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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1178; Product Identifier 2014–NM–144–AD; Amendment 39–19140; AD 2017–26–09]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain ATR—GIE Avions de Transport Régional Model ATR 42–500 airplanes and Model ATR 72–212A airplanes. This AD requires a one-time inspection for damage of the engine fire extinguishing pipes and incorrect pipe installation, and corrective actions if necessary. This AD was prompted by a report of damage to an engine fire extinguishing pipe due to chafing between the pipe and a fastener assembly; the chafing occurred as a result of incorrect installation of the pipe. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective January 18, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 18, 2018.

We must receive comments on this AD by February 20, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr-aircraft.com.* You may view this referenced 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–2017–1178.

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–2017–1178; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the aviation authority for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0144R1, dated June 10 2014; corrected June 11, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain ATR—GIE Avions de Transport Régional Model ATR 42–500 airplanes and Model ATR 72–212A airplanes. The MCAI states:

> Damage of an engine fire extinguishing pipe was reported on an in-service ATR 72–212A aeroplane. The damage was induced by chafing between the engine fire extinguishing pipe and a fastener assembly installed between flap arm and hinge flap at rib 4 during flaps extension to the 30 degrees position. The subsequent investigation also determined that the chafing occurred as a result of an incorrect (back to front) installation of the pipe.
>
> This condition, if not detected and corrected, could lead to damage of the fire extinguishing pipe, possibly generating a leak, leading to loss of available extinguishing agent and resulting in reduced capability to extinguish an engine fire.
>
> To address this potential unsafe condition, ATR issued Service Bulletins (SB) ATR42–26–0031 and ATR72–26–1027 to provide inspection instructions, as applicable to aeroplane model.
>
> For the reasons described above, this [EASA] AD requires a one-time [general] visual inspection [for damage] of the affected area [and incorrect pipe installation] and, depending on findings, accomplishment of applicable corrective actions.

Damaged pipes are defined as pipes that have wear due to chafing without evidence of cracking. Corrective actions include replacing damaged pipes, ensuring correct alignment, applying protective sealant and corrosion inhibiting compound, replacing damaged fasteners with new fasteners, and repairing flap arms and flap hinges. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1178.

Related Service Information Under 1 CFR Part 51

ATR has issued the following service information.

- ATR Service Bulletin ATR42–26–0031, dated April 30, 2014. This service information describes procedures for inspecting for damage and incorrect installation of the left-hand and right-hand engine fire extinguishing pipes, and corrective actions.
- ATR Service Bulletin ATR72–26–1027, dated April 30, 2014. This service information describes procedures for inspecting for damage and incorrect installation of the left-hand and right-

hand engine fire extinguishing pipes, and corrective actions.

These documents are distinct since they apply to different airplane models. 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 of this AD.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

There are currently no domestic operators of this product. Therefore, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reasons 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 we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–1178; Product Identifier 2014–NM–144–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on 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 AD.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, we provide the following cost estimates to comply with this AD:

We estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost $0 per product. Based on these figures, we estimate the cost of this AD will be $170 per product.

We also estimate that any necessary follow-on actions will take about 16 work-hours and require parts costing $1,360, for a cost of $2,720 per product. We have no way of determining the number of aircraft that might need these actions.

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 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–26–09 ATR—GIE Avions de Transport Régional: Amendment 39–19140; Docket No. FAA–2017–1178; Product Identifier 2014–NM–144–AD.

(a) Effective Date

This AD becomes effective January 18, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) ATR—GIE Avions de Transport Régional Model ATR42–500 airplanes; manufacturer serial number (MSN) 859, and MSNs 1001 through 1010 inclusive.

(2) ATR—GIE Avions de Transport Régional Model ATR72–212A airplanes; MSN 988 and 989; MSNs 993 through 1000 inclusive, except MSN 996; and MSNs 1020 through 1142 inclusive, except MSNs 1071, 1135, 1139, 1140, and 1141.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Reason

This AD was prompted by a report of damage of an engine fire extinguishing pipe due to chafing between the pipe and a certain fastener assembly; the chafing occurred as a result of incorrect installation of the pipe. We are issuing this AD to detect and correct

damage of the fire extinguishing pipes, which could generate a leak, resulting in the loss of available extinguishing agent and reduced capability to extinguish an engine fire.

(f) Compliance

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

(g) Inspection for Damaged Fire Extinguishing Pipes

Within 150 flight hours or 30 days, whichever occurs first after the effective date of this AD, accomplish a one-time inspection for damage of the left-hand (LH) and right-hand (RH) engine fire extinguishing pipes, in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–26–0031, dated April 30, 2014; or ATR Service Bulletin ATR72–26–1027, dated April 30, 2014; as applicable.

(h) Measurement of Wear Depth

If, during the inspection required by paragraph (g) of this AD, any damage is detected on an engine fire extinguishing pipe, before further flight, remove the damaged pipe, measure the maximum wear depth in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–26–0031, dated April 30, 2014; or ATR Service Bulletin ATR72–26–1027, dated April 30, 2014; as applicable.

(i) Corrective Actions and Related Investigative Actions for Major Wear Depth

If, during a measurement required by paragraph (h) of this AD, a depth of wear greater than 0.5 mm (0.0197 inch) is detected, before further flight, accomplish the actions specified by paragraphs (i)(1), (i)(2), and (i)(3) of this AD, in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–26–0031, dated April 30, 2014; or ATR Service Bulletin ATR72–26–1027, dated April 30, 2014; as applicable.

(1) Replace the damaged pipe with a new engine fire extinguishing pipe.

(2) Inspect the LH and RH flap parts (flap fasteners, flap arms, hinge flaps) at rib 4 for damage; and, depending on the findings, accomplish the applicable corrective actions, except, where ATR Service Bulletins ATR42–26–0031 and ATR72–26–1027, both dated April 30, 2014, specify to contact ATR for appropriate action, before further flight, accomplish corrective actions in accordance with the procedures specified in paragraph (n)(2) of this AD.

(3) Accomplish a functional test of the engine fire extinguishing system. If the part fails the test, before further flight, do corrective actions, repeat the test, and do applicable corrective actions until the part passes the test.

(j) Corrective Actions for Minor Wear Depth

If, during a measurement required by paragraph (h) of this AD, a depth of wear less than, or equal to, 0.5 mm (0.0197 inch) is detected, before further flight, accomplish the actions required by paragraphs (j)(1), (j)(2), and (j)(3) of this AD in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–26–0031, dated April 30, 2014; or ATR Service Bulletin ATR72–26–1027, dated April 30, 2014; as applicable.

(1) Do the actions specified by either paragraph (j)(1)(i) or (j)(1)(ii) of this AD.

(i) Replace the damaged pipe with a new engine fire extinguishing pipe.

(ii) Re-install the damaged pipe correctly, and, within 30 days after the inspection as required by paragraph (g) of this AD, replace the damaged pipe with a new engine fire extinguishing pipe.

(2) Inspect the LH and RH flap parts (flap fasteners, flap arms, hinge flaps) at rib 4 for damage; and, depending on the findings, accomplish all applicable corrective actions before further flight, except, where ATR Service Bulletins ATR42–26–0031 and ATR72–26–1027, both dated April 30, 2014, specify to contact ATR for appropriate action, before further flight, accomplish corrective actions in accordance with the procedures specified in paragraph (n)(2) of this AD.

(3) Accomplish a functional test of the engine fire extinguishing system. If the part fails the test, before further flight, do corrective actions, repeat the test, and do applicable corrective actions until the part passes the test.

(k) Pipe Replacement

Within 30 days after the replacement specified by paragraph (h) of this AD, unless already accomplished as required by paragraph (i)(1) or (j)(1) of this AD, as applicable, replace the damaged fire extinguisher pipe in accordance with the instructions of ATR Service Bulletin ATR42–26–0031, dated April 30, 2014; or ATR Service Bulletin ATR72–26–1027, dated April 30, 2014; as applicable, and, concurrently, accomplish the actions specified by paragraphs (j)(2) and (j)(3) of this AD.

(l) Corrective Action for Incorrect Pipe Installation

If, during the inspection required by paragraph (g) of this AD, no damage is detected, before further flight, verify the correct installation of the extinguishing pipes, in accordance with the Accomplishment Instructions of ATR Service Bulletins ATR42–26–0031 or ATR72–26–1027, both dated April 30, 2014, as applicable. If any engine fire extinguishing pipe is found incorrectly installed, before further flight, re-install the pipe correctly and accomplish a functional test of the engine fire extinguishing system in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–26–0031, dated April 30, 2014; or ATR Service Bulletin ATR72–26–1027, dated April 30, 2014; as applicable. If the part fails the test, before further flight, do corrective actions, repeat the test, and do applicable corrective actions until the part passes the test.

(m) Corrective Action for Damage Beyond Limits

If, during any inspection specified by paragraph (i)(2) or (j)(2) of this AD, as applicable, any damage is detected on flap arms or hinge flaps that is determined to be beyond the defined limits indicated in ATR Structural Repair Manual (SRM) 511010–01–001–A01, dated October 1, 2014, before further flight, accomplish corrective actions in accordance with the procedures specified in paragraph (n)(2) of this AD.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards 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 (l)(2) of this AD. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* 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.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or ATR—GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0144R1, dated June10, 2014; corrected June 11, 2014; for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1178.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(3) and (n)(4) of this AD.

(p) 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 this AD specifies otherwise.

(i) ATR Service Bulletin ATR42–26–0031, dated April 30, 2014.

(ii) ATR Service Bulletin ATR72–26–1027, dated April 30, 2014.

(3) For service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18;

email *continued.airworthiness@atr-aircraft.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 20, 2017.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–28146 Filed 1–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1180; Product Identifier 2012–NM–201–AD; Amendment 39–19144; AD 2018–01–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Airbus Model A310 series airplanes. This AD requires contacting the FAA to obtain instructions for addressing the unsafe condition on these products, and doing the actions specified in those instructions. This AD was prompted by reports of the portable oxygen cylinder assembly (POCA) slipping from its bracket inside a one-frame overhead stowage compartment. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective January 18, 2018.

We must receive comments on this AD by February 20, 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*: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1180; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone: 425–227–2125; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0146, dated July 22, 2015; corrected July 24, 2015, (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Airbus Model A310 series airplanes. The MCAI states:

During maintenance, an operator found that one portable oxygen cylinder assembly (POCA) had slipped from its bracket inside a one-frame [overhead stowage compartment] OHSC located near door L1. The investigation results indicated that the POCA had fallen behind the OHSC through a cut-out on the OHSC outboard panel and damaged some electrical wires, resulting in arcing, melted wires, partial burn stains on the POCA and on the inside of the fuselage.

This condition, if not detected and corrected, could possibly result in an uncontrolled fire in the affected area.

To address this potential unsafe condition, Airbus issued [alert operators transmission] AOT A25W003–12, requesting a one-time inspection of the affected POCA installation inside one-frame OHSC, corrective actions, and repetitive checks. Consequently, EASA issued Emergency AD 2012–0032–E to require repetitive inspections of the affected POCA installation(s) inside one-frame OHSC and, depending on findings, the accomplishment of applicable corrective actions(s).

Since that [EASA] AD was issued, it was discovered that more aeroplanes were potentially affected by this unsafe condition. Airbus issued AOT A25W003–12 Revision 1 to inform operators accordingly, and EASA issued AD 2012–0245–E, retaining the requirements of EASA AD 2012–0232E, which was superseded, to add these potentially affected aeroplanes to the Applicability.

Since that [EASA] AD was issued, Airbus issued Service Bulletin (SB) A300–25–6222 and SB A310–25–2210 to improve the POCA installation inside one-frame OHSC.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2012–0245–E, which is superseded, and requires the installation of a new protection cover as modification of POCA installation inside one-frame OHSC, which constitutes terminating action for the required repetitive [detailed visual inspection] DVI.

This [EASA] AD is republished to correct a typographical error in the Reason.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1180.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason(s) 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 we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–1180; Product Identifier 2012–NM–201–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on 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 AD.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. This AD requires contacting the FAA to obtain instructions for addressing the unsafe condition, and doing the actions specified in those instructions. Based on the actions specified in the MCAI AD, we are providing the following cost estimates for an affected airplane that is placed on the U.S. Register in the future:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle.
Modification	33 work-hours × $85 per hour = $2,805	2,000	4,805.

We have received no definitive data that would enable us to provide cost estimates for the repair or replacement specified in this AD. We estimate the following costs to do any necessary on-condition reporting that would be required based on the results of the required action:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Reporting	1 work-hour × $85 per hour = $85	$0	$85

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 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–01–03 Airbus: Amendment 39–19144; Docket No. FAA–2017–1180; Product Identifier 2012–NM–201–AD.

(a) Effective Date

This AD becomes effective January 18, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(5) of this AD, certificated in any category, equipped with one-frame overhead stowage compartments (OHSC), except for airplanes in an all-cargo configuration.

(1) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(2) Model A300 B4–605R and B4–622R airplanes.

(3) Model A300 F4–605R and F4–622R airplanes.

(4) Model A300 C4–605R Variant F airplanes.

(5) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by reports of the portable oxygen cylinder assembly (POCA) slipping from its bracket inside a one-frame overhead stowage compartment (OHSC). We are issuing this AD to prevent the POCA from falling behind the OHSC through a cut-out on the OHSC outboard panel, which could damage electrical wiring, resulting in electrical arcing, melted wires, and heat damage, and could ultimately result in an uncontrolled fire in the affected area.

(f) Compliance

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

(g) Required Action(s)

Within 30 days after the effective date of this AD, request instructions from the Manager, International Section, Transport Standards Branch, FAA, to address the unsafe condition specified in paragraph (e) of this AD; and accomplish the action(s) at the times specified in, and in accordance with, those instructions. Guidance can be found in Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) AD 2015–0146, dated July 22, 2015; corrected July 24, 2015.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, International Section, Transport Standards 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 International Section, send it to the attention of the person identified in paragraph (i)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

(i) Related Information

(1) Refer to MCAI EASA AD 2015–0146, dated July 22, 2015; corrected July 24, 2015, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1180.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

(j) Material Incorporated by Reference

None.

Issued in Renton, Washington, on December 26, 2017.

John P. Piccola, Jr.,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–28380 Filed 1–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1181; Product Identifier 2014–NM–037–AD; Amendment 39–19145; AD 2018–01–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2011–04–05, which applied to all Airbus Model A340–200, –300, –500, and –600 series airplanes. AD 2011–04–05 required revising the maintenance or inspection program to incorporate new airworthiness limitation items (ALIs). This new AD was prompted by the revision of certain ALIs, which specify more restrictive instructions or airworthiness limitations. This AD requires contacting the FAA to obtain instructions for addressing the unsafe condition on these products, and doing the actions specified in those instructions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective January 18, 2018.

We must receive comments on this AD by February 20, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1181; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued AD 2011–04–05, Amendment 39–16605 (76 FR 8612, February 15, 2011) (''AD 2011–04–05''), which applied to all Airbus Model A340–200, –300, –500, and –600 series airplanes. AD 2011–04–05 was prompted by a determination that certain steel forgings used to manufacture certain landing gear components were below specification limits, and the introduction of new ALIs. AD 2011–04–05 required revising the maintenance or inspection program to incorporate new ALIs. We issued AD 2011–04–05 to prevent the failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

Since we issued AD 2011–04–05, we have determined that more restrictive instructions or airworthiness limitations are needed to address the unsafe condition.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2014–0009, dated January 8, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A340–200, –300,

–500, and –600 series airplanes. The MCAI states:

The airworthiness limitations for Airbus aeroplanes are currently published in Airworthiness Limitations Section (ALS) documents.

The instructions and airworthiness limitations applicable to the Safe Life Airworthiness Limitation Items (SL ALI) are given in Airbus A330 ALS Part 1 and A340 ALS Part 1, which are approved by EASA.

The revision 07 of Airbus A330 and A340 ALS Part 1 introduces more restrictive instructions and/or airworthiness limitations. Failure to comply with this revision could result in an unsafe condition.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2012–0179, which is superseded, and requires accomplishment of the actions specified in Airbus A330 or A340 ALS Part 1 revision 07.

In addition, this [EASA] AD also supersedes EASA AD 2011–0122–E and EASA AD 2011–0212 [which corresponds to FAA AD 2012–25–12, Amendment 39–17293 (77 FR 75825, December 26, 2012)], whose requirements have been transferred into Airbus A330 and A340 ALS Part 1 revision 07.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1181.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason(s) 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 we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–1181; Product Identifier 2014–NM–037–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on 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 AD.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. This AD requires contacting the FAA to obtain instructions for addressing the unsafe condition, and doing the actions specified in those instructions. Based on the actions specified in the MCAI AD, we are providing the following cost estimates for an affected airplane that is placed on the U.S. Register in the future:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Maintenance or inspection program revision	1 work-hour × $85 per hour = $85	$0	$85

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 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 the 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) 2011–04–05, Amendment 39–16605 (76 FR 8612, February 15, 2011), and adding the following new AD:

2018–01–04 Airbus: Amendment 39–19145; Docket No. FAA–2017–1181; Product Identifier 2014–NM–037–AD.

