2020 through July 9, 2021, and must be completed by January 9, 2022. In the event that the Exemption Period is extended or a new exemption is granted, the third audit would cover the period from July 10, 2022 through July 9, 2023, and would have to be completed by January 9, 2024 (unless the Department chooses to alter the biennial audit requirement in the new or extended exemption);

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each Citigroup Affiliated QPAM and, if applicable, Citigroup, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each Citigroup Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each Citigroup Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each QPAM, a sample of such QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Citigroup and the Citigroup Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the Citigroup Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each Citigroup Affiliated QPAM's Policies and Training; each Citigroup Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective Citigroup Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The Citigroup Affiliated QPAM must properly address any noncompliance. The Citigroup Affiliate must promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Citigroup Affiliated QPAM. Any action taken or the plan of action to be taken by the respective Citigroup Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective Citigroup Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a Citigroup Affiliated QPAM has complied with the requirements under this subsection must be based on evidence that the particular Citigroup Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor, as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the most recent Annual Review described in Section I(m);

(6) The auditor must notify the respective Citigroup Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the Citigroup Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that such Citigroup Affiliated QPAM has

addressed, corrected or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code;

(8) The Risk Management Committee of Citigroup's Board of Directors is provided a copy of each Audit Report; and a senior executive officer of Citigroup or one of its affiliates who reports directly to, or reports to another executive who reports directly to, the highest ranking compliance officer of Citigroup must review the Audit Report for each Citigroup Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each Citigroup Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109. This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each Citigroup Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each Citigroup Affiliated QPAM and the auditor must submit to OED: Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in the course of the audit, provided such access and inspection is otherwise permitted by law; and

(12) Citigroup must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and Citigroup;

(j) As of January 10, 2018, and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and a Covered Plan, the Citigroup Affiliated QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a Citigroup Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction. This condition applies only to actual losses caused by the Citigroup Affiliated QPAM's violations;

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the Citigroup Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Citigroup, and its affiliates, or damages arising from acts outside the control of the Citigroup Affiliated QPAM;

(7) By July 9, 2018, each Citigroup Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the Citigroup Affiliated QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–14 that meets the terms of this condition. Notwithstanding the above, a Citigroup Affiliated QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement;

(k) By March 10, 2018, each Citigroup Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a Citigroup Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any

prospective clients for which a Citigroup Affiliated QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Citigroup Affiliated QPAM. Disclosures may be delivered electronically.

(l) The Citigroup Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction;

(m)(1) By July 9, 2018, Citigroup designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each annual period beginning on January 10, 2018 (the Annual Review) [46] to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must be a senior compliance officer of Citigroup Inc. or one of its affiliates, and such senior compliance officer will be an officer who reports directly to, or reports to another compliance officer who reports directly to, Citigroup Inc.'s highest ranking compliance officer (whose title is currently Global Chief Compliance Officer of Citigroup Inc.);

(2) With respect to each Annual Review, the following conditions must be met:

(i) The Annual Review includes a review of: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the relevant business activities of the Citigroup Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Citigroup Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Review (each, an Annual Report) that (A) summarizes his or her material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; and (D) the Citigroup Affiliated QPAMs have complied with the Policies and Training and/or corrected (or is correcting) any instances of noncompliance in accordance with Section I(h) above;

(iv) Each Annual Report must be provided to appropriate corporate officers of Citigroup and each Citigroup Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant Citigroup Affiliated QPAM; and must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed within three (3) months following the end of the period to which it relates;

(n) Each Citigroup Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such Citigroup Affiliated QPAM relies upon the relief in the exemption;

(o) During the Exemption Period, Citigroup: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Citigroup or any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(p) By July 9, 2018, each Citigroup Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (''Summary Policies'') which accurately summarizes key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.[47] With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or the Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(q) A Citigroup Affiliated QPAM or a Citigroup Related QPAM will not fail to meet the terms of this exemption, solely because a different Citigroup Affiliated QPAM or Citigroup Related QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (n) and (p); or if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of Citigroup or its affiliates.

Section II: Definitions

(a) The term ''Conviction'' means the judgment of conviction against Citicorp for violation of the Sherman Antitrust Act, 15 U.S.C. 1, entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15-cr-78–SRU). For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the conduct described in Paragraph 4(g)-(i) of the Plea Agreement filed in the District Court in Case Number 3:15-cr-78–SRU;

(b) The term ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan

[46] Note that such Annual Review must be completed with respect to the annual periods ending January 9, 2019; January 9, 2020; January 9, 2021; January 9, 2022; and January 9; 2023.

[47] In the event Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

subject to Section 4975 of the Code (''IRA'') with respect to which a Citigroup Affiliated QPAM relies on PTE 84–14, or with respect to which a Citigroup Affiliated QPAM (or any Citigroup affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the Citigroup Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code.

(d) The term ''Exemption Period'' means January 10, 2018, through January 9, 2023.

(e) The term ''Citicorp'' means Citicorp, a financial services holding company organized and existing under the laws of Delaware and does not include any subsidiaries or other affiliates.

(f) The term ''Citigroup Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which Citigroup is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). The term ''Citigroup Affiliated QPAM'' excludes Citicorp, the entity implicated in the criminal conduct that is the subject of the Conviction.

(g) The term ''Citigroup Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which Citigroup owns a direct or indirect five percent or more interest, but with respect to which Citigroup is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

Effective Date

This exemption is effective on January 10, 2018. The term of the exemption is from January 10, 2018, through January 9, 2023 (the Exemption Period).

Department's Comment: The Department cautions that the relief in this exemption would terminate immediately if an entity within the Citigroup corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the proposed exemption.

Further Information

For more information on this exemption, contact Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

Barclays Capital Inc. (BCI or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption 2017–06; Exemption Application No. D–11910]

Discussion

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed exemption in the **Federal Register** at 81 FR 83427, for certain entities with specified relationships to Barclays PLC (BPLC) to continue to rely upon the relief provided by PTE 84–14 for a period of five years,[48] notwithstanding BPLC's criminal conviction, as described herein. The Department is granting this exemption in order to ensure that Covered Plans [49] whose assets are managed by a Barclays Affiliated QPAM or Barclays Related QPAM may continue to benefit from the relief provided by PTE 84–14. This exemption is effective from January 10, 2018 through January 9, 2023 (the Exemption Period).

No relief from a violation of any other law is provided by this exemption, including any criminal conviction described in the proposed exemption. Furthermore, the Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the BPLC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period. The terms of this exemption have been specifically designed to promote conduct that adheres to basic fiduciary standards under ERISA and the Code. The exemption also aims to ensure that plans and IRAs can terminate relationships in an orderly and cost effective fashion in the event a plan or IRA fiduciary determines it is prudent for the plan or IRA to sever its relationship with an entity covered by the exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published in the **Federal Register** at 81 FR 83427 on November 21, 2016.[50] All comments and requests for a hearing were due by January 5, 2017. The Department received written comments from the Applicant and members of the U.S. Congress. After considering these submissions, the Department has determined to grant the exemption, with revisions, as described below.

Comment 1—Confirmation of the Comment Period Deadline

The Applicant requests that the Department confirm that the reference in the preamble to the proposed exemption to comments being due within 30 days was unintentional and the deadline for comments was January 5, 2017. The Department so confirms.

Comment 2—Term of the Exemption

The Applicant requests that the Department extend the term of the exemption from five years to ten years from the Conviction Date, as defined in Section II(e). The Applicant states that the five-year term is inconsistent with precedent and that the ''conduct that is the subject of BPLC's conviction was described by the Department of Justice (DOJ) as 'limited to a small part of [BPLC's] operations;' it involved only two traders; and it did not involve any of BPLC's asset management units.'' The Applicant further states that the limitation to five years is especially problematic given that the DOJ plea

[48] (49 FR 9494, March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14 or the QPAM Exemption.

[49] ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to section 4975 of the Code (''IRA'') with respect to which a Barclays Affiliated QPAM relies on PTE 84–14, or with respect to which a Barclays Affiliated QPAM (or any BPLC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the Barclays Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement or agreement with the ERISA-covered plan or IRA. See further discussion in this Preamble under the heading Comments 9, 10 & 11—Policies and Procedures Relating to Compliance with ERISA and the Code—Section (I)(ii)–(v).

[50] The Department received additional comments from Applicant, however, after the close of the comment period.

agreement with BPLC marked the first time that DOJ awarded a sentencing credit for a company's compliance and remediation efforts and that DOJ singled out BPLC for recognition and credit for its significant improvements to its compliance program and its ''dramatic steps to change its corporate culture.'' In addition, the Applicant states that DOJ called BPLC ''a leader in its efforts toward remediation'' and highlighted its ''extraordinary dedication'' to timely reporting of potential misconduct before it was under any reporting obligation, and that DOJ also lauded BPLC's cooperation during the investigative phase, which it characterized as ''uniquely helpful'' and ''of critical importance.''

Although the Applicant characterizes the conduct as involving the isolated actions of two individuals, the Department does not agree with the apparent suggestion that the Applicant bears little or no responsibility for the criminal conduct. For example, the Department considered BPLC's Plea Agreement, which includes the following statement, under the heading Other Relevant Conduct: ''The defendant, through its currency traders and sales staff, also engaged in other currency trading and sales practices in conducting FX Spot Market transactions with customers via telephone, email, and/or electronic chat, to wit: (*i*) Intentionally working customers' limit orders one or more levels, or 'pips,' away from the price confirmed with the customer; (ii) including sales markup, through the use of live hand signals or undisclosed prior internal arrangements or communications, to prices given to customers that communicated with sales staff on open phone lines; (iii) accepting limit orders from customers and then informing those customers that their orders could not be filled, in whole or in part, when in fact the defendant was able to fill the order but decided not to do so because the defendant expected it would be more profitable not to do so; and (iv) disclosing non-public information regarding the identity and trading activity of the defendant's customers to other banks or other market participants, in order to generate revenue for the defendant at the expense of its customers.''

In developing this exemption, the Department also considered relevant statements from regulators. For example, the Financial Conduct Authority's (FCA) Final Notice states that, ''[d]uring the Relevant Period, Barclays did not exercise adequate and effective control over its FX business. . . . The front office failed adequately to discharge these responsibilities with regard to obvious risks associated with confidentiality, conflicts of interest and trading conduct.'' The Notice further states: ''These failings occurred in circumstances where certain of those responsible for managing front office matters were aware of and/or at times involved in behaviours described above.''

By way of further example, the Order of the Commodities Futures Trading Commission (CFTC) states: ''Barclays failed to adequately assess the risks associated with its FX traders participating in the fixing of certain FX benchmark rates. Barclays also lacked adequate internal controls in order to prevent its FX traders from engaging in improper communications with certain FX traders at other banks. Barclays lacked sufficient policies, procedures and training specifically governing participation in the trading around the FX benchmark rates and had inadequate policies pertaining to, or insufficient oversight of, its FX traders' use of chat rooms or other electronic messaging.''

The Department also notes the size of relevant fines imposed by various regulators: The Department of Justice imposed a $710 million fine; the Board of Governors of the Federal Reserve Board imposed a $342 million fine; and the Department of Financial Services, the Commodity Futures Trading Commission, and the FCA imposed fines of $485 million, $400 million, and £284,432,000, respectively.

This exemption is not punitive. Instead, its five-year term and protective conditions reflect the Department's intent to protect Covered Plans that entrust substantial assets to a Barclays Affiliated QPAM, despite the serious misconduct and supervisory failures described above. The limited term of this exemption gives the Department the opportunity to review the adherence by the Barclays Affiliated QPAMs to the conditions set out herein. If the Applicant seeks an extension of this exemption, the Department will examine whether the compliance and oversight changes mandated by various regulatory authorities are having their desired effect on BPLC entities.

Comment 3—Conditions Unrelated to PTE 84–14 and Imposition of Onerous Requirements

The Department addresses this general comment more fully below in response to certain specific issues that are related to this general comment.

Comment 4—Description of Criminal Conduct—Section I

The prefatory language to Section I of the proposed exemption provides, ''*If the proposed five-year exemption is granted, certain asset managers with specified relationships to BPLC (the Barclays Affiliated QPAMs and the Barclays Related QPAMs, as defined further in Sections II(a) and II(b), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),*[51] *notwithstanding the judgment of conviction against BPLC (the Conviction), as defined in Section II(c)),*[52] *for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market, for a period of five years beginning on the date the exemption is granted.*''

The Applicant requests that the description of the charged conduct—the clause beginning ''for engaging in a conspiracy''—be omitted. The Applicant states that this description is inaccurate and incomplete, will lead to disputes with counterparties to the detriment of plans, and will make it unlikely that plans will benefit from or be protected by this exemption.

After consideration of the Applicant's comment, the Department has clarified the exemption's description of BPLC's criminal conduct.

Comment 5—Knowing or Tacit Approval—Sections I(a) and I(c)

Section I(a) of the proposed five-year exemption provides, ''*(a) Other than certain individuals who: Worked for a non-fiduciary business within BCI; had no responsibility for, and exercised no authority in connection with, the management of plan assets; and are no longer employed by BPLC, the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, agents other than BPLC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction (for purposes*

[51] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[52] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

of this paragraph (a), ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Conviction).''

Section I(c) of the proposed exemption provides, ''*(c) A Barclays Affiliated QPAM will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (c), ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Conviction).*''

The Applicant requests that the words ''or tacit'' in the phrase ''knowing or tacit approval'' be deleted in Sections I(a) and I(c). The Applicant states that the term ''tacit approval'' ''is undefined and ambiguous, and potentially encompasses a broad range of conduct that could become the subject of disputes with counterparties.'' In addition, the Applicant states that the reference to the individuals being ''no longer employed by BPLC'' in Section I(a) implies that the individuals referenced in this condition were employed directly by BPLC. However, the Applicant states that, as outlined in Applicant's December 6, 2016 letter to the Department, the two individuals referenced in Paragraph 4(g) of the Plea Agreement were employed by a service company subsidiary of a BPLC subsidiary. The Applicant suggests that Section I(a) be revised to read, ''*Other than certain individuals who: Worked for a nonfiduciary business of a BPLC subsidiary; had no responsibility for, and exercised no authority in connection with, the management of plan assets; and are no longer employed by the BPLC subsidiary, the Barclays Affiliated QPAMs (including their officers, directors, agents other than BPLC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, have reason to know of, or participate in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (a), ''participate in'' includes the knowing approval of the misconduct underlying the Conviction).*''

With respect to Condition I(a), after consideration of the Applicant's comment, the Department has removed ''or tacit'' in the phrase ''knowing or tacit approval'' and removed the phrase ''no longer employed by BPLC,'' and accepted the Applicant's suggested revision to replace ''BCI'' with ''BPLC subsidiary'' where remaining in the condition. However, the Department has not accepted the Applicant's suggestion to remove ''Barclays Related QPAMs'' from the condition. The Department intends to preclude relief to the extent a Barclays Related QPAM violates this condition. With respect to Condition I(c), the Department has revised the exemption in the manner requested by the Applicant.

Comment 6—Inclusion of BCI—Sections I(d), I(g), and I(h)(1)(i)

Section I(d) of the proposed five-year exemption provides, ''*A Barclays Affiliated QPAM will not use its authority or influence to direct an ''investment fund,'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such Barclays Affiliated QPAM to enter into any transaction with BPLC or BCI, or engage BPLC to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption.*''

Section I(g) of the proposed five-year exemption provides, ''*(g) BPLC and BCI will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets.*''

Section I(h)(1)(i) of the proposed five-year exemption provides, ''*(h)(1)(i) The asset management decisions of the Barclays Affiliated QPAM are conducted independently of the corporate management and business activities of BPLC and BCI.*''

The Applicant requests removal of the reference to ''BCI'' in this Section I(d), Section I(g), and Section I(h)(1)(i). Among other things, the Applicant states that as BCI is not the party to the Conviction, and therefore, the inclusion of BCI in this condition goes beyond the underlying Conviction. In addition, the Applicant states that, as noted in its December 6, 2016 letter to the Department, the two individuals referenced in Paragraph 4(g) of the Plea Agreement were employed by a service company subsidiary of a different BPLC subsidiary and were not ''dual-hatted'' to BCI. Further, the Applicant states that BCI was, and in the future is likely to be, the primary U.S. registered investment adviser of the Barclays Group, and any future investment management mandates would likely be undertaken by BCI. Thus, the Applicant states that not permitting an Affiliated QPAM to enter into a transaction with BCI is tantamount to a denial of the exemption. The Applicant also states that this condition would prevent BCI or its parent entity from purchasing an asset manager and merging the asset manager into BCI, and would also prevent BCI from developing new lines of business providing asset management or securities lending businesses to plans.

In response, the Department notes that the condition was developed based on a representation from the Applicant in a letter dated November 2, 2015. In that letter the Applicant stated that, ''the Investment Bank division, where such conduct arose, and the Wealth and Investment Management division both operated through BCI, one of the QPAMs, at the time of the criminal conduct; however, as also noted above and discussed in the Application, the Wealth and Investment Management activities of BCI were operated separately from the Investment Bank division and the activities of the Investment Bank division that gave rise to the criminal conduct, and as such, it is important to distinguish the Wealth and Investment Management employees from the other BCI employees. The 'Wealth and Investment Management employees' were specifically mentioned because there were Investment Bank division employees of BCI who were involved in the criminal conduct that is the subject of the Plea Agreement.''

Notwithstanding this, given the conditions required herein as discussed below, the Department has determined to revise the exemption in the manner requested by the Applicant, and has also clarified that paragraph (d) applies to an ''investment fund'' that is subject to ERISA or the Code and managed by such Barclays Affiliated QPAM with respect to Covered Plans.

Comment 7—Exercising Authority Over Plan Assets—Section I(f)

Section I(f) of the proposed five-year exemption provides, ''*(f) A Barclays Affiliated QPAM or a Barclays Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the Barclays Affiliated QPAM or the Barclays Related QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction.*''

The Applicant requests that the words ''related parties'' in the phrase ''Barclays Affiliated QPAM or the Barclays Related QPAM, or its affiliates or related parties'' be deleted, stating that the term

''related parties'' is undefined and could lead to confusion.

For clarity, the Department has deleted the term ''related parties.''

Comment 8—See Comment 6 Re: Section I(g)

Section I(g) of the proposed five-year exemption provides, ''*(g) BPLC and BCI will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets.*''

The Applicant requests removal of the reference to ''BCI'' in this Section I(g), and for the reasons discussed above, the Department has determined to revise the exemption in the manner requested by the Applicant. Additionally, the Department modified this condition to clarify that BPLC will not violate this condition in the event that it inadvertently becomes an investment advice fiduciary and that BPLC can act as a fiduciary for plans that it sponsors for its own employees or employees of an affiliate.

Comments 9, 10 & 11—Policies and Procedures Relating to Compliance With ERISA and the Code—Section I(h)(1)(ii)–(v)

Section I(h)(1)(ii)–(iii) of the proposed five-year exemption provides, ''*(h)(1) Prior to a Barclays Affiliated QPAM's engagement by any ERISA-covered plan or IRA for discretionary asset management services, where the QPAM represents that it qualifies as a QPAM, the Barclays Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: . . . .*

(ii) The Barclays Affiliated QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs; and

(iii) The Barclays Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;''

(iv) Any filings or statements made by the Barclays Affiliated QPAM to regulators including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time; [and]

(v) The Barclays Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plans and IRA clients.''

The Applicant requests that these subparagraphs be stricken as duplicative and already mandated by statute. The Applicant states that these conditions should apply only with regard to filings or statements made on behalf of ERISA-covered plans or IRAs in connection with accounts for which the Barclays Affiliated QPAM relies on the relief provided by PTE 84–14. The Applicant states that the conditions should be tailored to PTE 84–14 in all instances.

Subsection (iii): The Applicant requests that Section I(h)(1)(iii) be stricken. The Applicant states that, to the extent that Subsection I(h)(1)(iii) is intended to capture violations of ERISA or the Code that are not described in the preceding Subsection (such as ERISA disclosure requirements), such violations would not be within the scope of relief provided by the proposed exemption.

Subsection (iv): The Applicant suggests that the condition be revised to read, ''*(iv) Any filings or statements made by the Barclays Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs for which the Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services in reliance on PTE 84–14, are materially accurate and complete, to the best of such QPAM's knowledge at that time.*''

Subsection (v): The Applicant requests that the condition in Section I(h)(1)(v) incorporate language similar to Section I(h)(1)(iv), which provides that the condition extends ''to the best of such QPAM's knowledge at that time.''

The requirement of Section I(h) that the policies and procedures developed by the Barclays Affiliated QPAM reflect basic fiduciary norms is a protective measure that is amply justified by the substantial compliance and oversight failures that resulted in the Conviction and fines, and in the need for this exemption, as detailed above. Accordingly, the Department has substantially retained the condition. It has, however, revised the condition's scope to better match the Department's protective intent. In particular, subsection (v) has been revised to contain the ''to the best of such QPAM's knowledge at that time'' concept found in Subsection (iv); and the applicability of Subsections (iv) and (v) has been limited to Covered Plans. This revision is consistent with the Department's intent to protect ERISA-covered Plans and IRAs that may hire a Barclays Affiliated QPAM based on the manager's express representation that it relies on or qualifies under PTE 84–14.

As noted in more detail below, the Department will not strike a condition merely because the condition is also a statutory requirement. It is the express intent of the Department to preclude relief for a Barclays Affiliated QPAM that fails to meet the requirements of this exemption, including those derived from basic standards codified in statute, as applicable.

The Department does not view subparagraph (iii) of Section I(h)(1), which relates to compliance with ERISA or the Code, as duplicative of subparagraph (ii), which relates to compliance with, and knowing violations of, certain provisions of ERISA or the Code. However, the Department has modified the Policies' requirement of adherence to the fiduciary and prohibited transaction provisions of ERISA and the Code so that the Policies expressly focus on the provisions only to the extent those provisions are ''applicable'' under ERISA and the Code.

Comment 12—Correction of Violations and Failures to Comply—Section I(h)(1)(vii)

Section I(h)(1)(vii) of the proposed five-year exemption provides that, ''*(h)(1)* Prior to a Barclays Affiliated QPAM's engagement by any ERISA-covered plan or IRA for discretionary asset management services, where the QPAM represents that it qualifies as a QPAM, the Barclays Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: . . .

(vii) Any violation of, or failure to comply with, an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that

is independent of BPLC; however, with respect to any ERISA-covered plan or IRA sponsored by an 'affiliate' (as defined in Section VI(d) of PTE 84–14) of BPLC or beneficially owned by an employee of BPLC or its affiliates, such fiduciary does not need to be independent of BPLC. A Barclays Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii).''

The Applicant cites this condition as an example of how the Department made the proposed exemption ''inexplicably'' and ''arbitrarily'' more burdensome and onerous than other such exemptions it has granted previously. More specifically, the Applicant seeks several revisions to Section I(h)(vii), stating that its notification requirements are overbroad and that the terms such as ''promptly,'' ''appropriate corporate officers'' and ''appropriate fiduciary'' are either vague or undefined. The Applicant requests that the ''subparagraphs (ii) through (vi)'' reference be revised to ''subparagraphs (i) through (vi),'' and that the language be revised to provide that this condition is satisfied where the issue is reported to the corporate officers specifically identified in the condition and, if the plan reporting provision is not removed, to a plan fiduciary that satisfies the requirement that it be independent of BPLC, other than with respect to the Applicant's own plans. The Applicant requests also that the last sentence of the subparagraph be revised since it ''does not meaningfully provide relief in instances where a violation or compliance failure is corrected.''

The Applicant suggests the condition in Section I(h)(1)(vii) be revised to read, ''*(vii) Any violation of, or failure to comply with, an item in subparagraphs (i) through (vi), is corrected (or plans to correct are initiated) upon discovery, and any such violation or compliance failure not corrected (or a correction process initiated) is reported, upon the discovery of such failure to initiate correction efforts, in writing, to the head of compliance and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM. A Barclays Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it takes corrective action as to any instance of noncompliance when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii).*''

In response to the Applicant's general comment, the Department has based the conditions of this exemption on both the particular facts of this case and its experience over time with previous exemptions. For the reasons set out herein, the Department has concluded that the specific conditions of this exemption are appropriate and give the Department a reasonable basis for concluding that the conditions are appropriately protective of affected plans and IRAs. As noted above, a central aim of the exemption is to ensure that those relying upon the exemption for relief from the prohibited transaction rules will consistently act to promote a culture of fiduciary compliance, notwithstanding the conduct that violated Section I(g) of PTE 84–14.

After considering the Applicant's specific requests for revisions, however, the Department has replaced ''appropriate corporate officers'' with ''the head of compliance and the General Counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure.'' The Department also will not condition the exemption on a requirement for notification of violations to an appropriate fiduciary of any affected Covered Plan that is independent of BPLC.

However, the Department is not revising the ''subparagraphs (ii) through (vi)'' reference to include ''subparagraph (i)'' because the Department intends to preclude relief to the extent a Barclays Affiliated QPAM fails to develop, implement, maintain, and follow written policies and procedures. Clearly, it is not enough merely to develop policies and procedures, without also implementing, maintaining, and following the terms of those policies and procedures. Covered Plans do not benefit from the creation of strong policies and procedures, unless they are actually followed.

The Department has revised the term ''promptly'' for consistency with the Department's intent that violations or compliance failures be corrected ''as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier).'' However, contrary to the Applicant's suggestion, the Department intends to preclude relief to the extent violations or failures are not corrected as required by the exemption. Therefore, the Department has not adopted the Applicant's proposed subparagraph (vii), which requires little more than a plan for corrective action, without any corresponding obligation to actually implement the action.

Comment 13—Training Incorporated in Policies—Section I(h)(2)(i)

Section I(h)(2)(i) of the proposed five-year exemption provides, ''*. . . The Training must: (i) Be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this five-year exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.*''

The Applicant requests that the requirement in Section I(h)(2)(i) that the Training must ''[b]e set forth in the Policies'' be deleted. The Applicant states that the requirement could present logistical challenges as a Barclays Affiliated QPAM may update its Training and its Policies at different points in time. The Applicant further states that requiring that the former be incorporated into the latter merely increases the logistical burden and serves no useful purpose.

After considering this comment, the Department has determined to revise the condition to address the Applicant's concerns that it could present logistical challenges.

Accordingly, the Department has revised the subsection to read that the Training must: ''*At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.*''

Comment 14—Training by Independent Professional—Section I(h)(2)(ii)

Section I(h)(2)(ii) of the proposed five-year exemption provides, ''*The Training must: . . . (ii) Be conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.*''

The Applicant requests that Section I(h)(2)(i) be deleted, stating that requiring an ''independent professional'' to conduct the training is likely to be ''counterproductive, as the

most effective trainer may be someone with detailed knowledge of the Barclays Affiliated QPAM's business and compliance practices that an 'independent' trainer may lack.'' Moreover, the Applicant states that the term ''independent professional'' is undefined, leading to potential confusion and disputes. Further, the Applicant states that the term ''technical training'' is duplicative of ''proficiency'' and is undefined. Therefore, the Applicant suggests eliminating that term, and requests that Section I(h)(2)(ii) be revised to read, ''*Be conducted by an individual with significant understanding and familiarity with asset management and trading practices and who has appropriate proficiency with ERISA and the Code.*''

The Department has partially accepted the Applicant's request as to the suggested revision so that ''independent professional'' has been replaced with ''individual with significant understanding and familiarity with asset management and trading practices'' but has not removed the requirement that such person be prudently selected. Additionally, the Department disagrees with the Applicant's assertion that the phrase ''technical training and proficiency'' is duplicative. In the Department's view, the two terms are not synonymous, as a person may have taken technical training in a given subject matter but may not be proficient in that subject matter.

Further, while the Department does not agree with the Applicant's characterization that hiring an appropriate independent professional, prudently selected, would be ''counterproductive,'' the Department is persuaded that appropriate Barclays personnel, who are prudently selected, should be allowed to conduct the training, and has revised the condition accordingly.

Comment 15—Audit—Section I(i)(1)

Section I(i)(1) of the proposed five-year exemption requires that each ''*Barclays Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the Barclays Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve (12) month period starting with the twelve (12) month period that begins on the date that a Barclays Affiliated QPAM is first engaged by any ERISA-covered plan or IRA for discretionary asset management services reliant on PTE 84–14, and each annual audit must be completed no later than six (6) months after the period to which the audit applies.*''

The Applicant requests that the requirement that the audit requirement be incorporated in the Policies be deleted because it is already a condition of exemptive relief and incorporation into the Policies is, therefore, ''duplicative'' and appears to serve no useful purpose. In addition, the Applicant represents that the timing of the audit should factor into the timing of the proposed one-year exemption. The Applicant states that it is possible that the ''date that a Barclays Affiliated QPAM is first engaged'' could come before the effective date of the permanent exemption, rendering the timing unclear, and that the condition should clarify that the audit period will commence only after the effective date of this exemption. Further, the Applicant requests the elimination of the phrase ''technical training,'' because the term ''technical training'' is duplicative of ''proficiency'' and is undefined.

The Department declines to make certain of the Applicant's requested revisions. The Department views the audit requirement as an integral component of the exemption, without which the Department would be unable to make its finding that the exemption is protective of Covered Plans and their participants, beneficiaries, and beneficial owners, as applicable. A recurring, independent audit of the Barclays Affiliated QPAMs is a critical means by which to verify the adequacy of, and compliance with the Policies and Training mandated by this exemption.

The Department disagrees with the Applicant's assertion that the phrase ''technical training and proficiency'' is duplicative. In the Department's view, the two terms are not synonymous, as a person may have taken technical training in a given subject matter but may not be proficient in that subject matter. The exemption requires that the auditor be both technically trained and proficient in ERISA as well as the Code. Accordingly, the Department declines to change the phrase ''technical training and proficiency'' as used in Section I(i)(1).

The Department also declines to delete the requirement that the audit conditions be incorporated in the Policies. The audit requirement provides a critical independent check on compliance with this exemption's conditions, and helps ensure that the basic protections set forth in the Policies are taken seriously. Accordingly, the specifics of the audit requirement are important components of the Policies. Their inclusion in the Policies promotes compliance and sends an important message to the institutions' employees and agents, as well as to Covered Plan clients, that compliance with the policies and procedures will be subject to careful independent review.

After consideration of the Applicant's concerns regarding the annual audit, the Department is revising the audit condition to require an audit on a biennial basis. The Department notes that if the audit uncovers material deficiencies with the Applicant's compliance with this exemption, then the Applicant should consider conducting an additional audit after making corrections to ensure that it remains in compliance with the exemption. In any event, the Department emphasizes that it retains the right to conduct its own investigation of compliance based on any indicators of problems. Finally, the Department has clarified the audit timing requirements.

Comment 16—Access to Business—Section I(i)(2)

Section I(i)(2) of the proposed five-year exemption requires that ''*as permitted by law, each Barclays Affiliated QPAM and, if applicable, BPLC, will grant the auditor unconditional access to its business. . . .*''

The Applicant requests that the access granted by Section I(i)(2) be limited to non-privileged materials that do not contain trade secrets. The Applicant represents that the existing limitations can be read not to exclude such materials and, given the breadth of the ''unconditional access'' described, the absence of a specific limitation could lead to confusion, disputes, and infringement on a Barclays Affiliated QPAM's rights to protect its privileged communications and trade secrets. The Applicant suggests that the language read, ''as permitted by law, each Barclays Affiliated QPAM and, if applicable and solely to determine if the provisions of the exemption involving BPLC are met, BPLC will grant the auditor unconditional access to its business. . . .''

In the Department's view, to ensure a thorough and robust audit, the auditor must be granted access to information the auditor deems necessary for the auditor to make sound conclusions. Access to such information must be within the scope of the audit

engagement and denied only to the extent any disclosure is not permitted by state or federal statute. Enumerating specific restrictions on the accessibility of certain information may have a dampening effect on the auditor's ability to perform the procedures necessary to make valid conclusions and would therefore undermine the effectiveness of the audit. The auditor's access to such information, however, is limited to information relevant to the auditor's objectives as specified by the terms of the exemption and to the extent disclosure is not prevented by state or federal statute or involves communications subject to attorney client privilege. In this regard, the Department has modified Section I(i)(2) accordingly.

The Department has modified Section I(i)(2) so that it begins with the phrase ''Within the scope of the audit.''

Comment 17—Engagement Letter—Section I(i)(3)

Section I(i)(3) of the proposed five-year exemption requires the auditor's engagement to ''specifically require the auditor to determine whether each Barclays Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this five-year exemption, if granted, and has developed and implemented the Training, as required herein.''

The Applicant requests that Section I(i)(3) be deleted in its entirety, stating that it is duplicative of the requirements in Section I(i)(1) of the exemption, which also sets forth requirements as to the auditor's skill and the prudence of the selection process. Further, the Applicant suggests that it serves no useful purpose to mandate that the engagement letter repeat the requirements of the exemption and that such level of detail in the engagement is unnecessary in light of the detailed requirements of the exemption.

The Department does not concur with the Applicant's request. By including a statement of the audit's intended purpose and required determinations in the auditor's agreement, the Applicant ensures that both the auditor and the Barclays Affiliated QPAMs have a clear understanding of the purpose and expectations of the audit process. Therefore, the Department declines to omit Section I(i)(3) from the exemption.

Comment 18—Auditor's Test of Operational Compliance—Section I(i)(4)

Section I(i)(4) of the proposed five-year exemption provides that, ''*[t]he* auditor's engagement must specifically require the auditor to test each Barclays Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training.''

The Applicant requests that Section I(i)(4) be deleted in its entirety or, in the alternative, that the second sentence of the condition be deleted. As noted above, the Applicant states that Section I(i)(1) sets forth the scope of the audit and contains requirements as to the auditor's technical skill and the prudence of the selection process. The Applicant suggests that, in light of these requirements, a condition mandating how the auditor must perform the audit is unnecessary. The Applicant states that there are only two firms that hold themselves out as having the capacity to handle these audits, and neither is a regular audit firm that can test significant data in the very short time frames provided in these exemptions. The Applicant represents that the Department should leave to the independent judgment of the auditor whether and when to sample transactions. The Applicant suggests that, if the subsection is not deleted, the condition in this subsection should read, ''(4) The auditor's engagement must specifically require the auditor to test each Barclays Affiliated QPAM's operational compliance with the Policies and Training.''

The Department declines to make the Applicant's requested deletion or revision with respect to Section I(i)(4). The inclusion of written audit parameters in the auditor's engagement letter is necessary both to document expectations regarding the audit work and to ensure that the auditor can responsibly perform its important work. As stated above, clearly defined audit parameters will minimize any potential for dispute between the Applicant and the auditor. It is appropriate and necessary for the exemption to require a certain amount, and type, of audit work to be performed. Similarly, given the scope and number of relevant transactions, proper sampling is critical to ensuring the auditor's ability to reach reasonable conclusions.

The Department notes that Section I(i)(4) does not specify the number of transactions that the auditor must test, but rather requires, for each QPAM, that the auditor test a sample of each QPAM's transactions involving Covered Plans, ''sufficient in size and nature to afford the auditor a reasonable basis to determine operational compliance with the Policies and Training.'' The Department has revised this provision, however, by limiting its applicability to Covered Plans.

Comment 19—Auditor's Determination of Compliance—I(i)(5)(i)

Section I(i)(5)(i) of the proposed five-year exemption provides: ''*I(i)(5): For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to BPLC and the Barclays Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding:*

(i) The adequacy of the Barclays Affiliated QPAM's Policies and Training; the Barclays Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective Barclays Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Barclays Affiliated QPAM must be promptly addressed by such Barclays Affiliated QPAM, and any action taken by such Barclays Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective Barclays Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the Barclays Affiliated QPAM has complied with the requirements under this Subsection must be based on evidence that demonstrates the Barclays Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Furthermore, the auditor must not rely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section I(m) below in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above.''

The Applicant states that compliance with this provision and other provisions involving the auditor are within the control of the auditor rather than the Applicant, and that a violation of this provision should therefore not result in Applicant losing the exemption. The Applicant requests that, if the condition is not deleted or reworded as suggested, the Department should add the following proviso to the end of subparagraphs I(i)(4), I(i)(6) and I(i)(11): ''Any failure of the auditor to meet the conditions associated with the Audit Report shall not be deemed a violation of the exemption.''

In addition, the Applicant requests that the requirement that an auditor's recommendations be ''promptly'' addressed be deleted. The Applicant states that the term ''promptly'' is undefined and that the ambiguity is particularly problematic in this context as addressing an auditor's recommendation could be a lengthy process (updating computerized trading systems, for example, could take months).

Moreover, the Applicant states that the requirement that the auditor address the adequacy of the Annual Review required in Section I(m) is counterproductive and requests that this provision of Section I(i)(5) be deleted because ''the DOJ has singled out Barclays' extensive efforts to strengthen its already extensive internal controls.'' The Applicant further states that the Department should not mandate how the auditor performs its work in light of the conditions in the proposed exemption relating to the auditor's selection and qualifications. (*See* Subsection I(i)(1)). The Applicant states there is no reason to treat BPLC or the Barclays Affiliated QPAMs as recalcitrant entities and to impose conditions that the Department has not imposed in past cases as to applicants with extensive crimes or faulty internal processes. Moreover, the Applicant states that the language of this condition will interfere with the workability of the exemption and its use by plans. To that end, the Applicant states that if counterparties cannot understand the requirement or test whether it has been complied with, the exemption will not be used, to the detriment of plans and in violation of the statutory standard in section 408(a) of ERISA and Code section 4975. Therefore, the Applicant requests that the condition instead read:

''*I(i)(5): For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to BPLC and the Barclays Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. Any failure of the auditor to meet the conditions associated with the Audit Report shall not be deemed a violation of the exemption. The Audit Report must include the auditor's specific determinations regarding:*

(i) The adequacy of the Barclays Affiliated QPAM's Policies and Training; the Barclays Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective Barclays Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Barclays Affiliated QPAM must be addressed by such Barclays Affiliated QPAM, and any action taken by such Barclays Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective Barclays Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training should be based on evidence that demonstrates the Barclays Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this permanent exemption.''

The Department acknowledges that the Applicant's efforts to address the auditor recommendations regarding any inadequacy in the Policies and Training identified by the auditor, may take longer to implement than the time limits mandated by the proposed exemption. Accordingly, the Department is modifying Section I(i)(5)(i) to reflect the possibility that the Barclays Affiliated QPAMs' efforts to address the auditor's recommendations regarding inadequacies in the Policies and Training identified by the auditor, may not be completed by the submission date of the Audit Report and may require a written plan to address such items. However, any noncompliance identified by the auditor must be promptly addressed. The Department does not agree that the word ''promptly'' creates ambiguity in the condition and declines to remove the word. However, the Department has revised the exemption such that, with the exception of Section I(i)(11), the failure of the auditor to meet the conditions associated with the Audit Report shall not be deemed a violation of the exemption.

The final sentence of Section I(i)(5)(i) expresses the Department's intent that the auditor must not rely solely on the work of the Compliance Officer and the Annual Report in formulating its conclusions or findings. The auditor must perform its own independent testing to formulate its conclusions. This exemption does not prohibit the auditor from considering the Compliance Officer's Annual Report in carrying out its audit function, including its formulation of an audit plan. This exemption, however, does prohibit the auditor from reaching conclusions that are exclusively based upon the contents of the Compliance Officer's Annual Report.

The Department emphasizes that it is not mandating how the auditor performs its work. By the express terms of this exemption, the Auditor retains discretion as to how to perform an audit that complies with this exemption. The audit conditions are critical to the Department's determination to grant this exemption. As noted above, the Department believes the audit conditions are amply justified by the substantial compliance and oversight failures that resulted in the Conviction and fines, and in the need for this exemption as detailed above.

The Department has modified Section I(i)(5)(i) to more clearly reflect these views.

Comment 20—Adequacy of the Annual Review—Section I(i)(5)(ii)

Section I(i)(5)(ii) of the proposed five-year exemption provides that ''*[t]he Audit Report must include the auditor's specific determinations regarding: . . . (ii) The adequacy of the Annual Review described in Section I(m) and the resources provided to the Compliance Officer in connection with such Annual Review.*''

The Applicant requests deletion of this condition. The Applicant states that the requirement that the auditor investigate the details of resources provided to the Compliance Officer is intrusive on the operation of the business. The Applicant further states that, assuming the Annual Report required by Subsection I(m)(2)(ii) remains part of the exemption, the auditor can assess the adequacy of the report itself. In addition, the Applicant states that the proposed exemption contains multiple conditions relating to the auditor's selection and qualifications, and that, in light of these conditions, the auditor should be

trusted to exercise appropriate judgment.

As discussed in detail below, the Department views the Compliance officer and the Annual Review as integral to ensuring compliance with the exemption. An independent assessment by the auditor of the adequacy of the Annual Review is essential to providing the Department with the assurance that the Applicant and the Barclays Affiliated QPAMs have given these matters the utmost priority and have taken the actions necessary to comply with the exemption. However, the Department agrees that the QPAMs need not require the auditor to opine on the adequacy of the resources allocated to the Compliance Officer and has modified Section I(i)(5)(ii) accordingly. If, however, the auditor observes compliance issues related to the Compliance Officer or available resources, it would be appropriate to opine on these problems.

Comment 21—Auditor Notification to QPAM of Noncompliance—Section I(i)(6)

Section I(i)(6) provides that ''*[t]he auditor must notify the respective Barclays Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date.*''

The Applicant requests that this condition be deleted. The Applicant states that there is no reason why the QPAM needs this information within five business days and no indication is given as to what it is to do with the information once it has it. The Applicant also states that the auditor should be trusted to exercise discretion as to the timing of notification regarding instances of noncompliance, and asserts that requiring identification of every such instance, however technical the misstep, could be counter-productive, consume significant amounts of the auditor's time, and in light of the very limited number of available auditors, cause many financial institutions needing audits to fail to meet the deadlines imposed by these exemptions simply because a qualified auditor is not available. Further, the Applicant states that compliance with this provision is within the control of the auditor rather than the Applicant. If the condition is not deleted, the Applicant suggests that the condition read:

''The auditor must notify the respective Barclays Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date. Any failure of the auditor to meet this condition shall not be deemed a violation of the exemption.''

In the Department's view, it is important that notice of noncompliance be forthcoming and prompt. Accordingly, the Department declines to delete the condition. The Department also declines to include a statement in Section I(i)(6) that a failure on behalf of the auditor to meet this condition will not violate the exemption. However, the Department, as discussed below, has modified Section I(q) to address this issue.

Comment 22—Certification of the Audit—Section I(i)(7)

Section I(i)(7) of the proposed five-year exemption provides, ''*[w]ith respect to each Audit Report, the General Counsel or one of the three most senior executive officers of the Barclays Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has: Reviewed the Audit Report and this exemption, if granted; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption, if granted, and with the applicable provisions of ERISA and the Code.*''

The Applicant requests that the timing of Section I(i)(7) be clarified. In this regard, the Applicant states that the certification must be completed within thirty days (see Subsection I(i)(9)), but that it may take longer to remedy identified issues. The Applicant states that this condition should clarify that ''addressing'' an inadequacy means, not only accepting the auditor's recommendations, but can include pointing out alternative action, or even no action, is a preferable means of protecting ERISA plan clients and IRAs. In addition, the Applicant represents that the condition should reflect that the individual providing the certification may not be responsible for addressing, correcting, or remedying any inadequacy, and should clarify that the certification need only state that ''the officer has caused the process for such addressing, correcting, or remedying to commence.''

While the Department does not view Section I(i)(7) as ambiguous, the Department acknowledges that the Applicant's efforts to address the auditor's recommendations regarding inadequacies in the Policies and Training identified by the auditor, may take longer to implement than the timeframe to submit the certified Audit Report. The Department did not intend to limit corrective actions to those that could only be completed prior to the submission of the Audit Report. Therefore, the Department has modified Section I(i)(7) to reflect that the senior officer may certify that a written plan to address the inadequacies regarding the Policies and Training identified in the auditor's Report is in place.

Further, the conditions of this exemption do not prohibit the Applicant from disagreeing with the auditor with respect to whether certain practices rise to the level of noncompliance with the terms of this exemption. However, in those circumstances where the auditor is not persuaded to change its position on a matter the auditor considers noncompliant, the Applicant will be responsible to correct such matters. Nor do the conditions of this exemption prohibit the Applicant from disagreeing with the auditor with respect to the appropriate method for correcting or addressing issues of noncompliance. The Department expects the Applicant and the auditor to have meaningful communications on any such differences of opinion. In the event the Applicant chooses to apply a corrective method that differs from that recommended by the auditor, the Audit Report and the Addendum attached thereto should explain in detail the noncompliance, the auditor's recommended action, the corrective method chosen, and, if applicable, why the Applicant chose a corrective method different from that recommended by the auditor. Finally, while the individual providing the certification may not be responsible for directly addressing, correcting, or remedying any inadequacy, such individual is responsible for ensuring that such process has indeed addressed, corrected or remedied the identified inadequacy.

Comment 23—Review and Certification of Audit Report—Section I(i)(8)

Section I(i)(8) the proposed five-year exemption provides that ''*[t]he Risk Committee of BPLC's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of BPLC must review the Audit Report for each Barclays Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.*''

The Applicant requests that the requirement to provide the Audit Report to the Risk Committee of BPLC's Board of Directors be deleted. The Applicant states that mandating the internal process by which information is handled within the financial institution is beyond the scope of exemptive relief and is an unwarranted intrusion into the corporate governance processes of BPLC and the Barclays Affiliated QPAMs that does not advance the statutory goals set forth in ERISA section 408 and Code section 4975.

In addition, the Applicant states that the reference to the ''highest ranking legal compliance officer'' is unclear because BPLC does not have an officer that appears to satisfy the description. The Applicant assumes that the reference is either to the highest ranking legal officer or the highest ranking compliance officer.

The Department notes that in its application and related materials, the Applicant has represented that it has established, or is in the process of establishing, comprehensive changes to processes and procedures that are, in part, intended to change the culture at BPLC from the top down. As also represented by the Applicant, these changes are focused on enhancements in: (1) Supervision, controls, and governance; (2) risk management compliance assessment; (3) transaction monitoring and communications surveillance; (4) compliance testing; and (5) internal audit.[53]

The Department has developed this exemption to ensure that the highest levels of management are aware of ongoing matters concerning BPLC, the Barclays Affiliated QPAMs, and compliance with this exemption. Requiring the provision of the Audit Report to the Board of Directors and certification by a senior executive officer in the reporting line of the highest compliance officer provides assurance that the highest levels of management within BPLC stay informed about BPLC's and the Barclays Affiliated QPAMs' compliance with the terms of this exemption. In the Department's view, such officials are in the best position to ensure that any inadequacy identified by the auditor is appropriately addressed and that necessary changes to corporate policy are effectuated where necessary. Requiring certification under penalty of perjury is consistent with the Department's longstanding view that basic requirements of compliance and integrity are fundamental to an entity's ability to qualify as a QPAM. However, in accordance with the Applicant's request, the Department has clarified the condition to refer to the ''highest ranking compliance officer.''

Comment 24—Availability of the Audit Report—Section I(i)(9)

Section I(i)(9) of the proposed five-year exemption provides that, ''*Each Barclays Affiliated QPAM provides its certified Audit Report by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109, no later than 30 days following its completion. The Audit Report will be part of the public record regarding this five-year exemption, if granted. Furthermore, each Barclays Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such Barclays Affiliated QPAM.*''

The Applicant states that the scope of exemption should be limited to PTE 84–14 in all instances and requests that this condition require that the Audit Report be available to plans managed by a QPAM in reliance on PTE 84–14. The Applicant states that this condition can be read to require that the Audit Report be available to asset management plan clients, regardless of whether the Barclays Affiliated QPAM relies on PTE 84–14 for such clients' accounts. The Applicant suggests that the condition read: ''Each Barclays Affiliated QPAM provides its certified Audit Report by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109, no later than 30 days following its completion. The Audit Report will be part of the public record regarding this exemption. Furthermore, each Barclays Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such Barclays Affiliated QPAM in reliance on PTE 84–14.''

ERISA-covered plans and IRAs, routinely rely on QPAM status before entering into agreements with financial institutions, even if those institutions do not rely on PTE 84–14 when managing plan and IRA assets. Accordingly, the Department has an interest in ensuring that the conditions of this exemption broadly protect ERISA-covered plans and IRAs that have relied on QPAM status in deciding to enter into an agreement with the Applicant or the Barclays Affiliated QPAMs.

Nevertheless, the Department has revised Section I(i)(9) to clarify that the Barclays Affiliated QPAMs are required to make the documents available to any fiduciary of a Covered Plan. The Audit Report, in any event, will be incorporated into the public record attributable to this exemption, under Exemption Application Number D–11910, and, therefore, independently accessible by interested members of the public. Accordingly, the Department has determined to revise the condition by replacing the phrase ''an ERISA-covered plan or IRA, the assets of which are managed by such Barclays Affiliated QPAM'' with the term ''Covered Plan'' (as defined in Section II(f)). Lastly, the Department agrees that access to the Audit Report need only be upon request and such access or delivery can be made electronically, and it has revised the exemption accordingly.

Comment 25—Engagement Agreements—Section I(i)(10)

Section I(i)(10) of the proposed five-year exemption provides that, ''*Each Barclays Affiliated QPAM and the auditor must submit to OED: (A) Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this five-year exemption, if granted; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this five-year exemption, if granted, no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter).*''

The Applicant requests deletion of the requirement under Section I(i)(10)(B) which provides, ''*[e]ach Barclays Affiliated QPAM and the auditor must submit to OED . . . (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this five-year exemption, no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter);*''.

The Applicant states that the proposed exemption includes multiple conditions for the qualifications of the trainer (Subsection I(h)(2)(ii)), the contents of the Policies (Subsection

[53] See BCI Exemption Application (May 20, 2015) from pages 7 to 15.

I(h)(1)) and for the auditor's review of the adequacy of the Training and Policies (Subsection I(i)(5)(i)). The Applicant represents that there is no reason for the Department to see and review, and make available to the public, every service provider contract that could cover policies, procedures or training. The Applicant states that no reason is given for the Department's review of engagement letters for all legal and consulting services applicable to the policies, procedures and training. Additionally, the Applicant states that it should be permitted to delete or redact commercial terms from any engagement agreement submitted to the Department. Further, the Applicant requests that the timeframe for provision of the auditor's engagement be modified to no later than six (6) months after the Barclays Affiliated QPAM's engagement with an ERISA-covered plan or IRA for the provision of asset management or other discretionary fiduciary services (and one month after the execution of any agreement thereafter). Therefore, the Applicant suggests that the condition read: ''*Each Barclays Affiliated QPAM and the auditor must submit to OED: Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption no later than six (6) months after the Barclays Affiliated QPAM's engagement with an ERISA-covered plan or IRA for the provision of asset management or other discretionary fiduciary services (and one month after the execution of any agreement thereafter). Commercial terms may be removed or redacted from the auditor engagement.*''

In coordination with the Department's modification of Section I(h)(2)(ii) to remove the requirement that the Training must be conducted by an independent professional, the Department has determined to remove the requirement in Section I(i)(10)(B) to provide to the Department the engagement agreements entered into with entities retained in connection with compliance with the Training or Policies conditions. Furthermore, to remove any confusion or uncertainty regarding the timing of the submission of the auditor's engagement agreement, the Department has modified Section I(i)(10) to require that the auditor's engagement agreement be submitted to the Office of Exemption Determinations no later than two (2) months after the engagement agreement is entered into by the Applicant and the independent auditor.

Comment 26—Auditor's Workpapers—Section I(i)(11)

Section I(i)(11) of the proposed five-year exemption provides that the ''*auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant Barclays Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable Barclays Affiliated QPAM.*''

The Applicant states that, as noted above in connection with Section I(i)(5), compliance with this provision is within the control of the auditor rather than the Applicant. The Applicant states that a violation of this provision should therefore not result in loss of the exemption. The Applicant also represents that this condition is unnecessary and duplicative. In addition, the Applicant requests that this condition be appropriately limited to ensure that any confidential or otherwise sensitive information is redacted prior to any disclosure of the workpapers in a public file. The Applicant states that the proposed exemption, as worded, requires that the auditor enjoy broad access to a Barclays Affiliated QPAM's records. The Applicant further states that, while such access should be appropriately cabined, the auditor will still have access to sensitive information, such as client information, marketing data, personal information of the QPAM's employees, and other details.

Therefore, the Applicant requests that access be limited to allow the auditor, and OED,[54] to inspect such information without its being disclosed in the public record. The Applicant suggests that this condition read: ''*The auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, provided that any confidential business or personal information of the Barclays Affiliated QPAMs, BPLC, and their clients (or the officers, directors, employees or agents thereof) reflected in the workpapers, including, without limitation, client communications, shall be redacted, and provided further that nothing herein shall be deemed to limit any authority the Department may otherwise have to inspect such information without making it part of the public file. Any failure of the auditor to meet this condition shall not be deemed a violation of the exemption.*''

The Department acknowledges that certain information contained in the workpapers may be confidential and proprietary, and having that information in a public file may create needless or avoidable disclosure issues. The Department has determined to modify Section I(i)(11) to remove the requirement that the auditor provide the workpapers to OED, and instead require that the auditor provide access to the workpapers for the Department's review and inspection. However, given the importance of the workpapers to the Department's own review and the Applicant's contractual relationship with the auditor, the Department declines to include a statement in Section I(i)(11) that a failure on behalf of the auditor to meet this condition will not violate the exemption.

Comment 27—Replacement of Auditor—Section I(i)(12)

Section I(i)(12) of the proposed five-year exemption provides that, ''*BPLC must notify the Department at least thirty (30) days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until BPLC demonstrates to the Department's satisfaction that such new auditor is independent of BPLC, experienced in the matters that are the subject of the exemption, if granted, and capable of making the determinations required of this exemption, if granted.*''

The Applicant requests that this Section I(i)(12) be deleted, stating that the proposed exemption contains conditions requiring the auditor to satisfy multiple conditions and it serves no useful purpose to impose an additional requirement to demonstrate to the Department's satisfaction that the auditor satisfies such standards before substitution, particularly given the timeline required for the audit process. The Applicant requests that if the condition is not deleted, the condition be modified to read: ''*BPLC must notify the Department at least thirty (30) days after terminating the engagement of the auditor, the reason for the termination, and provide the Department with the contract of the substitute auditor, the selection of which must satisfy the requirements of subparagraph (i)(1).*''

The Department notes that this exemption is not unique in requiring the Department be notified of changes to service providers (see, *e.g.,* the requirement of Schedule C of the Form 5500 Annual Return/Report for the Plan Administrator of certain plans to report to the Department a termination of the

[54] OED is the Office of Exemption Determinations within the Employee Benefits Security Administration agency of the United States Department of Labor.

plan's auditor and/or enrolled actuary and to provide an explanation of the reasons for the termination, including a description of any material disputes or matters of disagreement concerning the termination). Furthermore, requiring the Applicant to notify the Department of the substitution of an auditor serves to ensure that the Barclays Affiliated QPAMs are attentive to the audit process and the protections it provides; and that the Department has the information it needs to review compliance. The Department has decided, however, to modify Section I(i)(12) to remove the requirement for the Applicant to demonstrate the independence and qualifications of the auditor, however, and requires instead that the Applicant, no later than two months from the engagement of the replacement auditor, notify the Department of a change in auditor and of the reason(s) for the substitution including any material disputes between the terminated auditor and the Applicant. The Applicant's fiduciary obligations with respect to the selection of the auditor, as well as the significant role a credible selection plays in reducing the need for more extensive oversight by the Department, should be sufficient to safeguard the selection process.

Comments 28–29—Contracts With Plans and IRAs—Section I(j)(1)

Section I(j)(1) of the proposed five-year exemption provides: ''*Effective as of the effective date of this five-year exemption, if granted, with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and an ERISA-covered plan or IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services, each Barclays Affiliated QPAM agrees and warrants: (1) To comply with ERISA and the Code, as applicable with respect to such ERISA- covered plan or IRA, to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA.*''

The Applicant requests that Subsection I(j) provide that the contract requirements apply only to agreements where a QPAM provides services in reliance on PTE 84–14. The Applicant asserts, as noted above, that the scope of exemptive relief in the proposed exemption should in all instances be limited in this manner. In addition, the Applicant states that the condition should make clear that it supersedes the analogous condition in the Temporary Exemption to avoid imposing duplicative requirements. The Applicant suggests that this condition read: ''This Subsection supersedes the analogous section of PTE 2016–16, as of the date of this exemption's publication in the **Federal Register**. Effective as of the publication date, with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and an ERISA-covered plan or IRA under which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services in reliance on PTE 84–14, each Barclays Affiliated QPAM agrees and warrants . . . .''

ERISA-covered plans and IRAs routinely rely on QPAM status as a condition of entering into transactions with financial institutions, even with respect to transactions that do not necessarily require adherence to PTE 84–14. In addition, it may not always be clear whether or not the Barclays Affiliated QPAM intends to rely upon PTE 84–14 for any particular transaction. Accordingly, it is critical to ensure that protective conditions are in place to safeguard the interests of ERISA-covered plans and IRAs that are acting in reliance on the availability of this exemption and QPAM status, particularly those which may not have entered into the transaction in the first place, but for the Department's grant of this exemption.

The Department has a clear interest in protecting such ERISA-covered plans and IRAs that enter into an asset management agreement with a Barclays Affiliated QPAM in reliance on the manager's qualification as a QPAM. Moreover, when an ERISA-covered plan or IRA terminates its relationship with an asset manager, it may incur significant costs and expenses as its investments are unwound and as it searches for and hires a new asset manager.

The Department has revised this condition for consistency with its interest in protecting ERISA-covered plans and IRAs that rely upon QPAM status. The condition now applies only to Covered Plans.

The Department rejects the view that it acts outside its authority by protecting ERISA-covered plans and IRAs that rely on Barclay's Affiliated QPAMs' eligibility for this exemption, and reemphasizes the seriousness of the criminal misconduct that caused the Applicant to need this exemption. The Department may grant an exemption under section 408(a)(3) of ERISA or section 4975(c)(2)(C) of the Code only to the extent the Secretary finds, among other things, that the exemption is protective of the affected plan or IRA. As noted above, BPLC personnel engaged in serious misconduct over an extended period and at the expense of their own clients. This misconduct appears to have stemmed, in part, from deficiencies in control and oversight.

Notwithstanding the misconduct, which resulted in violation of Section I(g) of PTE 84–14, the Department has granted this exemption based, in significant part, upon the inclusion of Section I(j)(1) in the exemption, which protects Covered Plans by, among other things, requiring Barclays Affiliated QPAMs to make an express commitment to their customers to adhere to the requirements of ERISA and the Code, as applicable. As previously indicated, the Department has concluded that a culture of compliance, centered on adherence to basic standards of fair dealing as set forth in this exemption, gives the Department a compelling basis for making the required statutory findings that the exemption is in the interests of plan and IRA investors and protective of their rights. Absent such findings, the exemption would have been denied.

In response to the Applicant's comments, however, the Department has required an express commitment to comply with the fiduciary standards and prohibited transaction rules only to the extent these provisions are ''applicable'' under ERISA and the Code. This section, as modified, should serve its salutary purposes of promoting a culture of compliance and enhancing the ability of plans and IRA customers to sever their relationships with minimal injury in the event of noncompliance. This conclusion is reinforced, as well, by the limited nature of the relief granted by this exemption, which generally does not extend to transactions that involve self-dealing.

In response to the Applicant's comments, the Department also notes that nothing in ERISA or the Code prevents the Department from conditioning relief on express contractual commitments to adhere to the requirements set out herein. The QPAMs always remain free to disclaim reliance on the exemption and to avoid such express contractual commitments. To the extent, however, that they hold themselves out as fiduciary QPAMs, they should be prepared to make an express commitment to their customers to adhere to the requirements of this exemption. This commitment strengthens and reinforces the likelihood of compliance, and helps

ensure that, in the event of noncompliance, customers will be insulated from injuries caused by noncompliance. These protections also ensure that customers will be able to extricate themselves from transactions that become prohibited as a result of the QPAMs' misconduct, without fear of sustaining additional losses as a result of the QPAMs' actions. In this connection, however, the Department emphasizes that the only claims available to the QPAMs' customers pursuant to these contractual commitments are those separately provided by ERISA or other state and federal laws that are not preempted by ERISA. As before, private litigants have only those causes of action specifically authorized by laws that exist independent of this exemption.

Comment 30—Indemnity Provision—Section I(j)(2)

Section I(j)(2) requires *each Barclays Affiliated QPAM to agree and warrant* ''*[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a Barclays Affiliated QPAM's violation of applicable laws, a Barclays Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I (g) of PTE 84–14 other than the Conviction.*''

The Applicant asserts that the provision is unfair because it is not limited to clients who are harmed through a direct, causal link to the loss of the exemptive relief provided by PTE 84–14 and the Applicant requests that the condition be deleted. In addition, the Applicant represents that the condition appears to allow plans and IRAs to seek to recover damages (i) that arise from violations and breaches by third parties, (ii) that arise only tenuously from the manager's conduct, (iii) that may be grossly unreasonable in amount, (iv) for claims without merit and (v) for claims in connection with accounts that do not rely on the relief provided by PTE 84–14. If the Department declines to delete this condition, the Applicant requests, in the alternative, that the Department expressly tie the requirement to damages with a proximate causal connection to relevant conduct of the manager by rewording the condition as follows: ''*To indemnify and hold harmless the ERISA-covered plan or IRA for any reasonable damages involving such arrangement, agreement or contract and resulting directly from a violation of ERISA by such Barclays Affiliated QPAM, or, to the extent the Barclays Affiliated QPAM relies on the exemptive relief provided by PTE 84–14 under the arrangement, agreement or contract, the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than as a result of the Conviction. This condition does not require indemnification of indirect, special, consequential or punitive damages.*''

As explained above, the intended purpose of this exemption is to protect ERISA-covered plans and IRAs that entrust the Barclays Affiliated QPAMs with the management of their retirement assets. To this end, it is the Department's view that the protective purpose of this exemption is furthered by Section I(j)(2). The Department emphasizes that this condition is not punitive, but rather ensures that, when an ERISA-covered plan or IRA enters into an asset management agreement with a Barclays Affiliated QPAM in reliance on the manager's qualification as a QPAM, it may expect adherence to basic fiduciary norms and standards of fair dealing, notwithstanding the prior conviction. The condition also ensures that the plan or IRA will be able to disengage from that relationship in the event that the terms of this exemption are violated without undue injury.

However, the Department has revised the applicability of this condition to more closely reflect these interests. In particular, the condition applies only when the Barclays Affiliated QPAM relies on PTE 84–14 or has expressly represented that it qualifies as a QPAM or relies on the QPAM class exemption in its dealings with the plan or IRA. As indicated above, if the asset manager would prefer not to be subject to these provisions as exemption conditions, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with the plan or IRA (in that case, however, it could not rely on the exemption for relief).

The Department has also made certain further changes to this condition in consideration of the Applicant's comment. These changes include: Renumbering the condition for clarity; replacing ''applicable laws'' with clarifying language that conforms to the one-year exemption; replacing ''any damages'' with ''actual losses resulting directly from'' certain acts or omissions of the Barclays Affiliated QPAMs; and adding language which affirms that the obligations under this condition do not extend to damages caused by acts that are beyond the control of the Barclays Affiliated QPAMS.

Comment 31—Limits on Liability—Section I(j)(2), I(j)(3) and I(j)(7) [55]

Sections I(j)(2), I(j)(3) and I(j)(7) require that *each Barclays Affiliated QPAM agree and warrant:*

. . . (2) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a Barclays Affiliated QPAM's violation of applicable laws, a Barclays Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction; (3) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the Barclays Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; [and] . . . (7) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Barclays Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BPLC, and its affiliates.''

The Applicant requests that these conditions be deleted because they contain duplicative requirements, which extend beyond the scope of relief. The Applicant states that the indemnification provision should be limited to ensure that it operates in a manner that is fair to the Applicant and its affiliates and that, with that change, the condition provides ample protection to clients. The Applicant states that Section I(j)(3) and Section I(j)(7) do not provide any additional protection.

The Department declines to delete Section I(j)(3) from the final exemption. The Department notes that ERISA already precludes ERISA fiduciaries from disclaiming obligations under ERISA. See ERISA section 410 (prohibiting exculpatory clauses as void as against public policy). To the extent the exemption condition prevents the Barclays Affiliated QPAMs from including contractual provisions that are void as against public policy there is no legitimate basis for objection. Such exculpatory language should not be in the governing documents in the first place and is potentially misleading because it suggests disclaimer of obligations that may not be disclaimed.

[55] The Department has determined that Subsection (4) is duplicative of the exemption's prohibition on exculpatory clauses, described below. Thus, the subsection has been deleted. Section I(j) has been renumbered for clarity.

Outside the context of ERISA section 410, the provision's requirement that the Barclays Affiliated QPAMs retain accountability for their adherence to the basic obligations set forth in this exemption is more than justified by the misconduct that led to the fines and Conviction as discussed above, and by the need to ensure that Plan and IRA customers may readily obtain redress and exit contracts with Barclays Affiliated QPAMs without harm in the event of violations.

The Department has modified Section I(j)(6) (formerly, Subsection (j)(7)) to clarify that the prohibition on exculpatory provisions does not extend to losses that arise from an act or event not caused by the Applicant. Also, nothing in this section alters the prohibition on exculpatory provisions set forth in ERISA section 410.

Comment 32—Termination and Withdrawal Restriction—Section I(j)(5) and I(j)(6)

Under Sections I(j)(5) and I(j)(6) of the proposed five-year exemption, the Barclays Affiliated QPAMs agree: ''*(5) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;*

[and] . . . (6) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors.''

The Applicant represents that these conditions should be deleted because they are unnecessary. The Applicant notes that lockup conditions are commonly used, designed to protect all investors in a pooled fund, and applied evenhandedly to all investors. Further, the Applicant states that the conditions, as worded, could provide ERISA plan clients and IRAs a privileged position, to the detriment of other investors.

The Applicant requests that, should these conditions be retained, they be modified as follows: Under renumbered Sections I(j)(4) and (j)(5), the Barclays Affiliated QPAMs agree: ''(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the Conviction Date, the adverse consequences must relate to a lack of liquidity of the pooled fund's underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions are applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences; [and] . . . (5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors.''

The Department has revised renumbered Section I(j)(4) and has revised the condition to allow exceptions for a lack of liquidity of the pooled fund's underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment in partial satisfaction of the Applicant's request, but has retained the parenthetical that the restriction is not limited to a separately-managed account that is subject to ERISA or a pooled fund that is subject to ERISA. The Department has decided to retain Section I(i)5 as proposed.

Comment 33—Updated Investment Management Agreement—Section I(j)(7)

Section I(j)(8) of the proposed five-year exemption provides that each Barclays Affiliated QPAM agrees and warrants: ''*[w]ithin four (4) months of the date of the Conviction, each Barclays Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a Barclays Affiliated QPAM provides asset management or other discretionary services, the Barclays Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the Barclays Affiliated QPAM and such clients or other written contractual agreement.*''

The Applicant represents that it and its affiliates do not currently provide asset management or other discretionary fiduciary services to ERISA-covered plans or IRAs. The Applicant states that, for that reason, the four-month notice has no purpose. The Applicant requests that this provision be modified to reflect that Barclays Affiliated QPAMs would in the future be required to provide notice prior to an engagement with an ERISA-covered plan or IRA subject to this exemption, consistent with Subsections (h)(1) and (h)(2). The Applicant notes that the timing of the notice was correct in the analogous provision of the Temporary Exemption. Moreover, the Applicant submits that the condition should be limited to plans for which the QPAM relies on PTE 84–14. Finally, the Applicant submits that a contractual agreement is an improper vehicle as a client may attempt to modify proposed contractual terms.

The Applicant suggests that the condition in renumbered Subsection (j)(7) read as follows: ''Prior to a Barclays Affiliated QPAM's engagement with an ERISA-covered plan or IRA for the provision of asset management or other discretionary fiduciary services, such Barclays Affiliated QPAM must provide a notice of its obligations under this Section I(j) to such ERISA-covered plan or IRA.''

The Department has modified the condition to require that Barclays Affiliated QPAMs provide notice prior to an engagement with an ERISA-covered plan or IRA. Further, as noted above, the Department has an interest in protecting a plan or IRA that enters into an asset management agreement with a Barclays Affiliated QPAM in reliance on

the manager's qualification as a QPAM, regardless of whether the QPAM relies on the class exemption when managing the plan's or IRA's assets. The Department has revised the applicability of this condition to more closely reflect this interest, and the condition now applies to Covered Plans.

Comment 34—Notice to Plan Clients—Section I(k)

Section I(k) of the proposed five-year exemption provides that ''*[e]ach BPLC affiliated asset manager provides each Future Covered Client with a* ***Federal Register*** *copy of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement that the Conviction resulted in a failure to meet a condition of PTE 84–14. The provision of these documents must occur prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the BPLC affiliated asset manager. For purposes of this paragraph, a ''Future Covered Client'' means a client of the BPLC affiliated asset manager that, beginning after the date, if any, that a final exemption is published in the* ***Federal Register****, has assets managed by such asset manager, and has received a representation from the asset manager that the asset manager is a QPAM, or qualifies for the relief provided by PTE 84–14.*''

The Applicant asserts that the condition is overbroad and should be deleted. The Applicant states, by its terms, it extends to clients for which the QPAM does not rely on PTE 84–14 and clients who are neither covered by ERISA or the prohibited transaction provisions of the Internal Revenue Code. Further, the Applicant states that, to the extent the condition is meant to extend to clients for which the QPAM relies on PTE 84–14, it duplicates the requirements of Subsection I(j)(8)).

The Department declines to delete the condition. The Department notes that ERISA-covered plans and IRAs often rely on QPAM status as a condition of entering into transactions with financial institutions, even with respect to transactions that do not strictly require adherence to PTE 84–14. In addition, it may not always be clear whether the Barclays Affiliated QPAM intends to rely upon PTE 84–14 for any particular transaction. Accordingly, it is critical to ensure that protective conditions are in place to safeguard the interests of plans and IRAs that are acting in reliance on QPAM status or the availability of this exemption, particularly those who may not have entered into the transaction in the first place, but for the Department's grant of this exemption. Further, the Department has an interest in protecting plans and IRAs that enter into an asset management agreement with a Barclays Affiliated QPAM in reliance on the manager's qualification as a QPAM. If a plan or IRA terminates its relationship with an asset manager, it may incur significant costs and expenses as its investments are unwound and as it searches for and hires a new asset manager.

The Applicant also requests deletion of the requirement that a separate summary of facts be provided, as the facts are set out in the **Federal Register** notice. The Applicant suggests that the condition read as follows: ''*Notice to Future Covered Clients. Each Barclays Affiliated QPAM provides each Future Covered Client with a* ***Federal Register*** *copy of the final permanent exemption. The provision of this document must occur prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Barclays Affiliated QPAM. For purposes of this paragraph, a ''Future Covered Client'' means an ERISA-covered Plan client or IRA client of the Barclays Affiliated QPAM that, beginning after the date, if any, that a final exemption is published in the* ***Federal Register****, for which a Barclays Affiliated QPAM will provide asset management or other discretionary fiduciary services in reliance on PTE 84–14.*''

The Department declines to make the requested changes. The exemption seeks to ensure that all interested parties are aware of and attentive to the complete facts and circumstances surrounding this application for exemption. The required disclosure of the proposal and grant ensures full disclosure of the relevant facts and circumstances, and the Summary highlights the important facts that led to the Conviction. Requiring the disclosure of the Summary, proposal, and grant provides the opportunity for all parties to have knowledge of these facts and circumstance. Notwithstanding this, the Department has modified the condition to clarify that disclosures may be provided electronically. Further, the notice requirement has been narrowed to ERISA-covered plans and IRAs that would benefit from this knowledge (*i.e.,* Covered Plans). Notice does not need to be given to a client with respect to which a Barclays Affiliated QPAM has expressly disclaimed reliance on QPAM status or reliance on PTE 84–14.

Comment 35—QPAM Compliance with PTE 84–14 Conditions Except Section I(g); Section I(l)

Section I(l) of the proposed five-year exemption provides that ''*[t]he Barclays QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction.*''

The Applicant represents this condition contains an unintended error as ''Barclays QPAM'' is undefined. The Applicant suggests that the condition read: ''The Barclays Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction.''

The Department has revised the exemption in the manner requested by the Applicant.

Comment 36—Compliance Officer Appointment and Reporting Line—Section I(m)(1)(ii)

Section I(m)(1)(ii) of the proposed five-year exemption provides, ''*BPLC designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met: . . .*

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance that is independent of BPLC's other business lines.''

The Applicant requests the deletion of conditions regarding appointment of the Compliance Officer and the Annual Review. The Applicant states that BPLC pleaded guilty to a single crime, based on the conduct of two individuals in London who had no responsibility for asset management. The Applicant claims that BPLC and its Affiliated QPAMs have very robust compliance departments and that BPLC's compliance and remediation efforts were singled out for praise by DOJ and resulted in BPLC becoming the first corporate entity to receive sentencing credit for such efforts. The Applicant asserts that the Department's imposition of additional compliance requirements is, under these circumstances, unwarranted and seemingly arbitrary. The Applicant states that the Department has not imposed a

requirement like that in Subsection I(m) in granting past exemptions, and claims that there is no basis for imposing the requirement herein. The Applicant represents that Barclays should be trusted to determine how to comply with the exemption and its Policies and Training conditions, which are separately the subject of the audit requirement. In addition, the Applicant states that the reference to the ''highest ranking corporate officer in charge of legal compliance'' is unclear. The Applicant requests that if the condition is not deleted, that the condition read: ''*(m)(1) BPLC designates a compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein: . . .*

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal or compliance that is independent of BPLC's other business lines.''

The Department proposed the requirement of an internal compliance officer because of serious concerns regarding the Applicant's compliance regime, as discussed above. The Department's determination to grant this exemption is based in part on the Department's view that an internal compliance officer with responsibility over the policies and procedures mandated by this exemption will provide a new level of oversight necessary to ensure that such Policies and Training are properly implemented. In response to the Applicant's comment that the reference to the ''highest ranking corporate officer in charge of legal compliance'' is unclear, as noted above in Section I(i)(8), the Department has modified ''highest ranking corporate officer in charge of legal compliance'' to ''highest ranking corporate officer in charge of compliance for asset management.''

Comment 37—Distribution of Compliance Officer's Annual Report—Section I(m)(2)(iv)

Section I(m)(2)(iv) of the proposed five-year exemption provides, ''*[w]ith respect to each Annual Review, the following conditions must be met: . . .*

(iv) Each Annual Report must be provided to appropriate corporate officers of BPLC and each Barclays Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM; and must be made unconditionally available to the independent auditor described in Section I(i) above.''

To the extent the Annual Review and Annual Report conditions are not deleted, the Applicant requests deletion of the requirement that the Annual Report be provided to ''appropriate corporate officers.'' The Applicant states that this term is undefined and unclear. The Applicant states that the purpose of this condition is satisfied by providing the Report to the General Counsel (or their functional equivalent) who can determine what further internal distribution is necessary. If the condition is not deleted, the Applicant suggests that the condition read: ''*Each Annual Report must be provided to the head of compliance and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM and the General Counsel (or their functional equivalent) of BPLC; and must be made unconditionally available to the independent auditor described in Section I(i) above.*''

While the Department declines to delete the Annual Review and Annual Report conditions, after consideration of the Applicant's comment, the Department has revised the exemption in the manner requested by the Applicant.

Comment 38—Compliance Annual Review and Timing—Section I(m)(2)(v)

Section I(m)(2)(v) of the proposed five-year exemption provides, ''*[w]ith respect to each Annual Review, the following conditions must be met: . . . (v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed at least three (3) months in advance of the date on which each audit described in Section I(i) is scheduled to be completed.*''

To the extent the Annual Review and Annual Report requirements are not deleted, the Applicant requests that this condition be deleted or, at minimum, that the timing requirement be removed. The Applicant states that the compliance review process outlined in the proposed exemption is an extensive undertaking, and the proposed exemption envisions an iterative process in which the auditor communicates with the relevant QPAM upon discovery of issues. The Applicant states that the Department should not mandate each aspect of the Annual Review, to the extent the Annual Review requirement remains, and, in any case, the Annual Review should not be mandated to conclude well before the audit is completed. If the condition is not deleted, the Applicant suggests that the condition read: ''*(v) The first Annual Review, including the Compliance Officer's written Annual Report, must be completed within twelve (12) months of the Effective Date and each successive Annual Review must be completed within twelve (12) months of the prior Annual Review.*''

The Department declines to delete the Annual Review and Annual Report conditions. The Department notes that the Annual Review and the Annual Report are integral to the auditor's assessment of the Applicant's compliance with the terms of the exemption. An independent assessment by the auditor of the adequacy of the Annual Review and the Annual Report is essential to providing appropriate assurances that the Applicant and the Barclays Affiliated QPAMs have taken their obligations under this exemption very seriously and have complied with those obligations. The Department has modified the time by which the Annual Review, including the Annual Report, is due, to three months following the period to which it relates.