(a) Effective Date

This AD becomes effective January 18, 2018.

(b) Affected ADs

This AD replaces AD 2011–04–05, Amendment 39–16605 (76 FR 8612, February 15, 2011) (''AD 2011–04–05'').

(c) Applicability

This AD applies to the Airbus airplanes specified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Model A340–211, –212, and –213 airplanes.

(2) Model A340–311, –312, and –313 airplanes.

(3) Model A340–541 airplanes.

(4) Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic inspections.

(e) Reason

This AD was prompted by the revision of certain airworthiness limitation items (ALIs), which specify more restrictive instructions or airworthiness limitations. We are issuing this AD to prevent the failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Required Action(s)

Within 30 days after the effective date of this AD, request instructions from the Manager, International Section, Transport Standards Branch, FAA, to address the unsafe condition specified in paragraph (e) of this AD; and accomplish the action(s) at the times specified in, and in accordance with, those instructions. Guidance can be found in Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) AD 2014–0009, dated January 8, 2014.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, International Section, Transport Standards 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 International Section, send it to the attention of the person identified in paragraph (i)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

(i) Related Information

(1) Refer to MCAI EASA AD 2014–0009, dated January 8, 2014, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1181.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

(j) Material Incorporated by Reference

None.

Issued in Renton, Washington, on December 26, 2017.

John P. Piccola, Jr.,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–28381 Filed 1–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0500; Product Identifier 2017–NM–009–AD; Amendment 39–19142; AD 2018–01–01]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model MD–11 and MD–11F airplanes. This AD was prompted by fuel system reviews conducted by the manufacturer. This AD requires a one-time inspection of the wire assemblies of the tail fuel tank transfer pumps to determine if metallic transitions are installed at the wire harness breakouts, and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 7, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 7, 2018.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; 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–2017–0500.

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–2017–0500; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sérj Harutunian, Aerospace Engineer, Propulsion Section, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5254; fax: 562–627–5210; email: *serj.harutunian@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model MD–11 and MD–11F airplanes. The NPRM published in the **Federal Register** on May 30, 2017 (82 FR 24597). The NPRM was prompted by fuel system reviews conducted by the manufacturer. The NPRM proposed to require a one-time inspection of the wire assemblies of the tail fuel tank transfer pumps to determine if metallic transitions are installed at the wire harness breakouts, and corrective actions if necessary. We are issuing this AD to detect and correct potential ignition sources inside the tail fuel tank,

which, in combination with flammable vapors, could result in a fuel tank fire or explosion, and consequent loss of the airplane.

Comments

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

Supportive Comment

The Air Line Pilots Association International stated that it agreed with the intent of the NPRM.

Request To Clarify the Description of the Unsafe Condition

Boeing asked that we clarify the description of the unsafe condition identified in paragraph (e) of the proposed AD to add the potential of fuel starvation as the end-level effect. Boeing stated that referenced service information specifies that the unsafe condition could result in engine fuel starvation.

We agree that damaged wires could result in fuel starvation as a potential unsafe condition. However, we have no SFAR88 analysis or service difficulty reports associated with the loss of system functions or fuel starvation from the chafed or damaged wires identified in this AD. We do have previous Special Federal Aviation Regulation 88 (SFAR88) ADs for wire harnesses in the same area that were issued to prevent wire chafing and potential ignition sources inside the fuel tank. The actions required by this AD are intended primarily to reduce the risk of other incidents of wires chafing and subsequent fuel tank fire or explosion. Therefore, we have made no change to this AD in this regard.

Request To Change Certain Estimates in Costs of Compliance Section

FedEx asked that the work-hours under the On-Condition Costs for the replacement be increased from 16 to 100. FedEx stated that the replacement cost specifies 16 work-hours, but noted that replacement of only one affected part will actually take about 100 hours. FedEx added that 100 work-hours is only for one damaged wire assembly.

United Parcel Service (UPS) asked that the work-hours under the On-Condition Costs for the replacement be increased from 16 to 244. UPS stated that it has previously replaced this wire harness and it required 244 work hours to complete the replacement. UPS also asked that the cost for parts for the repair be added. UPS stated that it has sourced the materials and the cost is $1,680 per airplane (or $168 per transition location).

We agree to revise the estimated on-condition work-hours. When issuing a service bulletin, Boeing estimates work-hours under expected conditions for direct labor only. As operators implement the service bulletin, they may find the actual work-hours are higher or lower than estimated. We have updated the Costs of Compliance section of this AD to reflect between 100 and 244 work-hours. We have also included the parts cost estimate provided for repairs.

Request To Add Information Notice To Service Information Citation

FedEx asked that Boeing Alert Service Bulletin MD11–28A150 IN 02, dated February 24, 2017, be added to the service information cited in paragraph (g) of the proposed AD. FedEx stated that the one-time inspection and corrective actions in paragraph (g) specify performing a detailed inspection in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016. FedEx added that since the referenced service information was issued, Boeing released an information notice (IN 02) with part numbers for three new wire assembly kits.

We disagree with the commenter's request. Boeing Alert Service Bulletin MD11–28A150 IN 02, dated February 24, 2017, provides updated kit information for the operators. The individual wire assembly part numbers in the new kits are the same wire assembly part numbers needed for the replacement required by this AD as specified in the figures in Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016. Since this AD only requires the replacement of certain individual wire assembly part numbers and not the kit part numbers that consist of the individual wire assembly part numbers, we have made no change to this AD in this regard.

Request To Clarify Paragraph (h) of the Proposed AD

FedEx and UPS requested that we clarify the actions specified in paragraph (h) of the proposed AD. FedEx stated that paragraph (h) of the proposed AD provides information to perform different tests than those listed in steps 1.f, 1.g., and 1.h. of Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016. FedEx stated it is not clear if the required test after rework is in accordance with steps 1.a. through 1.j. of Part 4 of Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016, or per the actions specified in (h)(1), (h)(2), and (h)(3) of this AD only. FedEx and UPS also stated that the proposed AD should require test procedures only for the section that Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016, is addressing and not all the systems associated with wire assemblies AJS9013 and AJS9014. FedEx and UPS also noted that the airplane maintenance manual (AMM) references in paragraphs (h)(1) and (h)(2) of the proposed AD are incorrect (AMM 28–28–01 should be AMM 28–08–01; AMM 26–21–02 should be AMM 28–21–02).

We agree to clarify which actions are required by this AD. Steps 1.f, 1.g., and 1.h. of Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016, are required for compliance (RC) after any rework is done and only address the system affected by this AD. The other steps identified as ''RC exempt'' as specified in Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016, are not a part of the requirements of this AD.

The intent of paragraph (h) of the proposed AD was to specify the corrective action for RC tests. Steps 1.f, 1.g., and 1.h. of Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016, specify to accomplish tests but the steps do not specify corrective actions if the tests fail. To clarify that the tests themselves are not exceptions to Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016, we have removed paragraph (h) of the proposed AD and included the corrective action statement for the tests in paragraph (g) of this AD.

We acknowledge that the AMM references in paragraphs (h)(1) and (h)(2) of the proposed AD were incorrect and note that the AMM references for the tests are identified correctly in Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016. The service information describes procedures for a one-time detailed inspection of the wire assemblies of the tail fuel tank transfer pumps to determine if metallic transitions are installed at the wire harness breakouts, and corrective actions that include repair and replacement of the wire assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 110 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	4 work-hours × $85 per hour = $340	$0	$340	$37,400

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	9 work-hours × $85 per hour = $765	Up to $1,680	Up to $2,445.
Replacement	Between 100 and 244 work-hours × $85 per hour = between $8,500 and $20,740.	$57,526	Between $66,026 and $78,266.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–01–01 The Boeing Company: Amendment 39–19142; Docket No. FAA–2017–0500; Product Identifier 2017–NM–009–AD.

(a) Effective Date

This AD is effective February 7, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Boeing Company Model MD–11 and MD–11F airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 28; Fuel.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We

are issuing this AD to detect and correct potential ignition sources inside the tail fuel tank, which, in combination with flammable vapors, could result in a fuel tank fire or explosion, and consequent loss of the airplane.

(f) Compliance

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

(g) One-Time Inspection and Corrective Actions

Within 27 months after the effective date of this AD, do a one-time detailed inspection of the wire assemblies of the tail fuel tank transfer pumps to determine if metallic transitions are installed at the wire harness breakouts, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016. If metallic transitions are installed, no further action is required by this paragraph. If metallic transitions are not installed, do the corrective actions required by paragraphs (g)(1) and (g)(2) of this AD, as applicable, and if, after any repair or replacement is done, any test fails, before further flight, do corrective actions, repeat the test, and do applicable corrective actions until the test is passed.

(1) Repair any affected wire assembly before further flight, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016, or replace any affected wire assembly with a new wire assembly before further flight, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016. If the replacement is done, no further action is required for that wire assembly only.

(2) Within 24 months after accomplishment of the repair required by paragraph (g)(1) of this AD: Replace any repaired wire assembly with a new wire assembly, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A150, dated October 6, 2016.

(h) 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 (i) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

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

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

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

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

(i) Related Information

For more information about this AD, contact Sérj Harutunian, Aerospace Engineer, Propulsion Section, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5254; fax: 562–627–5210; email: *serj.harutunian@faa.gov.*

(j) 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 MD11–28A150, dated October 6, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; 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 26, 2017.

John P. Piccola, Jr.,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–28379 Filed 1–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0698; Product Identifier 2017–NM–047–AD; Amendment 39–19143; AD 2018–01–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2017–02–03, which applied to certain The Boeing Company Model 767–200, –300, and –400ER series airplanes. AD 2017–02–03 required inspection of the plastic potable water coupling, and corrective actions if necessary; installation of new spray shrouds; and inspection of previously installed spray shields, and related investigative and corrective actions if necessary. This AD adds airplanes to the applicability and, for certain airplanes, requires hose assembly removals and installations. This AD was prompted by a report of a malfunction of the engine indication and crew alerting system (EICAS) during flight. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 7, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 7, 2018.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW, Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching

for and locating Docket No. FAA–2017–0698.

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–2017–0698; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW, Renton, WA 98057–3356; phone: 425–917–6585; fax: 425–917–6590; email: *stanley.chen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–02–03, Amendment 39–18782 (82 FR 10541, February 14, 2017) (''AD 2017–02–03''). AD 2017–02–03 applied to certain The Boeing Company Model 767–200, –300, and –400ER series airplanes. The NPRM published in the **Federal Register** on July 20, 2017 (82 FR 33465). The NPRM was prompted by a report of a malfunction of the EICAS during flight. The NPRM proposed to add airplanes to the applicability and, for certain airplanes, requires hose assembly removal and installation. We are issuing this AD to prevent an uncontrolled water leak from a defective potable water system coupling, which could cause the main equipment center (MEC) line replaceable units (LRUs) to become wet, resulting in an electrical short and potential loss of several functions essential for safe flight.

Comments

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

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that the installation of winglets per STC ST01920SE does not affect the accomplishment of the manufacturer's service instructions.

We agree with the commenter that STC ST01920SE does not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST01920SE does not affect the ability to accomplish the actions required by this AD. We have not changed this AD in this regard.

Request To Delay the Final Rule

Boeing requested that we delay issuance of the final rule until the manufacturer can release Revision 4 of Boeing Alert Service Bulletin 767–38A0073 in November 2017. Boeing pointed out that Revision 4 will not add any airplanes to the effectivity or make any substantial changes that will change the scope of the NPRM. Boeing mentioned that Revision 4 will expand usage of an optional tape material to all affected groups of airplanes because the originally specified tape is no longer available, and include an optional set of clamping instructions that can be used if needed to prevent a riding condition. Boeing also mentioned that Revision 4 will clarify what actions are required for each group of airplanes based on which revision of the service information has previously been accomplished. Boeing pointed out that revising the NPRM to refer to Revision 4 of Boeing Alert Service Bulletin 767–38A0073 would reduce the need for alternative method of compliance (AMOC) requests.

We do not consider that delaying this action until release of the planned service bulletin is warranted. Revision 4 of Boeing Alert Service Bulletin 767–38A0073 is not yet approved, and we cannot specify future revisions of service information in this AD. Revision 3 of Boeing Alert Service Bulletin 767–38A0073 is the current revision available, and it provides adequate information to address the identified unsafe condition. We have reviewed the proposed Revision 4 and as it does provide more options and clarifications which may be helpful, but are not required to accomplish the requirements of this AD. Therefore, we do not plan to wait for the release of Revision 4 of Boeing Alert Service Bulletin 767–38A0073 before issuing this AD. However, we have revised this AD to allow the use of BMS 5–179 tape, wherever Permacell P–29 is instructed to be used in Revision 3. We will consider requests for approval of an AMOC to allow the use of Revision 4 of Boeing Alert Service Bulletin 767–38A0073 after it has been published, under the provisions of paragraph (k)(1) of this AD.

Request To Revise Language of Parts Installation Prohibition

Boeing requested that we revise paragraph (j) of the proposed AD to specify that part numbers CA620 series and CA625 series may not be installed on the locations specific to Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016. Boeing pointed out that the current wording of paragraph (j) of the proposed AD is being misinterpreted to apply to all airplane locations. Boeing also mentioned that multiple operators have requested revision to the Illustrated Parts Catalog (IPC) to remove listed part numbers CA620 series and CA625 series in other locations that are not affected by Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016.

We agree with the commenter for the reasons provided. We have revised paragraph (j) of this AD to specify ''. . . for the locations identified in Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016.''

Request To Include Prior AMOC Approvals for AD 2017–02–03

ABX AIR requested that we include prior AMOC approvals that were granted for AD 2017–02–03. ABX AIR mentioned that it operates airplanes that have been converted from passenger configuration to cargo configuration. ABX AIR pointed out that the potable water system and components have been removed from the airplanes during conversion. ABX AIR also pointed out that it had already received AMOC approval for AD 2017–02–03 in regards to the conversion to cargo configuration.

We agree with the commenter for the reasons provided. We have added paragraph (k)(4) to this AD to include prior AMOC approvals for AD 2017–02–03.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016 (''Boeing Alert Service Bulletin 767–38A0073, R3''). This service information describes procedures for, among other actions, removing three hose assemblies and installing four new hose assemblies. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 139 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
Inspections (retained actions from AD 2017–02–03) (129 airplanes).	10 work-hours × $85 per hour = $850	$0	$850	$109,650
Installation (retained actions from AD 2017–02–03) (129 airplanes).	3 work-hours × $85 per hour = $255	330	585	75,465
Inspections (new action) (10 airplanes)	10 work-hours × $85 per hour = $850	0	850	8,500
Installation (new actions) (15 airplanes)	3 work-hour × $85 per hour = $255	330	585	8,775

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

ESTIMATED COST FOR ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 4 work–hours × $85 per hour = $340	$53	Up to $393.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

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) 2017–02–03, Amendment 39–18782 (82 FR 10541, February 14, 2017), and adding the following new AD:

2018–01–02 The Boeing Company: Amendment 39–19143; Docket No. FAA–2017–0698; Product Identifier 2017–NM–047–AD.

(a) Effective Date

This AD is effective February 7, 2018.

(b) Affected ADs

This AD replaces AD 2017–02–03, Amendment 39–18782 (82 FR 10541, February 14, 2017) (''AD 2017–02–03'').

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, and –400ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September

8, 2016 (''Boeing Alert Service Bulletin 767–38A0073, R3'').

(d) Subject

Air Transport Association (ATA) of America Code 38, Water/waste.

(e) Unsafe Condition

This AD was prompted by a report of a malfunction of the engine indication and crew alerting system (EICAS) during flight. We are issuing this AD to prevent an uncontrolled water leak from a defective potable water system coupling, which could cause the main equipment center (MEC) line replaceable units (LRUs) to become wet, resulting in an electrical short and potential loss of several functions essential for safe flight.

(f) Compliance

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

(g) Inspection of Couplings and Installation of Spray Shrouds

Except as required by paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–38A0073, R3, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 767–38A0073, R3.

Note 1 to paragraph (g) of this AD: Operators can take optional protective measures to cover or shield their equipment against water spray when performing the Potable Water System Leakage Test, as specified in Boeing Alert Service Bulletin 767–38A0073, R3.

(h) Exceptions to the Service Information

(1) Where Boeing Alert Service Bulletin 767–38A0073, R3, uses the phrase ''after the original issue date of this service bulletin,'' for purposes of determining compliance with the requirements of this AD, March 16, 2017 (the effective date of AD 2017–02–03) must be used.

(2) Where Boeing Alert Service Bulletin 767–38A0073, R3, uses the phrase ''after the Revision 2 date of this service bulletin,'' for purposes of determining compliance with the requirements of this AD, March 16, 2017 (the effective date of AD 2017–02–03) must be used.

(3) Where Boeing Alert Service Bulletin 767–38A0073, R3, specifies a compliance time ''after the Revision 3 date of this service bulletin,'' for purposes of determining compliance with the requirements of this AD, the phrase ''after the effective date of this AD'' must be used.

(4) Where Boeing Alert Service Bulletin 767–38A0073, R3, specifies using Permacell P–29 tape, for purposes of determining compliance with the requirements of this AD, BMS 5–179 tape is acceptable.

(i) Credit for Previous Actions

(1) For airplanes in Groups 4 through 8, 10, 12, and 13, as identified in Boeing Alert Service Bulletin 767–38A0073, R3: This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 767–38A0073, dated November 12, 2013; Boeing Service Bulletin 767–38A0073, Revision 1, dated November 5, 2014; or Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015.

(2) For airplanes in Groups 1 through 3, and Group 9, Configuration 2, as identified in Boeing Alert Service Bulletin 767–38A0073, R3: This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install any plastic potable water coupling having part number (P/N) CA620 series or P/N CA625 series on any airplane for the locations identified in Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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 (l)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-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, Seattle 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 2017–02–03 are approved as AMOCs for the corresponding provisions of Boeing Alert Service Bulletin 767–38A0073, R3, that are required by paragraph (g) of this AD.

(5) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(5)(i) and (k)(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.

(l) Related Information

(1) For more information about this AD, contact Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW, Renton, WA 98057–3356; phone: 425–917–6585; fax: 425–917–6590; email: *stanley.chen@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) 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 767–38A0073, Revision 3, dated September 8, 2016.

(ii) Reserved.

(3) For Boeing 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 26, 2017.

John P. Piccola, Jr.,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–28378 Filed 1–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1177; Product Identifier 2015–NM–195–AD; Amendment 39–19139; AD 2017–26–08]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes. This AD requires revising the airplane flight manual (AFM) to provide procedures to the flight crew for operational restrictions affecting in-flight use of the autopilot (AP) or yaw damper (YD) during dual-engine operation. This AD also provides an optional software modification, which would terminate the AFM requirement. This AD was prompted by flight test evaluations that revealed that after engine failure during AP or YD re-engagement, the YD unit commanded the rudder to return to neutral position, leading to inadequate balancing of the asymmetric power. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective January 18, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 18, 2018.

We must receive comments on this AD by February 20, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact ATR–GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr-aircraft.com.* You may view this referenced 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–2017–1177.

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–2017–1177; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2015–00237R1, dated December 16, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI'') to correct an unsafe condition for certain ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes. The MCAI states:

> During flight evaluations performed on Flight Synthetic Test Devices of ATR airplanes equipped with New Avionics Suite (also known as 'Glass Cockpit'), with one Air Data Computer (ADC) or one Attitude and Heading Reference System (AHRS) inoperative, it was found that, after engine failure during autopilot (AP) or Yaw Damper (YD) re-engagement, the YD unit commanded the rudder to return to neutral position leading to inadequate balancing of the asymmetric power.
>
> Subsequent flight tests confirmed the YD unit behavior observed during flight simulator evaluation and identified that a software issue is the root cause of this system reaction.
>
> Additionally, it was identified that the failure of one of the Direct Current (DC) Generators with a concurrent shutdown of the opposite engine leads to loss of the AHRS#2 and ADC#2 and resulting in YD command the rudder into neutral position.
>
> This condition, if not corrected, could result in loss of control of the airplane.
>
> To address this potential unsafe condition EASA issued AD 2015–0230 to introduce operational restrictions affecting in-flight use of AP and/or YD with an inoperative AHRS, or ADC and the relevant dispatch limitations.
>
> Since that [EASA] AD was issued, it was determined that airplanes modified in service by incorporating New Avionics Suite Standard 2 are not affected and that the operation of an airplane with combination of inoperative ADC, AHRS and DC Generator items is allowed. Additional investigation has resulted in prohibiting the use of AP or YD also in case of both engine operative, when an ADC or an AHRS becomes inoperative.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2015–0230, which is superseded, and introduces AP or YD operational restrictions applicable for dual engine operation.
>
> This [EASA] AD is considered an interim action and further [EASA] AD action may follow.
>
> This [EASA] AD is revised to specify the Reason leading to AD issuance.

Required actions also include AP or YD operational restrictions applicable for dual engine operation. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1177.

Related Service Information Under 1 CFR Part 51

Avions de Transport Régional has issued ATR Service Bulletin ATR42–31–0091, Revision 1, dated May 05, 2015; and ATR Service Bulletin ATR72–31–1092, Revision 2, dated March 31, 2015. The service information describes procedures for, among other things, modifying the software for the integrated avionics display (IAD), the core processing module (CPM), the switch module (SWM), and the flight warning main configuration file (FWMCF). These documents are distinct since they apply to different airplane models.

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 and Requirements of This AD

This product has been approved by the aviation authority of another

country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

FAA's Determination of the Effective Date

There are currently no domestic operators of this product. Therefore, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason(s) 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 we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–1177; Product Identifier 2015–NM–195–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on 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 AD.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, we provide the following cost estimates to comply with this AD:

We estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD will be $85 per product.

In addition, we estimate that the optional modification will take about 3 work-hours for a cost of $255 per product.

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 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–26–08 ATR–GIE Avions de Transport Régional: Amendment 39–19139; Docket No. FAA–2017–1177; Product Identifier 2015–NM–195–AD.

(a) Effective Date

This AD becomes effective January 18, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to ATR–GIE Avions de Transport Régional Model ATR42–500 airplanes, and Model ATR72–212A airplanes; certificated in any category; all manufacturer serial numbers on which ATR–GIE Avions de Transport Régional Modification 5948 (New Avionics Suite installation) has been embodied in production, except those airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airplanes on which ATR–GIE Avions de Transport Régional Mod 6977 (New Avionics Suite Standard 2) has been embodied in production.

(2) Airplanes on which ATR Service Bulletin ATR42–31–0091, or ATR Service Bulletin ATR72–31–1092, has been incorporated.

(d) Subject

Air Transport Association (ATA) of America Code 31, Instruments.

(e) Reason

This AD was prompted by flight evaluations that revealed that after engine failure during autopilot (AP) or yaw damper (YD) re-engagement, the YD unit commanded the rudder to return to neutral position, leading to inadequate balancing of the asymmetric power. We are issuing this AD to provide procedures to the flightcrew for operational restrictions affecting in-flight use of the autopilot (AP) or yaw damper (YD) during dual-engine operation.

(f) Compliance

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

(g) Revise the Airplane Flight Manual

Within 30 days after the effective date of this AD, revise the Limitations Section of the

applicable ATR–42 and ATR–72 airplane flight manuals (AFMs) to include figure 1 to paragraph (g) of this AD. Amending the AFM of an airplane by inserting a copy of this AD into the applicable AFM of that airplane is acceptable to comply with the requirements of this paragraph for that airplane.

Figure 1 to paragraph (g) of this AD – *AFM Temporary Revision*

Do not use AP or YD during flight when one of the following fault messages appears in Amber on the Engine and Warning Display: Air Data Computer (ADC) or Attitude and Heading Reference System (AHRS)

(h) Minimum Equipment List (MEL)

(1) Within 30 days after the effective date of this AD, amend the operator's ATR MEL, as applicable, by incorporating the dispatch restrictions listed in figure 2 to paragraph (h)(1) of this AD, and thereafter operate the airplane accordingly.

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Figure 2 to paragraph (h)(1) of this AD - *Minimum Equipment List (MEL) Amendment*

(1) Direct Current (DC) Generator loss

(1.1) Dispatch conditions

ATA 24 – ELECTRICAL POWER (Continued)					
ATA CHAPTER 1 / ITEM	2 - REPAIR INTERVAL CATEGORY	3 - NUMBER INSTALLED	4 - NUMBER REQUIRED FOR DISPATCH	5 - REMARKS OR CONDITIONS	
DC					
30-1 DC generator channel (generator + related GCU)	A	2	1	* (o) (m)	May be inoperative except for ETOPS, provided: (a) The Autopilot and Yaw Damper are deactivated, and (b) TRU is checked operative prior to each departure, and (c) Aircraft does not fly extended overwater routes, and (d) Two engines taxi is performed, and (e) Aircraft does not line up until 6 minutes elapsed after operative generator comes on line, and (f) Operations are limited to two flights

Note: This new dispatch condition only supersedes the related current approved master minimum equipment list (MMEL) items, on the basis of which the operator's MEL is established, applicable to ATR 42-500 and ATR 72-212A fitted with ATR Modification 5948, except airplanes modified in accordance with ATR modification 6977, the others dispatch conditions remain valid.

Figure 2 to paragraph (h)(1) of this AD - *MEL Amendment continued*

(1.2) Associated procedures

Dispatch Deviation Guide
ATA 24 – ELECTRICAL POWER
30-1 DC generator channel (generator + related **GCU) OPERATIONAL PROCEDURES:** ➢ Check of remaining generator feeder integrity: 6 minutes are necessary to establish the temperature difference between the feeders if one line is broken. So aircraft should not line up until 6 minutes elapsed after operative generator comes on line. ➢ Operational test of TRU (if installed): Note: During the test, the ACW electrical network must be available (The AC GPU connected or ACW generators running). Checking are performed only on Main Electrical Panel (left hand panel): - Switch OFF the pushbutton DC EXTERNAL POWER (if selected ON) - Switch OFF the pushbuttons DC GEN 1 & 2 (if selected ON) On Main Electrical Panel; check that the following caution lights are switched ON: - BATTERY ARROWS - Both BUS OFF - INVERTER 2 FAULT - Both DC BUS OFF - SHED LEGEND OF DC SVCE/UTLY BUS Check that the following systems are supplied: - VHF 1 - FUEL QTY INDICATOR - FLAPS POSITION INDICATOR On Main Electrical Panel; press the TRU push-button; then check that: - The TRU push-button is switched ON - The TRU ARROW caution light is switched ON - The BATTERIES ARROWS caution lights are not illuminated - The UNDV legend of OVRD/UNDV push-button is not illuminated On Main Electrical Panel, check that the BATTERY AMMETER shows zero load either if BAT selector switch is placed in EMER or MAIN position. Check that the following systems are still supplied: - VHF 1 - FUEL QTY INDICATOR - FLAPS POSITION INDICATOR On Main Electrical Panel, switch off the TRU push-button; then check that: - The TRU push-button is not illuminated - The TRU ARROW caution light is not illuminated - The BATTERY ARROWS caution lights are switched ON **MAINTENANCE PROCEDURES:** - Pull C/B AFCS/YAW SERVO, secure and tag

Figure 2 to paragraph (h)(1) of this AD - *MEL Amendment continued*

(2) ADC or AHRS fault

(2.1) Dispatch conditions

ATA 34 – NAVIGATION				
ATA CHAPTER 1	2 - REPAIR INTERVAL CATEGORY	3 - NUMBER INSTALLED	4 - NUMBER REQUIRED FOR DISPATCH	5 - REMARKS OR CONDITIONS
ITEM				
- **Air Data System**				
11-1 Air Data Computer (ADC)	A	2	1	* (o) (m) One ADC may be inoperative provided: (a) The Autopilot and Yaw Damper are deactivated, and (b) The TLU manual mode is operative (c) The IESI is operative, and (d) All the IOM DC are operative, and (e) The operations are limited to two flights, and (f) For day VMC flight only, and (g) For ETOPS, the ADC#1 must be operative Note: When TLU automatic mode is inoperative **Refer to MMEL 27 item 23-2**
- **Attitude – Heading**				
20-1 AHRS	A	2	1	* (m) One may be inoperative, provided: (a) The Autopilot and Yaw Damper are deactivated, and (b) The IESI is operative, and (c) For day VMC flight only, and (d) Operations are limited to two flights, and (e) For ETOPS, AHRS#1 must be operative

This new dispatch condition only supersedes the related current approved MMEL items, on the basis of which the operator's MEL is established, applicable to ATR 42-500 and ATR 72-212A fitted with ATR Modification 5948, except airplanes modified in accordance with ATR modification 6977, the others dispatch conditions remain valid.

Figure 2 to paragraph (h)(1) of this AD - *MEL Amendment continued*

(2.2) Associated procedures

Dispatch Deviation Guide
ATA 34 – NAVIGATION
11-1 ADC **OPERATIONAL PROCEDURES:** ADC switching must be set to valid ADC TLU manual mode check: ➢ Select HI SPD and check alert is generated after 25 seconds: MC, SC, FLT CTL TLU on FWS and TLU FAULT light ➢ Check rudder travel is limited ➢ Select AUTO and check alert stops after 15 seconds ➢ Check rudder travel is not limited **MAINTENANCE PROCEDURES:** - Pull C/B AFCS/YAW SERVO, secure and tag **20-1 AHRS** **OPERATIONAL PROCEDURES:** None for this chapter **MAINTENANCE PROCEDURES:** - Pull C/B AFCS/YAW SERVO, secure and tag.

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(2) Amending the operator's ATR MEL, as applicable, of an airplane by inserting a copy of this AD, or incorporating a later MMEL revision which includes the same dispatch restrictions as specified in figure 2 to paragraph (h)(1) of this AD is acceptable for compliance with the requirements of paragraph (h)(1) of this AD for that airplane.

(3) As of the effective date of this AD: If any of the systems identified in paragraph (h)(3)(i), (h)(3)(ii), and (h)(3)(iii) of this AD are inoperative, an airplane may be operated as specified in the MMEL, provided that the MEL of that airplane has been amended to be consistent with the MEL restrictions specified in figure 2 of this AD.

(i) One of two ADCs.

(ii) One of two AHRSs.

(iii) One of two DC generators.

(i) Optional Software Modification

Installation of new avionics suite standard 2 software on an airplane, in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–31–0091, Revision 1, dated May 05, 2015, or ATR Service Bulletin ATR72–31–1092, Revision 2, dated March 31, 2015, as applicable, terminates the AFM and MEL revisions required by paragraphs (g) and (h) of this AD, for that airplane.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using ATR Service Bulletin ATR42–31–0091, dated December 17, 2014; or ATR Service Bulletin ATR72–31–1092, dated October 7, 2014, or Revision 1, dated December 9, 2014, as applicable.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards 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 International Section, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD

2015–00237R1, dated December 16, 2015, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1177.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) 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 this AD specifies otherwise.

(i) ATR Service Bulletin ATR42–31–0091, Revision 1, dated May 05, 2015.

(ii) ATR Service Bulletin ATR72–31–1092, Revision 2, dated March 31, 2015.

(3) For service information identified in this AD, contact ATR–GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr-aircraft.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 20, 2017.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–28147 Filed 1–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0519; Product Identifier 2017–NM–001–AD; Amendment 39–19138; AD 2017–26–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 757–200, –200CB, and –300 series airplanes. This AD was prompted by a report of fatigue cracking found in a certain fuselage frame web. This AD requires inspection of the fuselage frame for existing repairs, repetitive inspections of the frame, and applicable repairs. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 7, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 7, 2018.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; 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–2017–0519.

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–2017–0519; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Muoi Vuong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5205; fax: 562–627–5210; email: *muoi.vuong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 757–200, –200CB, and –300 series airplanes. The NPRM published in the **Federal Register** on June 2, 2017 (82 FR 25550). The NPRM was prompted by a report of fatigue cracking found in the fuselage frame web at station (STA) 1681, below the floor line at stringer S–17L. The NPRM proposed to require inspection of the fuselage frame for existing repairs, repetitive inspections of the frame, and applicable repairs. We are issuing this AD to detect and correct cracking of the fuselage frame at STA 1681, which could result in reduced structural integrity of the airplane.

Comments

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

Support for the NPRM

United Airlines agreed with the content of the NPRM, and has started the proposed inspections.

FedEx's fleet of Model 757–200 airplanes was converted by VT Mobile Aerospace Engineering, Inc. (VT MAE), supplemental type certificate (STC) ST03562AT to a configuration similar to that of Boeing Model 757–200SF airplanes, and is no longer configured as passenger airplanes. FedEx stated, however, that per the VT MAE comments to the NPRM, the AD would still be effective for the converted FedEx fleet. FedEx noted that VT MAE has recommended that the airplane configuration groups identified in Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016, apply to the FedEx fleet. FedEx stated that it agrees with the airplane configuration groups cited by VT MAE and will comply with the actions in the proposed AD accordingly.

Request To Reference the Latest Service Information

Boeing asked that we add Boeing Alert Service Bulletin 757–53A0100, Revision 1, dated September 14, 2017, to paragraphs (c), (g), (h)(1), and (h)(2) of the proposed AD as an alternative to using Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016 (referenced in the NPRM as the appropriate source of service information for accomplishing the actions). Boeing stated that the revised service information provides alternative inspections that allow longer inspection intervals.