Comment 39—Deferred Prosecution Agreement/Non-Prosecution Agreement—Section I(o)(2)

Section I(o)(2) of the proposed five-year exemption provides, with respect to any Deferred Prosecution Agreement or Non-Prosecution Agreement: ''*During the effective period of this five-year exemption, if granted, BPLC: (2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. After review of the information, the Department may require BPLC, its affiliates, or related parties, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in the new application, or does not grant such relief within twelve (12) months of application, the relief described herein is revoked as of the date of denial or as of the expiration of the twelve (12) month period, whichever date is earlier.*''

The Applicant requests that the Department delete this condition. The Applicant states that the condition does not meet the requirements of either the Administrative Procedure Act (the APA) or the Department's own regulations. The Applicant states that if the Department wishes to withdraw an exemption, it must publish its intent to withdraw for notice and comment in the **Federal Register**. *See* 5 U.S.C. 553 and 29 CFR 2570.50. The Applicant states that the proposed rule provides that the Department, at its option, can require the Applicant to ''reapply'' for an

exemption, and if the Department denies it or simply lets a year go by, the current exemption is terminated. However, the Applicant states that the APA and the Department's own regulation require that an exemption may not be terminated unless the Department publishes the termination for notice and comment.

The Applicant also objects that the condition could create risk and uncertainty for multiple loans, leases, swaps, forwards and other investments. In addition, the Applicant states that the timing of NPAs/DPAs is uncertain. If the condition is not deleted, the Applicant requests that the condition read as follows: ''During the effective period of the permanent exemption BPLC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Barclays or any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement.''

The Department in no way intended that this condition to be read as providing for an automatic revocation of the exemption and has revised this condition accordingly. As revised, the condition simply requires that the Applicant notify the Department if and when it or any of its affiliates enter into a DPA or NPA with the U.S. Department of Justice for conduct described in section I(g) of PTE 84–14 or ERISA section 411 and immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. The Department retains the right to propose a withdrawal of the exemption pursuant to its procedures contained at 29 CFR 2570.50, should the circumstances warrant such action.

Comment 40—Right to Copies of Policies and Procedures—Section I(p)

Section I(p) of the proposed five-year exemption provides that, ''*[e]ach Barclays Affiliated QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, and then at least once annually, will clearly and prominently: inform the ERISA-covered plan and IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with this exemption, if granted.*''

The Applicant requests that this condition be revised to permit clients to seek and obtain copies of the policies and procedures upon request. The Applicant states that this condition adds to the number of duplicative and overlapping notice requirements to clients, which is burdensome and may lead to confusion and clients ignoring these mailings. The Applicant also states that annual re-notification is excessive and only adds to these risks. Further, the Applicant states that the exemption, which the client will already have received, can make clear that clients can request and receive the policies and procedures upon request, removing any need for additional mailings. The Applicant suggests that the condition read: ''ERISA-covered plan and IRA clients whose accounts are managed in reliance on PTE 84–14 shall be provided a copy of the QPAM's written Policies adopted in accordance with the exemption upon request.''

The Department disagrees, in part, with the Applicant's comment. Affording ERISA-covered plan and IRA clients a means by which to review and understand the Policies is a vital protection that is fundamental to this exemption's purpose. However, the Department has modified the condition so that the QPAMs, at their election, may instead provide Covered Plans a disclosure that accurately describes or summarizes key components of the Policies, rather than provide the Policies in their entirety. The Department has also determined that such disclosure may be continuously maintained on a website, provided that the website link to the summary of the written Policies is clearly and prominently disclosed to those ERISA-covered plan and IRA clients to whom this section applies. The Department also agrees with the Applicant that the timing requirement for notice should be revised and, accordingly, has modified the condition of Section I(p) to require notice regarding the information on the website be provided prior to or contemporaneously with a Barclays Affiliated QPAM's engagement by any Covered Plan. The notice shall be provided in its agreements with, or in other written disclosures provided to any such Covered Plan. If the Policies are thereafter changed, *each Covered Plan client must receive a new notice within six (6) months following the end of the calendar* year during which the Policies were changed.

Comment 41—No-Fault Provision—Section I(q)

Section I(q) the proposed five-year exemption provides that, ''*[a] Barclays Affiliated QPAM or a Barclays Related QPAM will not fail to meet the terms of this exemption, if granted, solely because a different Barclays Affiliated QPAM or a Barclays Related QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (n) and (p).*''

The Applicant requests that this provision include references to the conditions described in Subsections I(e), (f), (g), and (m). The Applicant represents that it is important to advance the principle that a QPAM should not lose exemptive relief simply because a separate QPAM within the same corporate family has failed to satisfy a condition. Adding the Subsections listed above will ensure that the relief is meaningful here. Moreover, the Applicant represents that the failure of the auditor to meet a requirement of the exemption should not disqualify the QPAMs from using the exemption. The Applicant suggests that the condition read: ''*A Barclays Affiliated QPAM or a Barclays Related QPAM will not fail to meet the terms of this exemption solely because a different Barclays Affiliated QPAM or a Barclays Related QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (e), (f), (g), (h), (i), (j), (k), (m), (n) and (p), or because the Auditor failed to meet a requirement of this exemption.*''

The Department declines to extend the relief provided under Section I(q) to Sections I(e), (f), (g), and (m).

Section I(e) provides that any failure of a Barclays Affiliated QPAM or Barclays Related QPAM to comply with Section I(g) of PTE 84–14 arose solely from the Conviction. As set forth in the Applicant's materials, the Conviction is the sole reason a new exemption is necessary for the Barclays Affiliated QPAMs. If there were a new or additional conviction of crime described in Section I(g) of PTE 84–14, the Department would need to assess the misconduct, its scope, and its significance. Without such an assessment, the Department could not be confident of the adequacy of the conditions set forth herein with respect to the Barclays Affiliated QPAMs and Related QPAMs. Indeed, depending on the particular facts, a subsequent conviction could be strong evidence of the inadequacy of this exemption's conditions to protect Covered Plans. Further, as stated above, the Department

is not obligated to grant further relief to the extent such a conviction occurs.

Section I(f) provides that no Barclays Affiliated QPAM or Barclays Related QPAM exercised authority over the assets of any ERISA-covered plan or IRA in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the Barclays Affiliated QPAM or Barclays Related QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction. The Applicant has represented that the conduct that is the subject of the BPLC's conviction ''did not involve any of BLPC's asset management units.'' The Department is not persuaded that it should include relief from Section I(f) in Section I(q).

Section I(g) requires BPLC to refrain from providing investment management services to plans, and Section I(m) requires a Compliance Officer to undertake various compliance and reporting obligations. Consequently, if the relief under I(q) were extended to Sections I(g) and I(m), it would render them virtually meaningless. There would be little or no effective penalty for the failure to comply with the conditions, as the Affiliated and Related QPAMs would remain free to rely on the exemption's terms. The Department also is of the view that the potential for disqualification of all Barclays Affiliated QPAMs under this agreement will serve as additional incentive for these entities to comply in good-faith with the provisions of Sections I(g) and (m).

However, the Department has determined to extend the relief in condition (l), which requires Barclays Affiliated QPAMs to comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. Finally, except as noted above, the Department accepts the Applicant's comment that the failure of the auditor to comply with any of the conditions of the exemption should not be treated as a failure by the Barclays Affiliated QPAMs to comply with the conditions of the exemption, provided that such failure was not due to the actions or inactions of the Applicant or its affiliates, and Section I(q) is amended, accordingly, except as described above.

Comment 42—Definition of Affiliated QPAM—Section II(a)

Section II(a) of the proposed five-year exemption provides: ''*[T]he term 'Barclays Affiliated QPAM' means a 'qualified professional asset manager' (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which BPLC is a current or future 'affiliate' (as defined in Section VI(d)(1) of PTE 84–14). The term 'Barclays Affiliated QPAM' excludes the parent entity, BPLC and BCI's Investment Bank division.*''

The Applicant states that BCI was not the subject of the Conviction, nor was its Investment Bank division the subject of the Conviction. The Applicant also represents that the division should not be excluded from the exemption, because BCI is an Affiliated QPAM in the BPLC Group, and excluding a BCI division from the benefits of PTE 84–14 would not only deter ordinary corporate transactions, such as the purchase of an asset management entity and its merging into BCI, it would prevent the development by BCI of new asset management lines of business. Moreover, the Applicant states that the Justice Department did not charge BCI, and thus did not determine that as a corporate entity, it was culpable of a crime. By excluding BCI's Investment Bank division from the benefits of PTE 84–14, the Applicant represents that the Department is making that judgment in the place of the Justice Department and effectively debarring the entity from providing any fiduciary services at all. According to the Applicant, such a result is arbitrary and punitive. Therefore, the Applicant requests that the provision read as follows: ''The term 'Barclays Affiliated QPAM' means a 'qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which BPLC is a current or future 'affiliate' (as defined in Section VI(d)(1) of PTE 84–14). The term 'Barclays Affiliated QPAM' excludes BPLC.''

The Department agrees with this comment and has modified Section II(a) accordingly.

Comment 43—Definition of Conviction—Section II(e)

Section II(e) of the proposed five-year exemption provides: ''*The term 'Conviction' means the judgment of conviction against BPLC in the United States District Court for the District of Connecticut (the Court), Case No. 3:15–cr–00077–SRU–1, for participating in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, euro/U.S. dollar currency pairs exchanged in the foreign currency exchange spot market by agreeing to eliminate competition in the purchase and sale of such currency pairs in the United States and elsewhere, in violation of the Sherman Antitrust Act, 15 U.S.C. 1.*''

The Applicant states that the language in this definition paraphrases the Plea Agreement and expands the use of the term Conviction far beyond the conduct that is the subject of the Plea Agreement. The Applicant states that exemptions are narrowly construed and it is critical that both the asset managers using the exemption and plan counterparties understand precisely what the conditions mean. The Applicant states that, without that precision, it is difficult to know whether conditions regarding compensation, participation, and future hiring are met. The Applicant represents that this overly-broad language goes far beyond the Part I(g) disqualification and will cause the Applicant and counterparties to conclude that it is unusable. Finally, the Applicant states that the definition of ''Conviction'' in Subsection II(e) was accurate in the Temporary Exemption. Therefore, the Applicant requests that this definition read as follows: ''The term ''Conviction'' means the judgment of conviction against BPLC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court), Case Number 3:15–cr–00077–SRU–1.''

After considering this comment, the Department has revised the definition accordingly. The Department notes that Section II of the five-year exemption has been reordered to list the defined terms alphabetically; therefore, the term ''Conviction'' is now listed as Subsection II(d).

Comments 44–46—Paragraph 2 of the Summary of Facts and Representations

The Applicant seeks certain clarifications to the Summary of Facts and Representations that the Department does not view as relevant to its determination whether to grant this exemption. Those requested clarifications may be found as part of the public record for Application No. D–11910, in a letter to the Department, dated January 5, 2017.

Comment—Letter from House Committee on Financial Services

The Department also received a comment letter from certain members of Congress (the Members) regarding this exemption, as well as the other QPAM-related exemptions published in the **Federal Register** today. In the letter, the Members recognized that certain conditions contained in these proposed exemptions are crucial to protecting the investments of our nation's workers and retirees, referring to proposed

conditions which require each bank to: (a) Indemnify and hold harmless ERISA-covered plans and IRAs for any damages resulting from the future misconduct of such bank; and (b) disclose to the Department any Deferred Prosecution Agreement or a Non-Prosecution Agreement with the U.S. Department of Justice. The Members also requested that the Department hold hearings in connection with the proposed exemptions.

The Department acknowledges the Members' concerns regarding the need for public discourse regarding proposed exemptions. To this end, the Department's procedures regarding prohibited transaction exemption requests under ERISA (the Exemption Procedures) afford interested persons the opportunity to request a hearing. Specifically, section 2570.46(a) of the Exemption Procedures provides that, ''[a]ny interested person who may be adversely affected by an exemption which the Department proposes to grant from the restrictions of section 406(b) of ERISA, section 4975(c)(1)(E) or (F) of the Code, or section 8477(c)(2) of FERSA may request a hearing before the Department within the period of time specified in the **Federal Register** notice of the proposed exemption.'' The Exemption Procedures provide that ''[t]he Department will grant a request for a hearing made in accordance with paragraph (a) of this section where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing.'' The Exemption Procedures also provide that ''[t]he Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements of paragraph (a) of this section; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.'' [56]

The Department notes that while the Members' letter raises policy issues, it does not appear to raise specific material factual issues. The Department previously explored a wide range of legal and policy issues regarding Section I(g) of the QPAM Exemption during a public hearing held on January 15, 2015 in connection with the Department's proposed exemption involving Credit Suisse AG, and has determined that an additional hearing on these issues is not necessary.

After giving full consideration to the record, the Department has decided to grant the exemption, as described above. The complete application file (Application No. D–11910) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 21, 2016 at 81 FR 83427.

Exemption

Section I: Covered Transactions

Certain entities with specified relationships to Barclays PLC (BPLC) (the Barclays Affiliated QPAMs and the Barclays Related QPAMs, as defined further in Sections II(a) and II(b), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the Conviction, as defined in Section II(d), during the Exemption Period,[57] provided that the following conditions are satisfied:

(a) Other than certain individuals who: Worked for a non-fiduciary business of a BPLC subsidiary; had no responsibility for, and exercised no authority in connection with, the management of plan assets; and are no longer employed by the BPLC subsidiary, the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, agents other than BPLC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction. For the purposes of this paragraph (a), ''participate in'' means the knowing approval of the misconduct underlying the Conviction;

(b) Apart from a non-fiduciary line of business within BCI, the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, and agents other than BPLC, and employees of such Barclays Affiliated QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(c) The Barclays Affiliated QPAM will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction. For the purposes of this paragraph (c), ''participated in'' means the knowing approval of the misconduct underlying the Conviction;

(d) At all times during the Exemption Period, no Barclays Affiliated QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Barclays Affiliated QPAM in reliance on PTE 84–14, or with respect to which a Barclays Affiliated QPAM has expressly represented to an ERISA-covered plan or IRA with assets invested in such ''investment fund'' that it qualifies as a QPAM or relies on the QPAM class exemption, to enter into any transaction with BPLC, or to engage BPLC to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Barclays Affiliated QPAM or a Barclays Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A Barclays Affiliated QPAM or a Barclays Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the Barclays Affiliated QPAM, the Barclays Related QPAM or their affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, BPLC will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that BPLC will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) or section 4975(e)(3)(B) of the Code;

[56] 29 CFR part 2570, published at 76 FR 66653, October 27, 2011.

[57] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

(h)(1) Prior to a Barclays Affiliated QPAM's engagement by an ERISA-covered plan or IRA for discretionary asset management services, where the QPAM relies upon PTE 84–14 or the QPAM represents that it qualifies as a QPAM, the Barclays Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies). The Policies must require and must be reasonably designed to ensure that:

(i) The asset management decisions of the Barclays Affiliated QPAM are conducted independently of the corporate management and business activities of BPLC;

(ii) The Barclays Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The Barclays Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the Barclays Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the Barclays Affiliated QPAM's knowledge at the time, the Barclays Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans;

(vi) The Barclays Affiliated QPAM complies with the terms of this exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the General Counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A Barclays Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Prior to a Barclays Affiliated QPAM's engagement by a Covered Plan, each Barclays Affiliated QPAM must develop a program of training (the Training), to be conducted at least annually, for all relevant Barclays Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The First Training under this exemption must be completed by all relevant Barclays personnel within eighteen months of the Barclay's Affiliated QPAM's engagement or representation, as described in this provision. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by an individual with significant understanding and familiarity with asset management and trading practices who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i)(1) Each Barclays Affiliated QPAM submits to an audit conducted every two years by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each Barclays Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each audit must cover a consecutive twelve (12) month period starting with the twelve (12) month period that begins on the date that a Barclays Affiliated QPAM is first engaged on or after January 10, 2018, by any Covered Plan. The second audit must cover a consecutive twelve month period that begins on the date that is twelve months after the date the first audit period ends. The third audit period must cover a consecutive twelve month period that begins on the date that is twelve months after the date the second audit period ends. Each biennial audit must be completed no later than six (6) months after the period to which the audit applies. No audit period is required to extend past July 9, 2023, and each biennial audit must be completed no later than six (6) months after the period to which the audit applies;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each Barclays Affiliated QPAM and, if applicable, BPLC, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each Barclays Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each Barclays Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test for each QPAM, a sample of such QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to BPLC and the Barclays Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The auditor, at their discretion, may issue a single consolidated Audit Report which covers all the Barclays Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each Barclays Affiliated QPAM's Policies and Training; each Barclays Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective Barclays Affiliated QPAM's noncompliance with the written

Policies and Training described in Section I(h) above. The Barclays Affiliated QPAM must promptly address any noncompliance. The Barclays Affiliated QPAM must promptly address or prepare a written plan of action to address any determination by the auditor regarding the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Barclays QPAM. Any action taken or the plan of action to be taken by the respective Barclays Affiliated QPAM must be included in an addendum to the Audit Report (which addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective Barclays Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a Barclays Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular Barclays Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section I(m) below as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) the adequacy of the most recent Annual Review described in Section I(m);

(6) The auditor must notify the respective Barclays Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date.;

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the Barclays Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that such Barclays Affiliated QPAM has addressed, corrected or remedied, any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of BPLC's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking compliance officer of BPLC must review the Audit Report for each Barclays Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each Barclays Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109, no later than 30 days following its completion of the Audit Report. The Audit Report will be part of the public record regarding this exemption. Furthermore, each Barclays Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each Barclays Affiliated QPAM and the auditor must submit to OED: Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in the course of the audit provided such access and inspection is otherwise permitted by law; and

(12) BPLC must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and BPLC;

(j) As of January 10, 2018 and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and a Covered Plan, the Barclays Affiliated QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable, with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a Barclays Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction. This condition applies only to actual losses caused by the Barclays Affiliated QPAM's violations;

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the Barclays Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Barclays Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BPLC, and its affiliates, or damages from acts outside the control of the Barclays Affiliated QPAM;

(7) Prior to a Barclays Affiliated QPAM's engagement with an ERISA-covered plan or IRA for the provision of asset management or other discretionary fiduciary services, such Barclays Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan;

(k) Any client for which a Barclays Affiliated QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Barclays Affiliated QPAM. Disclosures may be delivered electronically;

(l) The Barclays Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction;

(m)(1) Within six months following the date of a Barclays Affiliated QPAM's engagement by an ERISA-covered plan or IRA for discretionary asset management services, with respect to which the QPAM has represented that it qualifies as a QPAM or will rely on PTE 84–14, BPLC designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each annual period beginning with the date of such engagement and the anniversary of such date (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of compliance for asset management;

(2) With respect to each Annual Review, the following conditions must be met:

(i) The Annual Review includes a review of: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the relevant business activities of the Barclays Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Barclays Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Review (each, an Annual Report) that: (A) Summarizes his or her material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; and (D) the Barclays Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or is correcting) any instances of noncompliance in accordance with Section I(h) above;

(iv) Each Annual Report must be provided to the appropriate corporate officers of BPLC and each Barclays Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM and the General Counsel (or their functional equivalent) of BPLC; and must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed no more than three (3) months following the end of the period to which it relates;

(n) Each Barclays Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such Barclays Affiliated QPAM relies upon the relief in the exemption;

(o) During the Exemption Period, BPLC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by BPLC or any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(p) Prior to or contemporaneously with a Barclays Affiliated QPAM's engagement by any Covered Plan, each Barclays Affiliated QPAM will, in its agreements with, or in other written disclosures provided to any such Covered Plan, clearly and prominently inform such Covered Plan client of the right to obtain a copy of the Policies or a description (''Summary Policies'') which accurately summarizes key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the

Policies were changed.[58] With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or the Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(q) A Barclays Affiliated QPAM or a Barclays Related QPAM will not fail to meet the terms of this exemption solely because a different Barclays Affiliated QPAM or Barclays Related QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (n) and (p); or the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of BPLC or its affiliates.

Section II: Definitions

(a) The term ''BPLC'' means, Barclays PLC, the parent entity, but does not include any subsidiaries or other affiliates.

(b) The term ''Barclays Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which Barclays is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). The term ''Barclays Affiliated QPAM'' excludes the parent entity, BPLC;

(c) The term ''Barclays Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which BPLC owns a direct or indirect five percent or more interest, but with respect to which BPLC is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

(d) The term ''Conviction'' means the judgment of conviction against BPLC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court), Case Number 3:15–cr–00077–SRU–1;

(e) The term ''Conviction Date'' means the date of the judgment of the trial court. For avoidance of confusion, the Conviction Date is January 10, 2017, as set forth in Case Number 3:15-cr-00077–SRU;

(f) The term ''Covered Plan'' means a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to Section 4975 of the Code (''IRA'') with respect to which a Barclays Affiliated QPAM relies on PTE 84–14, or with respect to which a Barclays Affiliated QPAM (or any BPLC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the Barclays Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement or agreement with the ERISA-covered plan or IRA;

(g) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code; and

(h) The term ''Exemption Period'' means January 10, 2018, through January 9, 2023.

Effective Date

This exemption is effective on January 10, 2018. The term of the exemption is from January 10, 2018, through January 9, 2023 (the Exemption Period).

Department's Comment: The Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the BPLC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period. Although the Applicant could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

Further Information

For more information on this exemption, contact Ms. Anna Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

[58] In the event Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

UBS Assets Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O'Connor LLC; and Certain Future Affiliates in UBS's Asset Management and Wealth Management Americas Divisions (collectively, the Applicants or the UBS QPAMs) Located in Chicago, Illinois; Hartford, Connecticut; New York, New York; and Chicago, Illinois, Respectively

[Prohibited Transaction Exemption 2017–07; Exemption Application No. D–11907]

Discussion

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed exemption in the **Federal Register** at 81 FR 83385, for certain entities with specified relationships to UBS AG (hereinafter, the UBS QPAMs) to continue to rely on the relief provided by PTE 84–14 for a period of five years,[59] notwithstanding the ''2013 Conviction'' of UBS Securities Japan Co., Ltd. and the ''2017 Conviction'' of UBS, AG (UBS) (collectively, the Convictions), as described herein.

The Department is granting this exemption to ensure that Covered Plans[60] with assets managed by a UBS QPAM may continue to benefit from the relief provided by PTE 84–14. The effective date is January 10, 2018, and the exemption is effective from January 10, 2018 through January 9, 2021 (the Exemption Period).

No relief from a violation of any other law is provided by this exemption, including any criminal conviction described in the proposed exemption. Furthermore, the Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions) during the Exemption Period. The terms

[59] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14 or the QPAM exemption.

[60] ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to section 4975 of the Code (''IRA'') with respect to which a UBS QPAM relies on PTE 84–14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on the QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA. See further discussion in this Preamble under the heading Comment III A & B—Scope of Section I(j) & Covenants Regarding Compliance with ERISA—Section I(j)(1).

of this exemption have been specifically designed to promote conduct that adheres to basic fiduciary standards under ERISA and the Code. The exemption also aims to ensure that Covered Plans can terminate relationships in an orderly and cost effective fashion in the event a Covered Plan fiduciary determines it is prudent to sever the relationship with a UBS QPAM.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published in the **Federal Register** at 81 FR 83385 on November 21, 2016. All comments and requests for hearing were due by January 5, 2016.[61] The Department received written comments from UBS and members of the U.S. Congress. After considering these submissions, the Department has determined to grant the exemption, with revisions, as described below.

Comment I—The Term of the Exemption

The Applicant requests that the Department extend the term of the exemption from five years to nine years. UBS states that an exemption for less than nine years results in a reapplication requirement without additional meaningful protections. UBS states that if at any time the UBS QPAMs do not comply with all of the conditions under a nine year exemption, the relief provided will be lost. Hence, according to UBS, a nine year exemption is protective of affected ERISA-covered plans and IRAs. UBS also states that a five-year exemption period is not in the interest of the UBS QPAMs' clients or participants and beneficiaries. UBS states that a five-year exemption period creates uncertainty for fiduciaries with the result that such fiduciaries may spend time and money to prepare for a change in investment managers in the event that UBS does not receive another exemption. UBS claims the record does not support a conclusion that a nine year exemption period is inconsistent with ERISA Section 408(a) and neither has the Department conveyed a basis for findings that warrant an exemption for less than nine years. UBS points to precedent established by previous individual QPAM exemptions in which the Department placed ''particular importance'' on the ''degree to which the investment and compliance operations of the QPAM can be sufficiently isolated from the influence of 'bad actors'.'' (80 FR 20262, April 15, 2015). UBS states that ''UBS QPAMs were not involved in the FX Misconduct or the misconduct that is subject of the Convictions.'' UBS requests that, if the five-year exemption period is retained, the Department clarify the timing for an application to extend the relief, and for the Department to act on that application taking into account the notice-and-comment period. UBS also requests that the Department modify the exemption to allow for the continued reliance on the relief provided by a final exemption while any application to extend that relief beyond the initial 5-year period is pending.

In developing this exemption, the Department considered the Non-Prosecution Agreement between UBS and the U.S. Department of Justice (DOJ) dated December 18, 2012 (LIBOR NPA) and the Plea Agreement. When UBS entered into the LIBOR NPA, it agreed, among other things, not to commit any crime in violation of U.S. laws for a period of two years from the date of the LIBOR NPA in exchange for the DOJ agreeing not to prosecute UBS for any crimes related to the submission benchmark interest rates between 2001 and 2010. UBS also agreed to pay a monetary penalty of $500,000,000 and to take steps to further strengthen its internal controls, as required by certain other U.S. and non-U.S. regulatory agencies that had addressed the misconduct described in the LIBOR NPA.

While UBS entered into the LIBOR NPA avoiding prosecution, UBS Securities Japan, a wholly owned subsidiary of UBS, pled guilty and was convicted (2013 Conviction) of one count of wire fraud in violation of Title 18, U.S. Code, sections 1343 and 2[62] arising out of UBS Security Japan's fraudulent submission of Yen LIBOR rates between 2006 and 2009, and its participation in a scheme to defraud counterparties to interest rate derivatives trades executed on its behalf by secretly manipulating certain benchmark interest rates to which the profitability of those trades was tied. As a result of the 2013 Conviction, QPAMs with certain corporate relationships to UBS and UBS Securities Japan were no longer able to rely on PTE 84–14. Following the publication of a notice of proposed exemption in the **Federal Register** and after a period of notice and comment, the Department published a final exemption on September 13, 2013 (PTE 2013–09).[63] PTE 2013–09 among other conditions, required UBS to comply with each condition of PTE 84–14, as amended.[64]

Both the LIBOR NPA and the Plea Agreement contain a Statement of Facts (SOF) that describes the circumstances of UBS's scheme to defraud counterparties to interest rate derivatives transactions by secretly manipulating benchmark interest rates to which the profitability of those transactions was tied. The SOF describes the wide-ranging and systematic efforts, practiced nearly on a daily basis, by several UBS employees (a) to manipulate the YEN LIBOR in order to benefit UBS's trading positions; (b) to use cash brokers to influence other Contributor Panel banks' Yen LIBOR submissions; and (c) to collude directly with employees at other Contributor Panel banks to influence those banks' Yen LIBOR submissions.

DOJ determined UBS subsequently breached the LIBOR NPA when certain employees engaged in fraudulent and deceptive trading and sales practices in certain foreign exchange (FX) market transactions via telephone, email and/or electronic chat, to the detriment of UBS customers.[65] These employees also colluded with other actors in certain FX markets in order to manipulate those markets.

The Department considered the Factual Basis for Breach attached to the Plea Agreement which details that conduct (the FX Misconduct as defined in Section II(e)). That conduct included the following actions: Sales staff misrepresented to customers that markups were not added, when in fact they were; UBS personnel used a price level to ''track'' certain limit orders that was different from customer specified prices; UBS traders and salespeople used hand signals to fraudulently conceal markups from certain customers on ''open-line'' phone calls; and a UBS FX trader conspired with other financial

[61] UBS requested and the Department granted an extension until January 23, 2017 to provide the Notice to Interested Persons. The comment period was therefore extended until February 27, 2017. The Department received additional comments from Applicant, however, after the close of the comment period.

[62] Section 1343 generally imposes criminal liability for fraud, including fines and/or imprisonment, when a person uses wire, radio, or television communication in interstate or foreign commerce. Section 2 generally imposes criminal liability on a person as a principal if that person aids, counsels, commands, induces, or willfully causes another person to engage in criminal activity.

[63] 78 FR 56740 (September 13, 2013).

[64] Section I(h) of PTE 2013–09, at 78 FR 56741 (September 18, 2013).

[65] The circumstances of UBS's violation of the terms of the LIBOR NPA are described in detail in Exhibit 1 to the Plea Agreement, entitled ''The Factual Basis for Breach of the Non-Prosecution Agreement'' (the Factual Basis for Breach).

services firms acting as dealers in the FX spot market by agreeing to restrain competition in the purchase and sale of the Euro/U.S. dollar currency pair. The Factual Basis for Breach takes into account UBS's three recent prior criminal resolutions: The 2012 LIBOR NPA; a February 2009 DOJ Tax Division deferred prosecution agreement for conspiracy to defraud the U.S. of tax revenue through secret Swiss bank accounts for U.S. taxpayers (in connection therewith, UBS agreed to pay a penalty of $780 million); a May 2011 DOJ non-prosecution agreement with the DOJ Antitrust Division to resolve allegations of bid-rigging in the municipal bond derivatives market (in connection therewith, UBS agreed to pay a penalty of $160 million). DOJ also noted that UBS's compliance programs and remedial efforts following the LIBOR NPA failed to detect the collusive and deceptive conduct in the FX markets until a published article in the news media called attention to the matter. As a result of its breach of the LIBOR NPA and the resulting 2017 Conviction, UBS lost exemptive relief under both PTE 84–14 and its individual exemption, PTE 2013–09.

In developing this exemption, the Department also considered statements from a number of regulators about the FX Misconduct. The Financial Conduct Authority's (FCA) Final Notice dated November 11, 2014 states: ''During the Relevant Period, UBS did not exercise adequate and effective control over its G10 spot FX trading business. . . . The front office failed adequately to discharge these responsibilities with regard to obvious risks associated with confidentiality, conflicts of interest and trading conduct.'' That notice also states: ''These failings occurred in circumstances where certain of those responsible for managing front office matters were aware of and/or at times involved in behaviors described above.'' The Unites States Commodity and Futures Trading Commission's (CFTC) Order dated November 11, 2014 states: ''During the Relevant Period, UBS failed to adequately address the risks associated with its FX traders participating in the fixing of certain FX benchmark rates. UBS also lacked adequate internal controls in order to prevent its FX traders from engaging in improper communications with certain FX traders at other banks. UBS lacked sufficient policies, procedures and training specifically governing participation in trading around the FX benchmark rates. . . .''

The Department also considered the size of relevant fines imposed: The Department of Justice imposed $500 million and $203 million fines; the Board of Governors of the Federal Reserve Board imposed a $324 million fine; and the CFTC and the FCA imposed fines of $290 million and £223,814,000, respectively.

In light of the severity of the misconduct, the repeated criminal violations, and the breach of a previous exemption, which was itself necessitated by criminal conduct, the Department has concluded that it is appropriate to grant a more limited term of relief than the five-year period it originally proposed. As a result, the Department has concluded that a three-year term is appropriate for this exemption. A three-year term and the exemption's protective conditions reflect the Department's intent to protect Covered Plans that entrust substantial assets with a UBS QPAM, following serious misconduct, supervisory failures, repeated criminal convictions, and a violation of a previous exemption granted under similar circumstances (PTE 2013–09). The Department intends that the three-year term will give the Department the opportunity to review the adherence by the UBS QPAMs to the conditions set out herein. The shortened three-year period reflects the fundamental importance of the Applicants' prompt efforts to adopt supervisory mechanisms, policies, and procedures that safeguard plans and IRAs, and guard against the risk of further misconduct. The Applicants may apply for an additional extension at such time as they believe appropriate. Before granting an extension, however, the Department expects to consider carefully the efficacy of this exemption and any public comments on additional extensions, particularly including comments on how well the exemption has or has not worked to safeguard the interests of Covered Plans.

Comment II—Non-Prosecution and Deferred-Prosecution Agreements—Section I(q)

Section I(q) of the proposed exemption provides that ''*[d]uring the effective period of this five-year exemption UBS: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that UBS or any of its affiliates enters into with the U.S. Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement. After review of the information, the Department may require UBS, its affiliates, or related parties, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in the new application, or does not grant such relief within twelve months of application, the relief described herein is revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier.*''

UBS requests that section I(q) be deleted or revised to omit the paragraph regarding possible revocation of the exemption due to a new NPA or DPA. UBS states that this condition is unprecedented, highly problematic, and inappropriate for several reasons. The first reason is that the condition treats an NPA or a DPA as equivalent to a criminal conviction under PTE 84–14, Section I(g) in contradiction of guidance in Advisory Opinion Number 2013–05A, which confirms that the ''sole judicial action'' that triggers the disqualification under Section I(g) is a ''criminal conviction.'' UBS notes that Section I(g) of this exemption provides that the Department may require UBS to submit a new application for relief following an NPA or a DPA and the condition provides for the automatic revocation of the exemption if the Department fails to grant the new application within twelve months of its submission. According to UBS, this creates the situation where exemptive relief could be lost irrespective of the merits of the new application solely as a result of the Department's failure to timely act. UBS states this outcome would be arbitrary and could cause the UBS QPAMs' plan clients to make substantial expenditures to immediately replace the UBS QPAMs if the Department fails to timely act on a new application. UBS asserts that this result is not reconcilable with the statement in the Proposed Exemption that the Department designed certain conditions that would ''permit plans to terminate their relationships in an orderly and cost effective fashion.''

Additionally, according to UBS, such a revocation of a previously-granted exemption would be in direct violation of the Department's exemption regulations at 29 CFR 2570.50(b). Those regulations provide that before revoking or modifying an exemption the Department must: (1) Publish a notice of proposed action in the **Federal Register**; (2) provide interested persons with an opportunity to comment on the

proposed revocation or modification; (3) notify the applicant of the proposed action and the reasons therefore before publishing such notice; and (4) provide the applicant the opportunity to comment on the proposed revocation or modification subsequent to the publication of the notice. UBS argues that these procedural protections would not be available to the UBS QPAMs as a result of a revocation due to the Department's failure to act on the ''new'' application.

Finally, UBS states that the Department failed to identify any substantive standard that would apply to the evaluation of such a new application. UBS suggests that the revocation of the exemption therefore could be based on a UBS QPAM affiliate's NPA or DPA that does not relate to conduct involving the UBS QPAMs or their personnel or does not raise concerns regarding the QPAMs' independence from such affiliate. UBS is concerned this condition authorizes revocation of the exemption regardless of whether the underlying conduct or circumstances surrounding such an NPA or DPA calls into question the Department's original findings made under Section 408 of ERISA. Finally, UBS states that this condition is unnecessary because the Department already has the authority to modify or revoke the exemption if its original findings were called into question due to a UBS QPAM affiliate's DPA or NPA.

UBS requests that if the condition is not omitted from the exemption, that word ''immediately'' be deleted and replaced with the insertion of the phrase ''as soon as reasonably practicable, the entry into'' before the term ''any Deferred Prosecution Agreement (a DPA).'' UBS also requests that the parenthetical ''(as defined in Section VI(d) of PTE 84–14)'' be added after the word ''affiliate.'' Additionally, UBS requests that the term ''non-privileged'' be placed before the word ''information'' and the phrase as soon ''as reasonably practicable'' be inserted before ''as permitted by law.'' Lastly, UBS requests that the phrase ''and allegations that led to'' be deleted and replaced by inserting the word ''underlying'' before the phrase ''the agreement'' at the end of the Section.

The Department in no way intended to provide for an automatic revocation of this exemption and, in light of UBS's comments, has revised the condition accordingly. As revised, the condition simply requires UBS to notify the Department if and when it or any of its affiliates enter into a DPA or a NPA with the U.S. Department of Justice for conduct described in section I(g) of PTE 84–14 or ERISA section 411 and immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. The Department retains the right to propose a withdrawal of this exemption pursuant to its procedures contained at 29 CFR 2570.50, should the circumstances warrant such action. Additionally, as requested by the applicant, the Department has added the parenthetical ''(as defined in Section VI(d) of PTE 84–14)'' to clarify the term ''affiliate.''

Comment III A & B—Scope of Section I(j) & Covenants Regarding Compliance with ERISA—Section I(j)(1)

Section I(j) of the proposed exemption provides that: ''*Effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a UBS QPAM and an ERISA-covered plan or IRA for which such UBS QPAM provides asset management or other discretionary fiduciary services, each UBS QPAM agrees and warrants:*

(1) [t]o comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable;

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the UBS QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(3) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the UBS QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the UBS QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS and its affiliates; and

(7) To indemnify and hold harmless the ERISA-covered plan and IRA for any damages resulting from a violation of applicable laws, a UBS QPAM's breach of contract, or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions;

(8) Within four (4) months of the effective date of this proposed five-year exemption, each UBS QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which the UBS QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a UBS QPAM provides asset management or other discretionary fiduciary services, the UBS QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement or advisory agreement between the UBS QPAM and such clients or other written contractual agreement.''

According to UBS, extending Section I(j) and other conditions to circumstances in which the QPAMs do not rely on PTE 84–14 would exceed the proper scope of Section 408 of ERISA and the Department's exemption regulations, which are properly limited to protecting plans or IRAs involved in transactions that require use of PTE 84–14. Accordingly, UBS requests that

Section I(j) be revised to include the phrases ''pursuant to'' and ''in reliance on PTE 84–14.''

UBS also states that it interprets the clause ''to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable'' to have the same meaning as the same condition in PTE 2016–17,[66] which was previously granted to the UBS QPAMs. UBS interprets the language of Section I(j)(1) as ''requiring the UBS QPAMs to agree to comply with Section 404 of ERISA only to the extent that Section 404 is otherwise ''applicable'' to the ERISA-covered plan or IRA, such that most IRAs would not be subject to this provision because they are not subject to Title I of ERISA.'' UBS also states that if the Department contemplates that this clause would require the UBS QPAMs to contractually agree to comply with the duties set forth in Section 404 of ERISA with respect to all IRAs, such a requirement would be inappropriate. UBS represents that ''including such a requirement in a final exemption would introduce significant uncertainty as to what standards should apply to IRAs not subject to Title I of ERISA.'' UBS argues that ''requiring the UBS QPAMs to contractually agree to treat IRAs as possessing rights that do not apply to them under ERISA would also be inconsistent with the requirements for exemptions under ERISA Section 408.'' According to UBS, section 408 of ERISA requires that the Department make a determination that an exemption is protective of the ''existing'' rights of participants and beneficiaries. Additionally, UBS claims that the last clause of Section I(j)(1) of PTE 2016–17 which states ''with respect to each such ERISA-covered plan and IRA'' is redundant of the first clause of Section I(j)(1) of PTE 2016–17 and has, accordingly, requested deletion of the clause.