We agree that this final rule should refer to the latest service information. Since we issued the NPRM, Boeing has released Boeing Alert Service Bulletin 757–53A0100, Revision 1, dated September 14, 2017. No additional work is necessary on airplanes on which the actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016. We have therefore revised paragraphs (c), (g), (h)(1), and (h)(2) of this AD to refer to Boeing Alert Service Bulletin 757–53A0100, Revision 1, dated September 14, 2017. We have also added paragraph (i) to this AD to provide credit for using Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016, to accomplish the required actions before the effective date of this AD, and redesignated subsequent paragraphs accordingly.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the STC ST01518SE does not affect compliance with the actions specified in the NPRM.

We agree with the commenter. We have redesignated paragraph (c) of the proposed AD as paragraph (c)(1) and added paragraph (c)(2) to this AD to state that installation of STC ST01518SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01518SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request To Clarify Exception Paragraph

Delta Air Lines (Delta) asked that we clarify the following compliance time exception specified by paragraph (h)(1) of the proposed AD: ''Where Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016, uses the phrase 'after the original issue of this service bulletin' for determining compliance, for purposes of this AD, compliance is based on the effective date of this AD.'' Delta noted that the allowance for the phrase ''after the effective date of this AD'' could not strictly be applied without requesting further clarification in accordance with paragraph (i) of the proposed AD. Delta recommended that this phrase match the language specified in the referenced service bulletin.

We agree with the commenter's request. We have revised the language in paragraph (h)(1) of this AD to address the commenter's concern.

Request To Change Repair Procedures

FedEx asked that we revise the NPRM to specify that after repairs are done due to a crack finding, repetitive inspections be required only as based on the original equipment manufacturer (OEM), STC holder, or FAA requirements of the repair. FedEx also asked that the repetitive inspections be terminated for the portion of the inspection area covered by the repair. FedEx stated that Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016, specifies repetitive high frequency eddy current inspections in accordance with the applicable figure in the referenced service information, regardless of whether a repair is installed due to a crack finding. FedEx added that if a repair is installed due to a crack finding, repetitive inspections of the repair are required in accordance with the OEM/STC holder and FAA requirements.

We agree to provide clarification describing why the commenter's request to revise the NPRM is not necessary. The service bulletin is written such that the affected area is first inspected to determine if any repairs have been installed prior to the service bulletin. If an existing repair is found, then instructions are provided to contact Boeing for evaluation of the repair, to receive inspection instructions, and to do the inspection instructions. Paragraph (h)(2) of this AD requires that instructions received from Boeing are approved in accordance with AMOC procedures per paragraph (j) of this AD. The service bulletin then proceeds to address affected areas where an existing repair (as described above) does not exist by providing instructions to perform certain inspections to determine if a crack exists. When a crack is found, the service bulletin specifies to contact Boeing for repair instructions, do the repair, and then perform a repetitive inspection after a certain number of flight cycles for any crack in areas with no existing frame repair. These instructions must also be approved, per paragraph (h)(2) of this AD, in accordance with AMOC procedures per paragraph (j) of this AD. If a repair has been performed as a result of the previous inspection, the repetitive inspection is to be performed around the repair, but not of the repair itself. There are no repetitive inspections of the repairs specifically called out in the service bulletin. Each repetitive inspection in Tables 1 through Table 5 typically states at the end of the action, ''in areas with no existing frame repair.'' As clarified above, this means to inspect the area around the existing frame repair. Therefore, there is no need to terminate the repetitive inspections within the service bulletin for the portion of the inspection area now covered by a repair. However, as previously stated, inspections of the repairs themselves will be addressed by AMOC. We have not changed this AD in this regard.

Request To Add Information Notice to Service Information

FedEx asked that Boeing Alert Service Bulletin Information Notice 757–53A0100 IN 01, dated December 15, 2016, be referenced in the proposed AD. FedEx stated that IN 01 contains corrections to Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016.

We do not agree with the commenter's request. Boeing Alert Service Bulletin Information Notice 757–53A0100 IN 01, dated December 15, 2016, contains corrections to errors in Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016, but contains no technical changes. Those corrections are included in Boeing Alert Service Bulletin 757–53A0100, Revision 1, dated September 14, 2017, which, as explained previously, is referenced in this AD; therefore, we have not changed this AD in this regard.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 757–53A0100, Revision 1, dated September 14, 2017. The service information describes procedures for inspection of the fuselage frame for existing frame and floor beam repairs, repetitive high frequency eddy current inspections for cracking in any area with no existing frame repair, and repetitive high and low frequency eddy current inspections for cracking in any area with no existing frame or floor beam repair; and repair. This service

information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 606 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for existing frame and floor beam repairs.	1 work-hour × $85 per hour = $85	$0	$85	$51,510.
Repetitive inspections	Up to 32 work-hours × $85 per hour = up to $2,720 per inspection cycle.	$0	Up to $2,720 per inspection cycle.	Up to $1,648,320 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition repair specified in this AD.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–26–07 The Boeing Company: Amendment 39–19138; Docket No. FAA–2017–0519; Product Identifier 2017–NM–001–AD.

(a) Effective Date

This AD is effective February 7, 2018.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 757–200, –200CB, and –300 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 757–53A0100, Revision 1, dated September 14, 2017.

(2) Installation of Supplemental Type Certificate (STC) ST01518SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/312bc296830a925c86257c85006d1b1f/$FILE/ST01518SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01518SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53; Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of fatigue cracking found in the fuselage frame web at station (STA) 1681. We are issuing this AD to detect and correct cracking of the fuselage frame at STA 1681, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Actions Required for Compliance

Except as required by paragraph (h) of this AD: Do all applicable actions identified as required for compliance (RC) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0100, Revision 1, dated September 14, 2017. Do the actions at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–53A0100, Revision 1, dated September 14, 2017.

(h) Exceptions

(1) For purposes of determining compliance with the requirements of this AD, the phrase ''the effective date of this AD'' may be substituted for ''the original issue date of this service bulletin'' as specified in Boeing Alert Service Bulletin 757–53A0100, Revision 1, dated September 14, 2017.

(2) Where Boeing Alert Service Bulletin 757–53A0100, Revision 1, dated September 14, 2017, specifies contacting Boeing for

instructions, and specifies that action as RC: This AD requires using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) 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) Except as required by paragraph (h)(2) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

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

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

(k) Related Information

(1) For more information about this AD, contact Muoi Vuong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5205; fax: 562–627–5210; email: *muoi.vuong@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (l)(4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 757–53A0100, Revision 1, dated September 14, 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; 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 14, 2017.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–28148 Filed 1–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. FDA–2017–N–6599]

Medical Devices; Hematology and Pathology Devices; Classification of a Cervical Intraepithelial Neoplasia Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

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

DATES: This order is effective January 3, 2018. The classification was applicable on March 4, 2017.

FOR FURTHER INFORMATION CONTACT: Steven Tjoe, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4550, Silver Spring, MD 20993–0002, 301–796–5866, *steven.tjoe@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

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

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

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act and part 807 (21 U.S.C. 360(k) and 21 CFR part 807, respectively).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the

FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

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

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

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

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

II. De Novo Classification

On May 23, 2016, Ventana Medical Systems, Inc., submitted a request for De Novo classification of the CINtec Histology. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act. We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on March 4, 2017, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 864.1865. We have named the generic type of device the cervical intraepithelial neoplasia (CIN) test system, and it is identified as a device used to detect a biomarker associated with CIN in human tissues. The device is indicated as an adjunct test and not to be used as a stand-alone device. The test results must be interpreted in the context of the patient's clinical history including, but not limited to, prior and current cervical biopsy results, Papanicolaou (Pap) test results, human papillomavirus (HPV) test results, and morphology on hematoxylin and eosin (H&E) stained sections. This device is not intended to detect the presence of HPV.

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

TABLE 1—CERVICAL INTRAEPITHELIAL NEOPLASIA (CIN) TEST SYSTEM RISKS TO HEALTH AND REQUIRED MITIGATIONS

Identified risks	Required mitigations/21 CFR section
Inaccurate test results, such as false positive or false negative results	General controls and special controls (1) and (2) (21 CFR 864.1865(b)(1); 21 CFR 864.1865(b)(2)).
Failure to correctly interpret test results can lead to false positive or false negative results.	General controls and special controls (1) and (2) (21 CFR 864.1865(b)(1); 21 CFR 864.1865(b)(2)).

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

III. Analysis of Environmental Impact

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

IV. Paperwork Reduction Act of 1995

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

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, 21 CFR part 864 is amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

■ 1. The authority citation for part 864 continues to read as follows:

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

■ 2. Add § 864.1865 to subpart B to read as follows:

§ 864.1865 Cervical intraepithelial neoplasia (CIN) test system.

(a) *Identification.* A cervical intraepithelial neoplasia (CIN) test system is a device used to detect a biomarker associated with CIN in human tissues. The device is indicated as an adjunct test and not to be used as a stand-alone device. The test results must be interpreted in the context of the patient's clinical history including, but not limited to, prior and current cervical biopsy results, Papanicolaou (Pap) test results, human papillomavirus (HPV) test results, and morphology on hematoxylin and eosin (H&E) stained sections. This device is not intended to detect the presence of HPV.

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

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

(i) The indications for use must specify the biomarker that is intended to be identified and its adjunct use (*e.g.,* adjunct to examination of H&E stained slides) to improve consistency in the diagnosis of CIN.

(ii) Summary of professional society recommendations, as applicable.

(iii) A detailed device description including:

(A) A detailed description of all test components, including all provided reagents and required, but not provided, ancillary reagents.

(B) A detailed description of instrumentation and equipment, including illustrations or photographs of non-standard equipment or manuals.

(C) If applicable, detailed documentation of the device software, including, but not limited to, stand-alone software applications and hardware-based devices that incorporate software.

(D) A detailed description of appropriate positive and negative controls that are recommended or provided.

(E) Detailed specifications for sample collection, processing, and storage.

(F) A detailed description of methodology and assay procedure.

(G) A description of the assay cutoff (the medical decision point between positive and negative) or other relevant criteria that distinguishes positive and negative results, including the rationale for the chosen cutoff or other relevant criteria and results supporting validation of the cutoff.

(H) Detailed specification of the criteria for test results interpretation and reporting.

(iv) Detailed information demonstrating the performance characteristics of the device, including:

(A) Analytical specificity studies such as, but not limited to, antibody characterization (*e.g.,* Western Blot, peptide inhibition analysis), studies conducted on panels of normal tissues and neoplastic tissues, interference by endogenous and exogenous substances as well as cross-reactivity, as applicable.

(B) Device analytical sensitivity data generated by testing an adequate number of samples from individuals with the target condition including limit of blank, limit of detection, and limit of quantification, as applicable.

(C) Device precision/reproducibility data to evaluate within-run, between-run, between-day, between-lot, between-site, between-reader, within-reader and total precision, as applicable, using a panel of samples covering the device measuring range and/or the relevant disease categories (*e.g.* No CIN, CIN1, CIN2, CIN3, cervical cancer) and testing in replicates across multiple, nonconsecutive days.

(D) Device robustness/guardbanding studies to assess the tolerance ranges for various critical test and specimen parameters.

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

(F) Data from a clinical study demonstrating clinical validity using well-characterized prospectively or retrospectively obtained clinical specimens, as appropriate, representative of the intended use population. The study must evaluate the consistency of the diagnosis of CIN, for example, by comparing the levels of agreements of diagnoses rendered by community pathologists to those rendered by a panel of expert pathologists. Agreement for each CIN diagnostic category (*e.g.,* No CIN, CIN1, CIN2, CIN3, cancer) and for alternate diagnostic categories (*e.g.,* No CIN, low grade squamous intraepithelial lesion (LSIL)-histology, high grade squamous intraepithelial lesion (HSIL)-histology, cancer) between reference diagnosis by expert pathologist and community pathologist must be evaluated, as applicable. In addition, agreements for CIN binary categories as ≥CIN2 (*i.e.,* CIN2 or CIN3 or cancer) and ≤CIN1 (*i.e.,* No CIN or CIN1) between reference diagnosis by expert pathologist with H&E staining and community pathologist with H&E staining and agreements for alternate CIN binary categories as ≥HSIL-histology (*i.e.,* HSIL-histology or cancer) and ≤LSIL-histology (*i.e.,* No CIN or LSIL-histology) between reference diagnosis by an expert pathologist with H&E + [biomarker specified in paragraph (b)(1)(i) of this section] and a community pathologist with H&E + [biomarker specified in paragraph (b)(1)(i) of this section] must be evaluated and compared, as applicable.

(G) The staining performance of the device as determined by the community pathologists during review of the study slides must be evaluated. The staining performance criteria assessed must include overall staining acceptability, background staining acceptability, and morphology acceptability, as applicable.

(H) Appropriate training requirements for users, including interpretation manual, as applicable.

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

(2) The device's 21 CFR 809.10(b) compliant labeling must include a detailed description of the protocol, including the information described in paragraph (b)(1)(ii) of this section, as applicable, and a detailed description of the performance studies performed and the summary of the results, including those that relate to paragraph (b)(1)(ii) of this section, as applicable.

Dated: December 27, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–28342 Filed 1–2–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Parts 35, 103, 127, and 138

[Public Notice 10236]

RIN 1400–AE50

Department of State 2018 Civil Monetary Penalties Inflationary Adjustment

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule is issued to adjust the civil monetary penalties (CMP) for regulatory provisions maintained and enforced by the Department of State. The revised CMP adjusts the amount of civil monetary penalties assessed by the Department of State based on the December 2017 guidance from the Office of Management and Budget. The new amounts will apply only to those penalties assessed on or after the effective date of this rule, regardless of the date on which the underlying facts or violations occurred.

DATES: This final rule is effective on January 3, 2018.

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, Office of Management, *kottmyeram@state.gov.* ATTN: Regulatory Change, CMP Adjustments, (202) 647–2318.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, required the head of each agency to adjust its CMPs for inflation no later than October 23, 1996 and required agencies to make adjustments at least once every four years thereafter. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Section 701 of Public Law 114–74 (the 2015 Act) further amended the 1990 Act by requiring agencies to adjust CMPs, if necessary, pursuant to a ''catch-up'' adjustment methodology prescribed by the 2015 Act, which mandated that the catch-up adjustment take effect no later than August 1, 2016. Additionally, the 2015 Act required agencies to make annual adjustments to their respective CMPs in accordance with guidance issued by the Office of Management and Budget (OMB).

Based on these statutes, the Department of State (the Department) published a final rule on June 8, 2016, to implement the ''catch-up'' provisions. *See* 81 FR 36791. The Department published its first annual update to its CMPs in January 2017. *See* 82 FR 3168.

On December 15, 2017, OMB notified agencies that the annual cost-of-living adjustment multiplier for 2018, based on the Consumer Price Index, is 1.02041. Additional information may be found in OMB Memorandum M–18–03, at: *https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf.* This final rule amends Department CMPs for fiscal year 2018.

Overview of the Areas Affected by This Rule

Within the Department of State (Title 22, Code of Federal Regulations), this rule affects four areas:

(1) Part 35, which implements the Program Fraud Civil Remedies Act of 1986 (PFCRA), codified at 31 U.S.C. 3801–3812;

(2) Part 103, which implements the Chemical Weapons Convention Implementation Act of 1998 (CWC Act);

(3) Part 127, which implements the penalty provisions of sections 38(e), 39A(c), and 40(k) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(e), 2779a(c), 2780(k)); and

(4) Part 138, which implements Section 319 of Public Law 101–121, codified at 31 U.S.C. 1352, and prohibits recipients of federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract.

Specific Changes to 22 CFR Made by This Rule

I. Part 35

The PFRCA, enacted in 1986, authorizes agencies, with approval from the Department of Justice, to pursue individuals or firms for false claims. Applying all previous adjustments in accordance with the 2015 Act, the maximum liabilities under the PFRCA were $10,957, up to a maximum of $328,734. Applying the 2018 multiplier (1.02041) provided by OMB, the new maximum liabilities are as follows: $11,181 up to a maximum of $335,443.

II. Part 103

The CWC Act provided domestic implementation of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction. The penalty provisions of the CWC Act are codified at 22 U.S.C. 6761. Applying all previous adjustments in accordance with the 2015 Act, the maximum amounts were as follows: *Prohibited acts related to inspections,* $36,849; for *Recordkeeping violations,* $7,370.

Applying the 2018 multiplier (1.02041) provided by OMB, the new maximum amounts are as follows: *Prohibited acts related to inspections,* $37,601; for *Recordkeeping violations,* $7,520.

III. Part 127

The Assistant Secretary of State for Political-Military Affairs is responsible for the imposition of CMPs under the International Traffic in Arms Regulations (ITAR), which is administered by the Directorate of Defense Trade Controls (DDTC).