ERISA-covered plans and IRAs routinely rely on QPAM status as a condition of entering into transactions with financial institutions, even with respect to transactions which do not strictly require adherence to PTE 84–14. According to the Applicant's own application, ''[e]ven where the QPAM exemption is not strictly required (*e.g.,* for most purchases of publicly-traded stocks), many ERISA plan fiduciaries take great comfort in their managers qualifying for QPAM status and will not use managers that do not so qualify.'' Furthermore, in the report dated August 26, 2015 prepared by John Minahan, Ph.D. and provided to the Department by UBS in support of UBS QPAMs' application for exemption, Dr. Minahan states that ''[b]ecause of the importance of the QPAM designation, if the UBS QPAMs are denied an exemption and can longer act as QPAMs, plan fiduciaries are likely to conclude that they have no choice but to change managers. This is also true for plan clients with investment strategies that do not depend on the QPAM exemption. Fiduciaries of either category of plans are likely to view a denial of an exemption as reflective of the Department's view that the UBS QPAMS should not be trusted to act as an investment manager for benefit plan assets, regardless of whether other prohibited transaction exemptions may be available.''

The Department notes that it may not always be clear whether or not a UBS QPAM intends to rely upon PTE 84–14 for any particular transaction. Accordingly, it is critical to ensure that protective conditions are in place to safeguard the interests of ERISA-covered plans and IRAs that are acting in reliance on the availability of this exemption, particularly those who may not have entered into the transaction in the first place, but for the Department's grant of this exemption.

The Department has a clear interest in protecting ERISA-covered plans and IRAs that enter into an asset management agreement with a UBS QPAM in reliance of the manager's qualification as a QPAM. Moreover, when an ERISA-covered plan or IRA terminates its relationship with an asset manager, it may incur significant costs and expenses as its investments are unwound and as it works to place investments with a new asset manager.

After considering UBS's comments, the Department has revised this condition. The condition now applies to ERISA-covered plans and IRAs only when the UBS asset manager relies on PTE 84–14 or has expressly represented that it qualifies as a QPAM or relies on the QPAM class exemption in its dealings with the ERISA-covered plan or IRA (hereinafter, a Covered Plan). To the extent a UBS QPAM would prefer not to be subject to these conditions, however, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with an ERISA-covered plan or IRA. In that case, the plan or IRA is not a Covered Plan.[67]

The Department rejects the view that it acts outside the scope of its authority by protecting ERISA-covered plans and IRAs that rely on UBS QPAMs' eligibility for this exemption, and reemphasizes the seriousness of the criminal misconduct that caused the UBS QPAMs to need this exemption as well as the FX Misconduct. The Department may grant an exemption under Section 408(a) of ERISA or Code section 4975(c)(2)(C) only to the extent the Secretary finds, among other things, that the exemption is protective of the affected plan(s) or IRA(s). As noted by regulators, personnel at UBS engaged in serious misconduct over an extended period of time at the expense of their own clients. This misconduct appears to have stemmed, in part, from deficiencies in control and oversight.

Notwithstanding the misconduct, which resulted in violation of Section I(g) of PTE 84–14, the Department has determined that this exemption is protective of Covered Plans and in the interest of participants, beneficiaries, and beneficial owners of such Covered Plans. The Department made this determination based, in significant part, upon the protections of Section I(j) that require UBS QPAMs to make an express commitment to Covered Plans to adhere to the requirements of ERISA and the Code, as applicable. As previously indicated, the Department has concluded that a culture of compliance, centered on adherence to basic standards of fair dealing as set forth in this exemption, gives the Department a compelling basis for making the required statutory findings that the exemption is in the interest of, and protects the rights of participants, beneficiaries, and beneficial owners of Covered Plans. Absent such a compelling basis, the exemption would have been denied.

In response to UBS's comments, however, the Department required an express commitment to comply with the fiduciary standards and prohibited transaction rules only to the extent these provisions are ''applicable'' under ERISA and the Code. The revised terms, together with this exemption's limited relief (*e.g.,* this exemption generally does not extend to transactions that involve self-dealing) should serve to promote a culture of compliance and protect Covered Plans and their participants, beneficiaries, and beneficial owners.

In response to UBS's comments, the Department also notes that nothing in ERISA or the Code prevents the

[66] 81 FR 94049 (December 22, 2016). PTE 2016–17 is a temporary exemption in respect of Exemption Application No. D–11863 for UBS QPAMs to rely on the exemptive relief provided by PTE 84–14, notwithstanding the Convictions, for up to twelve months from January 5, 2017.

[67] Of course, the UBS QPAM could not claim exemptive relief under PTE 84–14 or this exemption with respect to any ERISA-covered plan or IRA for which it so expressly disclaims reliance on QPAM status or PTE 84–14.

Department from conditioning relief on express contractual commitments to adhere to the requirements set out herein. The QPAMs remain free to disclaim reliance on the exemption and to avoid such express contractual commitments. To the extent, however, that they hold themselves out as fiduciary QPAMs, they should be prepared to make an express commitment to their customers to adhere to the requirements of this exemption. This commitment strengthens and reinforces the likelihood of compliance, and helps ensure that, in the event of noncompliance, Covered Plans are insulated from injuries caused by noncompliance. These protections also ensure that Covered Plans are able to extricate themselves from transactions that become prohibited as a result of the QPAMs' misconduct, without fear of sustaining additional losses as a result of the QPAMs' actions. In this connection, however, the Department emphasizes that the only claims available to the QPAMs' Covered Plan customers pursuant to these contractual commitments are those separately provided by ERISA or other state and federal laws that are not preempted by ERISA.

Comment III C—Indemnification Requirements—Section I(j)(6) and Revision to Sections I(j)(5) and (3)

Section I(j)(7) of the proposed exemption provides that: ''*Effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a UBS QPAM and an ERISA-covered plan or IRA for which such UBS QPAM provides asset management or other discretionary fiduciary services, each UBS QPAM agrees and warrants: . . . (7)[t]o indemnify and hold harmless the ERISA-covered plan and IRA for any damages resulting from a violation of applicable laws, a UBS QPAM's breach of contract, or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions.*''

UBS states that Section I(j)(7) of the proposed exemption is overbroad because it could be interpreted to require the UBS QPAMs to indemnify plans for types of damages, such as punitive or consequential damages, that are impermissible under ERISA and/or that are not attributable to any act or omission of UBS or the QPAMs. Thus, UBS requests clarification that any such damages must be reasonable; related to the arrangement, agreement or contract; exclude indirect, special, consequential, or punitive damages; and result directly from the failure of the UBS QPAM. Additionally, UBS has requested that the phrase ''applicable laws'' in Section I(j)(7) of the proposed exemption be replaced with ''ERISA's fiduciary duties and of ERISA and Code's prohibited transaction provisions.''

As explained above, the purpose of this exemption is to protect Covered Plans. Section I(j)(6) (this Section has been renumbered so that Section I(j)(7) of the proposed exemption is now Section I(j)(6) in this exemption) is essential to achieving that purpose. Section I(j)(6) ensures that a Covered Plan may expect a UBS QPAM to adhere to basic fiduciary norms and standards of fair dealing, notwithstanding the Conviction. The condition also ensures that Covered Plans have the ability to disengage from a relationship with a UBS QPAM without undue injury if UBS violates the terms of this exemption. Accordingly, the Department has revised the applicability of this condition to more closely reflect this interest. In particular, the condition applies only to Covered Plans. As indicated above, if the asset manager would prefer not to be subject to these provisions as exemption conditions, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with the Plan or IRA (in that case, however, it could not rely on the exemption for relief).

The Department made further changes upon consideration of UBS's comments, however. These changes include: Renumbering the condition for clarity; replacing ''applicable laws'' with clarifying language that conforms to the one-year exemption, PTE 2016–17; and replacing ''any damages'' with ''actual losses resulting directly from'' certain acts or omissions of the UBS QPAMs. Because Section I(j)(6) extends only to actual losses resulting directly from the actions of the UBS QPAMs, it does not encompass losses solely caused by other parties, events, or acts of God.

Section I(j)(6) of the proposed exemption provides ''*Effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a UBS QPAM and an ERISA-covered plan or IRA for which such UBS QPAM provides asset management or other discretionary fiduciary services, each UBS QPAM agrees and warrants: . . . Not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS, and its affiliates.*''

In coordination with the modifications to Section I(j)(6) (formerly Section I(j)(7)) discussed above, the Department modified Section I(j)(5) (formerly I(j)(6) in the proposed exemption) to clarify that the prohibition on exculpatory provisions does not extend to losses that arise from an act or event not caused by UBS and that nothing in this section alters the prohibition on exculpatory provisions set forth in ERISA Section 410.

Section I(j)(3) of the proposed exemption provides that ''*Effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a UBS QPAM and an ERISA-covered plan or IRA for which such UBS QPAM provides asset management or other discretionary fiduciary services, each UBS QPAM agrees and warrants: . . . (3) [n]ot to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the UBS QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS.*''

The Department determined that Section I(j)(3), as proposed, is duplicative of the exemption's prohibition on exculpatory clauses in Section I(j)(5) (previously Section I(j)(6) in the proposed exemption) and, accordingly, has deleted the condition. Therefore, as previously stated, Section I(j) has been renumbered accordingly.

Comment IV—Definition of FX Misconduct—Section II(e)

Section I(e) of the proposed exemption provides: ''*The term ''FX Misconduct'' means the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15–cr–00076–RNC filed in the US District Court for the District of Connecticut.*'' UBS represents that the proposed exemption's definition of FX Misconduct should be limited to the collusive conduct described in Paragraph 15 of Exhibit 1 to the May 20, 2015 Plea Agreement. The Applicant argues that ''UBS was not charged with the other conduct described in Exhibit 1—referred to as the 'unilateral' or 'sales' conduct and was not required to

admit this conduct was criminal in nature.'' UBS claims that an individual QPAM exemption applicant has never been required to make representations regarding this type of conduct. UBS further argues that in excluding the ''unilateral'' conduct from the temporary exemptions granted to each of the other banks which were charged with FX-related crimes, unlike UBS, the Department determined that including such conduct would improperly expand the definition ''beyond that which is described as criminal in the Plea Agreement.'' Therefore, UBS argues that references to the ''unilateral'' conduct should be deleted from the UBS final exemption and from the definition of FX Misconduct.

The Department declines to make the requested change to the definition of FX Misconduct. As stated in the Factual Basis for Breach (Exhibit 1 to the May 20, 2015 Plea Agreement), DOJ determined that UBS violated the 2012 Non-Prosecution Agreement (the LIBOR NPA) relating to UBS's fraudulent submission of LIBOR rates and declared a breach of the LIBOR NPA due to a finding that certain UBS employees engaged in fraudulent and deceptive currency trading and sales practices, as well as collusive conduct in certain FX markets. Limiting the definition of the FX Misconduct to include only the collusive behavior specifically described in paragraph 15 of Exhibit 1 of the Plea Agreement would not appropriately reflect the misconduct of UBS employees in regard to the FX markets that DOJ considered in determining there was a breach of the LIBOR NPA which led to the Plea Agreement and the 2017 Conviction. Just as important, the Department believes the FX Misconduct, along with the criminal conduct that is the subject of the Convictions, is relevant to a determination of the protections necessary to assure that the interests of Covered Plans (and their participants, beneficiaries, and beneficial owners) are protected. This exemption is designed to protect Covered Plans and is based on the entirety of the record that describes in detail the FX misconduct, not just part.

Comment V—Deadlines for Completion of the Annual Audits and Annual Reviews—Section I(i)(1) and I(m)(v)

Section I(i)(1) of the proposed exemption provides in part that ''*[e]ach annual audit must cover a consecutive twelve month period starting with the twelve month period that begins on the date of the Conviction Date (the Initial Audit Period)*'' and that ''*[e]ach annual audit must be completed no later than six (6) months after the period to which the audit applies.*'' Section I(m)(v) of the Proposed Exemption provides that ''*[e]ach annual review, including the Compliance Officer's written Annual Report, must be completed at least three (3) months in advance of the date on which each audit described in Section I(i) is scheduled to be completed.*''

UBS represents that while it supports the notion of providing sufficient time in between the completion of the Annual Review and the Annual Audit to allow for the auditor to review the report on the Annual Review, the timing for the Audit and Annual Review would require UBS to conduct the Annual Reviews on a different time schedule than the UBS QPAMs currently follow for the completion of a similar internal review required by the Investment Advisors Act. UBS states that review for the Investment Advisors Act is generally completed on or around the beginning of June of each year. UBS contends that conducting both annual reviews on the same schedule would improve the effectiveness of the Annual Review and achieve substantial efficiencies. Therefore, UBS requests that Section I(i)(1) be revised to provide that (a) the Initial Audit Period cover the fourteen-month period from January 10, 2017 through March 9, 2018, with the audit to be completed six months later (*i.e.,* by September 9, 2018), and (b) the first Annual Review is to be completed three months before the completion of that audit (*i.e.,* by June 9, 2018). UBS states that, thereafter, the annual audits should cover consecutive twelve-month periods (*e.g.,* March 10, 2018 through March 9, 2019), with the same deadlines for completion of the audits and Annual Reviews (*i.e.,* by September 9th and June 9th, respectively, of each year).

The Department agrees that it would be beneficial and efficient for the time frame for the Annual Review to coordinate with the time frame for the compliance review conducted by the UBS QPAMs for other regulators. Therefore, the Department has modified Section I(i)(1) to provide that the Initial Audit Period is the consecutive fourteen-month period beginning on January 10, 2017. Each subsequent audit must cover consecutive twelve-month periods beginning at the end of the Initial Audit Period. Section I(i)(1) has also been modified, as requested, to confirm that for the time period from September 18, 2016 until the January 10, 2017 conviction date, the audit requirements in Section (g) of PTE 2013–09 remained in effect. Accordingly, the audit of such final time period under PTE 2013–09 had to have been completed and submitted within six (6) months of January 10, 2017 (that is, by July 9, 2017). This final audit required under PTE 2013–09 has been completed and the corresponding Audit Report has been submitted to the Department.

Comment VI—Deadline for Implementation of the Required Policies and Training—Sections: I(h)(1) and (2)

Section I(h)(1) of the proposed exemption provides that: ''*[E]ach UBS QPAM must immediately develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: . . .*'' *Section I(h)(2) provides:* ''*[E]ach UBS QPAM must immediately develop and implement a program of training (the Training), conducted at least annually, for all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:*''

UBS represents that PTE 2016–17 requires the UBS QPAMs to develop and implement the required policies, procedures, and training program within 6 months of the date of conviction while the proposed exemption requires the UBS QPAMs to ''immediately'' comply with these conditions which are substantially similar to those in the PTE 2016–17. UBS requests that Sections I(h)(1) and (2) in a final exemption be revised to require compliance by the dates set forth in Sections I(h)(1) and (2) of PTE 2016–17 in order to avoid any conflict between the conditions in PTE 2016–17 and the final exemption in the event a final exemption is granted before the occurrence of the 6-month deadline provided for in the PTE 2016–17.

The Department emphasizes that the UBS QPAMs must comply with the Policies and Training requirements within both PTE 2016–17 and this exemption. The Department has determined not to revise Section I(h)(1) and I(h)(2) as requested by UBS. However, the Department has made minor revisions to reflect the fact that UBS QPAMs may already have Policies and Training under the previous exemption, in which case, they are required to ''maintain'' such Policies or Training.

Comment VII A—Notices to Plan Clients and Notices to Interested Persons—Section I(k)(1)

Section I(k)(1) of the proposed exemption provides that: ''*Notice to ERISA-covered plan and IRA clients. Within fifteen (15) days of the publication of this proposed five-year exemption in the* ***Federal Register***,

each UBS QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84–14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a UBS QPAM provides asset management or other discretionary fiduciary services, or the sponsor of an investment fund in any case where a UBS QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the ***Federal Register*** *copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the* ***Federal Register****, and may be delivered electronically (including by an email that has a link to the five-year exemption). Any prospective clients for which a UBS QPAM provides asset management or other discretionary fiduciary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the UBS QPAM.*''

UBS requests that Section I(k)(1) be revised to require the notice only be provided to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which the UBS QPAMS provides asset management or discretionary fiduciary services in reliance on PTE 84–14. UBS also requests that Section I(k)(1) of the Exemption be revised to reflect the later date by which a certain number of plans and IRAs were provided with notice of the Proposed Exemption, as agreed to by the Department. Lastly, UBS requests that the Department confirm that the declaration required by 29 CFR 2570.43(c) will reflect that later date.

The Department has narrowed the notice requirement to include only ERISA-covered plans and IRAs that would benefit from this knowledge (*i.e.* Covered Plans). The Department confirms that the UBS QPAMs had 63 days after the proposed exemption was published in the **Federal Register** to notify interested persons and the declaration required by 29 CFR 2570.43(c) should reflect the January 23, 2017 date.

Comment VII B—Notices to ''Non-Plan Clients''—Section I(k)(2)

Section I(k)(2) of the proposed exemption provides that: ''*Each UBS QPAM will provide a* ***Federal Register*** *copy of the proposed five-year exemption, a* ***Federal Register*** *copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement, or other written contractual agreement, from the UBS QPAM. For purposes of this subparagraph (2), a Current Non-Plan Client means a client of a UBS QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the UBS QPAM as of the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the UBS QPAM that such UBS QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14. . . .*''

UBS requests that the Department omit this requirement. UBS represents that the scope of exemptive relief, as contemplated by Section 408 of ERISA and the Department's regulations, is limited to plans and IRAs that are affected by the exemption. Therefore, it argues, a condition requiring notice be provided to UBS QPAM clients that are not ERISA-covered plans or IRAs and do not utilize PTE 84–14 would be outside the scope of Section 408 of ERISA.

Given the breadth of the notice requirement otherwise mandated by the exemption, and its decision to restrict the requirement to those arrangements for which QPAM status plays an integral role (*i.e.,* the QPAM represents or relies upon its QPAM status), the Department has decided to delete this provision.

Comment VIII—Distribution of Audit Reports to Board Committees—Section I(i)(8)

Section I(i)(8) of the proposed exemption provides that: ''*The Risk Committee, the Audit Committee, and the Corporate Culture and Responsibility Committee of UBS's Board of Directors are provided a copy of each Audit Report; and a senior executive officer of UBS's Compliance and Operational Risk Control function must review the Audit Report for each UBS QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;*''

UBS requests that the Department revise this condition to allow UBS's Board of Directors to select which committee (or committees) is provided a copy of each Audit Report. UBS agrees that the results of the annual audit should be communicated to the highest level of UBS's governance structure, but which committee receives the Audit Report is a matter of internal governance best determined by the UBS Board of Directors. UBS claims that this condition could become unworkable if the Board's committee structure and/or the responsibilities of the Board's committees were to change. Alternatively, UBS requests that Section I(i)(8) be modified to limit the requirement to provide a copy of the Audit Report to the Risk Committee of UBS's Board of Directors.

In light of the importance of ensuring proper review of the Audit Report, the Department declines to alter this provision to permit UBS's Board of Directors to decide, in its discretion, which committee receives the Audit Report. However, after review of the record, the Department has revised Section I(i)(8) to reflect that only the Risk Committee of the UBS Board Directors must be provided a copy of the Audit Report.

Section I(i)(4)—Auditor Testing Operational Compliance

Section I(i)(4) of the proposed exemption requires the auditor to ''*test each UBS QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training.*'' UBS has requested that this Section be modified to include the phrase ''in reliance on PTE 84–14'' following the phrase ''involving ERISA-covered plans and IRAs.''

The Department revised this condition for consistency with other conditions of this exemption that are tailored to the Department's interest in protecting Covered Plans.

Additional Audit Requirement Revisions—Sections I(i)(2), I(i)(5), I(i)(7), I(i)(9), I(i)(11), I(i)(12)

In addition to the revisions to the audit requirement for Section I(i)(1), I(i)(4), and i(i)(8) described above, the Department, on its own motion, determined to make revisions to the following Sections to enhance the workability of the audit and the exemption:

Section I(i)(2) of the proposed exemption provides that ''*[t]o the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each UBS QPAM and, if applicable, UBS, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel.*'' In the Department's view, to ensure a thorough and robust audit, the independent auditor must be granted access to information it deems necessary to make sound conclusions. However, access to such information must be within the scope of the audit engagement and limited to information relevant to the auditor's objectives as specified by the terms of this exemption and denied only to the extent any disclosure is not permitted by state or federal statute or involves communications subject to attorney client privilege. The Department has modified Section I(i)(2)accordingly.

Section I(i)(5) of the proposed exemption provides that ''*[f]or each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding:*

(i) The adequacy of the UBS QPAM's Policies and Training; the UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective UBS QPAM must be promptly addressed by such UBS QPAM, and any action taken by such UBS QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective UBS QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the UBS QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the UBS QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Furthermore, the auditor must not rely on the Annual Report created by the Compliance Officer as described in Section I(m) below in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Annual Review described in Section I(m) and the resources provided to the Compliance officer in connection with such Annual Review;

The Department modified Section I(i)(5) to clarify that the auditor may issue one consolidated Audit Report covering all the UBS QPAMS for the period of time being audited.

The Department acknowledges that the UBS QPAMs' efforts to address the auditor's recommendations regarding any inadequacy in the Policies and Training identified by the auditor may take longer to implement than the time limits mandated by the proposed exemption. Accordingly, the Department is modifying Section I(i)(5)(i) to reflect the possibility that the UBS QPAMs' efforts to address the auditor's recommendations regarding any inadequacy in the Policies and Training may not be completed by the submission date of the Audit Report and may involve a written plan to address such items. However, any noncompliance identified by the auditor must be promptly addressed. The revised Section also requires that if such a plan of action to address the auditor's recommendation as to the adequacy of the Policies and Training is not completed by the submission of the Audit Report, the following period's Audit Report, must state whether the plan was satisfactorily completed. Additionally, the Department has modified the final sentence in Section I(i)(5)(i) to more clearly express the Department's intent that the auditor must not rely solely on the work of the Compliance Officer and the Annual Report in formulating its conclusions or findings. The Auditor must perform its own independent testing to formulate its conclusions. This exemption does not prohibit the auditor from considering the Compliance Officer's Annual Report in carrying out its audit function, including its formulation of an audit plan. This exemption, however, does prohibit the auditor from reaching conclusions that are exclusively based upon the contents of the Compliance Officer's Annual Report.

While an independent assessment by the auditor of the adequacy of the Annual Review is essential to providing the Department with the assurance that the Applicant and the UBS QPAMs have given these matters the utmost priority and have taken the necessary actions to comply with the exemption, the Department has determined that the auditor should not be responsible for opining on the adequacy of the resources allocated to the Compliance Officer and on its own motion, has modified Section I(i)(5)(ii) accordingly.

Section I(i)(7) of the proposed exemption provides that ''*[w]ith respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this five-year exemption; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption and with the applicable provisions of ERISA and the Code.*'' UBS requested that the Department add the phrase ''to the best of such officer's knowledge at the time'' to this condition. The Department has revised Section I(i)(7) as requested by clarifying that the certification be made to the best of such officer's knowledge at the time.

Furthermore, in coordination with the changes to Section I(i)(5)(i) discussed above, the Department revised Section I(i)(7) to acknowledge that the Applicant's efforts to address the auditor's recommendations regarding inadequacies in the Policies and Training identified by the auditor, may take longer to implement than the timeframe to submit the certified Audit Report. With respect to this issue, the Department did not intend to limit corrective actions to those that could only be completed prior to the submission of the Audit Report. Therefore, the Department has modified Section I(i)(7) to reflect that the senior officer may certify that a written plan to address the inadequacies regarding the Policies and Training identified in the Audit Report is in place.

Section I(i)(9) of the proposed exemption provides that ''*[e]ach UBS QPAM must provide its certified Audit Report, by regular mail to: the Department's Office of Exemption Determinations (OED), 200 Constitution*

Avenue NW, Suite 400, Washington DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109, no later than 45 days following its completion. The Audit Report will be part of the public record regarding this five-year exemption. Furthermore, each UBS QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such UBS QPAM.'' While the Department has an interest in ensuring that the conditions of this exemption broadly protect ERISA-covered plans and IRAs that have relied on QPAM status in deciding to enter into an agreement with the UBS QPAMs, the Department has revised Section I(i)(9) to clarify that the UBS QPAMs are required to make the documents available to any fiduciary of a Covered Plan. Additionally, the Department decided to require that the Audit Report be provided to the Department within 30 days following its completion. The Audit Report, in any event, will be incorporated into the public record attributable to this exemption, under Exemption Application Number D–11907, and, therefore, independently accessible by members of the public. Accordingly, the Department has decided to revise the condition by replacing the phrase ''an ERISA-covered plan or IRA, the assets of which are managed by such UBS QPAM'' with the term ''Covered Plan'' (as defined in Section II(b)). Lastly, the Department agrees that access to the Audit Report need only be upon request and such access can be electronic, and has revised the exemption accordingly.

Section I(i)(10) of the proposed exemption provides that ''*[e]ach UBS QPAM and the auditor must submit to OED: (A) any engagement agreement entered into pursuant to the engagement of the auditor under this five-year exemption; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed five-year exemption, no later than six (6) months after the effective date of this five-year exemption (and one month after the execution of any agreement thereafter).*'' To remove any confusion and uncertainty regarding the timing of the submission of the auditor's and other entity's engagement agreements, the Department has modified Section I(i)(10) to require that the auditor's engagement agreement and the engagement agreements with other entities retained in connection with such UBS QPAM's compliance with the Training or Policies be submitted to the OED no later than two (2) months after the engagement agreement is entered into by the Applicant and the independent auditor or other entity.

Section I(i)(11) of the proposed exemption requires that, ''*[t]he auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant UBS QPAM; and an explanation of any corrective or remedial action taken by the applicable UBS QPAM.*'' The Department acknowledges that certain information contained in the audit workpapers may be confidential and proprietary, and having that information in the public file may create needless or avoidable disclosure issues. Therefore, the Department has determined to modify Section I(i)(11) to remove the requirement that the auditor provide the workpapers to OED, and instead require that the auditor provide access to the workpapers for the Department's review and inspection.

Section I(i)(12) of the proposed five-year exemption requires that ''*UBS must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until UBS demonstrates to the Department's satisfaction that such new auditor is independent of UBS, experienced in the matters that are the subject of the five-year exemption and capable of making the determinations required of this five-year exemption.*''

The Department decided to remove the requirement for UBS to demonstrate the independence and qualifications of the auditor to the Department. The exemption requires instead that UBS, no later than two (2) months from the engagement of the replacement auditor, notify the Department of a change in auditor and of the reason(s) for the substitution including any material disputes between the terminated auditor and UBS. UBS's fiduciary obligations with respect to the selection of the auditor, as well as the significant role a credible selection plays in reducing the need for more extensive oversight by the Department, should be sufficient to safeguard the selection process.

No-Fault Provision—Failure of Auditor—Section I(s)

Section I(s) of the proposed exemption provides that ''*[a] UBS QPAM will not fail to meet the terms of this five-year exemption, solely because a different UBS QPAM fails to satisfy a condition for relief under this five-year exemption described in Sections I(c), (d), (h), (i), (j), (k), (l), (p), and (r).*'' The Department modified this condition so the failure of the auditor to comply with any of the conditions of the exemption, with the exception of Section I(i)(11) regarding access to the auditor's workpapers, will not be treated as a failure by the UBS QPAMs to comply with the conditions of the exemption provided that such failure was not due to the actions or inactions of UBS or its affiliates.

Comment IX—Additional Requested Revisions

In granting PTE 2016–17, the Department made several modifications to the proposed temporary exemption both at the request of UBS and on the Department's own initiative. UBS requested that the Department make the revisions that were made in PTE 2016–17 to the corresponding conditions in this exemption and additional revisions to certain of these Sections. The Department has addressed these requests as follows:

Knowing or Tacit Approval—Section I(a) and I(c)

Section I(a) of the proposed exemption provides, ''*[t]he UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not know of, have reason to know of, or participate in: (1) the FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions (for the purposes of this Section I(a), ''participate in'' includes the knowing or tacit approval of the FX Misconduct or the misconduct that is the subject of the Convictions).*''

Section I(c) of the proposed exemption provides, ''*[t]he UBS QPAMs will not employ or knowingly engage any of the individuals that participated in: (1) the FX Misconduct or (2) the criminal conduct that is the subject of the Convictions (for the purposes of this Section I(c), ''participated in'' includes the knowing or tacit approval of the FX Misconduct or the misconduct that is the subject of the Convictions).*''

UBS requests that the words ''or tacit'' in the phrase ''knowing or tacit approval'' be deleted in Sections I(a) and I(c) and be replaced with ''knowing approval'' in a final exemption, to avoid any ambiguity or confusion as to the definition of ''participate in.''

After consideration of UBS's comments, the Department revised the condition in the manner requested by the Applicant.

Receipt of Compensation—Section I(b)

Section I(b) of the proposed exemption provides, ''*[t]he UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with: (1) the FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions.*''

UBS requests that the Department replace ''receive direct compensation, or knowingly receive indirect compensation'' with ''knowingly receive compensation.'' UBS claims this change is consistent with the underlying purpose of the condition and avoids any ambiguity or confusion regarding the meaning of ''direct'' and ''indirect compensation.''

The Department does not agree that the terms ''direct and ''indirect'' create ambiguity or confusion and has not made the requested revision. It is the Department's intent to preclude relief herein if any asset management personnel of the UBS QPAMs received direct compensation, or knowingly received indirect compensation, in connection with the FX Misconduct or the criminal conduct that is the subject of the Convictions and therefore has not revised Section I(b).

UBS QPAM Will Not Use Its Authority or Influence—Section I(d)

Section I(d) of the proposed exemption provides that ''*[a] UBS QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such UBS QPAM to enter into any transaction with UBS or UBS Securities Japan or engage UBS or UBS Securities Japan to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption.*'' UBS has requested that the phrase ''in reliance on PTE 84–14'' be added to this condition following the phrase ''managed by such UBS QPAM.''

After considering the Applicant's comment, the Department has revised the exemption to clarify that Section I(d) applies to ''investment funds'' managed by the UBS QPAM with respect to Covered Plans.

Provision of Asset Management Services—Section I(g)

Section I(g) provides that ''*UBS and UBS Securities Japan will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets.*'' UBS requested that the Department modify Section I(g) in conformity with PTE 2016–17 to clarify that UBS and UBS Securities Japan will not violate this condition in the event that they inadvertently become investment advice fiduciaries and that UBS can act as a fiduciary for plans that it sponsors for its own employees or employees of an affiliate. The Department has modified Section I(g) accordingly.

Termination and Withdrawal Restrictions—Section I(j)(3)

Under Section I(j)(4) of the proposed exemption, the UBS QPAMs agree: ''*[n]ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the UBS QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors.*''

UBS requested that the Department revise Section I(j)(3) (formerly Section I(j)(4) in the proposed exemption) to be consistent with the language used for this condition in PTE 2016–17. Consistent with PTE 2016–17, the Department has revised Section I(j)(4) clarifying the circumstances under which reasonable restrictions are necessary to protect the remaining investors in a pooled fund and to also clarify that in any such event the restrictions must be reasonable and last no longer than reasonably necessary to remedy the adverse consequences.

Notice of Obligations—Section I(j)(7)

Section I(j)(8) of the proposed exemption provides that ''*[w]ithin four (4) months of the effective date of this proposed five-year exemption, each UBS QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which the UBS QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a UBS QPAM provides asset management or other discretionary fiduciary services, the UBS QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement or advisory agreement between the UBS QPAM and such clients or other written contractual agreement.*'' In addition to requesting that Section I(j)(8) of the proposed exemption be revised to reflect the changes made in PTE 2016–17, UBS requests that that the requirement in Section I(j)(8) be limited to ERISA-covered plans and IRAs for which the UBS QPAM provides asset management or other discretionary fiduciary services in reliance on PTE 84–14 and that the phrase ''all other prospective'' be replaced with the word ''new.''

As previously noted, this Section has been renumbered so that Section I(j)(8) of the proposed exemption is now Section I(j)(7) in this exemption.

As noted above, the Department has an interest in protecting an ERISA-covered plan or IRA that enters into an asset management agreement with a UBS QPAM in reliance on the manager's qualification as a QPAM, regardless of whether the QPAM relies on the class exemption when managing the assets of the ERISA-covered plan or IRA. The Department has revised the applicability of this condition to more closely reflect this interest, and the condition now applies to Covered Plans. The Department has also modified the condition so that a UBS QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. Furthermore, the condition has been modified to coordinate with PTE 2016–17, so that a notice that satisfies Section I(j)(8) of that exemption will satisfy renumbered Section I(j)(7) of this exemption, unless the notice contains any language that limits, or is inconsistent with, the scope of this exemption. The Department declines to replace the phrase ''all other prospective'' with the word ''new.'' The Department's intention for the sentence beginning ''[f]or all other prospective'' in Section I(j)(8) of the proposed exemption was to ensure that prospective clients for which a UBS QPAM does not yet provide asset management of other fiduciary services are informed of the UBS QPAM's obligations under Section I(j). Consistent with the request by UBS, the condition has been modified so that the notice must be provided July 9, 2018.

Policies and Procedures Relating to Compliance With ERISA and the Code—Sections I(h)(I)(1)(ii)–(v)

Section I(h)(1)(ii)–(v) of the proposed exemption provide, ''*(h)(1) [e]ach UBS QPAM must immediately develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: . . .*

(ii) The UBS QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The UBS QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the UBS QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v)[t]he UBS QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients.''

UBS requests that Section I(h)(1)(v) be revised to add language similar to that found in Section I(h)(1)(iv), indicating that the UBS QPAMs must implement policies designed to avoid any such misrepresentations ''to the best of such QPAM's knowledge at the time.''

The Department has modified the Policies' requirement of adherence to the fiduciary and prohibited transaction provisions of ERISA and the Code so that the Policies expressly focus on the provisions only to the extent ''applicable'' under ERISA and the Code. In general, however, the Department has otherwise retained the stringency and breadth of the Policies requirement, which is more than justified by the repeated compliance and oversight failures exhibited by UBS throughout the period of time during which the criminal misconduct persisted.

The specific elements of the Policies requirement as set forth in this exemption are essential to its protective purposes. In approving this exemption, the Department significantly relies upon conditions designed to ensure that those relying upon its term for prohibited transaction relief will adopt a culture of compliance centered on the basic principles and obligations set forth in the Policies requirement. These standards are core protections of this exemption.

The Department has made some additional changes, however, which should not detract from the Policies' protective purpose. Thus, as requested by UBS, subsection (v) has been revised to contain the ''to the best of QPAM's knowledge at the time'' concept found in subsection (iv). Additionally, the applicability of subsections (iv) and (v) has been narrowed to Covered Plans. To the extent a UBS QPAM would prefer not to be subject to this provision, however, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with the Covered Plan. This revision is consistent with the Department's intent to protect ERISA-covered plans and IRAs that have hired a UBS QPAM in reliance on PTE 84–14 or based on the manager's express representation that it relies on or qualifies under PTE 84–14.

Correction of Violations and Failures To Comply—Section I(h)(vii)

Section I(h)(1)(vii) of the proposed exemption provides that ''*[a]ny violation of, or failure to comply with, an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of UBS; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of UBS or beneficially owned by an employee of UBS or its affiliates, such fiduciary does not need to be independent of UBS. A UBS QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii).*''

UBS requests that this section be revised to clarify that any compliance failures that are discovered must be promptly corrected ''to the extent possible'' and to limit the second clause of the last sentence to any ''material'' ''instance of non-compliance'' that the UBS QPAM ''reasonably should have known about.''

The Department has based the conditions of this exemption on both the particular facts of the UBS cases and its experience over time with previous exemptions. For the reasons set out herein, the Department has concluded that the specific conditions of this exemption are appropriate and give the Department a reasonable basis for concluding that the exemptions are appropriately protective of affected plans and IRAs. As noted above, a central aim of the exemption is to ensure that those relying upon the exemption for relief from the prohibited transaction rules will consistently act to promote a culture of fiduciary compliance, notwithstanding the conduct that violated Section I(g) of PTE 84–14.

While the Department declines to narrow and qualify this subparagraph (vii) with the specific language revision requested by UBS, after consideration, the Department will not condition the exemption on a requirement for notification of violations to an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of UBS. Additionally, the Department has revised the term ''corrected promptly'' for consistency with the Department's intent that violations or compliance failures be corrected ''as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier).'' However, the Department intends to preclude relief to the extent violations or failures are not corrected as required by the exemption.

Compliance Officer Certification—Section I(m)(2)(iii)

Section I(m)(2)(iii) of the proposes exemption provides: ''*In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been*

identified in the Annual Report; (D) the UBS QPAMs have complied with the Policies and Training in all respects, and/or corrected any instances of noncompliance in accordance with Section I(h) above; and (E) UBS has provided the Compliance Officer with adequate resources, including, but not limited to, adequate staffing.'' UBS seeks to have Section I(m)(2)(iii) revised to clarify that the certifications must be made to the best of the Compliance Officer's knowledge at the time based on the Annual Review. UBS also requests that Section I(m)(2)(iii)(D) be revised to require the Compliance Officer certify that the UBS QPAM has corrected ''to the extent possible'' any ''known'' instances of noncompliance.

The Department has accepted UBS's request in part and has revised this condition accordingly. Accordingly, Section I(m)(iii) has been modified to require the Compliance Officer to certify in writing ''to the best of his or her knowledge at the time'' and Section I(m)(2)(iii)(D) has be modified to add the word ''known'' before the word ''instances.'' However, the Department has declined to narrow Section I(m)(iii)(D) by adding the phrase ''to the extent'' possible. The Department notes this subparagraph requires that the noncompliance is corrected in accordance with Section I(h) and Section I(h) has been revised to allow for such correction to occur ''as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier).''

Notice of Right To Obtain Copy of Policies—Section I(r)

Section I(r) of the proposed exemption provides that, ''*[e]ach UBS QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, and then at least once annually, will clearly and prominently: inform the ERISA-covered plan or IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with this five-year exemption.*''

UBS argues that the requirement to provide the disclosure in Section I(r) sixty (60) days prior to a transaction entered into in reliance on this exemption is not in the interest of UBS's current or future ERISA-covered plan and IRA clients. UBS therefore requests that Section I(r) be revised to remove the requirement that the notification be made 60 days prior to the initial transaction that is conducted in reliance on the exemption. UBS represents that the 60 advance notice would effectively place a ''freeze'' on the management of new clients accounts and therefore could deprive ERISA-covered Plans and IRA clients the opportunity to enter into beneficial transactions during the 60-day period, such as time-sensitive transactions to transition new clients' existing investments to new investments or transactions designed to reduce clients' risk exposure. UBS also claims that complying with a 60-day advance notice requirement would be impossible with regard to existing UBS QPAM clients who may have committed to or entered into transactions in reliance on this exemption. For example, UBS represents that some clients may have entered into transactions which are scheduled to occur simultaneously with the granting of this exemption, rendering it impossible for a QPAM to give sixty (60) days prior notice. Additionally, UBS requests that the phrase ''to which such UBS QPAM intends to provide services in reliance upon this exemption'' be added to this condition.

Affording Covered Plans a means by which to review and understand the Policies implemented in connection with this exemption is a vital protection that is fundamental to this exemption's purpose. However, the Department has modified the condition so that the UBS QPAMs, at their election, may instead provide Covered Plans a disclosure that accurately describes or summarizes key components of the Policies, rather than provide the Policies in their entirety. The Department has also determined that such disclosure may be continuously maintained on a website, provided that the website link to the summary of the written Policies is clearly and prominently disclosed to those Covered Plan clients to whom this section applies. The Department also agrees with the Applicant that the timing requirement for disclosure should be revised and, accordingly, has modified the condition of Section I(p) to require notice regarding the information on the website within 60 days of the effective date of this exemption, and thereafter to the extent certain material changes are made to the Policies.

Definition of ''Convictions'' and ''Conviction Date''—Section II(a) and II(d)

Section II(a) of the proposed exemption provides that ''*The term 'Convictions' means the 2013 Conviction and the 2016 Conviction. The term ''2013 Conviction'' means the judgment of conviction against UBS Securities Japan Co. Ltd. in Case Number 3:12–cr–00268–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United Sates Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates. The term '2016 Conviction' means the anticipated judgment of conviction against UBS AG in Case Number 3:15–cr–00076–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. For all purposes under this proposed five-year exemption, 'conduct' of any person or entity that is the 'subject of [a] Conviction' encompasses any conduct of UBS and/or their personnel, that is described in the Plea Agreement, (including Exhibits 1 and 3 attached thereto), and other official regulatory or judicial factual findings that are a part of this record.*'' UBS has requested the definition of ''convictions'' in Section II(a) be revised to reflect the corresponding changes made in PTE 2016–17 and to reflect that the ''2016 Conviction'' occurred in 2017 and should therefore be referred to as the ''2017 Conviction.'' UBS also requested that the definition of ''Conviction Date'' in Section II(d) be revised to ''January 5, 2017.''

The Department concurs with UBS and has revised the definition of the term ''Convictions'' in Section II(a) to be consistent with the definition provided in Section II(a) of PTE 2016–17 and has revised Sections II(a) and II(d) to replace the phrase ''2016 Conviction'' with ''2017 Conviction.'' Additionally, the Department has deleted the references to ''Conviction Date'' within the exemption. The Department notes that PTE 84–14 references the ''the date of the judgment of the trial court.'' Because that date is January 10, 2017, the compliance dates in this exemption are determined with reference to January 10, 2017.

Definition of ''UBS QPAM''—Section II(b)

Section II(b) of the proposed exemption provides in part that ''[t]he term 'UBS QPAM' excludes the parent entity, UBS AG and UBS Securities Japan.'' UBS has requested that the term ''the parent entity'' be deleted from this Section. The Department has made the requested revision and removed the

term ''the parent entity'' from Section II(B).

Comment—Letter from House Committee on Financial Services

The Department also received a comment letter from certain members of Congress (the Members) regarding this exemption, as well as regarding other QPAM-related proposed one year exemptions. In the letter, the Members stated that certain conditions contained in these proposed exemptions are crucial to protecting the investments of our nation's workers and retirees, referring to proposed conditions which require each bank to: (a) Indemnify and hold harmless ERISA-covered plans and IRAs for any damages resulting from the future misconduct of such bank; and (b) disclose to the Department any Deferred Prosecution Agreement or a Non-Prosecution Agreement with the U.S. Department of Justice. The Members also requested that the Department hold hearings in connection with the proposed exemptions.

The Department acknowledges the Members' concerns regarding the need for public discourse regarding proposed exemptions. To this end, the Department's procedures regarding prohibited transaction exemption requests under ERISA (the Exemption Procedures) afford interested persons the opportunity to request a hearing. Specifically, section 2570.46(a) of the Exemption Procedures provides that, ''[a]ny interested person who may be adversely affected by an exemption which the Department proposes to grant from the restrictions of section 406(b) of ERISA, section 4975(c)(1)(E) or (F) of the Code, or section 8477(c)(2) of FERSA may request a hearing before the Department within the period of time specified in the **Federal Register** notice of the proposed exemption.'' The Exemption Procedures provide that ''[t]he Department will grant a request for a hearing made in accordance with paragraph (a) of this section where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing.'' The Exemption Procedures also provide that ''[t]he Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements of paragraph (a) of this section; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.'' [68]

While the Members' letter raises important policy issues, it does not appear to raise specific material factual issues. The Department previously explored a wide range of legal and policy issues regarding Section I(g) of the QPAM Exemption during a public hearing held on January 15, 2015 in connection with the Department's proposed exemption involving Credit Suisse AG, and has determined that an additional hearing on these issues is not necessary.

After giving full consideration to the record, the Department has decided to grant the exemption, as described above. The complete application file (Application No. D–11907) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 21, 2016 at 81 FR 83385.

Exemption

Section I: Covered Transactions

Certain entities with specified relationships to UBS, AG (hereinafter, the UBS QPAMs as defined in Section II(h)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[69] notwithstanding the 2013 Conviction against UBS Securities Japan Co., Ltd. and the 2017 Conviction against UBS, AG (collectively the Convictions, as defined in Section II(a)),[70] during the Exemption Period, provided that the following conditions are satisfied:

(a) The UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not know of, did not have reason to know of, or participate in: (1) The FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions (for the purposes of this Section I(a), ''participate in'' includes the knowing approval of the FX Misconduct or the misconduct that is the subject of the Convictions);

(b) The UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with: (1) The FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions;

(c) The UBS QPAMs will not employ or knowingly engage any of the individuals that participated in: (1) The FX Misconduct or (2) the criminal conduct that is the subject of the Convictions (for the purposes of this Section I(c), ''participated in'' includes the knowing approval of the FX Misconduct or the misconduct that is the subject of the Convictions);

(d) At all times during the Exemption Period, no UBS QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such UBS QPAM with respect to one of more Covered Plans, to enter into any transaction with UBS or UBS Securities Japan or engage UBS or UBS Securities Japan to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the UBS QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

(f) A UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the FX Misconduct or the criminal conduct that is the subject of the Convictions; or cause the UBS QPAM, its affiliates or related parties to directly or indirectly profit from the FX Misconduct or the criminal conduct that is the subject of the Convictions;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, UBS and UBS Securities Japan will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that UBS and UBS Securities Japan will not be treated as violating the conditions of this exemption solely because it acted as an

[68] 29 CFR part 2570, published at 76 FR 66653 (October 27, 2011).

[69] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[70] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain criminal activity therein described.

investment advice fiduciary within the meaning of section 3(21)(A)(ii) or section 4975(e)(3)(B) of the Code;

(h)(1) Each UBS QPAM must continue to maintain or immediately implement and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the UBS QPAM are conducted independently of UBS's corporate management and business activities, including the corporate management and business activities of the Investment Bank division and UBS Securities Japan;

(ii) The UBS QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in such case as applicable, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The UBS QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the UBS QPAM to regulators, including, but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the UBS QPAM's knowledge at that time, the UBS QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans;

(vi) The UBS QPAM complies with the terms of this exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM, and the independent auditor responsible for reviewing compliance with the Policies. A UBS QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each UBS QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i)(1) Each UBS QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The first annual audit must cover a fourteen-month period that begins on January 10, 2017 (the Initial Audit Period) and all subsequent audits must cover consecutive twelve month periods commencing upon the end of the Initial Audit Period.[71] The Initial Audit Period shall cover the period of time during which PTE 2016–17 [72] is effective and a portion of the time during which this exemption is effective and the audit terms contained in this Section I(i) will supersede the terms of Section I(i) of PTE 2016–17 except as otherwise provided in this exemption. In determining compliance with the conditions for relief in PTE 2016–17 and this exemption, including the Policies and Training requirements, for purposes of conducting the audit, the auditor will rely on the conditions for exemptive relief as then applicable to the respective periods under audit. Additionally, the Department confirms that, for the final audit under PTE 2013–9 covering the time period from September 18, 2016 until the January 10, 2017 conviction date, the audit requirements in Section(g) of PTE 2013–09 remained in effect. Accordingly, the audit of such final time period under PTE 2013–09 had to have been completed and submitted within six (6) months of January 10, 2017, and it has, in fact, been submitted to the Department;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each UBS QPAM and, if applicable, UBS, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each UBS QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each UBS QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each UBS QPAM, a sample of such QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its

[71] The final audit under this exemption would not have to be completed until after the Exemption Period expires. If the Department ultimately decides to grant relief for an additional period, it could decide to alter the terms of the exemption, including the audit conditions (and the timing of the audit requirements). Nevertheless, the Applicant should anticipate that the Department will insist on strict compliance with the audit terms and schedule set forth above. As it considers any new exemption application, the Department may also contact the auditor for any information relevant to its determination.

[72] 81 FR 94049 (December 22, 2016). PTE 2016–17 is a temporary exemption in respect of Exemption Application No. D–11863 that permits UBS QPAMs to rely on the exemptive relief provided by PTE 84–14, notwithstanding the Convictions, for up to twelve months from Conviction Date.

examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the UBS QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each UBS QPAM's Policies and Training; each UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The UBS QPAM must promptly address any noncompliance. The UBS QPAM must promptly address or prepare a written plan of action to address any determination of inadequacy by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective UBS QPAM. Any action taken or the plan of action to be taken by the respective UBS QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective UBS QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a UBS QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular UBS QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Annual Review described in Section I(m);

(6) The auditor must notify the respective UBS QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, such UBS QPAM has addressed, corrected, remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination, that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of UBS's Board of Directors is provided a copy of each Audit Report; and a senior executive officer of UBS's Compliance and Operational Risk Control function must review the Audit Report for each UBS QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each UBS QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210; or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109. This delivery must take place no later than 30 days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each UBS QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each UBS QPAM and the auditor must submit to OED any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption. Further, each UBS QPAM must submit to OED any engagement entered into with any other person or entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in the course of the audit, provided such access and inspection is otherwise permitted by law; and

(12) UBS must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and UBS;

(j) As of January 10, 2018 and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a UBS QPAM and a Covered Plan, the UBS QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA to the extent that section 404 is applicable;

(2) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the UBS QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(3) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the UBS QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(4) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of

reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(5) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS, and its affiliates, or damages arising from acts outside the control of the UBS QPAM; and

(6) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a UBS QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM, or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction. This condition applies only to actual losses caused by the UBS QPAM's violations;

(7) By July 9, 2018, each UBS QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the UBS QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the UBS QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–17 that meets the terms of this condition. Notwithstanding the above, a UBS QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement.

(k) By March 10, 2018, each UBS QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective client for which a UBS QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the UBS QPAM. Disclosures may be delivered electronically;

(l) The UBS QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions;

(m)(1) By July 9, 2018, UBS designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each period corresponding to the audit periods set forth in Section I(i)(1) (including the Initial Audit Period) (the Annual Review) [73] to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a legal professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer has a dual-reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function: (A) A divisional reporting line to the Head of Compliance and Operational Risk Control, Asset Management, and (B) a regional reporting line to the Head of Americas Compliance and Operational Risk Control. The C&ORC function will be organizationally independent of UBS's business divisions—including Asset Management and the Investment Bank—and is led by the Global Head of C&ORC, who will report directly to UBS's Chief Risk Officer;

(2) With respect to each Annual Review, the following conditions must be met:

(i) The Annual Review includes a review of: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the C&ORC function during the previous year; any material change in the relevant business activities of the UBS QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the UBS QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Review (each, an Annual Report) that (A) summarizes his or her material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Annual Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; and (D) the UBS QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section I(h) above;

(iv) Each Annual Report must be provided to appropriate corporate officers of UBS and each UBS QPAM to which such report relates; the head of Compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM; and must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed within at least three (3) months following the end of the period to which it relates;

(n) UBS imposes its internal procedures, controls, and protocols on UBS Securities Japan to: (1) Reduce the likelihood of any recurrence of conduct that that is the subject of the 2013

[73] Note that such Annual Review must be completed with respect to the annual periods ending January 9, 2019; January 9, 2020; and January 9, 2021.

Conviction, and (2) comply in all material respects with the Business Improvement Order, dated December 16, 2011, issued by the Japanese Financial Services Authority;

(o) UBS complies in all material respects with the audit and monitoring procedures imposed on UBS by the U.S. Commodity Futures Trading Commission Order, dated December 19, 2012;

(p) Each UBS QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such UBS QPAM relies upon the relief in the exemption;

(q) During the Exemption Period, UBS: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by UBS or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) By July 09, 2018, each UBS QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the UBS QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.[74] With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(s) A UBS QPAM will not fail to meet the terms of this exemption, solely because a different UBS QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (p), and (r); or if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of UBS or its affiliates.

Section II: Definitions

(a) The term ''Convictions'' means the 2013 Conviction and the 2017 Conviction. The term ''2013 Conviction'' means the judgment of conviction against UBS Securities Japan Co. Ltd. in case number 3:12–cr–00268–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates. The term ''2017 Conviction'' means the judgment of conviction against UBS, AG in case number 3:15–cr–00076–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of the Convictions'' encompasses any conduct of UBS and/or their personnel, that is described in (i) Exhibit 3 to the Plea Agreement entered into between UBS, AG and the Department of Justice Criminal Division, on May 20, 2015, in connection with case number 3:15–cr–00076–RNC, and (ii) Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with case number 3:12–cr–00268–RNC;

(b) The term ''Covered Plan'' means an ERISA-covered plan or an IRA with respect to which a UBS QPAM relies on PTE 84–14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption, but not with respect to any arrangement, agreement, or contract between a UBS QPAM and an ERISA-covered plan or IRA with respect to which the UBS QPAM has expressly disclaimed reliance on the QPAM status or PTE 84–14 in entering into its contract with the ERISA covered plan or IRA.

(c) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code.

(d) The term ''Exemption Period'' means January 10, 2018, through January 9, 2021;

(e) The term ''FX Misconduct'' means the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS, AG and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15–cr–00076–RNC filed in the US District Court for the District of Connecticut.

(f) The term ''Plea Agreement'' means the Plea Agreement (including Exhibits 1 and 3 attached thereto) entered into between UBS, AG and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15-cr-00076–RNC filed in the US District Court for the District of Connecticut.

(g) The term ''UBS'' means UBS, AG.

(h) The term ''UBS QPAM'' means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the Asset Management or the Wealth Management Americas divisions of UBS, AG that qualifies as a ''qualified professional asset manager'' (as defined in Section VI(a)[75] of PTE 84–14) and that relies on the relief provided by PTE 84–14 or represents to ERISA-covered plans and IRAs that it qualifies as a QPAM and with respect to which UBS, AG is an ''affiliate'' (as defined in Part VI(d) of PTE 84–14). The term ''UBS QPAM'' excludes UBS, AG and UBS Securities Japan.

(i) The term ''UBS Securities Japan'' means UBS Securities Japan Co. Ltd, a wholly-owned subsidiary of UBS incorporated under the laws of Japan.

Effective Date

This exemption is effective January 10, 2018, and the term of the exemption is from January 10, 2018, through January 9, 2021 (the Exemption Period).

Department's Comment: The Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions) during the Exemption Period. Although UBS could apply for a new exemption in that

[74] In the event Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

[75] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

circumstance, the Department would not be obligated to grant the exemption. The terms of this exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

Further Information

For more information on this exemption, contact Brian Mica, telephone (202) 693–8402, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of December, 2017.

Lyssa E. Hall,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2017–27977 Filed 12–28–17; 8:45 am]

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Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[LLWO300000 L13100000 PP0000 18X]

RIN 1004–AE52

Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: On March 26, 2015, the Bureau of Land Management (BLM) published in the **Federal Register** a final rule entitled, ''Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands'' (2015 rule). With this final rule, the BLM is rescinding the 2015 rule because we believe it imposes administrative burdens and compliance costs that are not justified. This final rule returns the affected sections of the Code of Federal Regulations (CFR) to the language that existed immediately before the published effective date of the 2015 rule (June 24, 2015), except for changes to those regulations that were made by other rules published between the date of publication of the 2015 rule and now, and the phrase ''perform nonroutine fracturing jobs,'' which is not restored to the list of subsequent operations requiring prior approval. None of the changes by other rules are relevant to this rulemaking.

DATES: This final rule is effective on December 29, 2017.

FOR FURTHER INFORMATION CONTACT: Lorenzo Trimble, Acting Division Chief, Fluid Minerals Division, 202–912–7342, for information regarding the substance of this final rule or information about the BLM's Fluid Minerals program. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION:

Executive Summary

Pursuant to the Mineral Leasing Act (MLA), the Federal Land Policy and Management Act (FLPMA), the Indian mineral leasing laws, and other legal authorities, the BLM is charged with administering oil and gas operations on Federal and Indian lands in a manner that allows for responsible and appropriate resource development. This final rule is needed to prevent the unnecessarily burdensome and unjustified administrative requirements and compliance costs of the 2015 rule from encumbering oil and gas development on Federal and Indian lands.

The process known as ''hydraulic fracturing'' has been used by the oil and gas industry since the 1950s to stimulate production from oil and gas wells. In recent years, public awareness of the use of hydraulic fracturing practices has grown. New horizontal drilling technology has allowed increased access to oil and gas resources in tight shale formations across the country, sometimes in areas that have not previously experienced significant oil and gas development. As hydraulic fracturing has become more common, public concern increased about whether hydraulic fracturing contributes to or causes the contamination of groundwater sources, whether the chemicals used in hydraulic fracturing should be disclosed to the public, and whether there is adequate management of well integrity and of the ''flowback'' fluids that return to the surface during and after hydraulic fracturing operations.

On March 26, 2015, the BLM published in the **Federal Register** a final rule entitled, ''Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands'' (80 FR 16128) (2015 rule). The 2015 rule was intended to: Ensure that wells are properly constructed to protect water supplies, make certain that the fluids that flow back to the surface as a result of hydraulic fracturing operations are managed in an environmentally responsible way, and provide public disclosure of the chemicals used in hydraulic fracturing fluids. To achieve its objectives, the 2015 rule required oil and gas operators to:

- Obtain the BLM's approval before conducting hydraulic fracturing operations by submitting an application with information and a plan for the hydraulic fracturing design (43 CFR 3162.3–3(d)(4)).
- Include a hydraulic fracturing application in applications for permits to drill (APDs), or in a subsequent ''sundry notice'' (43 CFR 3162.3–3(c)).
- Include information about the proposed source of water in each hydraulic fracturing application so that the BLM can complete analyses required by the National Environment Policy Act (NEPA) (43 CFR 3162.3–3(d)(3)).
- Include available information about the location of nearby wells to help prevent ''frack hits'' (*i.e.,* unplanned surges of pressurized fluids into other wells that can damage the wells and equipment and cause surface spills) (43 CFR 3162.3–3(d)(4)(iii)(C)).
- Verify that the well casing is surrounded by adequate cement, and test the well to make sure it can withstand the pressures of hydraulic fracturing (43 CFR 3162.3–3(e)(1) and (2) and (f)).
- Isolate and protect usable water, while redefining ''usable water'' to expressly defer to classifications of groundwater by states and tribes, and the Environmental Protection Agency, 43 CFR 3160.0–7; and require demonstrations of 200 feet of adequate cementing between the fractured formation and the bottom of the closest usable water aquifer, or cementing to the surface (43 CFR 3162.3–3(e)(2)(i) and (ii)).
- Monitor and record the annulus pressure during hydraulic fracturing operations, and report significant increases of pressure (43 CFR 3162.3–3(g)).
- File post-fracturing reports containing information about how the hydraulic fracturing operation actually occurred (43 CFR 3162.3–3(i)).
- Submit lists of the chemicals used (non-trade-secrets) to the BLM by sundry notice (Form 3160–5), to FracFocus (a public website operated by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission), or to another BLM-designated database (43 CFR 3162.3–3(i)(1)).
- Withhold trade secret chemical identities only if the operator or the owner of the trade secret submits an affidavit verifying that the information qualifies for trade secret protection (43 CFR 3162.3–3(j)).
- Obtain and provide withheld chemical information to the BLM, if the BLM requests the withheld information (43 CFR 3162.3–3(j)(3)).
- Store recovered fluids in above-ground rigid tanks of no more than 500-barrel capacity, with few exceptions, until the operator has an approved plan for permanent disposal of produced water (as required by Onshore Oil and Gas Order No. 7) (43 CFR 3162.3–3(h)).

The 2015 rule also authorized two types of variances:

- Individual operation variances to account for local conditions or new or different technology (43 CFR 3162.3–3(k)(1)).
- State or tribal variances to account for regional conditions or to align the BLM requirements with state or tribal regulations (43 CFR 3162.3–3(k)(2)).

For either type of variance to be approved, the variance needed to meet or exceed the purposes of the specific provision of the 2015 rule for which the

variance is being granted (43 CFR 3162.3–3(k)(3)).

The 2015 rule was immediately challenged in court. The United States District Court for the District of Wyoming stayed the 2015 rule before it went into effect, and later issued a final order setting aside the rule, concluding that it was outside the BLM's statutory authority. On appeal, the United States Court of Appeals for the Tenth Circuit dismissed the appeal as prudentially unripe, and vacated the District Court's final order with instructions for the District Court to dismiss the case without prejudice. The plaintiffs have moved for rehearing or reconsideration en banc. Briefing on those petitions is complete. The Tenth Circuit has not yet issued its mandate to the District Court, and thus the 2015 rule has not gone into effect.

Commenters and a District Court have raised doubts about BLM's statutory authority to regulate hydraulic fracturing operations on Federal and Indian lands. The BLM believes that it is not only better policy to rescind the 2015 rule to relieve operators of duplicative, unnecessary, costly and unproductive regulatory burdens, but it also eliminates the need for further litigation about BLM's statutory authority.

On March 28, 2017, President Trump issued Executive Order 13783, entitled, ''Promoting Energy Independence and Economic Growth'' (82 FR 16093, Mar. 31, 2017), which directed the Secretary of the Interior to review four specific rules, including the 2015 rule, for consistency with the policy set forth in section 1 of the Order and, if appropriate, take action to lawfully suspend, revise, or rescind those rules that are inconsistent with the policy set forth in Executive Order 13783.

Section 1 of Executive Order 13783 states that it is in the national interest to promote clean and safe development of United States energy resources, while avoiding ''regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.'' Section 1 states that the prudent development of these natural resources is ''essential to ensuring the Nation's geopolitical security.'' Section 1 finds that it is in the national interest to ensure that electricity is affordable, reliable, safe, secure, and clean, and that coal, natural gas, nuclear material, flowing water, and other domestic sources, including renewable sources, can be used to produce it.

Accordingly, Section 1 of Executive Order 13783 declares that the policy of the United States is that: (1) Executive departments and agencies immediately review regulations that potentially burden the development or use of domestically produced energy resources and, as appropriate, suspend, revise, or rescind those that unduly burden domestic energy resources development ''beyond the degree necessary to protect the public interest or otherwise comply with the law''; and (2) To the extent permitted by law, agencies should promote clean air and clean water, while respecting the proper roles of the Congress and the States concerning these matters; and (3) Necessary and appropriate environmental regulations comply with the law, reflect greater benefit than cost, when permissible, achieve environmental improvements, and are developed through transparent processes using the best available peer-reviewed science and economics.

To implement Executive Order 13783, Secretary of the Interior Ryan K. Zinke issued Secretarial Order No. 3349 entitled, ''American Energy Independence,'' on March 29, 2017, which, among other things, directed the BLM to proceed expeditiously in proposing to rescind the 2015 rule.

As directed by Executive Order 13783 and Secretarial Order No. 3349, the BLM conducted a review of the 2015 rule. As a result of this review, the BLM believes that the compliance costs associated with the 2015 rule are not justified.

In conjunction with its review of the 2015 rule, the BLM analyzed the potential economic implications of implementing the 2015 rule and this final rule that rescinds the 2015 rule. That analysis is documented in the regulatory impact analysis (RIA) document that the BLM prepared for this final rule. As described in detail in that RIA, the BLM has estimated that this final rule will provide a reduction in compliance costs relative to the 2015 rule of up to $9,690 per well or approximately $14 million to $34 million per year.

When issuing the 2015 rule, the BLM acknowledged that it already had ''an extensive process in place to ensure that operators conduct oil and gas operations in an environmentally sound manner'' and that ''the regulations and Onshore Orders that have been in place to this point have served to provide reasonable certainty of environmentally responsible development of oil and gas resources'' (80 FR at 16133 and 16137). However, in the RIA for the 2015 rule, while noting that many of the requirements of the 2015 rule were consistent with industry practice and that some were duplicative of state requirements or were generally addressed by existing BLM requirements, the BLM asserted that the 2015 rule would provide additional assurance that operators are conducting hydraulic fracturing operations in an environmentally sound and safe manner, and increase the public's awareness and understanding of these operations.

While the extent of the benefits that the additional assurances might provide are questionable, it follows that the rescission of the 2015 rule could potentially reduce any such assurances. However, considering state regulatory programs, the sovereignty of tribes to regulate operations on their lands, and the pre-existing Federal regulations, the proposed rescission of the 2015 rule would not leave hydraulic fracturing operations unregulated.

The BLM's review of the 2015 rule also included a review of state laws and regulations that found that most states are either currently regulating hydraulic fracturing or are in the process of establishing hydraulic fracturing regulations. When the 2015 rule was issued, 20 of the 32 states with currently existing Federal oil and gas leases had regulations addressing hydraulic fracturing. In the time since the promulgation of the 2015 rule, an additional 12 states have introduced laws or regulations addressing hydraulic fracturing. As a result, all 32 states with Federal oil and gas leases currently have laws or regulations that address hydraulic fracturing operations.[1] In addition, some tribes with oil and gas resources have also taken steps to regulate oil and gas operations, including hydraulic fracturing, on their lands.

The BLM also now believes that disclosure of the chemical content of hydraulic fracturing fluids to state regulatory agencies and/or databases

[1] The reference to 32 states with existing Federal oil and gas leases includes the following states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming. The State of Oregon regulates hydraulic fracturing operations by way of its regulations addressing ''Water Injection and Water Flooding of Oil and Gas Properties'' (Oregon Administrative Rules [Or. Admin. R.] sec. 632–010–0194). The State of Arizona regulates hydraulic fracturing operations under regulations addressing ''Artificial Stimulation of Oil and Gas Wells'' (Arizona Administrative Code [A.A.C.] sec. R12–7–117). The State of Indiana issued ''emergency rules'' in 2011 and 2012 that incorporated new legislation addressing hydraulic fracturing (Pub. L. 140–2011 and Pub. L. 16–2012) into Indiana's oil and gas regulations at 312 Indiana Administrative Code (IAC) Article 16. For further information about the state regulatory programs, see § 2.12 of the RIA and Appendix 1 of the EA prepared for this rule.

such as FracFocus is more prevalent than it was in 2015 and, therefore, there is no continuing need for a Federal chemical disclosure requirement, since companies are already making those disclosures on most operations, either to comply with state law or voluntarily. There are 25 states that currently use FracFocus for chemical disclosures. These include seven states where the BLM has major oil and gas operations, including Colorado, Montana, New Mexico, North Dakota, Oklahoma, Texas, and Utah.

In addition to state and tribal regulation of hydraulic fracturing, the BLM has several pre-existing regulations that it will continue to rely on, some of which are set out at 43 CFR subpart 3162 and in Onshore Oil and Gas Orders 1, 2, and 7. These regulations ensure that operators conduct oil and gas operations in an environmentally sound manner and also reduce the risks associated with hydraulic fracturing by providing specific requirements for well permitting; construction, casing, and cementing; and disposal of produced water.[2] The BLM also possesses discretionary authority allowing it to impose site-specific protective measures reducing the risks associated with hydraulic fracturing.

Prior to the 2015 rule, the regulations at 43 CFR 3162.3–2(a) (2014) provided in pertinent part that a ''proposal for further well operations shall be submitted by the operator on Form 3160–5 for approval by the authorized officer prior to commencing operations to . . . perform nonroutine fracturing jobs . . . .'' In the proposed rule that preceded this final rule, the BLM offered to restore the regulatory text in § 3162.3–2(a) regarding ''nonroutine fracturing jobs'' to exactly as it existed in the pre-2015 rule regulations. Those regulations, however, did not define ''nonroutine fracturing jobs'' or provide guidance to operators or BLM authorized officers on how to distinguish ''routine'' from ''nonroutine.'' Some of the comments that were submitted for the proposed rule noted this and criticized the regulations for being vague, confusing, and difficult for operators and the BLM to apply. In light of these comments, the BLM reconsidered its initial proposal to restore the regulation text in section 3162.3–2(a) requiring prior approval for ''nonroutine fracturing jobs.''

As a result of considerable advances in oil and gas development technology in the last 20 years, hydraulic fracturing practices that would have been considered ''nonroutine'' when the BLM originally issued the regulations requiring prior approval for ''nonroutine fracturing jobs'' are now commonly utilized and considered ''routine.'' The combination of advances in oil and gas development technology and the BLM's existing authority to mitigate the potential risks of hydraulic fracturing operations through site-specific protective measures that are applied as a part of the environmental review and approval process at the APD stage has made post-APD approvals for ''nonroutine fracturing jobs'' at most a very rare occurrence. In fact, while the BLM has not been tracking requests for approval of ''nonroutine fracturing jobs,'' recent inquiries to BLM state offices have not revealed any examples of ''nonroutine fracturing'' requests or approvals. Thus, given that the ''nonroutine fracturing'' requirement has not, and does not seem to serve any purpose, and removing it from the regulations could reduce the potential for unproductive confusion or paperwork without adverse effects, the BLM has not restored the ''nonroutine fracturing'' requirement in this final rule.

The BLM's review of the 2015 rule also included a review of incident reports from Federal and Indian wells since December 2014. This review indicated that resource damage is unlikely to increase by rescinding the 2015 final rule because of the rarity of adverse environmental impacts that occurred from hydraulic fracturing operations since promulgation of the 2015 rule. The BLM now believes that the appropriate framework for mitigating these impacts exists through state regulations, through tribal exercise of sovereignty, and through BLM's own pre-existing regulations and authorities (pre-2015 rule 43 CFR subpart 3162 and Onshore Orders 1, 2, and 7).

I. Background
II. Discussion of the Final Rule and Comments on the Proposed Rule
III. Procedural Matters

I. Background

The development and production of oil and gas, including hydraulic fracturing operations, are regulated under a framework of Federal, state, and local laws, and, on some tribal lands, by tribal regulations. Several Federal agencies implement Federal laws and requirements while each state in which oil and gas is produced has one or more regulatory agencies that administer state laws and requirements.

State and local laws apply on Federal lands, except to the extent that they are preempted by Federal law. Federal preemption is rare, and is not at issue in the final rule. Accordingly, the drilling and completion of oil and gas wells, including hydraulic fracturing operations, are subject to Federal and state and local regulation on Federal lands. If the requirements of a state regulation are more stringent than those of a Federal regulation, for example, the operator can comply with both the state and the Federal regulation by meeting the more stringent state requirement.

Tribal and Federal laws apply to oil and gas drilling and completion operations, including hydraulic fracturing operations, on tribal lands. Operators on tribal lands can comply with both tribal and Federal regulations governing drilling and completion requirements by complying with the stricter of those rules.

Regardless of any difference in operational regulations, operators on Federal lands must comply with all Federal, state, and local permitting and reporting requirements. On Indian lands, they must comply with all Federal and tribal permitting and reporting requirements.

Existing BLM Requirements—Not Affected by This Final Rule

The BLM has an extensive process in place to ensure that operators conduct oil and gas operations in a safe and environmentally sound manner that protects resources. The following discussion provides a description of some of the BLM's existing processes and requirements that are not affected by the rescission of the 2015 rule pursuant to this final rule that help to ensure that the risks of oil and gas operations, including hydraulic fracturing, are appropriately minimized.

The BLM applies a tiered decision-making approach when providing access for the development of Federal oil and gas resources on public lands. First, the BLM develops land use plans (the BLM refers to these plans as Resource Management Plans, or RMPs). The RMP serves as the basis for all land use decisions the BLM makes, including decisions to delineate public lands that are appropriate for oil and gas leasing. Establishment or revision of an RMP requires preparation of an environmental impact statement (EIS) in accordance with the National Environmental Policy Act (NEPA). In areas where lands are open for oil and gas leasing, the EIS prepared to support establishment or revision of the RMP analyzes oil and gas development related impacts that may be expected to

[2] Additional discussion regarding Onshore Oil and Gas Orders 1, 2, and 7, and 43 CFR subpart 3162, is provided in § 2.11 of the RIA and the EA prepared for this rule.

occur over the life of an RMP (typically 20 years). The RMP identifies the terms and conditions under which the BLM would allow oil and gas development to occur in order to protect other resource values. Those terms and conditions may include mitigation measures that would be evaluated through the EIS and are implemented as stipulations incorporated into oil and gas leases. If necessary, certain lands are closed to oil and gas leasing altogether when such use is incompatible with sensitive resources or other planned uses. In addition to compliance with NEPA, the BLM must comply with the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), and other applicable Federal laws and regulations. Once an RMP has been approved, the BLM makes land use decisions, including oil and gas development decisions, in accordance with the RMP, or any revisions or amendments to that RMP.

Before oil and gas activities may occur on Federal lands, interested parties must obtain a lease from the BLM. Oil and gas leases are acquired through an auction-style sale process in which interested parties typically identify tracts of land that they would like to see leased. The BLM will conduct a preliminary evaluation to first determine whether the lands nominated for oil and gas leasing are under Federal jurisdiction and are open to leasing in accordance with the applicable RMP. The BLM will then conduct a second tier of NEPA review—typically through an EA—to address potential impacts that could be caused by oil and gas development within the nominated lease area. The NEPA review conducted at the leasing stage tiers to the EIS prepared for the RMP. If the BLM's analysis determines that the nominated tracts are suitable for leasing, the BLM would offer the tracts for lease during a competitive oil and gas lease sale auction. If any of the tracts are not bid upon during the lease sale auction, those tracts become available for non-competitive leasing by the first qualified applicant for a two year period that begins on the first business day following the last day of the lease sale. In addition to compliance with the NEPA, the BLM also complies with the NHPA and the ESA at the leasing stage. Upon issuance by the BLM, the lease allows the operator to conduct operations on the lease subject to the requirements of existing regulations, the lease terms and stipulations, and the requirement that the operator obtain BLM approval of a site-specific Application for Permit to Drill (APD).

When trust or restricted Indian lands are involved, the tribe or individual Indian mineral owner plans the uses of their own lands. They lease their own oil and gas resources with the consent of the Department of the Interior's (''DOI'' or ''the Department'') Bureau of Indian Affairs (BIA). Nonetheless, the BLM often serves as a cooperating agency during the development of the environmental review for such actions. Moreover, pursuant to delegations from the Secretary of the Interior (Secretary) and BIA regulations, the BLM regulates oil and gas operations on trust and restricted Indian lands, applying the same operating regulations that apply on Federal lands.

The procedures followed when issuing leases to develop Indian oil and gas resources may be similar to, or different from, the leasing process used for Federal lands, depending upon a number of different factors. For example, when tribal oil and gas resources are leased under the authority of the Indian Mineral Leasing Act of 1938 (IMLA), the BIA typically conducts a competitive lease sale process that shares many similarities with the leasing process for Federal lands. In contrast, the Indian Mineral Development Act of 1982 (IMDA), allows Indian mineral owners to forego the competitive auction-style leasing process and negotiate directly with potential operators for agreements to develop their oil and gas resources.[3] However, for both IMLA and IMDA authorized leases and agreements, the approval of the Indian mineral owner and the BIA or the DOI is required.[4] Much like with oil and gas leasing actions involving Federal lands, authorizations pursuant to the IMLA and the IMDA to develop Indian oil and gas resources are subject to compliance with applicable Federal statutes, including NEPA. The procedures for issuing leases and other development agreements for Indian oil and gas resources are outlined in the BIA's regulations at 25 CFR parts 211 (IMLA leasing), 212 (agreements for allotted lands), and 225 (IMDA agreements).

The BLM has existing regulations, including Onshore Oil and Gas Orders, to ensure that operators conduct oil and gas exploration and development in a safe and environmentally responsible manner that protects other resources. Sections 3162.3–1 and Onshore Order 1 require an operator to get approval from the BLM prior to drilling a well. The operator must submit an APD containing all of the information required by Onshore Order 1. This includes a completed Form 3160–3, Application for Permit to Drill or Re-Enter, a well plat, a drilling plan, a surface use plan, bonding information, and an operator certification.

Upon receiving a drilling proposal on Federal lands, the BLM is required by existing section 3162.3–1(g) to post information for public inspection for at least 30 days before the BLM can approve the APD. The information must include: The company/operator name; the well name/number; and the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, or maps showing the affected lands and the location of all tracts to be leased and of all leases already issued in the general area.

The public can review the posted information and provide any input they would like the BLM to consider during the environmental analysis the BLM prepares prior to making a decision on the APD.

The drilling plan provided by the operator must be in sufficient detail to permit the BLM to complete an appraisal of the technical adequacy of, and environmental effects associated with, the proposed project. The operator must provide geological information, including the name and estimated tops of all geologic groups, formations, members, and zones. The operator must also provide the estimated depths and thickness of formations, members, or zones potentially containing usable water, oil, gas, or prospectively valuable deposits of other minerals that the operator expects to encounter, and their plans for protecting such resources. The BLM uses this information and the BLM's geologists' and engineers' professional reviews to ensure that usable water zones are protected.

The operator must provide minimum specifications for blowout prevention equipment that they will use to keep control of well pressures encountered while drilling. The BLM evaluates the proposed equipment to determine that it is adequate for anticipated pressures that the well may encounter in order to prevent loss of control of the well and potential environmental issues. The operator must provide a proposed casing program, including the size, grade, weight, and setting depth of each

[3] The IMDA authorizes Indian tribes and individual Indian mineral owners to enter into leases, as well as other types of agreements, to explore for and develop their oil and gas resources. 25 U.S.C. 2102(a). Indian allotted lands may also be leased for mineral development pursuant to 25 U.S.C. 396.