(1) *AECA section 38(e):*

Applying all previous adjustments in accordance with the 2015 Act, the maximum penalty under 22 U.S.C. 2778(e), or Section 38(e) of the AECA, was $1,111,908. Applying the 2018 multiplier (1.02041) provided by OMB, the new maximum penalty under 22 U.S.C. 278(e) is $1,134,602.

(2) *AECA section 39A(c):*

Applying all previous adjustments in accordance with the 2015 Act, the maximum penalty for 22 U.S.C. 2779a(c), or Section 39A(c) of the AECA, was $808,458. Applying the 2018 multiplier (1.02041) provided by OMB, the new maximum penalty for 22 U.S.C. 2779a(c) is $824,959.

(3) *AECA section 40(k):*

Applying all previous adjustments in accordance with the 2015 Act, the maximum penalty for 22 U.S.C. 2780(k), or Section 40(k) of the AECA, was $962,295 per violation. Applying the 2018 multiplier (1.02041) provided by OMB, the new maximum penalty per violation is $981,935.

IV. Part 138

Section 319 of Public Law 101–121, codified at 31 U.S.C. 1352, provides penalties for recipients of federal contracts, grants, and loans who use appropriated funds to lobby the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. Any person who violates that prohibition is subject to a civil penalty. The statute also requires each person who requests or receives a federal contract, grant, cooperative agreement, loan, or a federal commitment to insure or guarantee a loan, to disclose any lobbying; there is a penalty for failure to disclose.

Applying all previous adjustments in accordance with the 2015 Act, the maximum penalties for both improper expenditures and failure to disclose, was: For first offenders, a penalty of $18,936; for others, not less than $19,246, and not more than $192,459. Applying the 2018 multiplier (1.02041) provided by OMB, the new maximums are: For first offenders, $19,322; for others, not less than $19,639, and not more than $196,387.

Summary

Citation in 22 CFR	Old penalty	2018 penalty
§ 35.3	$10,957 up to $328,734	$11,181 up to $335,443.
§ 103.6 Prohibited Acts	$36,849	$37,601.
§ 103.6 Recordkeeping Violations	$7,370	$7,520.
§ 127.10(a)(1)(i)	$1,111,908	$1,134,602.
§ 127.10(a)(1)(ii)	$808,458	$824,959.
§ 127.10(a)(1)(iii)	$962,295	$981,935.
§ 138.400 First Offenders	$18,936	$19,322.
§ 138.400	$19,246 up to $192,459	$19,639 up to $192,549.
2018 multiplier: 1.02041		

Effective Date of Penalties

The revised CMP amounts will go into effect on the date this rule is published. All violations for which CMPs are assessed on or after the effective date of this rule, regardless of whether the violation occurred before the effective date, will be assessed at the adjusted penalty level.

Future Adjustments and Reporting

The 2015 Act directed agencies to undertake an annual review of CMPs using a formula prescribed by the statute. Annual adjustments to CMPs are made in accordance with the guidance issued by OMB. As in this rulemaking, the Department of State will publish notification of annual inflation adjustments to CMPs in the **Federal Register** no later than January 15 of each year, with the adjusted amount taking effect immediately upon publication.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is publishing this rule using the ''good cause'' exception to the Administrative Procedure Act (5 U.S.C. 553(b)), as the Department has determined that public comment on this rulemaking would be impractical, unnecessary, or contrary to the public interest. This rulemaking is mandatory; it implements Public Law 114–74. In addition, the Department of State finds good cause for this rule to be effective upon publication, as Congress has mandated that the penalty adjustments be effective on or before January 15th. *See* 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because this rulemaking is exempt from 5 U.S.C. 553, a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act of 1995

This rule does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment 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, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Orders 12866, 13563, and 13771

The Department believes that benefits of the rulemaking outweigh any costs, and there are no feasible alternatives to this rulemaking. It is the Department's position that this rulemaking is not an economically significant rule under the criteria of Executive Order 12866, and is consistent with the provisions of Executive Order 13563. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 35

Administrative practice and procedure, Claims, Fraud, Penalties.

22 CFR Part 103

Administrative practice and procedure, Chemicals, Classified information, Foreign relations, Freedom of information, International organization, Investigations, Penalties, Reporting and recordkeeping requirements.

22 CFR Part 127

Arms and munitions, Exports.

22 CFR Part 138

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth above, 22 CFR parts 35, 103, 127, and 138 are amended as follows:

PART 35—PROGRAM FRAUD CIVIL REMEDIES

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 22 U.S.C. 2651a; 31 U.S.C. 3801 *et seq.;* Pub. L. 114–74, 129 Stat. 584.

§ 35.3 [Amended]

■ 2. In § 35.3:

■ a. Remove ''$10,957'' and add in its place ''$11,181'', wherever it occurs.

■ b. In paragraph (f), remove ''$328,734'' and add in its place ''$335,443''.

PART 103—REGULATIONS FOR IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION AND THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1998 ON THE TAKING OF SAMPLES AND ON ENFORCEMENT OF REQUIREMENTS CONCERNING RECORDKEEPING AND INSPECTIONS

■ 3. The authority citation for part 103 continues to read as follows:

Authority: 22 U.S.C. 2651a; 22 U.S.C. 6701 *et seq.;* Pub. L. 114–74, 129 Stat. 584.

§ 103.6 [Amended]

■ 4. Amend § 103.6 by removing ''$36,849'' and adding in its place $37,601'' in paragraph (a)(1), and removing ''$7,370'' and adding in its place ''$7,520'' in paragraph (a)(2).

PART 127—VIOLATIONS AND PENALTIES

■ 5. The authority citation for part 127 continues to read as follows:

Authority: Sections 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129; Pub. L. 114–74, 129 Stat. 584.

§ 127.10 [Amended]

■ 6. Section 127.10 is amended as follows:

■ a. In paragraph (a)(1)(i), remove ''$1,111,908'' and add in its place ''$1,134,602'';

■ b. In paragraph (a)(1)(ii), remove ''$808,458'' and add in its place ''$824,959''; and

■ c. In paragraph (a)(1)(iii), remove ''$962,295'' and add in its place ''$981,935.''

PART 138—RESTRICTIONS ON LOBBYING

■ 7. The authority citation for part 138 continues to read as follows:

Authority: 22 U.S.C. 2651a; 31 U.S.C. 1352; Pub. L. 114–74, 129 Stat. 584.

§ 138.400 [Amended]

■ 8. In § 138.400:

■ a. Remove ''$19,246'' and ''$192,459'' and add in their place ''$19,639'' and ''$196,387'', respectively, wherever they occur.

■ b. In paragraph (e), remove ''$18,936'' and add in its place ''$19,322''.

Jerry C. Drake,

Acting Executive Director, Office of the Legal Adviser and Bureau of Legislative Affairs, Department of State.

[FR Doc. 2017–28395 Filed 1–2–18; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 117, 147, and 165

[USCG–2017–1008]

2016 Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, Drawbridge Operation Regulations and Regulated Navigation Areas

AGENCY: Coast Guard, DHS.

ACTION: Notification of expired temporary rules issued.

SUMMARY: This document provides notification of substantive rules issued by the Coast Guard that were made temporarily effective but expired before they could be published in the **Federal Register.** This document lists temporary safety zones, security zones, special local regulations, drawbridge operation regulations and regulated navigation areas, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules that became effective, primarily between April 2016 and June 2016, unless otherwise indicated, and were terminated before they could be published in the **Federal Register.**

ADDRESSES: Temporary rules listed in this document may be viewed online, under their respective docket numbers, using the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Yeoman First Class David Hager, Office of Regulations and Administrative Law, telephone (202) 372–3862.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events. *Drawbridge operation regulations* authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. *Regulated Navigation Areas* are water areas within a defined boundary for which regulations for vessels navigating within the area have been established by the regional Coast Guard District Commander.

Timely publication of these rules in the **Federal Register** may be precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, often informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the end of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

The following unpublished rules were placed in effect temporarily during the period between June 2014–June 2016 unless otherwise indicated. To view copies of these rules, visit *www.regulations.gov* and search by the docket number indicated in the list below.

Docket No.	Type	Location	Effective date
USCG–2014–0456	Safety Zones (Part 147 and 165)	Adjacent Waters, Guam	6/17/2014
USCG–2014–0478	Notice	Spirit Owensboro, KY	7/4/2014
USCG–2014–0444	Safety Zones (Part 147 and 165)	Cincinnati, OH	7/5/2014
USCG–2014–0457	Notice	Madison, IN	7/5/2014
USCG–2014–0479	Safety Zones (Part 147 and 165)	Evansville, IN	7/16/2014
USCG–2014–0724	Safety Zones (Part 147 and 165)	Port San Juan Area	8/2/2014
USCG–2015–0035	Special Local Regulations (Part 100)	Fajardo, Puerto Rico	3/15/2015
USCG–2016–0138	Safety Zones (Part 147 and 165)	Merizo, GU	5/29/2015
USCG–2015–0530	Safety Zones (Part 147 and 165)	Lake Michigan zone	8/8/2015
USCG–2015–0885	Safety Zones (Part 147 and 165)	Mackinac Island, MI	9/24/2015
USCG–2016–0133	Safety Zones (Part 147 and 165)	Tanapag Harbor, Saipan	2/12/2016
USCG–2016–0033	Safety Zones (Part 147 and 165)	Tanapag Harbor, Saipan	2/16/2016
USCG–2016–0118	Safety Zones (Part 147 and 165)	Juneau, AK	2/18/2016
USCG–2016–0164	Safety Zones (Part 147 and 165)	Morro Bay, CA	3/1/2016
USCG–2016–0180	Safety Zones (Part 147 and 165)	Chauvin, LA	3/18/2016
USCG–2015–1094	Safety Zones (Part 147 and 165)	Ohio River	3/26/2016
USCG–2016–0259	Safety Zones (Part 147 and 165)	Long Beach, CA	4/1/2016
USCG–2016–0176	Special Local Regulations (Part 100)	San Diego, CA	4/2/2016
USCG–2016–0134	Special Local Regulations (Part 100)	Fajardo, Puerto Rico	4/3/2016
USCG–2016–0175	Safety Zones (Part 147 and 165)	Newport News, VA	4/3/2016
USCG–2016–0282	Security Zones (Part 165)	Pittsburgh, PA	4/5/2016
USCG–2016–0278	Safety Zones (Part 147 and 165)	Los Angeles, CA	4/5/2016
USCG–2011–0489	Safety Zones (Part 147 and 165)	Burnham Park Harbor	4/7/2016
USCG–2016–0260	Safety Zones (Part 147 and 165)	San Francisco, CA	4/8/2016
USCG–2016–0243	Drawbridges (Part 117)	Sacramento, CA	4/9/2016
USCG–2016–0273	Safety Zones (Part 147 and 165)	Chicago, IL	4/10/2016
USCG–2016–0325	Security Zones (Part 165)	Natchez Bridge, Lower Mississppi River	4/13/2016
USCG–2016–0300	Safety Zones (Part 147 and 165)	New Orleans, LA	4/16/2016
USCG–2014–0796	Safety Zones (Part 147 and 165)	Cathlament, Wa	4/21/2016
USCG–2016–0240	Safety Zones (Part 147 and 165)	Hampton, VA	4/22/2016
USCG–2016–0328	Special Local Regulations (Part 100)	Moss Point, MS	4/22/2016
USGC–2016–0034	Safety Zones (Part 147 and 165)	Pago Pago Harbor, American Samoa	4/22/2016
USCG–2016–0339	Special Local Regulations (Part 100)	Ohio River	4/23/2016
USCG–2016–0336	Safety Zones (Part 147 and 165)	Chicago, IL	4/29/2016
USCG–2016–0269	Drawbridges (Part 117)	Sacramento, CA	4/30/2016
USCG–2016–0064	Safety Zones (Part 147 and 165)	Stockton, CA	5/5/2016
USCG–2016–0171	Safety Zones (Part 147 and 165)	Red River	5/7/2016
USCG–2016–0083	Security Zones (Part 165)	Wrightsville Beach, NC	5/9/2016
USCG–2016–0413	Safety Zones (Part 147 and 165)	Pascagaoula, MS	5/13/2016
USCG–2015–0530	Safety Zones (Part 147 and 165)	Holland, MI	5/14/2016
USCG–2016–0376	Safety Zones (Part 147 and 165)	Lake Erie, Hamburg, NY	5/17/2016
USCG–2016–0431	Security Zones (Part 165)	Vallejo, CA	5/18/2016
USCG–2016–0423	Safety Zones (Part 147 and 165)	Mobile, AL	5/18/2016
USCG–2016–0422	Security Zones (Part 165)	New London, CT	5/18/2016
USCG–2016–0379	Safety Zones (Part 147 and 165)	Merizo, GU	5/19/2016
USCG–2016–0254	Safety Zones (Part 147 and 165)	Riverside, CT	5/21/2016
USCG–2016–0334	Safety Zones (Part 147 and 165)	Memphis, TN	5/21/2016
USCG–2016–0391	Drawbridges (Part 117)	Holland Tract, CA	5/22/2016
USCG–2016–0396	Special Local Regulations (Part 100)	Knoxville, TN	5/22/2016
USCG–2016–0283	Safety Zones (Part 147 and 165)	Agana, GU	5/22/2016
USCG–2016–0313	Safety Zones (Part 147 and 165)	Agana, GU	5/22/2016
USCG–2016–0400	Special Local Regulations (Part 100)	Chattanooga, TN	5/22/2016
USCG–2016–0398	Drawbridges (Part 117)	Point Pleasant, NJ	5/24/2016
USCG–2016–0270	Security Zones (Part 165)	Seddon Channel, Tampa, FL	5/24/2016
USCG–2016–0375	Safety Zones (Part 147 and 165)	San Francisco, CA	5/25/2016
USCG–2016–0177	Safety Zones (Part 147 and 165)	San Francisco, CA	5/27/2016
USCG–2016–0361	Safety Zones (Part 147 and 165)	Merizo, GU	5/27/2016
USCG–2016–0393	Safety Zones (Part 147 and 165)	Bath, NC	5/28/2016
USCG–2016–0312	Safety Zones (Part 147 and 165)	San Diego Port Zone	5/29/2016
USCG–2016–0489	Safety Zones (Part 147 and 165)	Dubuque County, IA	5/29/2016
USCG–2016–0483	Safety Zones (Part 147 and 165)	Beaumont, TX	6/2/2016
USCG–2016–0236	Safety Zones (Part 147 and 165)	Sound Island, WA	6/3/2016
USCG–2016–0333	Special Local Regulations (Part 100)	Charleston, CA	6/4/2016
USCG–2016–0048	Special Local Regulations (Part 100)	Jacksonville, FL	6/4/2016
USCG–2016–0383	Safety Zones (Part 147 and 165)	Bellaire, OH	6/4/2016
USCG–2016–0302	Safety Zones (Part 147 and 165)	Arkansas River	6/5/2016
USCG–2016–0496	Safety Zones (Part 147 and 165)	Lake Superior, MI	6/11/2016
USCG–2016–0252	Security Zones (Part 165)	Chicago, IL	6/12/2016
USCG–2016–0450	Safety Zones (Part 147 and 165)	Chicago, IL	6/12/2016
USCG–2016–0546	Safety Zones (Part 147 and 165)	Hampton, VA	6/15/2016
USCG–2016–0340	Safety Zones (Part 147 and 165)	New Orleans, LA	6/15/2016
USCG–2016–0117	Safety Zones (Part 147 and 165)	Urbanna, VA	6/17/2016
USCG–2016–0482	Safety Zones (Part 147 and 165)	Hancock, MI	6/18/2016
USCG–2016–0540	Security Zones (Part 165)	Norfolk, VA	6/18/2016

Docket No.	Type	Location	Effective date
USCG–2016–0095	Safety Zones (Part 147 and 165)	Buffalo, NY	6/18/2016
USCG–2016–0158	Special Local Regulation	Lawrenceburg, IN	6/18/2016
USCG–2016–0401	Safety Zones (Part 147 and 165)	Chattanooga, TN	6/18/2016
USCG–2016–0512	Special Local Regulations (Part 100)	Triathlon, Ohio River	6/19/2016
USCG–2016–0548	Security Zones (Part 165)	Cincinnati, OH	6/20/2016
USCG–2016–0606	Safety Zones (Part 147 and 165)	Clements, MI	6/23/2016
USCG–2016–0595	Security Zones (Part 165)	Medina, WA	6/24/2016
USCG–2016–0631	Safety Zones (Part 147 and 165)	offshore of Fitzpatrick	6/26/2016
USCG–2016–0475	Special Local Regulation	Aguada, PR	6/26/2016
USCG–2016–0495	Special Local Regulations (Part 100)	Chattanooga, TN	6/26/2016
USCG–2016–0637	Safety Zones (Part 147 and 165)	Ironton, OH	6/30/2016

Dated: December 19, 2017.

Katia Kroutil,

Office Chief, Office of Regulations and Administrative Law.

[FR Doc. 2017–28401 Filed 1–2–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 2

[SAMHSA–4162–20]

RIN 0930–ZA07

Confidentiality of Substance Use Disorder Patient Records

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule makes changes to the Substance Abuse and Mental Health Services Administration's (SAMHSA) regulations governing the Confidentiality of Substance Use Disorder Patient Records. These changes are intended to better align the regulations with advances in the U.S. health care delivery system while retaining important privacy protections for individuals seeking treatment for substance use disorders. This final rule addresses the prohibition on re-disclosure notice by including an option for an abbreviated notice. This final rule also addresses the circumstances under which lawful holders and their legal representatives, contractors, and subcontractors may use and disclose patient identifying information for purposes of payment, health care operations, and audits and evaluations. Finally, this final rule is making minor technical corrections to ensure accuracy and clarity in SAMHSA's regulations.

DATES: *Effective date:* This final rule is effective February 2, 2018.

Compliance dates: The compliance date for all provisions of this final rule, except for § 2.33(c), is February 2, 2018. As discussed in the preamble, contracts between lawful holders and contractors, subcontractors, and legal representatives must comply with § 2.33(c) within two years of the effective date of the final rule.

FOR FURTHER INFORMATION CONTACT: Mitchell Berger, Telephone number: (240) 276–1757, Email address: *PrivacyRegulations@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 9, 2016, SAMHSA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (81 FR 6988), proposing updates to the Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR part 2) regulations. These regulations implement title 42, section 290dd–2 of the United States Code pertaining to the Confidentiality of Substance Use Disorder Patient Records held by certain substance use disorder treatment programs that receive federal financial assistance. As SAMHSA explained in that NPRM, it proposed to update these regulations, last substantively amended in 1987, to reflect development of integrated health care models and the use of electronic exchange of patient information. SAMHSA also wished to maintain confidentiality protections for patient identifying information, as persons with substance use disorders still may encounter significant discrimination if their information is improperly disclosed.

On January 18, 2017, SAMHSA published a final rule (82 FR 6052). In response to public comments, the final rule provided for greater flexibility in disclosing patient identifying information within the health care system while continuing to address the need to protect the confidentiality of substance use disorder patient records. SAMHSA concurrently issued a supplemental notice of proposed rulemaking (SNPRM) (82 FR 5485) to solicit public comment on additional proposals including: The payment and health care operations-related disclosures that can be made to contractors, subcontractors, and legal representatives by lawful holders under the part 2 rule consent provisions; and the provisions governing disclosures for purposes of carrying out a Medicaid, Medicare or Children's Health Insurance Program (CHIP) audit or evaluation. SAMHSA also solicited comments on whether an abbreviated notice of the prohibition on re-disclosure should be used and, if so, under what circumstances.

SAMHSA received 55 comments on the SNPRM, and after considering those comments, is finalizing the proposed revisions, with some changes made in response to the public comments that were received. Some comments were outside the scope of the specific provisions SAMHSA proposed in the SNPRM or were inconsistent with SAMHSA's legal authority regarding the confidentiality of substance use disorder patient records. This final rule does not address these comments.

II. Discussion of Public Comments and Final Modifications to 42 CFR Part 2

A. Align With HIPAA

Public Comments

SAMHSA received a number of comments regarding alignment of 42 CFR part 2 with the Health Insurance Portability and Accountability Act (HIPAA) or the Health Information Technology for Economic and Clinical Health (HITECH) Act. Reasons cited by these commenters in support of aligning the regulations with HIPAA or HIPAA/HITECH Act were to: (1) Promote information flow between providers, including a clinically complete patient record; (2) allow providers and administrators of services greater discretion; (3) facilitate interoperability; (4) improve compliance; (5) enhance privacy protections by making confidentiality restrictions more

uniform across health care settings; (6) promote more innovative models of health care delivery, including integrated and coordinated care, and value-based and population-based models; (7) establish uniform, workable regulations with respect to treatment, payment and operations; and (8) improve patient care and reduce stigma and potential harm to patients.

SAMHSA Response

SAMHSA has attempted to align this final rule with HIPAA, the HITECH Act, and their implementing regulations to the extent feasible, based on the proposed revisions in the SNPRM, the public comments received, and the limitations on SAMHSA's authority in the governing statute, 42 U.S.C. 290dd–2. At the same time, it is important to note that part 2 and its authorizing statute are separate and distinct from HIPAA, the HITECH Act, and their implementing regulations. Part 2 provides more stringent federal protections than other health privacy laws such as HIPAA and seeks to protect individuals with substance use disorders who could be subject to discrimination and legal consequences in the event that their information is improperly used or disclosed. To the extent feasible given these restrictions, SAMHSA continues to review these issues, plans to explore additional alignment with HIPAA, and may consider additional rulemaking for 42 CFR part 2.

B. Prohibition on Re-Disclosure (§ 2.32)

In the SNPRM, SAMHSA sought comment on whether an abbreviated notice of the prohibition on re-disclosure should be included in § 2.32 and on the circumstances under which such abbreviated notice should be used. The SNPRM provided an example of an abbreviated notice: ''Data is subject to 42 CFR part 2. Use/disclose in conformance with part 2.'' SAMHSA has adopted an abbreviated notice that is 80 characters long to fit in standard free-text space within health care electronic systems. The abbreviated notice in this final rule reads ''Federal law/42 CFR part 2 prohibits unauthorized disclosure of these records.''

Public Comments

Several commenters expressed support for the abbreviated notice of the prohibition on re-disclosure because it provides more flexibility and efficiency in meeting the notice requirement. Several supportive commenters suggested potential technical solutions for conveying the prohibition on re-disclosure, such as communicating part 2 restrictions through codes, flags, pop-ups, or other signifiers. However, some of these commenters and others also explained that most of the suggestions are not technically feasible at this time, due to the lack of standardized electronic formats and transmission standards. One supportive commenter suggested SAMHSA work with the Department of Health and Human Services (HHS) and its agencies, including the Centers for Medicare & Medicaid Services (CMS), and the Office of Civil Rights (OCR), to explore whether HIPAA electronic transactions and code sets can be leveraged or modified to ''flag'' part 2 information and, once the recommendation becomes actionable, involve standard-setting bodies and the public. Several supportive commenters provided circumstances they thought were appropriate for an abbreviated notice of the prohibition on re-disclosure, including: (1) All electronic disclosures (because there may not currently be a standard mechanism to ''flag'' electronic information disclosures that are covered by part 2); (2) only paper disclosures; (3) limiting the use of the abbreviated notice to the exchange of records between part 2 programs (that would have familiarity with the concept of prohibition on re-disclosure); (4) exchange of records among part 2 programs and other entities (including third-party payers, and other lawful holders); and (5) using a single abbreviated notice for all circumstances. A couple of commenters indicated that having the notice of prohibition on re-disclosure accompany disclosures, as required by § 2.32, is important for ensuring compliance with part 2.

Commenters who opposed the abbreviated notice of the prohibition on re-disclosure expressed concerns that a shortened notice: (1) May be confusing or unclear to patients and professionals; (2) would fail to safeguard against unauthorized disclosures; and (3) would be insufficient to solve logistical concerns because, regardless of the length of the notice, systems will need to be put in place to tag substance use disorder information and send the notice with the information being disclosed. In addition, some commenters found the current notice to be sufficient.

SAMHSA also received comments stating that the SNPRM provided insufficient information to either support or oppose the abbreviated notice of the prohibition on re-disclosure because: (1) The purpose of the abbreviated notice was not made clear; and (2) it was unclear whether SAMHSA considered the impact the proposed abbreviated notice would have on electronic health records formats, system design and software development for clinical medical records format, or the impact on required HIPAA Administrative transactions. One commenter stated that an abbreviated notice of the prohibition on re-disclosure must contain, at a minimum, a clear warning label to prevent misuse and should state that any misuse is illegal under 42 CFR part 2.

SAMHSA Response

The 42 CFR part 2 regulations in effect since 1983 have required that a notice of the prohibition on re-disclosure accompany each disclosure made with the patient's written consent. In the SNPRM, SAMHSA proposed the option of an abbreviated notice to satisfy the requirements of § 2.32 due to concerns about character limits in free-text fields within electronic health record systems. Specifically, many of the health care electronic systems have a standard maximum character limit of 80 characters in the free text space that may be used to transmit this notice.

While SAMHSA recognizes there may be technical issues to be resolved, after considering the totality of the comments, SAMHSA believes including an abbreviated notice of the prohibition on re-disclosure as an option will be beneficial to stakeholders, particularly those who use electronic health record systems to exchange data. However, because even commenters supporting inclusion of an abbreviated notice had differing views about the circumstances under which an abbreviated notice should be used, SAMHSA decided, consistent with its proposal, to allow use of an abbreviated notice in any instance in which a notice is required under the regulations. Recognizing concerns expressed by commenters that an abbreviated notice could be insufficient to convey understanding of part 2 requirements, SAMHSA encourages part 2 programs and other lawful holders using the abbreviated notice to discuss the requirements with those to whom they disclose patient identifying information. In response to comments received that the abbreviated notice did not provide an adequate warning against potential misuse of patient identifying information, SAMHSA, in this final rule, has modified the language in the abbreviated notice to more explicitly notify recipients that improper use or disclosure is prohibited under 42 CFR part 2.

C. Disclosures Permitted With Written Consent (§ 2.33)

In the SNPRM, SAMHSA proposed to explicitly list under § 2.33(b), specific types of activities for which any lawful holder of patient identifying information would be allowed to further disclose the minimal information necessary for specific payment and health care operations activities. SAMHSA proposed new regulatory text under § 2.33(c) that would require lawful holders that engage contractors and subcontractors to carry out payment and health care operations activities that entail the use or disclosure of patient identifying information to include specific contract provisions addressing compliance with part 2. In this final rule, SAMHSA finalizes the scope and requirements for permitted disclosures to contractors, subcontractors, and legal representatives for the purpose of payment and health care operations. SAMHSA does not retain the proposed list of payment and health care operations in the regulatory text and instead, moves this list to the preamble section of the final rule to serve as illustrative examples of permissible payment and health care operations activities. In addition, consistent with SAMHSA's prior statement in the SNPRM preamble, SAMHSA adds language to the regulatory text in § 2.33(b) to clarify that disclosures to contractors, subcontractors, and legal representatives are not permitted for substance use disorder patient diagnosis, treatment, or referral for treatment. SAMHSA finalizes § 2.33(c) in relation to contract language referencing compliance with 42 CFR part 2 and the protections of part 2 patient identifying information, but does not retain the proposed reference to permitted uses of patient identifying information consistent with the written consent.

1. Disclosures by Lawful Holders

Public Comments

In response to SAMHSA's request for comments on proposed revisions to § 2.33, SAMHSA received a number of comments supporting its proposal in § 2.33 to clarify that lawful holders of patient identifying information may disclose the minimum amount of information necessary to contractors, subcontractors, and legal representatives for payment and health care operations purposes. Several commenters cited practical concerns with the policy as stated in the January 18, 2017, final rule, including: (1) It is unrealistic to assume that lawful holders of patient identifying information such as third-party payers have the expertise and resources to carry out certain payment and health care operations without the assistance of contractors; (2) it is often not feasible to specify each contractor on a part 2 consent form; and (3) specifying contractors on a part 2 consent form unreasonably restricts a lawful holder from changing contractors. One commenter observed that essential payment and operations activities directly or indirectly benefit patients (*e.g.,* by ensuring access to and coverage of treatment). One commenter supported the proposal because it further aligns part 2 with HIPAA, while another commenter expressed support for this or any proposal that would reduce the time and expense incurred by part 2 programs when seeking and obtaining patient consent where not necessary.

SAMHSA Response

In the SNPRM, SAMHSA proposed clarifications to the final regulations issued on January 18, 2017, where they appeared to be needed, based on public comment. SAMHSA appreciates the support it received for clarifying the part 2 regulations. SAMHSA is finalizing those clarifications as proposed in § 2.33(b) except for the list of 17 specific types of payment and health care operations activities for which any lawful holder of patient identifying information would be allowed to further disclose to contractors, subcontractors, and legal representatives. As discussed below, this list of activities is being included in the preamble, rather than in regulatory text, in order to make clear that it is an illustrative rather than exhaustive list of the types of payment and health care operations activities that would be acceptable to SAMHSA. By removing the list from the regulatory text, SAMHSA intends for other appropriate payment and health care operations activities to be permitted under § 2.33 as the health care system continues to evolve. In addition, consistent with SAMHSA's prior statement in the SNPRM preamble, SAMHSA has added language to the regulatory text in § 2.33(b) to clarify that disclosures to contractors, subcontractors, and legal representatives are not permitted for activities related to a patient's diagnosis, treatment, or referral for treatment.

Public Comments

SAMHSA also received numerous comments opposing its proposal in § 2.33. The majority of these commenters were opposed to the changes because SAMHSA had not specified additional safeguards that would apply in connection with the disclosures. Some commenters expressed concern that the changes were too broad or would undermine overall part 2 protections. One commenter expressed concern that the risk of breaches might increase by permitting additional disclosures to facilitate health care operations. Several commenters noted that the revisions in § 2.33(b) would permit lawful holders greater latitude in sharing information with entities than would be afforded to patients. These commenters found that the revisions would permit patients to consent to sharing patient identifying information with lawful holders, who then are permitted to re-disclose that information to contractors, subcontractors, or legal representatives without notifying the patient. Conversely, patients would be prohibited from consenting to disclose patient identifying information to entities with whom they do not have a treating provider relationship without further designating an individual participant in that entity. As a result, these commenters questioned SAMHSA's intent for this proposal.

One commenter thought the SNPRM did not provide sufficient information to respond to the proposed § 2.33 because of the similarity of contractors and subcontractors with qualified service organizations (QSOs) under §§ 2.11 and 2.12, and the similarity to Business Associates under HIPAA. The commenter requested clarification on whether it is SAMHSA's intent to directly apply part 2 to these contractors and subcontractors in a manner similar to what was accomplished under the HIPAA Privacy and Security Rules for Business Associates of covered entities.

SAMHSA Response

SAMHSA is seeking a balance between protecting the confidentiality of substance use disorder patient records and ensuring that the regulations do not pose a barrier to patients with substance use disorders who wish to participate in, and could benefit from, emerging health care models that promote integrated care and patient safety. Unauthorized disclosure of substance use disorder patient records can lead to a host of negative consequences, including loss of employment, loss of housing, loss of child custody, discrimination by medical professionals and insurers, arrest, prosecution, and incarceration. The purpose of the part 2 regulations is to ensure that a patient is not made more vulnerable by reason of the availability of their patient record than an individual with a substance use

disorder who does not seek treatment. SAMHSA recognizes the legitimate needs of lawful holders of patient identifying information to disclose that information to their contractors, subcontractors, and legal representatives for purposes of payment and health care operations as long as the core protections of 42 CFR part 2 are maintained. SAMHSA notes that the part 2 regulations already state at § 2.13(a): ''. . . Any disclosure made under the regulations in this section must be limited to that information which is necessary to carry out the purpose of the disclosure.'' This provision helps to ensure that information is not shared more broadly than the purpose(s) for which the patient consents. With respect to the comment that proposed revisions in § 2.33(b) would provide lawful holders greater latitude in sharing information with entities for payment and health care operations purposes than would be afforded to patients, SAMHSA acknowledges this concern and will be convening a stakeholder meeting relative to part 2 as required by the 21st Century Cures Act (Pub. L. No: 114–255).

Finally, it is not SAMHSA's intent to apply part 2 to contractors and subcontractors in a manner similar to what was accomplished under the HIPAA Privacy and Security Rules for Business Associates in accordance with, respectively, sections 13404(a) and 13401(a) of the HITECH Act, 42 U.S.C. 17934(a), 17931(a). SAMHSA has attempted to align part 2 with HIPAA in this final rule to the extent such changes are permissible under 42 U.S.C. 290dd–2. Moreover, as discussed previously, SAMHSA plans to explore additional alignment with HIPAA and is considering additional rulemaking for 42 CFR part 2.

At the same time, part 2 and its authorizing statute are separate and distinct from HIPAA, the HITECH Act, and their implementing regulations. Because of its targeted population, part 2 and its authorizing statute provides more stringent federal protections than other health privacy laws, including the HIPAA Rules, in order to encourage individuals with substance use disorders to seek treatment.