[4] In certain situations, IMDA agreements may only be approved by the Secretary of the Interior or the Assistant Secretary for Indian Affairs. *See* 25 U.S.C. 2103(d) and 25 CFR 225.3.

casing string. The BLM engineers evaluate the proposed casing to ensure that it is being set at proper depths to protect other resources, including usable water. The BLM engineers also ensure that the casing size and strength is sufficient for the depths at which it will be set, and the pressures that the well will encounter.

The operator must provide information regarding the proposed cementing program. This includes the amount and types of cement the operator will use for each casing string, and the expected top of cement for each casing string. The cement is critical for the isolation and protection of usable water since it is the cement that establishes a barrier outside the casing between any hydrocarbon bearing zones and usable water zones. The proposed cementing program is the first step for this protection. The BLM engineers evaluate the proposed cementing program to ensure that the volume and strength of the cement is adequate to achieve the desired protections.

The operator must include in the drilling plan information regarding their proposed drilling fluid. The operator must provide the type and characteristics of the proposed circulating medium for drilling each well bore section, including the quantities and types of mud the operator will maintain, and the monitoring equipment the operator will utilize on the circulating system. The BLM engineers review this information to ensure that the drilling fluid system and additives will be compatible and not detrimental to all usable water and prospectively valuable mineral zones that the well bore may encounter. The operator must also provide their proposed testing, logging, and coring procedures. This may include resistivity, gamma ray, spontaneous potential, caliper, and neutron logs as well as cement evaluation logs. The BLM reviews the proposed logging suite and determines if the operator will need to run any additional logs to provide additional downhole information.

The operator's drilling plan must address the expected bottom-hole pressure and any anticipated abnormal pressures, temperatures, or potential hazards that the well may encounter. Hazards may include lost circulation zones, hydrogen sulfide zones, or faults and fractures. The operator must also include a plan for mitigating such hazardous. The BLM geologists review this information to determine if any other anticipated hazards exist. The BLM engineers review this information to ensure the proposed mitigation to address any anticipated hazards is adequate.

The operator must include in its drilling plan any other information regarding the proposed operation that it would like the BLM to consider. This might include, but is not limited to, the directional drilling plan for deviated or horizontal wells, which would provide the proposed wellbore path. The BLM engineers review the proposed directional plan to ensure there will not be any potential issues with existing wells.

The operator's APD must also include a surface use plan of operations, or the equivalent required by another surface management agency. The surface use plan must contain sufficient details of the proposed surface use to provide for safe operations, adequate protection of the surface resources, groundwater, and other environmental components. The operator must also describe any Best Management Practices (BMP) they plan to use. BMPs are state-of-the-art mitigation measures applied to oil and natural gas drilling and production to help ensure that operators conduct energy development in an environmentally responsible manner. BMPs can protect water, wildlife, air quality, or landscapes. The BLM encourages operators to incorporate BMPs into their plans.

The operator's surface use plan should follow the BLM's *Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development,* which is commonly referred to as The Gold Book.[5] The BLM developed The Gold Book to assist operators by providing information on the requirements for obtaining permit approval and conducting environmentally responsible oil and gas operations.

The operator's surface use plan must include information regarding existing roads they plan to use to access the proposed well location and must explain how they will improve or maintain existing roads. The surface use plan must also include the operator's plan for any new access roads they plan to build. The operator must design roads based upon the type of road, the safety requirements, traffic characteristics, environmental conditions, and the type of vehicles that will use the road. The proposed road description must include: Road width, maximum grade, crown design, turnouts, drainage and ditch design, on-site and off-site erosion control, revegetation of disturbed areas, location and size of culverts and/or bridges, fence cuts and/or cattleguards, major cuts and fills, source and storage of topsoil, and the type of surface materials that the operator will use.

The operator must include a map showing all known wells, regardless of well status (producing, abandoned, etc.) within a one-mile radius of the proposed location. The BLM uses this information to ensure the proposal does not conflict with any current surface use. The BLM uses this well information to identify any potential downhole conflicts or issues between the existing wells and the proposed well. If the BLM does identify conflicts, the BLM will require the operator to modify their proposal or to submit plans to mitigate the issue.

The operator must include a map or diagram that shows the location of all production facilities and lines they will install if the well is successful (*i.e.,* a producing well), as well as any existing facilities. This would include all buried oil, water, or gas pipelines and all overhead and buried power lines. The BLM reviews this information to identify any potential conflicts with the proposed facilities.

The operator must include in their surface use plan information concerning the water supply, such as rivers, creeks, springs, lakes, ponds, and wells that the operator plans to use for drilling the well. This may or may not be the same source of water the operator plans to use for their hydraulic fracturing operations. The BLM does not regulate water usage, but the BLM does use the information about water supply in conducting the environmental analysis of the APD. The BLM uses the information to determine if the operator must obtain any additional approvals such as a right-of-way across Federal lands that may be necessary for the transport of water.

The operator must include a written description of the methods and locations it proposes for safe containment and disposal of each type of waste material (*e.g.,* cuttings, garbage, salts, chemicals, sewage, etc.) that results from drilling the proposed well. The narrative must include plans for the eventual disposal of drilling fluids and any produced oil or water recovered during testing operations. The operator must describe plans for the construction and lining, if necessary, of the reserve pit.

The surface use plan must include the character, intended use, and source of all construction materials, such as sand, gravel, stone, and soil material. The operator must identify the location and construction method and materials from

[5] The Gold Book is available on the BLM's website, at: *https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/the-gold-book.*

all anticipated ancillary facilities such as camps, airstrips, and staging areas. This information will be used to assess the environmental impacts of the proposed operations.

The operator must include a diagram of the proposed well site layout. The layout must show the location and orientation of the following: The proposed drill pad, the reserve pit/blooie line/flare pit location, access road entry points, and the reserve pit showing all cuts and fills, the drilling rig, any dikes and ditches to be constructed, and topsoil and/or spoil material stockpiles.

The operator must submit a plan for the surface reclamation or stabilization of all disturbed areas. The plan must address interim (during production) post-drilling reclamation for the area of the well pad not needed for production, as well as final abandonment of the location. The plan must include, as appropriate, the following: Configuration of the reshaped topography, drainage systems, segregation of stockpiles, surface disturbances, backfill requirements, proposals for pit closures, redistribution of topsoil, soil treatments, seeding or other steps to reestablish vegetation, weed control, and practices necessary to reclaim all disturbed areas, including any access roads and pipelines.

If the BLM does not manage the surface, the surface management agency must approve the surface use plan according to their respective regulations and guidance documents.

The APD must provide proof of adequate bond coverage as required by existing 43 CFR 3104.1 for Federal lands and by 25 CFR 211.24, 212.24, and 225.30, for Indian lands. These regulations require the operator or the lessee to have an adequate bond in place prior to the BLM's approval of the APD. If the BLM determines that the current bond amount is not sufficient, the BLM can require additional bond coverage. The BLM determines the need for bond increases by considering the operator's history of previous violations, the location and depth of wells, the total number of wells involved, the age and production capability of the field, and any unique or unusual conditions in the planned drilling operations or in the surrounding environment.

Upon receipt of a complete APD, the BLM will schedule an onsite inspection with the operator. The purpose of the onsite inspection is for the BLM and operator to further identify site-specific resource concerns and requirements not originally identified during the application stage. Prior to, or in conjunction with, the onsite inspection, the BLM or other surface management agency will advise the operator if any special inventories or studies are required, such as for cultural resources or threatened and endangered species.

The onsite inspection team will include the BLM, a representative of any other surface management agency, the operator or permitting agent, and other parties associated with planning work on the project, such as the operator's principal dirtwork contractor, agency resource specialists, surveyors, and pipeline or utility company representatives. When the onsite inspection is on private surface, the BLM will invite the surface owner to attend. The purpose of the onsite inspection is to discuss the proposal; determine the best location for the well, road, and facilities; identify site-specific concerns and potential environmental impacts associated with the proposal; and discuss the conditions of approval (COA) or possible environmental BMPs. If the BLM identifies resource conflicts, the BLM has the authority to require the operator to move surface facilities to locations that would reduce resource impacts while still allowing development of the leased minerals.

After the BLM has reviewed the operator's proposed plans and conducted the onsite inspection, the BLM will prepare an environmental impacts analysis document in conformance with the requirements of NEPA, and the Department of the Interior's regulations. The extent of the environmental analysis process and the time period for issuance of a decision on the APD will depend upon the complexity of the proposed action and resulting analysis, the significance of the environmental effects disclosed, and the completion of appropriate consultation processes. In each case, the environmental analysis considers environmental concerns and resource issues in the area, including those the BLM or operator identified during the onsite inspection, such as potentially impacted cultural resources, endangered species, surface water, ground water, and other natural resources. A group of resource specialists conduct the analysis. The composition of the team depends on the resource issues in that area and any resource issues that the BLM or operator identified during the onsite inspection. The resource specialists may include petroleum engineers, geologists, natural resources specialists, wildlife biologists, archeologists, hydrologists, soil scientists, botanists, recreation specialists, range management specialists, and realty specialists.

The environmental analysis may be conducted for a single well, a group of wells, or for an entire field. The public is welcome to provide input to the BLM for inclusion in the analysis. The BLM posts notices of all Federal APDs for public inspection in the authorizing office and on the internet. For large projects, such as field development environmental assessments or environmental impact statements, the BLM will go through public scoping and will issue a draft analysis for public comment prior to completing the final analysis and issuing a decision.

The environmental analysis will identify potential impacts from the proposed action. The BLM will develop any necessary COAs to mitigate those potential impacts. If the BLM identifies unacceptable impacts, the BLM will ask the operator to modify its proposal, or the BLM may deny the application. The BLM will attach the COAs to the approved APD. The operator must follow the approved plan and all COAs.

Upon BLM's approval of an APD, the operator may commence drilling of the well. In addition to the approved plan and the COAs attached to the APD, the operator must also comply with the requirements of Onshore Order 2. Onshore Order 2 details the BLM's uniform national minimum standards of performance expected from operators when conducting drilling operations on Federal and Indian lands. Many of the requirements of Onshore Order 2 ensure the protection of usable water. Onshore Order 2 defines ''isolating'' as ''using cement to protect, separate, or segregate usable water and mineral resources'' and ''usable water'' as ''generally those waters containing up to 10,000 ppm of total dissolved solids.''

Onshore Order 2 requires that the operator conduct the proposed casing and cementing programs as approved to protect and/or isolate all usable water zones, lost circulation zones, abnormally pressured zones, and any prospectively valuable deposits of minerals. It requires that the operator determine the casing setting depths based on all relevant factors, including: Presence/absence of hydrocarbons; fracture gradients; usable water zones; formation pressures; lost circulation zones; other minerals; or other unusual characteristics. It also requires the operator to report all indications of usable water.

Onshore Order 2 requires the operator to run centralizers on the bottom 3 joints of surface casing to help ensure the casing is centered in the drilled hole prior to cementing. This helps to ensure wellbore integrity. It also requires the operator to cement the surface casing

back to the surface either during the primary cement job or by remedial cementing. Cementing the surface casing back to the surface ensures that all usable water zones behind the surface casing are isolated and protected. Onshore Order 2 requires the operator to wait until the cement for all casing strings achieves a minimum of 500 psi compressive strength at the casing shoe prior to drilling out the casing shoe. It requires the operator to use top plugs during cementing operations to reduce contamination of the cement by displacement fluid. It requires the operator to use a bottom plug or other acceptable technique, such as a preflush fluid, inner string cement method, etc., to help isolate the cement from contamination by the mud fluid being displaced ahead of the cement slurry. By using proper cementing techniques such as these, the operator can complete the cement job as planned and thus protect usable water.

Onshore Order 2 requires the operator to pressure test the casing prior to drilling out the casing shoe. This test ensures the integrity of the casing. Onshore Order 2 requires the operator to conduct a pressure integrity test of each casing shoe on all exploratory wells, and on that portion of any well approved for a 5000 psi blowout preventer. The operator must conduct this test before drilling 20 feet of new hole. The pressure test ensures the integrity of the cement around the casing shoe.

Onshore Order 2 identifies the minimum requirements for blowout prevention equipment and the minimum standards for testing the equipment. Proper sizing, installation, and testing of the blowout prevention equipment ensures that the operator maintains control of the well during the drilling process, which is necessary for protection of usable water zones.

The BLM conducts inspections of drilling operations to ensure that operators comply with the Onshore Order 2 drilling regulations, the approved APD, and the associated COAs. The BLM drilling inspections consist of two general types of inspections: Technical and environmental. The BLM petroleum engineering technicians conduct technical inspections of the drilling operations, such as witnessing the running and cementing of the casing, witnessing the testing of the blowout prevention equipment, and detailed drilling rig inspections that include review of documentation such as the third party cementing job ticket, which describes the cementing operation including the type and amount of cement used, the cement pump pressures, and the observation of cement returns to the surface, if applicable. Through witnessing the operation or the review of the documentation, the BLM inspectors verify that the drilling operations are conducted in accordance with the approved plan and that no wellbore issues exist. The BLM natural resource specialists conduct environmental inspections of drilling operations. The environmental inspections focus primarily on the surface use portion of the approved APD. This includes inspection of the access road, the well pad, and any pits. While the BLM does not have the budget or personnel available to inspect every drilling operation as it is occurring on Federal and Indian minerals, the BLM conducts inspections in accordance with an annual strategy to ensure compliance with the regulations, lease stipulations, COAs for the plan, and permits.

As described above, the BLM has numerous processes and requirements to ensure that operators conduct oil and gas exploration and development in an environmentally responsible manner that protects mineral and other resources.

Within 30 days after the operator completes a well, the operator is required by Section IV(e) of Onshore Order 1 to submit to the BLM a Well Completion or Recompletion Report and Log (Form 3160–4), which provides drilling and completion information. This includes the actual casing setting depths and the amount of cement the operator used in the well along with information regarding the completion interval, such as the top and bottom of the formation, the perforated interval, and the number and size of perforation holes. The operator is required to submit copies of all electric and mechanical logs, including any cement evaluation logs, which the operator ran on the well prior to conducting completion operations. The BLM reviews this information to ensure that the operator set the casing and pumped the cement according to the approved permit.

Once a well goes into production, water is often produced with the oil and gas. The produced water tends to be of poor quality and is not generally suitable for drinking, livestock, or other uses without treatment and, therefore, must be disposed of properly. Onshore Oil and Gas Order 7 (Order 7) regulates the disposal of produced water. Under Onshore Order 7, operators must apply to the BLM for authorization to dispose of produced water by injecting the water into a suitable formation, by storing it in pits, or by other methods approved by the BLM. If the disposal is into injection wells, the operator must obtain approval under the Safe Drinking Water Act's Underground Injection Control (UIC) program that is administered by the Environmental Protection Agency (EPA). In many states, the EPA has granted primary enforcement authority for the UIC program to the state agency responsible for oil and gas development. If the water will be stored in pits, the BLM requires specific design standards to ensure the water does not contaminate the environment or pose a threat to public health and safety.

After a well has been drilled and completed, the BLM continues to inspect the well until it has been plugged and abandoned and the surface has been rehabilitated. During the production phase of the well, the BLM inspections focus on two primary issues: Production and the environment. The Federal Government (for Federal leases) or an Indian tribe or individual Indian allottee (for Indian leases) receives a royalty on the oil and gas removed or sold from the lease based on the volume, quality, and value of the oil and gas. Royalties from Federal leases are shared with the state as provided by statute. Production inspections are done to ensure the volume and quality of the oil and gas is accurately measured and properly reported. Environmental inspections are done to ensure that well pads and facilities are in compliance with regulations, Onshore Orders, and approved permits. Environmental inspections include ensuring that pits are properly constructed, maintained, and protected from wildlife; identifying leaking wells or pipelines; ensuring that the wellsite and facilities are properly maintained; and ensuring that proper erosion controls and rehabilitation measures are in place.

When a well has reached the end of its economic life, Federal regulations require it to be plugged and abandoned to prevent oil and gas from leaking to the surface or contaminating water bearing zones or other mineral zones. 43 CFR 3162.3–4. Well abandonment can be requested by the operator or required by the BLM. In either case, the operator must submit a proposal for well plugging, including the length, location, type of cement, and placement method to be used for each plug. Onshore Order 2 contains minimum requirements for well plugging. The operator must also submit a plan to rehabilitate the surface once the well has been plugged. The goal of surface rehabilitation is to remove obvious visual evidence of the pad and to promote the long-term stability of the site and vegetation.

The BLM inspects both well plugging and surface restoration. Well plugging inspections are done to ensure the plugs are set into the wellbore as approved by the BLM. The inspector will witness the depth and volume of cement used in each plug as well as the physical verification of the top of each plug. When an operator has complete surface restoration, it will notify the BLM. The BLM will send surface protection specialists to ensure the restoration is adequate. Once the BLM is satisfied with the restoration efforts, the BLM will approve the operator's Final Abandonment Notice.

II. Discussion of the Final Rule and Comments on the Proposed Rule

On July 25, 2017, the BLM proposed to rescind the 2015 final rule because we believed that rule was unnecessarily duplicative of state and some tribal regulations and imposed burdensome reporting requirements and other unjustified costs on the oil and gas industry. The 60-day comment period for that proposed rule (the 2017 proposed rule) ended on September 25, 2017 (82 FR 34464).

Discussion of Comments by Topic

Water Quality

Many commenters state that the 2017 proposal, if finalized, will have negative impacts on water quality and public health. Commenters state that science has shown that hydraulic fracturing can be injurious to the natural landscape as well as to human health and safety. Commenters state that one danger from hydraulic fracturing is contamination of surface water by toxic chemicals that leach off site. Another is that the fluids may leak from the well into underground aquifers. Commenters assert that contamination on Federal and tribal land runs off Federal lands into the water systems that we use and seeps into the groundwater we drink.

The BLM has reviewed incident reports from Federal and Indian wells since December 2014. This review indicated that resource damage is unlikely to increase by rescinding the 2015 rule because of the rarity of adverse environmental impacts that occurred from hydraulic fracturing operations before the 2015 rule, and after its promulgation while the 2015 rule was not in effect. The BLM believes that the appropriate framework for mitigating these impacts is through the state regulations, through tribal exercise of sovereignty, and through BLM's own pre-existing regulations and authorities (pre-2015 final rule 43 CFR subpart 3162 and Onshore Orders 1, 2, and 7). The review and approval of the APDs requires compliance with those existing authorities and regulations to ensure protection of the water resources, and the local environment.

Multiple commenters claim that hydraulic fracturing is a dangerous practice that can contaminate our air and water, while contributing to the release of greenhouse gases. One commenter states that, as the base of scientific knowledge regarding risks from hydraulic fracturing continues to develop, the evidence continues to build that hydraulic fracturing and shale and tight gas development processes pose a wide range of risks to human health and the environment. Another commenter asserts that no amount of regulation can make hydraulic fracturing safe, but that rescinding or weakening the recently updated rules only puts our shared resources at greater risk. Further, the commenter states that the updated rules are long overdue and simply lay out basic standards to follow. Commenters state that the 2015 rule was enacted after years of review and should not be weakened or repealed. Commenters state that rescinding the 2015 rule would put our Federal lands at risk by repealing our first line of defense against groundwater contamination.

The BLM initiated the development of the hydraulic fracturing rule in 2010 in response to public concerns. Relatively few states had any regulations on hydraulic fracturing at that time. In light of this, a BLM regulation covering wellbore integrity and usable water protection seemed appropriate at that time. Since promulgation of the 2015 rule, however, many states have updated their regulations to address hydraulic fracturing operations. The BLM now believes that the 2015 rule is duplicative of the states' and some tribal regulations, as well as some of the BLM's own pre-existing regulations and authorities (pre-2015 rule 43 CFR subpart 3162 and Onshore Orders 1, 2, and 7), and is not necessary.

Some commenters are concerned that hydraulic fracturing affects the availability of water resources. These commenters describe that once water is used for hydraulic fracturing, it cannot be returned to the water table and that water is a precious resource that should not be depleted in this fashion.

Recycling and reuse of flowback fluids from ongoing hydraulic fracturing operations is currently practiced in many states, but the majority of recovered fluids are still injected into disposal wells regulated under the Safe Drinking Water Act (SDWA). The 2015 rule, however, would not have mandated reuse or recycling. Therefore, rescinding the 2015 rule will not affect demands on water supplies or the reuse or recycling of recovered fluids.

One commenter states that, although incidents of contamination of groundwater from hydraulic fracturing are not frequent, due in part to improvements in technology, they have occurred in locations that raise concern about the adequacy of protection. In response to comments that list examples of studies that find no linkages between hydraulic fracturing and groundwater contamination, one comment points to the work of a former U.S. EPA scientist linking hydraulic fracturing with groundwater contamination. The commenter adds that not all laboratory tests have shown contamination of groundwater in areas of hydraulic fracturing because standard laboratory tests do not always test for exotic, highly water-soluble chemicals used in hydraulic fracturing.

The referenced study suggested that water wells in Pavillion, WY were contaminated with hydraulic fracturing wastes that had been stored in unlined pits dug into the ground. The BLM has several existing requirements, some of which are set out at 43 CFR subpart 3162 and in Onshore Oil and Gas Orders 1, 2, and 7, that allow it to mitigate the risks associated with oil and gas operations, including any risks to groundwater from hydraulic fracturing operations. The BLM also possesses discretionary authority allowing it to impose site-specific protective measures reducing the risks associated with hydraulic fracturing. The BLM Authorized Officers follow the BLM's regulations and authorities to review and approve each APD. Operators also must comply with existing state laws and regulations and, on tribal lands, tribal laws and regulations, including those that are intended to prevent groundwater contamination. The BLM does not believe that the 2015 final rule would reduce the risks of groundwater contamination to an extent that would justify the burdens imposed on operators or the BLM by that rule.

One commenter states that the cost of cleaning groundwater after it is contaminated is exorbitant and therefore that circumstances potentially causing contamination should be avoided.

We agree. The BLM Authorized Officers follow the BLM's regulations and authorities (pre-2015 rule 43 CFR subpart 3162 and Onshore Orders 1, 2, and 7) to review and approve each APD. Operators also must comply with existing state regulations, or, on tribal lands, tribal laws. Those requirements are intended to ensure protection of the

water resources and prevent any groundwater contamination. We are no longer persuaded, though, that the 2015 rule would improve protection of groundwater to an extent that would justify the burdens on operators or the BLM.

One commenter takes issue with the statements in the 2017 proposed rule that, ''a review of incident reports from Federal and Indian wells since December 2014,'' indicates that, ''resource damage is unlikely to increase by rescinding the 2015 final rule.'' The commenter asserts that the BLM provides no support or explanation for this statement and has failed to consider many of the significant adverse environmental impacts associated with rescinding the 2015 rule.

The BLM did not find any increase in the number of incidents related to hydraulic fracturing completions in BLM operations since December 2014. The EPA study (EPA 2016) on hydraulic fracturing was unable to identify any specific activities of hydraulic fracturing operations on Federal or Indian lands that impacted the drinking water resources, because the study did not distinguish between hydraulic fracturing on Federal or Indian lands and hydraulic fracturing on other lands.

One commenter states that he has lived in North Dakota for five years and personally witnessed the purposeful dumping of hydraulic fracturing water along roads and ditches on the roads leading to hydraulic fracturing sites. The commenter states that most of the oil and hydraulic fracturing waste spills that happen on or near sites do not get reported.

The 2015 rule did not address open dumping of recovered fluids. Neither the 2015 rule, nor this rule, alter the requirement that permanent disposal of produced water must be in accordance with an approved plan. See Onshore Oil and Gas Order No. 7, 58 FR 47354 (1993). Unpermitted dumping of recovered fluids is outside the scope of this rulemaking.

Multiple commenters assert that BLM's rescission of the 2015 rule is appropriate because there has been no proven case of groundwater contamination from hydraulic fracturing in the United States to date. Several commenters state that studies developed by the EPA and U.S. Geological Survey (USGS) indicate that hydraulic fracturing has not had an impact on groundwater quality. One commenter further states that several studies, including an EPA study, a Yale University study, and a study funded by the Natural Resources Defense Council, find no incidence of contamination of groundwater due to hydraulic fracturing, which has been performed on over 1.2 million wells since 1948. Absent any confirmed instances of hydraulic fracturing impacting underground sources of drinking water, a commenter asserts that there is no protective advantage to the environment from the 2015 rule.

The BLM generally agrees with the commenter. We conclude that state and some tribal regulations, in conjunction with the BLM's own pre-existing regulations and authorities (pre-2015 rule 43 CFR subpart 3162 and Onshore Orders 1, 2, and 7) have been effective in ensuring protection of the water resources and the local environment.

One commenter states that any studies contained in the BLM's original administrative record that suggest that a link exists between groundwater contamination and oil and gas production were focused on well construction rather than hydraulic fracturing as the cause of the contamination. The commenter further states the BLM and each of the states in which Federal oil and gas is produced had well construction rules prior to the 2015 rule, and that the BLM's administrative record does not provide any evidence that a rule focused on hydraulic fracturing would improve the degree of protection related to well construction.

The BLM agrees in part. Onshore Oil and Gas Order No. 2 continues to apply to the drilling and cementing of oil and gas wells on Federal and Indian lands. See 53 FR 46798 (1988). The 2015 rule would have imposed additional monitoring, testing, and reporting requirements. In the preamble and supporting documents for the 2015 rule, though, the BLM cited a few instances where surface or groundwater contamination was caused by inter-well communications during the hydraulic fracturing operations. Those were not directly linked to wellbore construction, but rather caused by geologic fractures and fissures which are prevalent in some areas, or by lack of awareness of other wellbores. However, the BLM also possesses discretionary authority allowing it to impose site-specific protective measures that can be applied when necessary to reduce the risks associated with hydraulic fracturing.

One commenter noted that, in Federal court, an oil company was found to have caused permanent and irreparable pollution of the Sac and Fox Nation's groundwater by oil and gas activities. As a result of ineffective and absent regulatory actions, portions of the Sac and Fox Nation's aquifer will be unsafe to drink for generations.

It appears that the operator in the cited case did not follow the conditions of the permit issued by the BLM for the operation, and is responsible for the damage. The BLM's 2015 rule would not have addressed such issues related to violation of the rule on tribal lands and neither would this rule.

One commenter describes that the 2015 rule would have redefined ''usable water,'' modifying the term's definition to include ''those waters containing up to 10,000 parts per million (ppm) of total dissolved solids.'' The commenter asserts a lack of any empirical evidence or science-based support for a need to protect water that is so saline that it can kill livestock, and asserts that this definition would expand the scope of protected waters well beyond EPA's regulations under the Safe Drinking Water Act.

Onshore Oil and Gas Order No. 2, Section II. Y, states that ''Usable Water means generally those waters containing up to 10,000 ppm of total dissolved solids.'' The BLM believes that the standard set forth in Onshore Order No. 2 is appropriate and it will continue to follow that standard.

Air Quality/Public Health

One commenter states that there are unsafe levels of air pollution at every stage of oil and gas development. Air quality testing at hydraulic fracturing sites in several states have revealed levels of hydrogen sulfide and volatile organic compounds capable of causing respiratory, neurologic, and cardiovascular disease, blood dyscrasias, birth defects, and malignancies after chronic and recurrent exposure. The commenter claims that we do not yet know the true level of risk related to air contamination for workers, neighboring families and communities. The commenter asserts that flowback, even when stored in closed tanks, can liberate toxic volatile pollutants (such as carcinogenic benzene) at very high concentrations into the atmosphere. The commenter states that workers should be wearing respirator masks to minimize serious health consequences.

In response to that comment, the BLM notes that the 2015 rule would have generally required recovered fluids to be stored in tanks until a permanent disposal plan was approved, but allowed for exceptions and did not require closed or vapor-recovery systems. The 2015 rule was never intended to be an air quality or emissions regulation. Health effects from air emissions and mitigation measures were not addressed in the 2015 rule and are outside the scope of this rule. Air quality and worker safety

are regulated by other Federal, state, or tribal agencies.

One commenter states that a new form of hydraulic fracturing-related air pollution may be increased levels of indoor radon concentration (the number one cause of lung cancer among non-smokers) in homes located in areas where hydraulic fracturing is used to extract natural gas from shale formations. The commenter highlights that a peer-reviewed study published in May 2015 by the National Institute of Environmental Health Sciences, ''Predictors of Indoor Radon Concentrations in Pennsylvania, 1989–2013,'' documents a progressive upward trend in ambient radon levels between 2005 and 2013 coincident with the onset of hydraulic fracturing in Pennsylvania. The commenter noted that, at present, there are no state or Federal regulations addressing this newly discovered association.

In response to that comment, the BLM notes that the 2015 rule did not address radon concentrations, and rescinding that rule will not affect radon concentrations. Radon ''association'' with hydraulic fracturing operations is outside the scope of this rulemaking.

One commenter states that unsafe levels of air pollution found near hydraulic fracturing sites are largely ignored by Federal and state agencies. The commenter suggest that, to remedy this, monitoring of pollution emissions, air testing of communities, and strict standards to limit pollution are sorely needed and should replace patchy, inadequate state protections that do not do enough to safeguard communities that are increasingly exposed to the deadly consequences of poorly regulated hydraulic fracturing sprawl. Another commenter states that diesel emissions from heavy trucks and machinery used during well site preparation, drilling, and production contain toxins and release diesel soot particles, which increase health risks including: Asthma attacks, cardiopulmonary disease, respiratory disease, pregnancy complications, and premature death. In addition, the commenter states that inhaling respirable silica can cause silicosis and lung cancer in miners, sandblasters, and foundry workers. The commenter further notes that, due in large part to methane leakage and venting, the greenhouse gas footprint of shale gas is larger than the footprint of oil, conventional gas, and even coal.

These comments are outside the scope of the present rulemaking action. Neither the 2015 rule nor this rescission will cause air pollution, fugitive dust, or greenhouse gas emissions to be greater or less. Air quality monitoring and emissions standards are regulated by other agencies.

In addition to air and water pollution, one commenter expressed concern about externalities of drilling operations, such as noise pollution and odors, which should be kept within tolerance levels as drilling expands to areas where more people live.

This comment is outside the scope of this rulemaking because it addresses oil and gas development in general and fails to assert any specific alternative approach or change from the 2017 proposed rule that the BLM should have considered in this final rule with respect to the regulation of hydraulic fracturing operations on Federal and Indian lands.

Chemical Disclosure

In this section, we describe the comments the BLM received regarding chemical disclosure and respond to them all in the final paragraph of the section.

Some commenters are concerned that rescinding the 2015 rule will result in chemicals used in the hydraulic fracturing process not being disclosed by operators. Commenters state that, as the Federal lands managed by the BLM are public lands, the public has a right to clearly understand what is occurring on them and any potential impacts that those activities could have on water resources. One commenter notes that a recent study conducted by the Yale School of Public Health found that, of the compounds used in hydraulic fracturing that they could identify and study, 44 percent of the water pollutants and 60 percent of air pollutants were either confirmed or possible carcinogens. Although these compounds often make up only a small percentage of the total volume of the fluid, many are known to be toxic to humans at levels as low as five parts per billion. The commenter suggests that the 2015 rule would help to ensure proper handling and would mitigate potential exposure and impacts to public health from hydraulic fracturing. Another commenter describes a 2015 report published by the EPA that stated that well operators refused to disclose 11 percent of their ingredient records, citing them as confidential business information. Furthermore, one or more ingredients in more than 70 percent of disclosures were omitted, according to the commenter.

One comment referred to a 2016 article entitled, ''Hydraulic Fracturing Chemicals Reporting: Analysis of Available Data and recommendations for Policy Makers,'' which highlighted that 16.5 percent of chemicals used in hydraulic fracturing between the years 2012 and 2015 were unreported.

One commenter expressed concern regarding the BLM's reliance on a third party (FracFocus) to replace specific transparency and public accountability. In response to commenters on the 2015 rule, the BLM stated that, ''compliance with these rules will increase transparency of the hydraulic fracturing approval process and provide a means for disclosure to the public of the fluids utilized in the hydraulic fracturing process.'' The commenter complains that the BLM now states that disclosure of the chemical content of hydraulic fracturing fluids to states or databases, such as FracFocus, is more prevalent than it was in 2015 and so there is no need for a Federal chemical disclosure requirement. The commenter asserts that the slight shift in reporting frameworks is insufficient justification to remove regulations that promote administrative transparency and public disclosure of potentially harmful chemicals. Furthermore, the commenter stated that the BLM has yet to respond to questions from the Secretary of Energy's Advisory Board raised in 2015 with respect to technical issues with FracFocus, including a lack of verification for data accuracy.

One commenter states that the BLM's analysis of state requirements for chemical disclosure indicates that all states reviewed require chemical disclosure of hydraulic fracturing fluids to FracFocus (with the possible exception of New Mexico). The commenter states that the BLM rule, however, requires much more than just disclosure of chemicals used in the fracturing fluid. The commenter asserts that California is the only state that has equivalent requirements for each of the elements that had been required in the 2015 rule and the only other state that has any equivalent requirements is Wyoming.

One commenter states that radioactive substances are used in hydraulic fracturing fluid to determine the injection profile and location of fractures created by hydraulic fracturing. The commenter asserts that these chemicals should be heavily regulated as a matter of national security and that all chemicals onsite should be identified and reported by the operator. The commenter states that the contents of all materials and quantities injected into the wells should be documented, reported, and provided upon request. The commenter states that polluters should not remain unidentified because the identifying features of the injected slurry are protected as ''trade secrets.''

Some commenters assert that it is not burdensome to require the oil and gas industry to disclose the chemicals they are pumping into the ground in order to extract petroleum.

In response to all of the foregoing comments in this section, although we agree that the information is readily available to the operators or their contractors, we are no longer convinced that a BLM regulatory requirement would improve access to that information sufficiently to justify the cost of compliance.

Most states with existing oil and gas operations now have regulations that require operators to disclose the chemical content of hydraulic fracturing fluids to either a publicly accessible forum, such as FracFocus, state regulatory agencies, or both. This includes the States of California, Colorado, Montana, New Mexico, North Dakota, Oklahoma, Texas, Utah, and Wyoming, which accounted for approximately 99 percent of the total well completions on Federal and Indian lands from fiscal year (FY) 2010 to 2016. In addition, there are 25 states that currently use FracFocus for chemical disclosures. These include seven states, Colorado, Montana, New Mexico, North Dakota, Oklahoma, Texas, and Utah, with substantial BLM administered oil and gas operations. The BLM now believes that the disclosures of the chemical content of hydraulic fracturing fluids to state regulatory agencies and/or databases, such as FracFocus is more prevalent than it was in 2015 and that there is no need for a duplicate Federal chemical disclosure requirement, since companies are already making those disclosures on most of the operations, either to comply with state law or voluntarily. Furthermore, the 2015 rule did not require disclosure of trade secrets. See generally, 18 U.S.C. 1905; 43 CFR 3162.3–3(j) (2016). Therefore, there is no reason to believe that rescinding the 2015 rule will cause operators to withhold more confidential information about chemicals used in hydraulic fracturing operations. To the extent that the comments address control of hazardous substances generally, they are beyond the scope of this rulemaking.

Earthquakes

Some commenters suggest that there is a link between earthquakes and hydraulic fracturing of rock formations. One commenter states that significant seismic activity is allowed without any state or Federal constraints. Commenters suggest a link between hydraulic fracturing and wastewater injection and earthquakes in Oklahoma and Ohio. Several commenters describe a 2016 study that cautioned that hydraulic fracturing in the United States may be causing higher-than-recognized induced earthquake activity that is being masked by more abundant wastewater-induced earthquakes. The commenters assert that the injection of oil and gas wastewater, often associated with hydraulic fracturing, has been linked to the dangerous proliferation of earthquakes, including damaging earthquakes in many parts of the country.

In addition, one commenter asserts that the hydraulic fracturing industry has burdened tribal businesses and homeowners that have to pay to repair damages inflicted by these earthquakes. The commenter asserts that induced seismicity prevents tribal members from access to Department of Housing and Urban Development (HUD) funds for home construction in areas that are now unable to be adequately insured for earthquake damage.

In response to the comments, U.S. Geological Survey research indicates that most induced seismicity has been linked to wastewater injection, and seldom to hydraulic fracturing operations. While the 2015 rule contains provisions regarding the storage of recovered fluids, it did not include any provisions regarding wastewater disposal by underground injection, which is regulated under the SDWA by the EPA or an approved state or tribe. The 2015 rule also did not change the provisions of 43 CFR 3162.3–2 that apply to injection activities. Pursuant to Onshore Order 7, operators must submit a wastewater disposal plan prior to commencing operations, and they must provide the BLM with a permit from the EPA, state or tribe along with this plan. Even if hydraulic fracturing operations were found to cause damaging seismicity, the 2015 rule would not have controlled the effect, and, therefore, rescinding that rule will not increase the likelihood of seismicity damage.

Rule Authorities

Commenters expressed a variety of opinions about whether the BLM has statutory authority to regulate hydraulic fracturing operations on Federal and Indian lands. This section of the preamble first summarizes the arguments for the BLM's statutory authority (and duty) and responds to them. It next summarizes the arguments against the BLM's authority and responds to them.

Some commenters assert that the BLM has clear authority to regulate hydraulic fracturing while other commenters disagree. More specifically, some commenters state that the BLM issued the 2015 rule as part of carrying out its statutory duties to prevent unnecessary or undue degradation of public lands consistent with 43 U.S.C. 1732(b) and to issue ''comprehensive'' regulations ''necessary to implement the provisions'' of FLPMA, and to ''carry out the purposes of [FLPMA] and of other laws applicable to the public lands.'' In addition, the commenters state that, under the MLA, Congress charged the BLM with ensuring that Federal lessees conduct their operations with ''reasonable diligence, skill and care,'' and instructed the BLM to protect the ''interests of the United States'' and ''the public welfare.'' The commenters state that Congress authorized the BLM to ''prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes'' of the MLA. These commenters conclude that the 2015 rule is consistent with the BLM's duties under FLPMA and MLA.

Similarly, some commenters state that BLM lands are multiple use lands that must fulfill not only resource acquisition goals but public recreation and public benefit goals. The commenters state that actions must be consistent with all the uses of BLM property and the BLM cannot make this determination without the information requested in the 2015 rule. Some commenters assert that activity on public lands must be regulated consistently across the nation, especially when activities may affect the ability of the BLM to uphold its multiple use mandate. Some commenters argue that the proposed action indicates a preference for oil and gas leasing and development over other multiple uses. The commenters argue that this mandate prohibits DOI from managing public lands primarily for energy development or in a manner that unduly or unnecessarily degrades other uses.

Some commenters state that the proposed rescission rule is inconsistent with the BLM's statutory duties under FLPMA, the MLA, and the IMLA. The commenters state that the BLM concluded in 2015 that the requirements of the 2015 rule were necessary to meet those obligations. The commenters assert that the BLM's proposed reversal of the 2015 rule is not permissible under FLPMA and other laws because the BLM failed to explain its departures from the factual conclusions it drew when promulgating the rule in 2015.

Similarly, some commenters state that it is a dereliction of duty to abdicate the responsibility of management of the

appropriate and proper use of public lands to the states. Commenters state that they rely on BLM oversight to manage the use of these public lands for the benefit of all Americans, not just the profits of oil and natural gas companies. Commenters assert that the 2017 proposed rule, if finalized, is guided by the short term interests of a few at the expense of long-term efforts to protect our lands and most importantly, our water.

We agree in part with the comments in the previous four paragraphs. The BLM's actions related to oil and gas operations on Federal land are subject to FLPMA, MLA, the Mineral Leasing Act for Acquired Lands (MLAAL), and other statutes. FLPMA prescribes that the public lands are to be managed for multiple use and sustained yield, and that the BLM is to prevent unnecessary or undue degradation. The MLA requires that Federal oil and gas leases include provisions to ensure the exercise of reasonable diligence, skill, and care in operations. No court, however, has held that FLPMA requires BLM to manage each acre of public land to support all uses at all times. Rather, oil and gas operations are statutorily authorized uses of the Federal lands, and thus may be thought of as ''necessary or due'' degradation when conducted according to appropriate standards for protection of the lands and associated resources.

With respect to legal duties, no statute requires the BLM to regulate hydraulic fracturing operations, and no statute requires all oil and gas operations on Federal lands to be subject to the same regulations. (Indeed, lease stipulations and COAs are often different in different areas to address local conditions.) Rather, the contents of operating regulations are within the discretion of the Secretary. *Mineral Policy Ctr.* v. *Norton,* 292 F. Supp. 2d 30, 44–45 (D.D.C. 2003). State laws have always applied to oil and gas operations on public lands, even when those laws differ from one another. Particularly where, as here, there is no compelling indication that modern state regulations are allowing unnecessary or undue degradation to the public lands, the Secretary is within his discretion to decide that rescinding the 2015 rule would reduce the burdens both on operators and the BLM, with little reduction in the protection of those lands.

This final rule represents no dereliction of duty. *See generally, Gardner* v. *BLM,* 638 F.3d 1217, 1222 (9th Cir. 2011). Furthermore, it has nothing to do with decisions about which Federal lands to open for leasing, or which parcels to be offered for lease. Private, for-profit, development of oil and gas on Federal lands is authorized by the MLA, the MLAAL, and other statutes, and thus objections to those authorizations are outside the scope of this rulemaking.

Other commenters assert that the BLM lacked authority to issue the 2015 rule. Some commenters argue that Congress has not delegated authority to the BLM to regulate hydraulic fracturing and has granted only limited authority to the EPA to regulate hydraulic fracturing under the Safe Drinking Water Act (SDWA). Another commenter states that the BLM concedes that it cannot regulate enhanced oil recovery, disposal wells, or hydraulic fracturing using diesel because Congress has designated the EPA as the agency with regulatory authority over those forms of underground injection in the SDWA, and the same conclusion should apply with respect to non-diesel hydraulic fracturing.

Some commenters argue that the 2015 final rule requirement to submit water source and recovered fluid disposal method encroaches upon state jurisdiction over waters of the state and over underground injection control covered in the primacy agreement between North Dakota and the EPA in 1983.

A commenter asserts that North Dakota has a large number of ''split-estate'' tracts where the Federal minerals have been severed from the surface estate, which is owned by either the State of North Dakota or private parties. The commenter argues that the 2015 final rule inappropriately broadened BLM's authority to regulate surface operations for hydraulically fractured wells that penetrate Federal minerals, but where the United States does not own the surface.

With few exceptions, the arguments described in the previous three paragraphs were raised in the litigation challenging the 2015 rule. We believe that rescinding the 2015 rule alleviates these concerns and, therefore, the BLM need not address them here. The more immediate point is that the BLM has authority to rescind the 2015 rule, and to restore the regulations existing prior to the 2015 rule with the few exceptions previously discussed. Those regulations were promulgated in 1982 and amended in 1988. See 43 CFR 3612.3–2 (2014); 47 FR 47765 (1982); 48 FR 36583 (1983); 52 FR 5391 (1987); 53 FR 17363 (1988); 53 FR 22847 (1988). No commenter provided evidence that this rescission would interfere with the regulation of underground injections by states, tribes, or the EPA under the SDWA (as amended). The BLM does not regulate disposal wells; but BLM's authorization is required for use of BLM-managed surface for a disposal well. Other ''enhanced recovery'' operations are also outside the scope of this rulemaking. Aside from ''split estates'' being common in several states where the BLM regulates oil and gas operations, no commenter provided evidence that rescission of the 2015 rule would be ''inappropriate'' as applied to split-estate lands. If after this rescission of the 2015 rule, the BLM needs to approve an operation that would, for example, require substantial quantities of water, the requirements of NEPA and the applicable regulations would apply.

One commenter states that, regardless of the 2015 rule, the BLM already has the ability to impose additional conditions related to hydraulic fracturing on operators. This includes the authority to require the submission of additional information in relation to the permitting process as well as the ability to require that specific actions be taken by operators on-site to minimize environmental impacts and ensure site safety and security. The commenter states that the agency has broad authority to collect information. The commenter also noted that, pursuant to 43 CFR 3160.0–9, the BLM may request data so that proposed operations may be approved or to enable the monitoring of compliance with granted approvals, and operators must respond to such requests as a condition of Federal oil and gas leases and as a precondition to issuance of a permit to drill. Finally, the commenter notes that the BLM also has the authority to require operators to take specific actions when developing a lease.

The commenter is essentially correct. After this rescission, the BLM will continue to responsibly use its authorities to carry out its duties under the applicable statutes and regulations.

One commenter criticizes the BLM's intention to restore the regulations under which prior approval is required for ''non-routine'' hydraulic fracturing operations. 43 CFR. 3162.3–2 (2014). The commenter asserts that the BLM has never treated the ''fracturing'' referred to in 43 CFR. 3162.3–2 as equivalent to hydraulic fracturing. The commenter further argues that proponents of the 2015 rule have recognized that under 43 CFR. 3162.3–2 ''companies generally treated all hydraulic fracturing operations as routine'' and the BLM did not exercise approval authority over hydraulic fracturing.

In response to this and other similar comments, the BLM reconsidered its proposal to restore the regulatory text in

43 CFR 3162.3–2(a) (2014) requiring prior approval for ''nonroutine fracturing jobs.'' As a result of this review, the BLM decided not to restore the ''nonroutine fracturing'' requirement in this final rule.

As previously mentioned, prior to the 2015 rule, the regulations at 43 CFR 3162.3–2(a) (2014) provided in pertinent part that a ''proposal for further well operations shall be submitted by the operator on Form 3160–5 for approval by the authorized officer prior to commencing operations to . . . perform nonroutine fracturing jobs. . . .'' Those regulations, however, did not define ''nonroutine fracturing jobs'' or provide guidance to operators or the BLM authorized officers on how to distinguish ''routine'' from ''nonroutine.''

The BLM further notes that as a result of considerable advances in oil and gas development technology in the last 20 years, hydraulic fracturing practices that would have been considered ''nonroutine'' when the BLM originally issued the regulations requiring prior approval for ''nonroutine fracturing jobs'' are now commonly employed and considered ''routine.'' The combination of advances in oil and gas development technology and the BLM's existing authority to mitigate the potential risks of hydraulic fracturing operations through site-specific protective measures that are applied as a part of the environmental review and approval process at the APD stage has made post-APD approvals for ''nonroutine fracturing jobs'' at most a very rare occurrence. In fact, while the BLM has not been tracking requests for approval of ''nonroutine fracturing jobs,'' recent inquiries to BLM state offices have not revealed any examples of ''nonroutine fracturing'' requests or approvals. Thus, given that the ''nonroutine fracturing'' requirement has not, and will not foreseeably serve any purpose, and that removing it from the regulations could reduce the potential for unproductive confusion or paperwork without adverse effects, the BLM has removed ''nonroutine fracturing'' from 43 CFR 3162.3–2(a) in this final rule.

As for whether the word ''fracturing'' in 43 CFR 3162.3–2 (2014), includes hydraulic fracturing, both the plain meaning and its use in the industry, includes ''hydraulic fracturing.'' See, *e.g.,* Williams & Myers Manual of Oil and Gas Terms, p. 420 (10th ed. 1997) (quoting American Gas Ass'n, Glossary for the Gas Industry (3d ed. 1981)). The BLM has always interpreted that regulation to include hydraulic fracturing. The commenter does not offer any other rational interpretation. Therefore, including ''routine fracturing'' in the restored section 3162.3–2(b) makes plain that an operator does not need the BLM's prior approval for hydraulic fracturing operations, except those that involve increased surface disturbance or that do not conform to the standard of prudent operating practice.

Adequacy of Existing Regulations and Industry Practices

The following paragraphs summarize comments regarding whether existing regulations and industry practices are adequate to protect public lands. We first summarize and respond to comments critical of the existing regulations and industry practices, and opposed to rescission of the 2015 rule. Then we summarize and respond to comments arguing that existing state and Federal regulations and industry practices provide adequate protection for federal lands and associated resources, and in favor of rescission of the 2015 rule.

Multiple commenters state that when the BLM rescinds the 2015 rule, regulations would be as they existed prior to adoption of the 2015 rule. One commenter states that it is apparent that almost no oversight of hydraulic fracturing was required prior to the 2015 rule, however, and that the inadequacy of the prior regulation for dealing with issues related to hydraulic fracturing was noted in the rulemaking process for the development of the 2015 rule. The commenter states that the prior regulations required that the BLM approve proposals for ''further well operations,'' which included ''nonroutine fracturing jobs'' and eight other activities. The commenter states that no BLM approval was required for ''routine fracturing'' jobs unless there was additional surface disturbance. However, the commenter states that ''nonroutine fracturing jobs'' was not a defined term and the BLM proposes to continue to not define the term. The commenter states that the lack of defined distinction between nonroutine hydraulic fracturing jobs and routine hydraulic fracturing jobs made ''this distinction functionally difficult to apply and confusing for both the agency and those attempting to comply with the regulations.'' The commenter states that the BLM therefore acknowledges that almost all fracturing operations were deemed routine and not requiring approval from the BLM prior to commencing operations. A separate commenter notes that this ''pre-existing authority'' clearly existed at the time the 2015 rule was promulgated and fails to provide a valid basis for the BLM's change in position.

Multiple commenters express concern that state laws are insufficient to regulate hydraulic fracturing activities. The commenters state that, while some states have requirements regarding particular issues that are equivalent to the 2015 rule, many gaps in regulation remain. The commenters state that each state has areas where its regulations are weaker than the 2015 rule, and no state requires the same best practices across the board. The BLM should keep the 2015 rule in place to ensure consistent protections across the dozens of states with existing Federal oil and gas leases. One commenter notes that, if the BLM recognizes that certain states have less comprehensive regulations and enforcement mechanisms, it necessarily concedes that the legal framework within those states will not provide the same protections as the regulations promulgated by the 2015 rule and therefore that the 2015 rule is not duplicative of state regulations. Another commenter offers that the 2015 rule provided specific direction to states on how to protect groundwater and other resources and set forth a common standard of environmental protection at hydraulic fracturing sites and brought together requirements for a set of environmentally protective requirements that could be easily referenced in one place for consistent implementation.

Multiple commenters argue that the BLM's analysis of state regulations included in the RIA suggests the 2015 rule is not redundant. In particular, two commenters highlight that the BLM, in its discussion of the mechanical integrity test requirement, states it ''is an industry recommended practice and is required by almost all of the states whose regulations we reviewed.'' One commenter states that the BLM rule requires operators to perform a successful mechanical integrity test prior to fracturing at a test pressure equal to that which will be applied during the actual fracturing operation and that the applied pressure must hold for 30 minutes with no more than a 10 percent pressure loss. The commenter states that only California and Montana have rules that include these requirements. The commenter states that similar issues exist with regard to the annulus pressure monitoring and reporting provisions. The commenter states further that, in its analysis of state regulations for monitoring pressure during hydraulic fracturing operations, the BLM claims that all states reviewed, other than New Mexico, Oklahoma, and Utah, explicitly require monitoring

during fracturing operations. The commenter states that, as with state mechanical integrity test rules, the mere presence of a rule is not sufficient. Rather, the commenter states, the substance of state rules must be analyzed to determine whether state rules contain safeguards equivalent to the BLM rule. In addition, with respect to review of the storage tank requirements, some commenters state that the BLM acknowledges that ''Although the use of tanks is reportedly common, only 5 out of the 9 states in our in-depth regulatory review had requirements specifying that operators must use tanks.''

One commenter asserts that the fact that all 32 states currently with Federal oil and gas leases now have laws or regulations that address hydraulic fracturing operations in no way indicates those regulations are sufficient to fulfill the stipulations under Executive Order 13783, Promoting Energy Independence and Economic Growth. Another commenter highlighted that despite the existence of state requirements, the BLM explained in 2015 that ''a major impetus for a separate BLM rule is that states are not legally required to meet the stewardship standards that apply to public lands and do not have trust responsibilities for Indian lands under Federal laws.'' 80 FR 16133; see id. at 16154. The commenters assert that ''an additional 12 states have introduced laws or regulations'' regarding hydraulic fracturing is a natural consequence of the significant public concern about the practice, but does not obviate the need for Federal regulatory standards that promote the responsible development of public lands and fulfill BLM's own independent statutory duties to ensure that oil and gas operations on Federal and Indian lands are performed in a safe, responsible, and environmentally protective manner.

One commenter states that, unlike BLM's 2015 rule, many states do not require operators to obtain a permit specifically for fracturing operations. The commenter notes that, of the states the BLM reviewed in the RIA, only California, Montana, and Wyoming require a permit for fracturing operations. The commenter notes that Oklahoma and Colorado require notification before fracturing, while New Mexico, North Dakota, Texas, and Utah require neither a permit nor advanced notification. The commenter states that this is a significant difference between state regulations and the 2015 rule.

One commenter specifically claims that New Mexico is second only to Wyoming in the number of producing oil and natural gas leases on federally managed land, yet state regulations lack important safeguards included in the 2015 rule. The commenter notes that, for example, New Mexico's hydraulic fracturing regulations do not include measures to prevent ''frack hits,'' which occur when the hydraulic fracturing of one well causes a pressure transfer that interferes with production in another well. The commenter states that, as acknowledged in the EA for the rescission of this rule, these frack hits pose a tangible threat to water resources and the ecological integrity of public land subjected to excessive and haphazard drilling.

One commenter contends that the 2015 rule contains two essential safety components: Wellbore testing prior to hydraulic fracturing and storage of flowback waste in tanks rather than pits. The commenter states that these two areas, if not adequately regulated, present significant risks of environmental contamination. The commenter asserts that the 2015 rule represented improvements over existing Federal and Colorado state rules in these areas. The commenter states that, in proposing to rescind them, the BLM clearly recognized what researchers have also concluded: Hydraulic fracturing poses pollution risks to air, soil and water that are highly correlated with failure to ensure wellbore integrity and pit storage of waste. The commenter states that the 2015 rule is the BLM's best determination, based on its own expertise and expert outside input, for preventing such contamination and the rule should therefore not be rescinded.

One commenter stated that BLM's suggestion that a major expansion of state regulation has occurred since 2015 is misleading because the states with new regulations represent an insignificant fraction of Federal oil and gas development.

One commenter states that the Appendix to the EA for the proposed rule showed that the new state regulations lack many of the protections imposed by the 2015 rule. The commenter states that, for example, most state regulations do not mandate the use of tanks instead of open pits, do not require measures to prevent frack hits, and do not require the same measures to ensure adequate cementing.

One commenter said that the BLM assumes substantial continued use of storage tanks by operators in many states even after the rule is rescinded, although this is implausible. The commenter states that, for example, the BLM assumes that 100 percent of operators in Texas and New Mexico will use tanks even after rescission because of state regulations despite the fact that both states allow exemptions to their regulatory standards. The commenter states that the BLM also assumes 100 percent voluntary compliance in Utah despite the state's ''unclear'' standards, and 92 percent voluntary compliance in Wyoming. The commenter states that the estimation of voluntary compliance rates is based partly on the fact that ''tanks are likely to be less costly than pits on smaller and medium volume jobs.'' The commenter states that without a Federal regulatory backstop, past voluntary compliance rates and past evidence of job size in particular states do not guarantee the continued use of tanks in the future.

In response to the foregoing paragraphs in this section, when issuing the 2015 rule, the BLM acknowledged that it already had ''an extensive process in place to ensure that operators conduct oil and gas operations in an environmentally sound manner that protects resources'' (80 FR 16133). At that time, the BLM also noted that while ''the regulations and Onshore Orders that have been in place to this point have served to provide reasonable certainty of environmentally responsible development of oil and gas resources . . .,'' the 2015 rule ''will complement these existing rules by providing further assurance'' that hydraulic fracturing operations are conducted in an environmentally responsible manner across all public and Indian lands (id. at 16137). However, as previously noted, in accordance with Executive Order 13783 and Secretarial Order No. 3349, the BLM recently conducted a review of the 2015 rule, existing state laws and regulations, existing Federal authorities and recent incident reports submitted to the BLM for Federal and Indian oil and gas operations. As a result of this review, the BLM now believes that the 2015 rule imposes unnecessary and unjustified compliance costs and burdens. Moreover, in light of state regulatory programs, the sovereignty of tribes to regulate oil and gas operations on their lands, and the BLM's pre-existing regulations and Onshore Oil and Gas Orders and other Federal authorities, the rescission of the 2015 rule will not lead to poorly regulated oil and gas development activities, including hydraulic fracturing operations, on Federal and Indian lands. State regulatory programs can more readily address local conditions than may the BLM's rules. Thus, the fact that state rules differ from each other and are not identical to the 2015 rule do not render state programs ineffective, or the

2015 rule essential. Furthermore, as expressed in the Executive Orders, it is this Administration's policy to reduce unnecessary regulatory burdens on energy development. Based on the rarity of adverse environmental impacts that have occurred from hydraulic fracturing operations before the 2015 rule, and the lack of compelling evidence that state regulatory programs are inadequate, the 2015 rule is a duplicative layer of Federal regulation that should be rescinded. To the extent that the comments address the pre-2015 rule requirements for prior approval of ''nonroutine fracturing jobs,'' see the BLM's response to comments in the *Rule Authorities* section above. As previously discussed, the BLM has decided not to restore the requirements for ''nonroutine fracturing jobs'' in 43 CFR 3162.3–2(a).

One commenter states that the proposed rescission of the 2015 rule does not provide substantive evidence that industry practice is sufficient to prevent the pollution and degradation of hydrological resources on public lands. The commenter states that, given its self-described mandate to provide bona fide minimum standards to ensure industry compliance, as well as its obligations under NEPA, the BLM should not rescind protections given to groundwater in the 2015 Rule.

While industry practices can and often do work to appreciably reduce the risks associated with oil and gas development, the BLM does not solely rely on industry practice to ensure that oil and gas development operations on public lands are conducted in an environmentally responsible manner. Operators on Federal lands must comply with all Federal, state, and local requirements. On Indian lands, they must comply with all Federal and tribal permitting and reporting requirements. As previously noted, the BLM has an extensive process in place to ensure that operators conduct oil and gas operations in a safe and environmentally sound manner that protects resources. The environmental reviews conducted under NEPA provide an opportunity for the BLM to consider and mitigate potentially adverse environmental impacts, including those involving hydrological resources. If hydrological concerns arise during the BLM's review of a specific oil and gas proposal, the BLM may require additional information, or impose protective measures, such as lease stipulations or COAs attached to APDs, to mitigate the potential adverse impacts.

One comment disapproves of the proposed rescission because of a lack of reasonable regulation in Idaho to protect the communities impacted by hydraulic fracturing. The commenter adds that there is a lack of standardization in incident reporting processes in different states by highlighting a peer-reviewed study published in February 2017 in the *Journal of American Chemical Society* entitled, ''Unconventional Oil and Gas Spills: Risks, Mitigation Priorities, and State Reporting Requirements.'' The study points out differences in reporting requirements in each of the four states that produce most oil and gas using hydraulic fracturing, and documents a total of 6,648 spills between 2005 and 2014.

Contrary to the commenter's assertion, the BLM reviewed the applicable Idaho state laws and regulations and found an extensive regulatory framework for addressing the risks associated with hydraulic fracturing. *See* Idaho Admin. Code §§ 20.07.02.210 and 20.07.02.211. As previously discussed, the fact that state regulatory programs differ from each other and are not identical to the 2015 rule does not render the state programs ineffective, or the 2015 rule essential. Furthermore, operators on Federal or Indian lands are required to report adverse incidents directly to the BLM. The BLM requires operators to clean up spills promptly and thoroughly. Those requirements will not change with the rescission of the 2015 rule.

Multiple commenters asserted that the hydraulic fracturing regulations of specific states are adequate, and thus the 2015 rule is not needed. One commenter highlighted that there has never been a mechanical failure in North Dakota since the North Dakota Industrial Commission's hydraulic fracturing regulations were implemented; a separate commenter asserts that the regulatory oversight provided by the State of North Dakota protects the environment while providing permitting in a careful but timely manner. Another commenter suggested that, in Wyoming, operators have employed hydraulic fracturing technology safely and efficiently for decades. Another commenter asserts that New Mexico's hydraulic fracturing rules and regulations are protective of the environment and that hydraulic fracturing is proficiently regulated by the State of New Mexico, including rigorous protocols for casing, cementing, completions, recompletions and all associated procedures, including extensive monitoring and pressure-testing requirements, as well as mechanical and pressure-based well integrity testing. That commenter states that adding an additional layer of Federal regulation on top of an efficient and effective set of existing state regulations will provide no additional environmental protection. Additionally, one commenter states that the State of Utah has an effective regulatory program that, for many years, has successfully monitored the construction and operation of oil and gas wells, including well completion operations, such as hydraulic fracturing, water management, and chemical disclosure. Another commenter also asserts that Colorado rules and regulations along with the Memorandum of Agreement with the BLM (and the United States Forest Service) for Permitting of Oil and Gas Operations on BLM and National Forest Service Lands in Colorado should suffice in coordinating the permitting of oil and gas operations on Federal lands. One commenter states that, in Oklahoma, regulators live in the communities most affected, are in touch with evolving technical and scientific data, and have a demonstrated track record of working effectively with industry as well as the other stakeholders of public and private lands. In addition, a commenter asserts that Western States with oil and gas production have robust regulations to protect the environment and public health and are best-equipped to regulate oil and gas development. The commenter asserts that the Western States have experienced few, if any, adverse impacts involving water quality and water allocation attributable to hydraulic fracturing and that the process has been used for more than a million wells for over sixty years, and is responsible for increasing the nation's ability to recover oil and gas at great economic benefit.

The BLM thanks the commenters for providing comments and supporting information.

One commenter states that the EA for the 2017 proposed rule reveals that misguided public sentiment regarding hydraulic fracturing was a lead motivator for the BLM's initiation of rulemaking in 2010. The commenter states that BLM also accurately observed that adverse environmental impacts from hydraulic fracturing were a rare occurrence prior to the final 2015 rule, and that observation remains true today. The commenter asserts that, instead of imposing a costly regulatory burden on oil and gas operators, the BLM would be better served by dedicating resources to countering these unfounded public concerns.

The BLM agrees that the 2015 rule imposes compliance costs on the oil and gas industry that are no longer justified. The remaining statements in this

comment are outside the scope of this rulemaking.

One commenter states that the 2015 rule would have required that all fluids recovered between the commencement of hydraulic fracturing operations and the authorized officer's approval of a produced water disposal plan under BLM requirements must be stored in rigid enclosed, covered, or netted and screened above-ground tanks. The commenter further states that no regulatory mechanism exists for the ''approval of a produced water disposal plan'' on an individual well basis, thus the limitations the 2015 rule purports to apply to recovered fluids storage are premised on an administrative approval process that does not exist.

As this final rule rescinds the 2015 rule, this comment is outside the scope of the present rulemaking action.

Adequacy of Tribal Regulations

Multiple commenters state that the BLM's suggestion that the 2015 rule is ''duplicative'' of existing tribal regulation is unsupported. The commenters state that the differences between the 2015 BLM rule and other regulations are even greater on Indian lands, where many tribes have not developed their own regulatory programs to manage hydraulically-fractured oil and gas development. The commenters state that this is acknowledged in the EA. Another commenter asserts that relying on state regulations is inadequate for protecting tribes. One commenter describes experiencing multiple oil spills related to injection wells on tribal lands and the lack of resources to respond and hold corporations accountable for the injury, damage, and unnecessary burden the oil industry placed on the tribe and its resources. The commenter states that, even though the sovereignty of tribes to regulate operations on their lands may be an option and reality for some tribes, others have yet to develop the capacity to enforce such regulations on their lands and may never have the resources to effectively manage and enforce oil and gas regulations. The 2015 rule would directly benefit and help protect these tribes.

We acknowledge that not all oil and gas producing tribes have exercised their sovereignty to regulate hydraulic fracturing activities. Rescission of the 2015 rule, however, does not affect those tribes' options for promulgating and implementing programs in exercise of their self-governance and sovereignty. In addition, the BLM regulations applicable to tribal lands, which include the regulations at 43 CFR subpart 3162, as amended by this final rule, and Onshore Oil and Gas Orders 1, 2, and 7, reduce the risks associated with hydraulic fracturing by providing specific requirements for well permitting; construction, casing, and cementing; and disposal of produced water. These BLM regulations, along with the enforcement mechanisms that are available to the BLM on tribal lands, provide reasonable assurance that oil and gas development on tribal lands will occur in an environmentally responsible manner, even when tribal regulations or enforcement mechanisms to ensure responsible oil and gas development are not fully developed.

Rule Process

Multiple commenters assert that the BLM has failed to explain why the 2015 rule is no longer needed to ensure the environmentally responsible development of Federal oil and gas resources. These commenters note that the Supreme Court has outlined procedures that an agency must take to comply with the Administrative Procedure Act (APA) when changing an existing regulation, including the need to provide a reasoned analysis or reasoned explanation for the change. The commenters contend that the BLM's 2017 proposed rule does not meet these requirements and is fraught with loose language that does not demonstrate a reasoned basis or reasoned explanation for the change.

Some commenters assert that the BLM's decision to rely on Executive Order 13783 and Secretarial Order 3349 to justify the proposed rescission fails to provide the ''reasoned explanation'' required by the APA. These commenters note that Executive Order 13783 directs agencies to review regulations that ''unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.'' They contend that the BLM does not explain why the 2015 rule ''burdens'' the development of energy resources as defined by the Executive Order, particularly in light of the BLM's findings that the 2015 rule would cost just a small fraction of a percent of the profit margins of small operations. The commenters further state that the proposed rescission does not address other provisions of the Executive Order, including that ''all agencies should take appropriate actions to promote clean air and clean water for the American people.''

Finally, some commenters state that the BLM articulated a reasoned justification in 2015 for the storage tank requirement, and that the agency now proposes to rescind that same requirement without addressing the evidence from the 2015 record or offering any explanation for why a tank requirement would no longer deliver important environmental benefits.

On the contrary, the BLM believes that it has articulated a reasoned justification for rescinding the 2015 final rule. It therefore has not changed this final rule based on these comments. The Supreme Court has explained that ''[a]gencies are free to change their existing policies as long as they provide a reasoned explanation for the change,'' ''display awareness that [they are] changing position,'' and ''show that there are good reasons for the new policy.'' *Encino Motorcars, LLC* v. *Navarro,* __U.S. __, 136 S. Ct. 2117, 2125–26 (2016). However, agencies do not need to show ''that the reasons for the new policy are better than the reasons for the old one'' or necessarily ''provide a more detailed justification than what would suffice for a new policy created on a blank slate.'' *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

The BLM has provided a reasoned explanation for rescinding the 2015 rule that accords with these requirements: The BLM believes that the 2015 rule, which would impose compliance costs and information requirements that are duplicative of regulatory programs of many states and some tribes, is redundant and therefore unnecessarily burdensome on regulated entities. Any marginal benefits provided by the 2015 rule do not outweigh the rule's costs, even if those costs are a small percentage of the cost of a well. In fact, benefits were largely unquantified in the 2015 rule. The BLM has also provided good reasons for its new policy, explaining that state regulatory programs (including those of the states with most of the Federal oil and gas leasing), the sovereignty of tribes to regulate operations on their lands, and other preexisting Federal regulations provide a better framework than the 2015 rule for mitigating the impacts associated with hydraulic fracturing operations. For example, there are currently laws or regulations to address hydraulic fracturing in all 32 of the states in which the BLM currently manages oil and gas leases, and the BLM has several existing requirements, some of which are set out at 43 CFR 3162.3–1 and in Onshore Oil and Gas Orders 1, 2, and 7, that allow it to reduce the risks associated with hydraulic fracturing. Additionally, the BLM has explained that rescinding the 2015 rule's storage tank requirement may alleviate some on-the-ground indirect impacts, such as

those associated with truck traffic to transport tanks to and from well sites.

The BLM is not required to demonstrate that its reasons for rescinding the 2015 rule are better than or refute its rationale for initially promulgating the 2015 rule. This is especially true where, as here, the 2015 rule was never operational and did not engender serious reliance interests on the part of the regulated community. By providing an explanation for why it is rescinding the 2015 rule and demonstrating that there are good reasons for relying on state regulations, tribal sovereignty, and the BLM's preexisting regulations, the BLM has provided the necessary justification for changing its policy regarding the regulation of hydraulic fracturing. Furthermore, there is no legal impediment to this Administration implementing its policies and priorities through rulemaking to rescind or amend existing regulations.

Some commenters state that the BLM failed to consider a full range of alternatives in its environmental assessment. In particular, the commenters state that the BLM should have analyzed alternatives that strengthen the rule instead of rescinding it, including alternatives that regulate stimulation operations broadly, area of review, strengthen frack hit protections, baseline water testing, well construction, and restricted chemicals.

The BLM disagrees. The BLM considered a reasonable range of alternatives in its environmental assessment in light of the proposed action's purpose and need and the environmental effects that may result from rescinding the 2015 final rule. NEPA requires an agency to analyze all reasonable alternatives related to the purposes of the agency's action. Where, as here, an agency prepares an EA, the range of alternatives that the agency must consider, and the degree of analysis that is required, is less than is required for environmental impact statements. Moreover, '''the range of alternatives that [an] agency must consider [in an EA] decreases as the proposed action's environmental impact becomes less and less substantial,' '' *Earth Island Inst.* v. *United States Forest Serv.,* 697 F.3d 1010, 1023 (9th Cir. 2012) (quoting *Louisiana Crawfish Producers Ass'n–West* v. *U.S. Army Corps of Engineers,* 463 F.3d 352, 356–57 (5th Cir. 2006) (alterations omitted)), and it becomes even more diminished where, as here, an agency concludes that the action being considered will have a minimal environmental effect. See *Save Our Cumberland Mts.* v. *Kempthorne,* 453 F.3d 334, 342–43 (6th Cir. 2006). Furthermore, although the unsigned draft EA accompanying the proposed rulemaking analyzed only two alternatives, the signed EA for this final rule analyzes four alternatives, and explains why other alternatives were considered but not carried forward for analysis.

As described in detail above, this final rule will have minimal environmental effects. It will not authorize hydraulic fracturing operations as a whole, it will not authorize any particular hydraulic fracturing operation on Federal or Indian lands, and it will not impact the overall number of hydraulic fracturing operations on Federal or Indian lands. What few impacts may result from the final rule will be mitigated by state and tribal regulations and the preexisting Federal regulations. In light of these minimal impacts, the BLM did not need to analyze additional alternatives beyond the alternative that were analyzed in the EA that has been prepared for this final rule.

Additionally, the commenters are mistaken that the BLM should have analyzed alternatives that strengthened the 2015 final rule. The purpose and need of a proposed action determines the universe of alternatives that an agency must consider. The purpose of the BLM's proposed action (the 2017 prosed rule) ''is to reduce and eliminate unnecessary regulatory requirements in order to more efficiently manage oil and gas operations,'' and the need is ''to more prudently balance the BLM's interest in mitigating the risks of oil and gas development operations, including hydraulic fracturing, . . . with the compliance burdens it imposes on the oil and gas industry.'' Alternatives that would retain or increase the regulatory burdens imposed by the 2015 final rule on the oil and gas industry would not further the BLM's purpose and need for action and, therefore, did not have to be analyzed.

Some commenters assert that the BLM's proposed rescission of the 2015 rule fails to comply with NEPA. These commenters state that the EA prepared by the BLM contains only a brief discussion of a few of the impacts related to groundwater, surface water, and greenhouse gas emissions, which it determines to be insignificant. The commenters contend that these determinations contradict those found in the EA that the BLM prepared when it promulgated the 2015 rule, ignore recent science regarding hydraulic fracturing, and contradict several reviews of hydraulic fracturing conducted in California and elsewhere that demonstrate the potential for other significant environmental impacts that may result from the repeal of the 2015 rule.

The BLM disagrees with the commenters that the EA's discussion of impacts constituted a NEPA violation. Pursuant to CEQ's regulations implementing NEPA, an EA needs to include only ''brief discussions . . . of the environmental impacts of the proposed action and alternatives.'' (See 40 CFR 1508.9(b).) The EA's discussion of the impacts related to groundwater, surface water, and greenhouse gas emissions satisfies this requirement. Moreover, BLM notes that the EA references appropriate portions of the 2015 EA addressing these impacts, incorporating them into this EA.

Similarly, the BLM disagrees with the commenters that its determinations that the impacts to groundwater, surface water, and greenhouse gas emissions of this final rule are insignificant contradict its determinations in the EA prepared for the 2015 rule. With regard to surface water and groundwater, the 2015 EA merely stated that, under the No Action Alternative (*i.e.,* existing regulations), the impacts to surface water and groundwater described in the EA would be ongoing. The 2015 EA neither stated nor concluded that the impacts to those resources from the No Action alternative would be significant. Similarly, there is no contradiction between the two EAs regarding impacts related to greenhouse gas emissions. The 2015 EA did not, as the commenters suggest, determine that greenhouse gas emissions related to the No Action alternative would be significant. On the contrary, the 2015 EA found that although ''the various action alternatives would result in some small variations in [greenhouse gas emissions],'' none of them ''would appreciably affect the amount of GHG emissions arising from oil and gas operations on Federal and tribal lands as compared to [existing regulations].'' This finding is consistent with the BLM's current determination that rescinding the 2015 final rule would not result in an appreciable increase in greenhouse gas emissions.

The BLM also disagrees that the determinations in the EA ignores recent science regarding hydraulic fracturing. The BLM reviewed and considered a wide range of scientific evidence, including recent studies, in assessing the environmental impacts associated with rescinding the 2015 final rule. For example, the BLM gave considerable weight to the EPA's December 2016 study of hydraulic fracturing's potential impact on drinking water resources. NEPA, however, does not require the BLM to rely equally on all such studies.

Rather, NEPA permits agencies to rely on their expertise to determine which studies are particularly relevant or scientifically accurate. The fact that the EA does not specifically address the findings in the studies referenced in the comment does not mean that such studies were not considered. It simply means that, in analyzing the impacts associated with rescinding the 2015 final rule, the BLM found other studies more relevant.

Some commenters assert that the BLM violated NEPA by basing its EA on unfounded assumptions rather than sufficient evidence or analysis. The commenter states, for example, while acknowledging potential risks from the impacts that it did consider, the BLM finds that existing state and tribal regulations and the BLM's existing authorities will ''allow it to reduce the risks associated with hydraulic fracturing.'' However, the commenter states, the 2015 final rule remains more comprehensive than the requirements in many states and tribes, and the BLM has previously stated that the final rule ''would result in a reduction of the risks associated with hydraulic fracturing operations on Federal and Indian lands.''

The commenters are mistaken. The BLM based its EA on evidence, analysis, and technical expertise, not unfounded assumptions. For example, the specific conclusion referenced by the commenters that existing regulatory frameworks will allow the BLM to reduce the risks associated with hydraulic fracturing is based on the BLM's detailed review of state, tribal, and Federal regulations. *See* RIA at § 2.12, and EA at Appendix 1. That review indicated that all 32 states with existing Federal oil and gas leases currently have regulations to address hydraulic fracturing operations, as do some tribes with oil and gas resources. Additionally, the BLM has several existing requirements, some of which are set out at 43 CFR subpart 3162 and in Onshore Oil and Gas Orders 1, 2, and 7, that allow it to reduce the risks associated with oil and gas operations, including those of hydraulic fracturing. The BLM also possesses discretionary authority allowing it to impose site-specific protective measures reducing the risks associated with hydraulic fracturing. Relying on this evidence to conclude that the 2015 final rule was duplicative of an existing regulatory framework that will reduce the risks associated with hydraulic fracturing operations is a technical judgment within the BLM's area of expertise. The BLM may rely on the judgment of its own experts, see *San Juan Citizens Alliance* v. *Stiles,* 654 F.3d 1038, 1057 (10th Cir. 2011), even if the same regulatory framework would have led the commenters to arrive at a different conclusion. See *Greater Yellowstone Coal.* v. *Flowers,* 359 F.3d 1257, 1271 n. 14 (10th Cir. 2004).

The commenters are also mistaken that the 2015 rule's potential to reduce risks somehow calls into question the BLM's conclusion that it can rely on state, tribal, and Federal regulatory framework to reduce the risks associated with hydraulic fracturing operations. The 2015 rule was meant to ''add to'' and ''complement'' this existing regulatory framework. (80 FR 16128). Regardless of whether those additions would have resulted in additional risk reductions, the BLM's conclusion that the existing regulatory framework is capable of reducing risks remains valid.

Some commenters assert that the BLM must prepare a full EIS before rescinding the 2015 rule.

The BLM has not prepared an EIS in response to those comments. NEPA requires an agency to prepare an EIS when it proposes to take a major Federal action that significantly affects the quality of the human environment. Agencies must consider the context of the action and the intensity of its impacts to determine whether an action significantly affects the quality of the environment. As discussed in the BLM's EA and FONSI, the BLM considered the context of rescinding the 2015 rule and determined that doing so would remove information requirements that are duplicative of the regulatory programs of many states and some tribes with active oil and gas development. The BLM also considered the intensity, as that term is defined in CEQ's NEPA regulations, of rescinding the 2015 final rule. Applying the intensity factors listed in 40 CFR 1508.27(b), the BLM determined that rescinding the 2015 rule would not have a severe impact on the quality of the human environment. Based on its considerations of the context and intensity of the proposed action, the BLM determined that rescinding the 2015 rule will not significantly affect the quality of the human environment. In light of that determination, it is unnecessary to prepare a full EIS before rescinding the 2015 rule.