Public Comments

Several commenters proposed an alternative approach to the proposed changes in § 2.33, which would instead allow lawful holders to contract with QSOs, just as part 2 programs currently do. One such commenter proposed that, instead of an explicit list of activities, § 2.33(b) should include a general statement that an entity that lawfully receives patient identifying information under a valid part 2 consent may disclose the information to its contractor under a QSO agreement (QSOA) if such disclosure is reasonably consistent with the terms of the consent. This commenter also proposed to revise the QSO definition to align it more closely with the HIPAA ''business associate'' concept. Two commenters questioned the distinction between the needs of part 2 programs and other lawful holders to engage third parties for operational assistance and requested that the QSO definition simply include lawful holders in the list of entities for which a QSO may provide services. One of these commenters stated that this alternative approach would give patients a choice and align better with patients' expectations without adding another layer of complexity.

SAMHSA Response

SAMHSA declines to implement the suggested alternative approaches. SAMHSA agrees there are similarities between contractors under § 2.33(b) and QSOs. However, SAMHSA did not propose in the SNPRM to revise the provision on QSOs.

2. List of Payment and Health Care Operations Activities

In the SNPRM, SAMHSA sought public comment on whether the proposed listing of permitted activities is adequate and appropriate to ensure the health care industry's ability to conduct necessary payment and health care operations, while still maintaining adequate confidentiality of substance use disorder patient records. SAMHSA also sought comment on the specific types of activities for which a lawful holder of patient identifying information would be allowed to further disclose the minimal information necessary for specific payment and health care operations activities described in the SNPRM. Further, SAMHSA requested public comment on additional purposes for which lawful holders should be able to disclose patient identifying information. SAMHSA is finalizing the clarifications, as proposed in § 2.33, but now includes the list of 17 specific types of payment and health care operations as illustrative examples in the preamble rather than the regulatory text.

Public Comments

Many commenters responded to SAMHSA's requests for comments on whether the proposed list of explicitly permitted payment and health care operations activities is adequate and appropriate. Several commenters expressly supported the list of payment and operations activities included in the SNPRM. One commenter stated that the proposed 17 categories of payment and operations activities are essential to allowing third-party payers and other lawful holders to reasonably operate. Another commenter observed that the proposed payment and health care operations activities represent significant progress toward SAMHSA's stated goal of modernizing 42 CFR part 2 to increase opportunities for individuals with substance use disorders to participate in new and emerging health care models and health information technology.

Numerous commenters recommended that care coordination and case management be added to the list, noting the importance of these services in the operational and treatment responsibilities in serving patients, including those with a dual diagnosis of mental health and substance use disorder. Conversely, several commenters recommended that SAMHSA include a statement in the regulatory text explicitly excluding care coordination and case management from § 2.33(b). Another commenter also stated that disclosures to contractors, subcontractors, and legal representatives should not include information concerning diagnosis, treatment and/or referral to treatment without a patient's express consent.

Several commenters were confused by, or disagreed with, SAMHSA's omission of treatment-related activities such as care coordination and case management from the list of payment and health care operations activities for which additional disclosures were proposed in the SNPRM. One such commenter stated that it was unclear why a contractor performing a treatment-related activity should be subject to greater confidentiality safeguards (*e.g.,* specific consent) than an entity performing a payment or business-related activity. Others thought the benefits of care coordination outweighed any risk of including it on the list of permitted activities because SAMHSA also included on the list patient safety activities, which are inextricably linked to care coordination and case management. Another commenter, stating that health information technology and health information exchange are essential building blocks of integrated care, argued that the exclusion of care coordination and case management from permitted health care operations would make it extremely difficult for state Medicaid agencies, managed care

organizations (MCOs), and providers to use this technology to provide high quality, integrated care. One commenter pointed out that third-party payers, to which disclosure would be permitted under the SNPRM, may perform care coordination and case management activities as well as payment and health care operations activities.

SAMHSA also received comments requesting a variety of additions to the list of permitted activities. In addition, SAMHSA received comments requesting clarification of some of the activities included on the list. Finally, two commenters observed that the rapid changes occurring in the health care payment and delivery system may make any list of permitted activities included in the final rule outdated very quickly.

A few commenters disagreed with including in the regulatory text a list of permitted payment and health care operations activities. One commenter thought SAMHSA should be more protective of vulnerable patients because the list was seen as a loophole that would result in patient identifying information being spread beyond the immediate point of care and being used in unforeseen ways. For consistency, one commenter requested that SAMHSA replicate HIPAA's definition of payment at 45 CFR164.501 for the purpose of collection activities under proposed § 2.33(b)(1).

SAMHSA also received a number of comments requesting that certain activities on the list of payment and health care operations activities be restricted or narrowed. A number of commenters requested that SAMHSA remove or narrow proposed § 2.33(b)(15) & (16) to ensure patients' protected substance use disorder information will not be used to limit or deny insurance coverage or access to health care. Some commenters expressed concern that the proposed § 2.33(b)(2) could be interpreted as allowing protected information to be disclosed to employers. Many of these commenters stated they did not support the SNPRM's proposed changes in general, or SAMHSA's proposal to permit lawful holders to disclose patient identifying information obtained pursuant to patient consent to contractors, subcontractors, and legal representatives for payment and health care operations purposes, in particular, without further protections and safeguards. Two commenters disagreed with the inclusion of five of the proposed activities (§§ 2.33(b)(6), 2.33(b)(10), 2.33(b)(12), 2.33(b)(15), and 2.33(b)(16)) because they could adversely affect patient enrollment in health plans and determinations regarding insurability, treatment, and eligibility.

Several commenters also requested additional protections to ensure lawful holders and their contractors, subcontractors, and legal representatives only use information protected under part 2 for the purposes listed in the patient's written consent.

SAMHSA Response

While SAMHSA is finalizing the clarifications as proposed in § 2.33, SAMHSA is not including the list of 17 specific types of payment and health care operations in the regulatory text that would be the basis for further disclosures by a lawful holder of patient identifying information. Based on the numerous comments received requesting additions or clarifications to the list, as well as concerns that the rapid changes occurring in the health care payment and delivery system could render any list of activities included in the regulatory text outdated, SAMHSA has decided to include the list in the preamble of this final rule to illustrate the types of permissible payment and health care operations activities.

Examples of permissible activities under § 2.33(b) that SAMHSA considers to be payment and health care operations activities include:

- Billing, claims management, collections activities, obtaining payment under a contract for reinsurance, claims filing and related health care data processing;
- Clinical professional support services (*e.g.,* quality assessment and improvement initiatives; utilization review and management services);
- Patient safety activities;
- Activities pertaining to:
- The training of student trainees and health care professionals;
- The assessment of practitioner competencies;
- The assessment of provider and/or health plan performance; and
- Training of non-health care professionals;
- Accreditation, certification, licensing, or credentialing activities;
- Underwriting, enrollment, premium rating, and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care;
- Third-party liability coverage;
- Activities related to addressing fraud, waste and abuse;
- Conducting or arranging for medical review, legal services, and auditing functions;
- Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating, including formulary development and administration, development or improvement of methods of payment or coverage policies;
- Business management and general administrative activities, including management activities relating to implementation of and compliance with the requirements of this or other statutes or regulations;
- Customer services, including the provision of data analyses for policy holders, plan sponsors, or other customers;
- Resolution of internal grievances;
- The sale, transfer, merger, consolidation, or dissolution of an organization;
- Determinations of eligibility or coverage (*e.g.* coordination of benefit services or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims;
- Risk adjusting amounts due based on enrollee health status and demographic characteristics;
- Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges.

This list of payment and health care operations is substantively unchanged from that which was proposed as regulatory text in the SNPRM published on January 18, 2017. In this final rule, SAMHSA maintains its position that the payment and health care operations activities referenced in § 2.33 and listed in the preamble are not intended to encompass substance use disorder patient diagnosis, treatment, or referral for treatment. SAMHSA believes it is important to maintain patient choice in disclosing information to health care providers with whom patients have direct contact. For this reason, the final provision in § 2.33(b) is not intended to cover care coordination or case management and disclosures to contractors, subcontractors, and legal representatives to carry out such purposes are not permitted under this section. In addition, SAMHSA added language to the regulatory text in § 2.33(b) to clarify that disclosures to contractors, subcontractors and legal representatives are not permitted for activities related to a patient's diagnosis, treatment, or referral for treatment. SAMHSA notes that the position articulated in this final rule differs from the HIPAA Privacy Rule, under which 'health care operations' encompasses such activities as case management and care coordination. However, SAMHSA appreciates the concerns expressed by

some commenters about such issues as the exclusion of care coordination and case management from § 2.33(b). SAMHSA also appreciates comments received concerning potential risks of including care coordination, case management and other activities in § 2.33(b). Consistent with the 21st Century Cures Act, prior to March 21, 2018, the Secretary of HHS will convene relevant stakeholders to determine the effects of 42 CFR part 2 on patient care, health outcomes, and patient privacy. This meeting will provide stakeholders with an additional opportunity to provide further input to SAMHSA regarding implementation of part 2, including changes adopted in this final rule.

3. Contract Provisions for Disclosures Under Proposed § 2.33(c)

SAMHSA proposed new regulatory text requiring that lawful holders that engage contractors and subcontractors to carry out payment and health care operations that require using or disclosing patient identifying information include specific contract provisions requiring contractors and subcontractors to comply with the provisions of part 2. SAMHSA is finalizing this proposal except that it is not requiring that the contract specify the permitted uses of patient identifying information by the contractor, subcontractor, or legal representative. An appropriate comparable legal instrument will suffice in cases where there is otherwise no contract between the lawful holder and a legal representative who is retained voluntarily; when a legal representative is required to represent the lawful holder by law, the requirement for a contract or comparable legal instrument in § 2.33(c) shall not apply.

Public Comments

SAMHSA received several comments expressing general support for the proposed provisions in § 2.33(c) relating to contracts or legal agreements between lawful holders and their contractors, subcontractors, and legal representatives. One of these commenters agreed that limits should be placed on disclosures to contractors, such as allowing disclosure of only the minimum patient identifying information necessary for specific payment or health care operations.

A number of commenters, however, opposed including specific contract requirements in § 2.33(c) between lawful holders and their contractors requiring compliance with part 2. Many of these commenters stated that this provision would impose significant contract amendment burdens industry-wide and would be disruptive to business relationships. Commenters noted that business associate agreements under HIPAA as well as many contracts already require compliance with all applicable federal and state laws, which would include part 2. Some commenters requested that contract provisions requiring compliance with applicable federal laws and regulations be deemed as satisfying the requirement of proposed § 2.33(c) even if part 2 is not specifically mentioned. One commenter stated that contracts typically specify the purposes for which the contractor may use any confidential information and so it is not necessary to require language on specific permitted uses and disclosure of patient identifying information.

Some commenters stated that § 2.33(c) should not be included in future rulemaking. One such commenter requested that SAMHSA provide evidence that current contract language is not adequately addressing part 2 uses and disclosures by those entities specified in § 2.33(c). Another commenter requested that SAMHSA explore leveraging information technology to identify more efficient ways for patients to consent to disclosure. This commenter also recommended that SAMHSA conduct an assessment or promulgate an Advanced Notice of Proposed Rulemaking to solicit information to determine the adequacy of existing contracts or business processes to address information disclosures with contracted entities. Several commenters stated that SAMHSA could address concerns with an extension, by regulation, of the part 2 protections to any entity handling the information disclosed via consent.

SAMHSA received comments that asked that that the language in proposed § 2.33(c) be modified to allow the patient identifying information safeguards to be spelled out in the contract and/or business associates agreement.

SAMHSA Response

SAMHSA is finalizing § 2.33(c) as proposed, but has revised the regulatory text to remove the reference to patient consent as it relates to the requirement to specify permitted uses of patient identifying information by the contractor, subcontractor, or legal representative. However, SAMHSA notes that § 2.13 requires that any disclosure made under the regulations must be limited to that information which is necessary to carry out the purpose of the disclosure. Therefore, to comply with § 2.13, lawful holders should ensure that the purpose section of the consent form is consistent with the role of or services provided by the contractor or subcontractor (*e.g.,* ''payment and health care operations'').

SAMHSA understands the concerns expressed by commenters regarding bringing contracts into compliance with § 2.33(c). To address these concerns, the final rule allows lawful holders two years from the effective date of the final rule to bring their contracts and legal agreements with contractors, subcontractors, and voluntary legal representatives into compliance. If lawful holders choose not to re-disclose patient identifying information to contractors, subcontractors, or legal representatives as specified under § 2.33(b), they do not have to comply with § 2.33(c).

SAMHSA disagrees with comments that propose allowing existing contractual language regarding general compliance with applicable federal laws to satisfy requirements under § 2.33(c). SAMHSA believes that it is important for part 2 to be specifically mentioned in contracts and legal agreements when lawful holders are disclosing part 2 patient identifying information to contractors, subcontractors and voluntary legal representatives under § 2.33(b). A fundamental principle of 42 CFR part 2 is that patients should have as much control as possible over their patient identifying information. Referencing part 2 in contracts will help to underscore the importance of compliance with part 2 provisions.

However, SAMHSA also recognizes that entities may have different approaches to ensuring compliance with part 2 and other laws. While SAMHSA requires compliance with § 2.33(c) for lawful holders who wish to disclose patient identifying information pursuant to § 2.33(b), SAMHSA is not specifying the exact contract language to be used.

With respect to the comment regarding limiting disclosures to the minimum information necessary, § 2.13 requires that any disclosure made must be limited to that information which is necessary to carry out the purpose of the disclosure. Contractors, subcontractors, and legal representatives will be required to comply with this and all applicable provisions under part 2. (Section 2.33(c) states that contractors and any subcontractors or legal representatives are fully bound by the provisions of part 2 upon receipt of patient identifying information).

Public Comments

One commenter requested that SAMHSA remove the following

sentence from § 2.33(c): ''In making such disclosure, the lawful holder should specify permitted uses of patient identifying information consistent with the written consent, by the contractor and any subcontractors or legal representatives to carry out the payment and health care operations activities listed in the preceding subparagraph, require such recipients to implement appropriate safeguards to prevent unauthorized uses and disclosures and require such recipients to report any unauthorized uses, disclosures, or breaches of patient identifying information to the lawful holder.'' Commenters stated that lawful holders will not possess the written consent because it is typically held by the part 2 program and it would be impractical, if not impossible, for the written consent form to be passed on to other entities. Another commenter stated that mechanisms for transmitting written consent forms had yet to evolve.

A commenter stated that a prohibition on re-disclosure notice under § 2.32 should not be required when a disclosure from a contractor that is a cloud services provider is back to the lawful holder or is disclosed under the direction or control of the lawful holder because the cloud service provider would not have control over the disclosure and therefore could not accompany the disclosure with a notice related to § 2.32 and suggested alternative language.

Other commenters supported the provisions in proposed § 2.33(c) but specified additional safeguards that should be added or referenced. Several commenters requested that SAMHSA include another requirement in proposed § 2.33(c) that contractors, subcontractors, and legal representatives be bound by all of the requirements that apply to QSOs, as QSOs and contractors serve similar functions. These commenters stated that written contracts under proposed § 2.33(c), therefore, would require contractors, subcontractors, and legal representatives to agree to resist in judicial proceedings any efforts to obtain access to patient records identifying information related to substance use disorder diagnosis, treatment, or referral for treatment except as permitted by part 2. These commenters also expressed opposition to the SNPRM's proposed changes in general or SAMHSA's proposal to permit lawful holders to disclose patient identifying information obtained pursuant to patient consent to contractors, subcontractors and legal representatives, including for payment and health care operations purposes, without these and other protections.

One commenter stated that a List of Disclosures requirement for lawful holders who wish to re-disclose patient identifying information to contractors, subcontractors, and legal representatives should be included in contractual language.

One commenter requested that SAMHSA require in the contractual text that contractors, subcontractors, and legal representatives use protected substance use disorder information only for the purpose(s) listed in the patient's written consent and that re-disclosure by contractors, subcontractors, and legal representatives to third parties be allowed only as long as the third party discloses the patient identifying information back to the contractors or lawful holders from which the information originated.

SAMHSA Response

SAMHSA declines to provide specific and detailed contract language because SAMHSA believes lawful holders need the flexibility to include language that fits within their contract structures. However, regardless of the specific contractual language used, all lawful holders, contractors, subcontractors, and legal representatives must comply with applicable requirements specified in § 2.33(c) as well as the other applicable provisions in part 2.

SAMHSA does not require that part 2 consent forms be passed along to the contractor or subcontractor. SAMHSA has revised the regulatory text in § 2.33(c) to remove the reference to patient consent as it relates to the requirement to specify permitted uses of patient identifying information by the contractor, subcontractor, or legal representative. However, § 2.13 requires that any disclosure made under the regulations must be limited to that information which is necessary to carry out the purpose of the disclosure. Therefore, to comply with § 2.13, part 2 programs and other lawful holders should ensure that the purpose section of the consent form is consistent with the role of or services provided by the contractor or subcontractor (*e.g.,* ''payment and health care operations''). Those utilizing contractors or subcontractors should then inform those parties in their contracts that information governed by part 2 requires the contractor or subcontractor to take reasonable steps to prevent unauthorized uses and disclosures and to inform the lawful holder of any breaches and/or unauthorized uses. If a contractor receives information for quality assurance purposes, for instance, they should not be sharing it for other purposes, much less for activities not related to payment and health care operations. Section § 2.33(c) specifies the requirements of a written contract; it is up to the lawful holder and contractor to determine how their contracts should address these requirements.