Some commenters assert that the BLM failed to analyze indirect and cumulative impacts of rescinding the 2015 rule.

Agencies are required to analyze the indirect and cumulative impacts associated with a proposed action. The BLM's analysis of those impacts is set forth, respectively, in sections 4.0 and 5.0 of the EA.

One commenter states that ESA and NHPA consultations are required before the 2015 final rule can be rescinded.

The ESA requires an agency to consult with the U.S. Fish and Wildlife Service or National Marine Fisheries Service to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties included on or eligible for inclusion on the National Historic Register of Historic Places (NRHP), and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings.

The BLM is not required to perform ESA or NHPA consultations to rescind the 2015 rule. Neither the rescission nor implementation of the 2015 rule would, by themselves, authorize or prohibit hydraulic fracturing operations as a whole, or any particular hydraulic fracturing operation on Federal or Indian lands. These actions are also not expected to impact the number of hydraulic fracturing operations. As such, the actions would not, by themselves, have an effect on any listed species or its habitat nor any historic properties that are listed on or eligible for listing on the NRHP. After the 2015 rule is rescinded, the BLM will continue to make decisions involving the development of oil and gas resources on BLM-administered lands at the land use planning, leasing, and permitting stages in compliance with NEPA, the ESA, and the NHPA. Indeed, site-specific proposals to drill for and develop oil and gas resources that involve hydraulic fracturing operations would require the same level of compliance with the ESA and NHPA if the BLM did not rescind the 2015 rule. Given that the BLM considers the cumulative and site-specific effects of proposed oil and gas operations as part of its land use planning, leasing, and permitting processes, as is discussed earlier in this preamble, and will conduct appropriate consultations whenever and wherever appropriate, consultation under the ESA and NHPA is not required at this time.

Some commenters state that, because the issue of ''frack hits'' was not part of the discussions between stakeholders and the agency during the rulemaking process for the 2015 rule, it is reasonable that the BLM would rescind the 2015 rule and defer issuance of any

rule related to ''frack hits'' until the appropriate regulatory procedures are invoked.

Some commenters also state that the 2015 rule would have required that before hydraulic fracturing operations begin, the operator must perform a successful mechanical integrity test of any casing or fracturing string through which the operation will be conducted. These commenters contend that the administrative record prepared for the 2015 final rule ''does not contain comments regarding the efficacy, cost, or purpose of testing the lateral portion of the wellbore because that requirement was not part of the proposed rule.''

The commenters contend that measures to protect against ''frack hits'' and requiring mechanical integrity tests included in the 2015 rule were not logical outgrowths of the BLM's proposed rule. Because the BLM is rescinding the 2015 rule, and because the present rule rescission does not contain measures related to ''frack hits'' or require mechanical integrity tests, it is unnecessary to address whether the issues of ''frack hits'' and mechanical integrity tests are a logical outgrowth of the proposed rule that the BLM published.

One commenter states that it is impossible to reconcile a requirement to conduct a mechanical integrity test on casing that does not protect usable water and it is likely to increase costs of completing a well by $75,000 to $100,000. Given the absence of any benefit that will be derived from these costs, rescission of the 2015 rule is reasonable and appropriate.

The BLM agrees that rescission of the 2015 rule is appropriate and good policy.

Costs of 2015 Rule and Effects on Industry

Multiple commenters state that the 2015 rule would not be burdensome for industry. One commenter states that there are several problems with BLM's assertion that the 2015 rule ''imposes burdensome reporting requirements and other unjustified costs on the oil and gas industry'' (82 FR 34464). The commenter states first, that the BLM's own RIA finds that the 2015 rule would cost approximately $9,690 per well, or about 0.1 percent to 0.2 percent of the cost of drilling a well (RIA at 3, Tables 4.2.2.a, 4.2.2.b). The commenter further notes that the BLM's estimate of the costs of the 2015 rule have not substantially changed since 2015 (80 FR 16,130 (estimating compliance costs to be ''approximately 0.13 to 0.21 percent of the cost of drilling a well'')). The commenter states that BLM also noted that its cost estimates may be overstated where industry is already in compliance.

In the RIA for the 2015 rule, the BLM asserted that regulation would result in a reduction of the risks associated with hydraulic fracturing operations on Federal and Indian lands, without providing an estimate for the monetary benefits of this risk reduction. The BLM noted in the 2015 RIA that the majority of the requirements were consistent with industry practice and that some were required by state regulations or were generally addressed by existing BLM requirements. In light of the protections available under other Federal regulations, the increased prevalence of state and tribal laws and regulations to address hydraulic fracturing, and new industry practices, the BLM believes that the requirements imposed by the 2015 rule are redundant and therefore unnecessarily burdensome. There were no monetary estimates of any incremental benefit that the 2015 rule provides in addition to existing Federal, state, and tribal regulations and industry standards. Such incremental benefits, however, are likely to be too small in light of the increased prevalence and comprehensiveness of these standards since the original RIA was published to justify compliance costs that are both monetized and certain to exist.

One commenter notes that, in 2015, in response to commenters' arguments that the rule was not economically justified and that benefits did not exceed costs, the BLM responded that the 2015 rule was ''prudent,'' ''necessary,'' and ''common-sense,'' and that the rule's ''burden should be minimal.'' The commenter asserts that, in its proposed rescission, the BLM never sufficiently explains why those same prudent, common-sense requirements, deemed necessary to environmental protection after weighing compliance costs, are now suddenly unnecessary.

As noted in previous responses, in light of the protections available under other Federal regulations, the increased prevalence of state and tribal laws and regulations to address hydraulic fracturing, and new industry practices, the BLM now believes that the requirements imposed by the 2015 final rule are redundant or only marginally beneficial, and therefore unnecessarily burdensome.

One commenter states that the BLM fails to acknowledge the forgone cost savings of the tank requirement that will partly offset any estimated cost savings from the rescission. The commenter notes that storage tank requirement from the 2015 rule was anticipated to generate long-term cost savings for industry that would have partly offset their compliance costs. The commenter suggests that rescinding the requirement will forgo those cost savings, and that loss of cost savings will partly offset any positive cost savings anticipated from the rescission.

In response to the previous comment, the BLM notes that it is not clear that requiring operators to use storage tanks for flowback and produced water would generate any cost savings. Operators that instead use central reservoirs may have decided to do so precisely because it is the most cost-effective option available to them, and requiring them to do otherwise may have the unintended consequence of increasing costs for them.

One commenter states that an unanticipated cost associated with rescinding the 2015 rule is related to road and infrastructure damage associated with trucks hauling large quantities of salt water and drilling mud at load weights exceeding legal limits by 35 percent. The commenter offers that Texas has incurred more than $2 billion debt to repair about 40 percent of their damaged roads in absence of having a dedicated revenue source to pay for it. A commenter states that failure to hold businesses accountable for their externalities amounts to indirect subsidies, which is not fair to producers of clean energy who do not receive these advantages. The commenter states that Federal lands are leased to these extractors at prices that are well below market values for extraction on private lands. The commenter asserts that this is another indirect subsidy for the extractors and is a bad deal for the taxpayers.

The use of public roads for the transport of materials and equipment both to and from energy production sites, including weight restrictions and taxation, is regulated by states and localities, and on tribal lands by tribes. It was not addressed in the 2015 rule, and thus is outside the scope of this rulemaking. Operators do need BLM's approval for access roads from public roads across public lands to their operation sites.

The BLM also disagrees with the assertion that Federal lands are leased at ''well below market values'' for oil and gas extraction on comparable private lands. Although private leases may often have higher royalty rates, there are often greater regulatory burdens uniquely associated with Federal leasing requirements. These include NEPA reviews for leasing nominations and drilling permits, production

measurement compliance requirements, and other fees and assessments, that operators do not encounter to the same extent on non-Federal lands. A simple comparison of royalty rates between Federal and non-Federal oil and gas leases is insufficient to support the commenter's conclusion about market values. Furthermore, bonus bids, rentals and royalties are outside the scope of this rulemaking.

One commenter suggests that California's growing economy is an example to counter industry's claims that the 2015 rule and regulations in general, unnecessarily encumber energy production, constrain economic growth, and prevent job creation.

The commenter does not provide evidence that regulation of hydraulic fracturing in California specifically has an impact on statewide economic growth. Also, different states have different mixes of industries and employers, as well as different geology, land ownership patterns, and other conditions important to business growth. Thus, we have no reasonable basis to extrapolate from any state's economic growth to a conclusion that the 2015 rule would be a net benefit for job creation.

One commenter suggested it is valuable to have a unified standard with which to regulate hydraulic fracturing. The commenter states that frack hits also pose a threat to industry profits, as they may also lead to a decrease in well production. The commenter states that, without firmly regulating irresponsible drilling practices, we run the risk of not only damaging the ecological health of our public lands and water resources, but also sabotaging the success of the extractive industry.

As noted in the RIA, the American Petroleum Institute does provide uniform, national voluntary standards for conducting hydraulic fracturing. Hydraulic fracturing oversight is and will continue to be provided through the state laws and regulations detailed in API 100–1 and API 100–2. There is ample evidence from national production data that hydraulic fracturing allows oil and gas production that would not otherwise be realized. Any frack hits on neighboring wells from using the technology are unfortunate but not nationally significant compared to the overall industry growth emanating from this technology.

One commenter suggests that, because the 2015 rule presented significant conflicts with existing Federal and state regulations, its adoption held the potential to create regulatory uncertainty and confusion, increasing project costs, thus providing further disincentives to operators to develop resources on Federal lands that the agency manages for the American people.

The BLM does not agree that regulations that are largely consistent with state rules and industry practices necessarily increase uncertainty or confusion. The BLM does agree, however, that such overlap can make such regulations redundant, marginally beneficial, and unnecessarily burdensome, which is the why it is rescinding the 2015 rule.

Multiple commenters state that additional BLM regulation of a process already regulated by the states will decrease efficiency and increase costs. Commenters assert that the BLM does not have the staff, the budget, or the expertise to process APDs with the same efficiency as the states. One commenter states that the delay in processing APDs by the BLM will result in declining production from Federal lands to the detriment of the public. Another commenter asserts that the BLM severely underestimated the cost of the 2015 rule by not including the cost of delays in permit approval. The commenter asserts that if APDs are not approved in a timely manner, the re-leasing process will cost additional millions. A separate commenter highlights that BLM officials conceded that, given the combination of increases in workload associated with the hydraulic fracturing rule and reductions in the agency budget, getting the work done could be an issue. The commenter also notes that, among other problems, the BLM recognizes that ''skills gaps'' are a ''program vulnerability'' for the BLM's existing oil and gas programs. The commenter therefore concludes that rescission of the 2015 rule is entirely appropriate given the admonitions of agency leaders that the BLM does not have the expertise in the field to administer the rule.

The BLM's engineers and field managers have decades of experience exercising oversight of these wells during the evolution of hydraulic fracturing technology. However, as stated in the RIA for this rule, the BLM recognizes the potential that the 2015 rule might pose unnecessary delays and implementation costs to the BLM and operators. These costs were not quantified in the RIA for the 2015 rule. The BLM's staffing levels, budget and appropriations are outside the scope of this rulemaking.

One commenter argues that, due to North Dakota's unique history of land ownership, it is typical for oil and gas spacing units to consist of a combination of Federal, state, and private mineral ownership. The commenter notes that, even in circumstances where the Federal mineral ownership within a spacing unit is small relative to other mineral ownership, the 2015 rule would have required all the oil and gas operators within the unit, as a practical matter, to conduct operations in accordance with the 2015 rule applicable to the development of Federal minerals. The commenter asserts that complying with the Federal requirements and permitting timelines imposed by the 2015 final rule will substantially delay operations on any spacing units that contain Federal minerals and that this delay adversely affects the development of all minerals within the unit, including state and private oil and gas minerals.

As stated in the RIA for this rule, the BLM recognizes the potential that the 2015 final rule might pose unnecessary delays and implementation costs to the BLM and operators. We understand the commenter's concerns that many long directional wells are completed in many tracts, some Federal, and some not federal. The operators' burdens of complying with the 2015 rule could adversely affect the owners of the non-federal tracts. Those concerns support the BLM's decision to rescind the 2015 rule.

Some commenters state that the 2015 rule would have represented an expansion of the information that oil and gas developers are required to disclose publicly both before and after operations and that, much of this information, and particularly information regarding local geology and the operators' technical designs for extracting resources from that geology, is highly proprietary and represents economically valuable commercial information. The commenters argue that the 2015 rule failed to account both for the confidential nature of the information the rule required to be disclosed and the commercial consequences of that disclosure. The commenters state that, because the 2015 rule would have required public disclosure of highly confidential and commercially valuable information, it is contrary to Federal public records law and its rescission is appropriate. Another commenter argued that the same requirement of the 2015 rule failed to account for service companies owning the trade secrets.

As the commenter notes, by rescinding the 2015 rule, the BLM would no longer require that the operator submit information to the BLM and/or FracFocus after the hydraulic fracturing operation is complete. As

stated in the RIA, the removal of this requirement would alleviate some administrative burden. At least for Federal wells, operators are likely to report the chemicals used regardless of whether the BLM requires them to or not, since almost all states currently have chemical disclosure requirements.

One commenter estimates that the 2015 rule would have imposed a minimum per-well additional cost of $1,500 associated with assembling, analyzing and adding new information to APDs and final reports submitted to the BLM, not including the potential additional costs associated with legal review and requirements for the operator to verify and manage proprietary information that is claimed to be exempt from disclosure. The commenter estimates the following additional costs of the 2015 rule: Potential work stoppage during completions if there is a ''false positive'' 500 psi increase in annulus pressure (assumed $200,000 to $500,000 per day standby cost); managing ''recovered fluids'' or produced water by constructing and utilizing a central storage and treatment facility according to rule requirements (estimated 5-year net present cost of $2.3 million for a lined pit, vs. $23 million for using 500-barrel tanks to provide a storage capacity of 250,000 barrels); concern that a BLM field office could interpret the 2015 rule in a more stringent fashion than intended, which could lead to a slowdown, stoppage, or delay of work, or additional costs for specific requirements.

The BLM acknowledges that there are several potential compliance costs for the 2015 rule that it did not quantify in the economic analysis that was prepared for that rule. However, because this final rule rescinds the 2015 rule, it is not necessary to review whether the BLM's cost estimates for that rule were adequate, or to determine if the commenters' estimates are appropriate.

A commenter critiqued the effects of the 2015 rule on operators, concluding that the rule would have caused unintended burdens or delays.

Because we are rescinding the 2015 rule, there is no need to analyze the commenters' predictions.

One commenter asserts that small businesses will benefit from this final rule because elimination of the 2015 rule would eliminate any future possibility that they must pay the compliance costs associated with the rule.

We agree that small businesses would benefit to the degree that they are no longer subject to the compliance costs associated with the 2015 rule.

One commenter states that a comprehensive analysis of the costs the 2015 rule would have imposed demonstrates that costs savings resulting from the rule's rescission are likely to exceed $220 million per year due to increased administrative costs ($17.8M), delay costs ($6.7M), additional casing costs ($174M), additional mechanical integrity testing costs ($17M), and additional costs of recovered fuel storage ($4.9M).

The comment has been considered in developing the final regulatory impact analysis (RIA), but we find that the estimated cost savings discussed in the RIA are more supportable and are adequate for the decision to rescind the 2015 rule.

Regional and National Implications

One commenter states that the economic impact of rescinding the 2015 final rule on the outdoor industry and farming should be seriously considered when evaluating whether rescinding the 2015 rule is good for economic growth and job creation. The commenter asserts that hydraulic fracturing operations effectively destroy natural and rural areas integral to the outdoor industry. The commenter notes that, in 2011, the outdoor industry employed 6.1 million Americans and Americans spend approximately $646 billion annually on outdoor recreation.

There is little to no evidence that properly regulated hydraulic fracturing operations have a significantly greater effect on natural and rural areas integral to the outdoor industry compared to the conventional oil and gas drilling operations that have taken place on BLM lands for decades. In its decision to rescind the 2015 rule, the BLM examined existing state regulations—as well as existing Federal regulations contained in Onshore Orders 1, 2, and 7—and determined that they are sufficient to ensure that hydraulic fracturing operations on Federal lands remain properly regulated.

To the degree that lands open for oil and gas development could have an opportunity cost in that they could otherwise be used for recreational activities, the BLM has long implemented FLPMA's policy of multiple use that uses the NEPA environmental review process to determine how best to plan for the public's desires to put the lands to competing uses. The BLM's land use planning, however, is beyond the scope of this rulemaking.

Multiple commenters support the proposed rescission asserting that the 2015 rule imposes unnecessary costs, hinders energy production, and constrains economic growth. Commenters argue that the potential cost impacts of the 2015 rule on exploration and production activities on BLM managed lands would greatly exceed the estimates that the BLM provided in its original RIA. One commenter asserts that governments should take care to ensure that any regulations they issue to ensure safety and protect the environment recognize the economic importance of, and avoid unduly burdening the use of, hydraulic fracturing to develop America's energy resources.

In analyzing the 2015 rule, the BLM has reached the same conclusion regarding its unnecessary costs and impact on energy production and economic growth. As a result, the BLM has decided to rescind the 2015 rule.

One commenter stated that BLM's 2015 rule would exacerbate the decline in oil and natural gas production on Federal lands and that this would have a severe, negative effect on Wyoming's tax revenue and employment numbers, would increase the costs for energy to all consumers, and could increase this country's reliance on imports from less than friendly nations.

Regardless of whether the 2015 rule would have had a ''severe, negative effect'' on any state, or whether it would have caused an increase in reliance upon imported oil or gas, the BLM does believe that the costs of complying with the 2015 rule would be an unnecessary burden on industry. This Administration's policy is to increase revenues and to reduce reliance on imported oil through this and other actions to reduce unnecessary burdens on energy industries, including oil and gas on Federal and Indian lands. Thus, we are rescinding the 2015 rule.

Climate Change

Some commenters contend that the BLM cannot, in evaluating its oversight of hydraulic fracturing on the public lands, overlook the fact that extracting the new oil and gas resources made exploitable by modern hydraulic fracturing techniques is inconsistent with any reasonable likelihood of avoiding the most catastrophic effects of global climate change. Some commenters recommend that the United States shift toward alternative forms of energy.

Some commenters assert that the BLM must weigh the relative effects on oil and gas production, supply, markets, and ultimately emissions of its actions in regulating public lands hydraulic fracturing. The commenters assert that this must include an assessment of the net emissions consequences of all

reasonable alternatives—including implementation of the 2015 hydraulic fracturing rule, the BLM's proposed rescission of that rule, or an alternative rule banning public lands hydraulic fracturing.

Those commenters seek a reduction in leasing and production of oil and gas from Federal and Indian lands with the goal of reducing emissions of greenhouse gasses. Issues of land use planning, leasing of parcels, and levels of production from Federal and Indian lands are beyond the scope of this rulemaking. Hydraulic fracturing was a technology available to operators on Federal and Indian lands prior to the promulgation of the 2015 rule, it would have been available had the 2015 rule become effective, and it will be available after promulgation of this rescission rule. The BLM is committed to compliance with NEPA at each stage of its decision-making. NEPA does not require the BLM to consider banning hydraulic fracturing in its analysis of this rescission rule. As previously stated, the purpose and need for the rule is to reduce unnecessary burdens on oil and gas production from Federal and Indian lands. Furthermore, since emission levels from future hydraulic fracturing operations are necessarily speculative (because they depend upon geologic, technical, and economic variables, plus the potential substitution of sources for oil and gas), a comparison of ''net emissions consequences'' would not provide useful information to the decision-maker or the public.

The BLM has not made a change from the 2017 proposed rule to this final rule in response to those comments.

Recommendations

Multiple commenters suggest the BLM should conduct additional research regarding the impacts of hydraulic fracturing and of rescinding the 2015 rule, including the impacts of hydraulic fracturing on drinking water resources and human health. Some commenters assert that the BLM must thoroughly study the effects of repealing the rule, including consideration of new circumstances, studies, and information developed since the rule was adopted. The commenters assert that this should include, for example, consideration of recent information regarding connections between disposal of drilling-related waste and earthquakes, according to some commenters. Moreover, the commenters state that the BLM must consider the likelihood that the proposed deregulation will lead to a significant expansion in poorly controlled oil and gas drilling and hydraulic fracturing and the consequences for global climate change. Some commenters suggest that the BLM should consider and adopt a rule that protects public lands, public health, and the climate by banning hydraulic fracturing altogether on public lands.

In response to the previous comments, the BLM notes that, in December 2016, EPA completed its nationwide study of hydraulic fracturing. U.S. EPA, Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States (Final Report), EPA/600/R–16/236F (available at *2016https://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=332990*). The BLM has considered the findings in that report. That report demonstrated that, like most industrial processes, hydraulic fracturing has the potential to cause the release of pollutants into the environment, including groundwater resources. A logical conclusion is that hydraulic fracturing activities should be regulated to control those risks. It is not clear, however, that the 2015 rule was the best or only way to regulate hydraulic fracturing on Federal and Indian lands. Commenters have failed to provide facts demonstrating that the BLM needs to conduct another study a year after EPA's report. Risks of induced seismicity from hydraulic fracturing operations are beyond the scope of this rulemaking. The USGS studies both natural and induced seismicity. Several USGS publications are listed at *https://earthquake.usgs.gov/research/induced/references.php*. Those studies show that induced seismicity from hydraulic fracturing operations is uncommon, and seems to occur mostly in areas with small percentages of federally owned minerals. More common is seismicity induced by the injection of waste fluids for disposal. Those disposal wells, however, are regulated by states, tribes and the EPA under the Safe Drinking Water Act, and are beyond the scope of this rulemaking.

This final rule will not lead to poorly regulated drilling of oil and gas wells on Federal and Indian lands. Drilling operations will continue to be subject to the BLM's regulations, including Onshore Oil and Gas Order No. 2, (53 FR 46798, 1988), state regulations on Federal land, and tribal regulations on tribal lands. We do not believe that hydraulic fracturing operations will be poorly regulated under the present rule, with states and tribes taking the lead for regulating most hydraulic fracturing activities.

As previously explained, we do not believe it is in the national interest to ban hydraulic fracturing on Federal and Indian lands. Hydraulic fracturing activities can be conducted in ways that reduce risks to the environment while providing the benefits of domestically produced oil and gas, including jobs. Furthermore, a ban on hydraulic fracturing on Federal and Indian lands would most likely cause production to move to areas that are not subject to the BLM's regulations, and have no impact on emissions.

One commenter asserts that the 2015 rule provides for a ''type well'' to be used for an entire field to satisfy the pre-fracturing approval requirements. The commenter recommends that the 2015 rule should be rescinded in its entirety or expanded to allow a type well to cover an entire county or basin if the geology is substantially similar.

The commenter is mistaken. The 2015 rule does not mention a ''type well.'' The present rule rescinds the 2015 rule in its entirety.

The BLM has not made a change from the 2017 proposed rule to this final rule based on these commenters' recommendations.

Discussion of the Final Rule

As previously discussed in this preamble, the BLM is revising 43 CFR part 3160 to rescind the 2015 rule. The regulatory amendments in this final rule are identical to those in the proposed rule, except that the phrase ''perform nonroutine fracturing jobs'' has been removed from the regulations at 43 CFR 3162.3–2(a). This final rule restores the regulations in part 3160 of the CFR to exactly as they were before the 2015 rule, except for changes to those regulations that were made by other rules published between March 26, 2015 (the date of publication of the 2015 final rule) and now, and the phrase ''perform nonroutine fracturing jobs,'' which is not restored to the list of subsequent operations requiring prior approval in section 3162.3–2(a). None of the amendments to part 3160 by other rules are relevant to this rulemaking. See, *e.g.,* 82 FR 83008 (2016). The following section-by-section analysis discusses returning to the pre-2015 rule regulations.

Section 3160.0–3 Authority

The BLM amends § 3160.0–3 by removing the reference to the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701). The 2015 rule added this reference as an administrative matter. This final rule returns this section to the language it contained before the 2015 rule and does not have any substantive impact.

Section 3160.0–5 Definitions

The BLM amends this section by removing several terms that were added by the 2015 rule and by restoring the definition of ''fresh water'' that the 2015 rule removed. This final rule removes the definitions of ''annulus,'' ''bradenhead,'' ''Cement Evaluation Log (CEL),'' ''confining zone,'' ''hydraulic fracturing,'' ''hydraulic fracturing fluid,'' ''isolating or to isolate,'' ''master hydraulic fracturing plan,'' ''proppant,'' and ''usable water.'' The 2015 rule used those terms in the operating regulations. Since those operating regulations are rescinded, these terms are no longer necessary in this definitions section. This final rule restores the previous definition of ''fresh water'' to the regulations.

Section 3162.3–2 Subsequent Well Operations

This final rule amends § 3162.3–2 by making non-substantive changes to paragraph (a), which include replacing the word ''must'' with the word ''shall,'' replacing the word ''combine'' with the word ''commingling,'' replacing the word ''convert'' with the word ''conversion,'' and removing the language from the first sentence of paragraph (a) that the 2015 rule only added to more fully describe Form 3160–5.

In response to comments received, § 3162.3–2(a) of this final rule does not include the requirement to obtain prior approval to ''perform nonroutine fracturing jobs.'' As previously discussed in this preamble, as a result of considerable advances in oil and gas development technology in the last 20 years, hydraulic fracturing practices that would have been considered ''nonroutine'' when the BLM originally issued the regulations requiring prior approval for ''nonroutine fracturing jobs'' are now commonly employed and considered ''routine.'' See the ''Rule Authorities'' discussion of comments for more information about this revision.

The final rule makes non-substantive changes to paragraph (b) of § 3162.3–2, which include replacing ''using a Sundry Notice and Report on Well (Form 3160–5)'' with ''on Form 3160–5.''

The final rule restores ''routine fracturing or'' to paragraph (b) of § 3162.3–2. The 2015 rule removed those words from the list because it amended § 3162.3–3 to include a detailed listing of requirements for hydraulic fracturing operations to be approved by the authorized officer. This final rule removes that requirement from § 3163.3–3, which is discussed below.

Section 3162.3–3 Other Lease Operations

The BLM revises this section by removing language that was added by the 2015 rule and returning this rule to the exact language it contained previously. The 2015 rule made substantial changes to this section and revised the title to read as ''Subsequent well operations; Hydraulic fracturing.''

Paragraph (a) of this section in the 2015 rule, as reflected in the 2015 edition of the CFR, includes an implementation schedule that the BLM would have followed to phase in the requirements of the rule, had the rule gone into effect. Paragraph (b) of this section contains the performance standard referencing § 3162.5–2(d). Paragraph (c) of this section would have required prior approval of hydraulic fracturing operations. Paragraph (d) of this section lists the information that an operator would have been required to include in a request for approval of hydraulic fracturing. Paragraph (e) of this section specifies how an operator would have had to monitor and verify cementing operations prior to hydraulic fracturing. Paragraph (f) of this section would have required mechanical integrity testing of the wellbore prior to hydraulic fracturing. Paragraph (g) of this section would have required monitoring and recording of annulus pressure during hydraulic fracturing. Paragraph (h) of this section specifies the requirements that would have applied for managing recovered fluids until approval of a permanent water disposal plan. Paragraph (i) of this section specifies information that an operator would have been required to provide to the authorized officer after completion of hydraulic fracturing operations. Paragraph (j) of this section specifies how an operator could have withheld information from the BLM and the public about the chemicals used in a hydraulic fracturing operation. Paragraph (k) of this section describes how the BLM would have approved variances from the requirements of the 2015 final rule.

For the reasons discussed earlier in this preamble, the BLM believes this section of the 2015 rule is unnecessarily duplicative and would impose costs that would not be clearly exceeded by its benefits and, therefore, removes these 2015 rule provisions and restores the previous language of the section.

Section 3162.5–2 Control of Wells

The BLM amends paragraph (d) of this section by restoring the term ''fresh water-bearing'' and the phrase ''containing 5,000 ppm or less of dissolved solids.'' The final rule also restores other non-substantive provisions that appeared in the previous version of the regulations.

Good Cause for Immediate Effectiveness

The APA normally requires regulations to become effective no sooner than 30 days after publication in the **Federal Register** (5 U.S.C. 553(d)). Nonetheless, the APA allows regulations to go into effect immediately upon publication when ''a substantive rule grants or recognizes an exemption or relieves a restriction'' (5 U.S.C. 553(d)(1)). As explained in this preamble, this final rule relieves oil and gas operators on Federal and Indian lands from the numerous restrictions and burdens that would be imposed if the 2015 rule were to go into effect.

The primary purpose of the delayed effective date requirement in section 553(d) is to give people a reasonable time to prepare to comply with or take other action with respect to the rule (See Attorney General's Manual on the Administrative Procedure Act 37 (1947)). As explained elsewhere in this preamble, the 2015 rule has never been operational. Therefore, no one requires time to conform their conduct to avoid the legal consequences of ''violating'' the regulations that would remain in effect after rescission of the 2015 rule. Even if persons not subject to the 2015 rule could claim a benefit from a 30-day effective date, that would not prevent this final rule from becoming effective immediately upon publication (*Independent U.S. Tanker Owners Comm.* v. *Skinner,* 884 F.2d 587, 591–92 (D.C. Cir. 1989), *cert. denied,* 495 U.S. 904 (1990)).

The APA also allows regulations to go into effect immediately upon publication for ''good cause'' (5 U.S.C. 553(d)(3)). Application of the good cause exception requires an '' 'urgency of conditions coupled with demonstrated and unavoidable limitations of time,' '' with the ''primary consideration . . . be[ing] the 'convenience or necessity of the people affected' '' (*United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting 92 Cong. Rec. 5650–51 (1946) (remarks of Cong. Walter))). In determining whether to invoke the good cause exception, an ''agency is required to balance the [public] necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable time to prepare for the effective date of its ruling'' (*Gavrilovic,* 551 F.2d at 1105).

The current posture of the litigation related to the 2015 rule makes it possible that the 2015 rule could become operational within 30 days of the publication of this final rule. Were that to happen, oil and gas operators—the persons most affected by this final rule—would have to go to significant expense to comply with the 2015 rule, even though that rule would be rescinded in a matter of days upon the effective date of this final rule. Those significant burdens would not be offset by the de minimus environmental benefits of a few days of compliance with the 2015 rule. Requiring oil and gas operators to incur such significant expense to comply with a rule that will be rescinded in a matter of days would be fundamentally unfair. Thus, there are urgent conditions, unavoidable limitations of time, and a risk to the convenience or necessity of the people affected.

For both of these reasons, the BLM finds that there is good cause for this final rule to be effective upon publication in the **Federal Register**.

III. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866, 13563, and 13771)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant because it will raise novel legal or policy issues.

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

Executive Order 13771 (82 FR 9339, Feb. 3, 2017) requires Federal agencies to take proactive measures to reduce the costs associated with complying with Federal regulations. Consistent with Executive Order 13771, we have estimated the cost savings for this final rule to be $14—$34 million per year from the 2015 rule. Therefore, this final rule is expected to be a deregulatory action under Executive Order 13771.

Regulatory Flexibility Act

The BLM certifies that this rule will not have a significant economic effect on a substantial number of small entities pursuant to 5 U.S.C. 605(b). The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities (*See* 5 U.S.C. 601—612). Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the Small Business Administration (SBA) size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the Economic Census. The BLM concluded that the vast majority of entities operating in the relevant sectors are small businesses as defined by the SBA. As such, the final rule will likely affect a substantial number of small entities.

Although the final rule will likely affect a substantial number of small entities, the BLM does not believe that these effects would be economically significant. This final rule is a deregulatory action that will remove all of the requirements placed on operators by the 2015 rule. Operators will not have to undertake the compliance activities, either operational or administrative, that are outlined in the 2015 rule, except to the extent the activities are required by state or tribal law, or by other pre-existing BLM regulations.

The BLM conducted an economic analysis which estimates that the average reduction in compliance costs will be a small fraction of a percent of the profit margin for small companies, which is not a large enough impact to be considered significant. For more detailed information, see section 5.3 of the RIA prepared for this final rule. The final RIA has been posted in the docket for the final rule on the *Federal eRulemaking Portal: http://www.regulations.gov.*

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. The rule will not have an annual effect on the economy of $100 million or more.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This final rule is a deregulatory action that removes all of the requirements placed on operators by the 2015 rule. Operators will not have to undertake the compliance activities, either operational or administrative, that would have been required solely by the 2015 rule. The screening analysis conducted by the BLM estimates the average reduction in compliance costs will be a small fraction of a percent of the profit margin for companies, which is not large enough to: Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises; cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or have an annual effect on the economy of $100 million or more.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) (UMRA) is not required. This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such

governments, nor does it impose obligations upon them.

Takings (EO 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required. This rule is a deregulatory action that removes all of the requirements placed on operators solely by the 2015 rule and therefore will impact some operational and administrative requirements on Federal and Indian lands. All such operations are subject to lease terms which expressly require that subsequent lease activities be conducted in compliance with subsequently adopted Federal laws and regulations. This rule conforms to the terms of those leases and applicable statutes and, as such, the rule is not a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the final rule will not cause a taking of private property or require further discussion of takings implications under Executive Order 12630.

Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required. The final rule will not have a substantial direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the levels of government. It will not apply to states or local governments or state or local governmental entities. The rule will affect the relationship between operators, lessees, and the BLM, but it does not directly impact the states. Therefore, in accordance with Executive Order 13132, the BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a federalism assessment.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. More specifically, this rule meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

Consultation With Indian tribes (E.O. 13175 and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The BLM has evaluated this final rule in accordance with the Department's consultation policies and under the criteria in Executive Order 13175. The BLM authorizes oil and gas operations that are proposed on Indian onshore oil and gas leases. Therefore, the rule has the potential to affect Indian tribes and tribal lands.

Potentially affected tribes were provided an opportunity to provide feedback and consult with the BLM regarding this rule. The BLM has fully considered tribal views made known to us in preparing this final rule.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number issued by the Office of Management and Budget (OMB). Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. See 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k).

This rule rescinds information collection activities that would have required approval by the OMB under the PRA had the 2015 rule become effective. OMB pre-approved those activities and assigned control number 1004–0203 to them, but the control number was not activated. In view of the rescission, there will be no need to continue the information collection activities that the OMB has pre-approved under control number 1004–0203. Accordingly, the BLM will request that the OMB discontinue that control number after the effective date of this final rule.

In accordance with this final rule, the BLM will include in its request for renewal of control number 1004–0137 (expires January 31, 2018) that nonroutine fracturing jobs be removed from the information collection activity for subsequent well operations, at 43 CFR 3162.3–2.

National Environmental Policy Act

The BLM prepared an environmental assessment (EA) to document its examination of the potential environmental impacts that may occur as a result of this final rule. The BLM has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because we reached a Finding of No Significant Impact (FONSI) for this final rule.

The final EA and FONSI that were prepared for this final rule have been placed in the file for the BLM's Administrative Record for the final rule at the BLM's 20 M Street address specified in the **ADDRESSES** section. The final EA and FONSI have also been posted in the docket for the final rule on the *Federal eRulemaking Portal: http://www.regulations.gov.* The BLM invites the public to review these documents.

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

This final rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required. Section 4(b) of Executive Order 13211 defines a ''significant energy action'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of rulemaking, and notices of rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of [OIRA] as a significant energy action.''

Since this final rule is a deregulatory action and would reduce compliance costs, it is likely to have a positive effect, if any, on the supply, distribution, or use of energy, and not a significant adverse effect. As such, we do not consider the final rule to be a ''significant energy action'' as defined in Executive Order 13211.

Authors

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Dated: December 22, 2017.

Joseph Balash,

Assistant Secretary—Land and Minerals Management, U.S. Department of the Interior.

List of Subjects in 43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authorities stated below, the Bureau of Land Management amends 43 CFR part 3160 as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, and 1740; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

Subpart 3160—Onshore Oil and Gas Operations: General

■ 2. Revise § 3160.0–3 to read as follows:

§ 3160.0–3 Authority.

The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a-398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. § 441 (43 U.S.C. 1457), the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (40 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (94 Stat. 2964), the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701), the Indian Mineral Development Act of 1982 (25 U.S.C. 2102), and Order Number 3087, dated December 3, 1982, as amended on February 7, 1983 (48 FR 8983) under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the responsibility for leasing of restricted Indian lands, to the Bureau of Land Management.

■ 3. Amend § 3160.0–5 by removing the definitions of ''Annulus,'' ''Bradenhead,'' ''Cement Evaluation Log (CEL),'' ''Confining zone,'' ''Hydraulic fracturing,'' ''Hydraulic fracturing fluid,'' ''Isolating or to isolate,'' ''Master hydraulic fracturing plan,'' ''Proppant,'' and ''Usable water,'' and by adding the definition of ''Fresh water'' in alphabetical order to read as follows:

§ 3160.0–5 Definitions.

* * * * *

Fresh water means water containing not more than 1,000 ppm of total dissolved solids, provided that such water does not contain objectionable levels of any constituent that is toxic to animal, plant or aquatic life, unless otherwise specified in applicable notices or orders.

* * * * *

Subpart 3162—Requirements for Operating Rights Owners and Operators

■ 4. Amend § 3162.3–2 by revising the first sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 3162.3–2 Subsequent well operations.

(a) A proposal for further well operations shall be submitted by the operator on Form 3160–5 for approval by the authorized officer prior to commencing operations to redrill, deepen, perform casing repairs, plug-back, alter casing, recomplete in a different interval, perform water shut off, commingling production between intervals and/or conversion to injection. * * *

(b) Unless additional surface disturbance is involved and if the operations conform to the standard of prudent operating practice, prior approval is not required for routine fracturing or acidizing jobs, or recompletion in the same interval; however, a subsequent report on these operations must be filed on Form 3160–5.

* * * * *

■ 5. Revise § 3162.3–3 to read as follows:

§ 3162.3–3 Other lease operations.

Prior to commencing any operation on the leasehold which will result in additional surface disturbance, other than those authorized under § 3162.3–1 or § 3162.3–2, the operator shall submit a proposal on Form 3160–5 to the authorized officer for approval. The proposal shall include a surface use plan of operations.

■ 6. Amend § 3162.5–2 by revising the heading and first sentence of paragraph (d) to read as follows:

§ 3162.5 -2 Control of wells.

* * * * *

(d) *Protection of fresh water and other minerals.* The operator shall isolate freshwater-bearing and other usable water containing 5,000 ppm or less of dissolved solids and other mineral-bearing formations and protect them from contamination. * * *

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