With regard to cloud service providers storing patient identifying information for a lawful holder, SAMHSA declines to make the suggested changes to the language in § 2.33(c). Under § 2.33, lawful holders, contractors and their subcontractors are responsible for providing a prohibition on re-disclosure notice (§ 2.32) if they re-disclose patient identifying information to their contractors in order to meet the requirements of § 2.33. If other entities access the information as permitted by the lawful holder (because the other entities that gain access to the information via the cloud are contractors with the lawful holder (§ 2.33) and not the cloud services provider, or to fulfill the requirements on the written consent (§ 2.31), then the lawful holder (not the cloud service provider) is responsible for ensuring that a notice of the prohibition on re-disclosure is conveyed to those entities, along with the information.

Regardless of the specific contractual language used, all lawful holders, contractors, subcontractors, and legal representatives must comply with requirements specified in § 2.33(c) as well as the other applicable provisions in part 2. Therefore, with respect to the comments on contractors, subcontractors, and legal representatives resisting disclosure of patient records in judicial proceedings, SAMSHA notes that § 2.13(a) already states: ''The patient records subject to the regulations in this part may be disclosed or used only as permitted by the regulations in this part and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by a federal, state or local authority.'' In addition, § 2.13(a) already requires that any disclosures must be limited to the information which is necessary to carry out the purpose of the consent. In response to the request that the contract require compliance with the security requirements, § 2.16, Security for Records, already applies to part 2 programs and other lawful holders of patient identifying information, and, therefore, would apply to contractors, subcontractors, and legal representatives.

4. Other Comments Concerning Disclosures by Lawful Holders

Public Comments

SAMHSA received a number of comments relative to Medicaid agencies and MCOs with which they contract; the commenters stated that MCOs are considered to be an extension of the Medicaid agency. Several of these commenters requested clarification that, under § 2.33(b), MCOs (one commenter noted that such organizations are called coordinated care organizations in that state) may disclose patient identifying information for health care operations and payment purposes to the state agency with which the organization is under contract. One commenter requested clarification that under § 2.33(b) lawful holders may disclose patient identifying information to the state Medicaid agency with which they are contracted. Another commenter requested that that this provision explicitly permit disclosures between managed care organizations, their contractors and a Medicaid program. Similarly, a commenter also pointed out that proposed § 2.33(b) would only allow a lawful holder to disclose to its own contractors and subcontractors, which would not relieve the administrative obstacles part 2 providers experience when trying to obtain insurance coverage for their patients because the part 2 programs would have to deal directly with a peer reviewer or utilization review company that is a subcontractor to the insurance company named on the consent form.

SAMHSA Response

With regard to the comments on Medicaid agencies and the managed care organizations with which they contract, as well as those addressing administrative obstacles contractors may face in obtaining patient identifying information, the information can be disclosed directly to the contractor or subcontractor and does not need to first be disclosed to the lawful holder (*i.e.,* recipient named on the consent form) and then subsequently re-disclosed, as long as the information is being used for the purposes of payment and health care operations. This is because contractors, legal representatives, and subcontractors are acting on behalf of the lawful holders based on contracts, legal agreements or mandates in law.

Public Comments

Two commenters, pointing to the varying definitions for ''contractors'' and ''subcontractors'' under different laws and regulations, requested that SAMHSA consider defining these terms.

SAMHSA Response

SAMHSA did not propose to define ''contractors'' and ''subcontractors'' in its proposed rule and declines to do so now in the final rule. As stated in § 2.33(c), lawful holders who wish to disclose patient identifying information pursuant to subsection (b) of this section must enter into a written contract with the contractor (or appropriate comparable legal instrument in the case of a legal representative retained voluntarily by the lawful holder). In the case where there is a legal representative who is required to represent the lawful holder by law, the requirement for a contract or comparable legal instrument in § 2.33(c) shall not apply. SAMHSA believes this general understanding of a contractor or subcontractor provides the necessary flexibility for these types of arrangements while still ensuring that all parties must adhere to requirements and protections specified in § 2.33(c).

Public Comments

One commenter requested that SAMHSA add a new § 2.33(d) to state that ''if the contractor, subcontractor, or legal representative needs patient identifying information directly from the part 2 program, the contractor, subcontractor, or legal representative must produce a copy of the agreement mandated by § 2.33(c) prior to the part 2 program releasing any information.''

SAMHSA Response

SAMHSA declines to require contractors, subcontractors, and legal representatives to produce a copy of the agreement mandated by § 2.33(c) prior to the part 2 program releasing any information because SAMHSA did not propose to do so in the SNPRM. The decision as to whether to share this information would be at the discretion of the contracting parties.

Public Comments

One commenter stated that proposed § 2.33(b) should apply to all lawful holders (and not just those who received patient identifying information pursuant to a written consent), which would enable QSOs to disclose without consent to contractors and subcontractors.

SAMHSA Response

SAMHSA declines to eliminate the requirement that § 2.33(b) only applies to lawful holders that receive patient identifying information pursuant to a written consent. SAMHSA believes that the consent requirement for lawful holders that fall under § 2.33(b) must be maintained and that § 2.33(b) should not apply to QSOs. Further, SAMHSA guidance indicates that a QSOA does not permit a QSO to re-disclose information to a third party unless that third party is a contract agent of the QSO, helping them provide services described in the QSOA, and only as long as the agent only further discloses the information back to the QSO or to the part 2 program from which it came.

C. Audit and Evaluation (§ 2.53)

SAMHSA recognizes that federal, state, and local governments often need to access all of the records, including part 2 program records, held by entities they regulate in order to appropriately evaluate compliance with applicable laws, rules, and policies. As a result, in the SNPRM, SAMHSA proposed regulatory changes to clarify that audits and evaluations may be performed on behalf of federal, state, and local governments providing financial assistance to, or regulating the activities of, lawful holders as well as part 2 programs. SAMHSA recognizes that federal, state, and local governments often need to access all of the records, including part 2 program records, held by entities they regulate in order to appropriately evaluate compliance with applicable laws, rules, and policies. For example, an Accountable Care Organization (ACO) or similar CMS-regulated health care models may wish to evaluate the impact of integrated care on several participating behavioral health care programs' quality of care, or a state may wish to do an audit to see how many individuals who leave state-supported correctional facilities subsequently receive substance use disorder treatment. In addition, SAMHSA proposed regulatory revisions to: Specify that audits and evaluations may be performed by contractors, subcontractors, or legal representatives on behalf of a third-party payers or a quality improvement organizations; and state that if disclosures are made under this section for a Medicare, Medicaid, or CHIP audit or evaluation, including a civil investigation or administrative remedy, further disclosures may be made to contractors, subcontractors, or legal representatives to carry out the audit or evaluation. SAMHSA is now finalizing these requirements. It has also made certain technical amendments to correct inadvertent omissions in the rule's text to effectuate SAMHSA's intent to permit disclosure and use of patient identifying information held by other lawful holders for audit and evaluation purposes, as well as to clarify

and operationalize the requirements of this section.

Public Comments

SAMHSA received a range of comments concerning the proposed amendments with regard to permitted disclosures of patient identifying information to contractors, subcontractors, and legal representatives for purposes of carrying out an audit or evaluation under part 2. SAMHSA received a number of comments supporting these revisions. Several of the commenters also expressed support specifically for the provision allowing patient identifying information to be disclosed for purposes of carrying out an audit or evaluation, with some citing proposed § 2.53(a)(1)(i) in particular. Some commenters stated this particular revision would allow lawful holders of patient identifying information to disclose that information to audit and oversight entities in order to respond to an audit or evaluation request, and that clear authority to disclose patient identifying information for audits (which may include quality improvement and program integrity) is critical to Medicaid program operations. Another commenter supported the proposed changes because they would appear to allow disclosure of patient identifying information to a government agency authorized to regulate the activities of any lawful holder, not just a part 2 program or private payer, and because this change would at least partially conform to HIPAA's permissible disclosures to health system oversight agencies. The commenter, however, expressed concern that the proposed language did not make clear whether the government agency must obtain access to the records directly from the part 2 program rather than from the other lawful holder that the agency regulates, as obtaining records from the part 2 program posed communications challenges.

SAMHSA Response

SAMHSA appreciates the support for the further amendments as set out in the regulatory text of § 2.53. Inclusion of these additional provisions reflects that contractors, subcontractors and legal representatives are increasingly involved in audit and evaluation activities. SAMHSA recognizes that federal, state, and local governments often need to access all of the records, including part 2 program records, held by entities they regulate in order to appropriately evaluate compliance with applicable laws, rules, and policies. We believe including these changes will assist in compliance with part 2 and other federal, state, and local rules and regulations and improve part 2 program quality.

With respect to the commenter's concern, if a government agency is auditing or evaluating a lawful holder, which it regulates, the agency may receive the patient identifying information necessary for that audit or evaluation directly from the lawful holder.

Public Comments

SAMHSA also received a number of comments opposing the proposal to permit re-disclosure of patient identifying information without patient consent to contractors and subcontractors for audit and evaluation purposes unless SAMHSA provides additional safeguards. Several of these commenters noted that the proposed changes to § 2.53 have the potential to greatly expand the universe of individuals and entities who may receive protected substance use disorder information without patient consent for audit and evaluation purposes.

A couple of commenters expressed concern that detailed patient records would be used for purposes of risk adjustment and reporting of the patient's severity of illness to predict health care cost expenditures and adjust payer payments. One commenter stated that, if data are being used to impact a patient's score or health coverage, patient consent should be required.

SAMHSA Response

SAMHSA appreciates the array of recommendations commenters provided for possible restrictions and safeguards. SAMHSA is contemplating future rulemaking for 42 CFR part 2, and will take these recommendations under advisement at that time.

With regard to the suggestion that SAMHSA require patient consent if data could be used to affect a patient's health coverage or health score, SAMHSA reiterates that under the terms of § 2.53, patient identifying information may only be used for audit and evaluation purposes.

D. Other Public Comments on the SNPRM

1. Extension of Part 2 Restrictions to Third Parties

Public Comments

Two commenters stated that changes made to the SNPRM were predicated on the concept that part 2 confidentiality restrictions extend beyond part 2 programs to third parties, including lawful holders, contractors, subcontractors and legal representatives. These commenters, noting that no definitions exist in the regulatory text for ''lawful holders,'' ''contractors,'' or ''subcontractors,'' or ''legal representatives,'' requested that SAMHSA address whether the part 2 statute permits the extension of these restrictions beyond part 2 programs.

SAMHSA Response

The statute (42 U.S.C. 290dd–2) authorizes SAMHSA to promulgate regulations to effectuate the confidentiality provisions governing substance use disorder patient records. The part 2 rule's applicability to third parties is a reasonable exercise of SAMHSA's statutory authority to ensure protection of part 2 information in the possession of lawful holders other than part 2 programs.

2. Greater Weight to Comments From Patient and Part 2 Program

Public Comments

SAMHSA received several comments requesting that greatest weight be given to comments from patients and consumers who will be directly affected by any changes to part 2; one of these commenters made this request because patients entering treatment will likely be unable to anticipate complex re-disclosure risks for activities proposed by the SNPRM. In addition, a commenter requested that special consideration be given to comments from substance use disorder treatment providers.

SAMHSA Response

Every comment received on the SNPRM was given careful consideration, and SAMHSA has endeavored in this final rule to take into account the varying perspectives of public commenters. SAMHSA is seeking a balance between ensuring that patients with substance use disorders have the ability to participate in, and benefit from, new and emerging health care models that promote integrated care and patient safety and ensuring the confidentiality of substance use disorder patient records, given the potential for discrimination, harm to reputations and relationships, and serious civil and criminal consequences that could result from impermissible disclosures.

E. Regulatory Impact Analysis (RIA)

In the SNPRM, SAMHSA stated that, if adopted, the proposed revisions should not result in any additional costs to part 2 programs. However, SAMHSA specifically sought comment on the implications of the proposed changes on the regulatory and financial impact, if any, of these proposed rules.

Public Comments

SAMHSA did not receive any comments on costs related to specific proposals made in the SNPRM or the RIA.

F. Requests for Public Comment

In the January 18, 2017, SNPRM, SAMHSA made several requests for public comments based on its expectation that there may be future 42 CFR part 2-related rulemaking. Those comments are summarized below.

1. Conveying the Scope of the Written Consent

In the SNPRM, SAMHSA sought comment on the proper mechanisms to convey the scope of the consent to lawful holders, contractors, subcontractors, and legal representatives, including those who are downstream recipients of patient identifying information given current electronic data exchange technical designs.

Public Comments

Commenters suggested that SAMHSA provide more clarity on these mechanisms, particularly given the current electronic exchange environment and recommended more specific ways to ensure patients retain control over how their information is disclosed. Another commenter asserted proposed consent requirements could be burdensome, and a third-party payer may be unable to assess part 2 program compliance with consent requirements.

SAMHSA Response

SAMHSA has modified language in § 2.33(c) so as not to imply that the consent form must be provided to the recipient of part 2 records. Sections 2.13, 2.31, and other sections of part 2 require recipients of patient identifying information to have knowledge of 42 CFR part 2 as it relates to the purpose for which information is being disclosed and can be re-disclosed lawfully. Individuals and entities that disclose or receive patient identifying information via patient consent must be able to comply with these requirements.

2. Other Restrictions and Safeguards

In the SNPRM, SAMHSA specifically sought comments regarding the establishment of appropriate restrictions and safeguards on lawful holders and their contractors, subcontractors, and legal representatives' use and disclosure of patient identifying information for the purposes discussed in the SNPRM.

a. General

Public Comments

SAMHSA received a number of responses to this request for comments regarding the establishment of appropriate restrictions and safeguards. These comments recommended a wide array of patient protections and safeguards. While some commenters noted there is a legitimate need for lawful holders to disclose protected information to their contractors, subcontractors, and legal representatives for payment and health care operations purposes, many commenters expressed concern that the breadth of the proposed changes may undermine core protections under part 2, which give substance use disorder patients control over how their information is disclosed so as not to make them more vulnerable to potential negative consequences of such disclosures. Loss of employment, loss of housing, loss of child custody, discrimination by medical professionals and insurers, and arrest, prosecution, and incarceration were cited as potential negative consequences. Most commenters stated concern over, or even their opposition to, SAMHSA finalizing proposed changes in the SNPRM without including certain additional protections.

SAMHSA Response

SAMHSA appreciates the array of recommendations commenters provided for possible restrictions and safeguards. SAMHSA believes that the existing restrictions and safeguards—including provisions limiting use of patient identifying information in criminal and civil procedures and requiring that any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure—are adequate.

b. Commenter Recommendations for Anti-Discrimination Protections

Many commenters recommended the addition of specific anti-discrimination protections that would apply to disclosures pursuant to the proposed §§ 2.33(b) and 2.53. Commenters expressed concern over the potential for misuse of information and a desire to balance the increased flexibility of proposed §§ 2.33 and 2.53 with increased protections.

SAMHSA Response

Promulgating rules that address discriminatory action is outside the scope of SAMHSA's legal authority.

c. Commenter Recommendations for Patient Notification on the Consent Form

Public Comments

Several commenters expressed concern that the proposed changes to § 2.33 would greatly expand access to patient identifying information by individuals and entities to whom the patient did not specifically consent and for purposes not always evident to the patient. These commenters, and a number of others, requested that SAMHSA require, at a minimum, a notification to patients on the consent form that they are consenting to the disclosure of their patient identifying information to both the recipient and the recipient's contractors, subcontractors, and legal representatives to the extent those contractors, subcontractors, and legal representatives need the information to carry out payment or health care operations purposes.

SAMHSA's Response

SAMHSA is contemplating future rulemaking for 42 CFR part 2 and will take these recommendations under consideration at that time. In addition, consistent with the 21st Century Cures Act, prior to March 21, 2018, the Secretary of HHS will convene relevant stakeholders to determine the effects of 42 CFR part 2 on patient care, health outcomes, and patient privacy. The information obtained at the meeting will help to inform the course of any further part 2 rule-making. SAMHSA will consider these comments on privacy and confidentiality in conjunction with those made during the stakeholder meeting.

d. Commenter Recommendations for Mechanisms for Identifying and Sanctioning Unauthorized Disclosures

Public Comments

Several commenters recommended adding a requirement that lawful holders who wish to re-disclose patient identifying information to contractors, subcontractors, and legal representatives be subject to the same List of Disclosures requirements that apply to intermediaries who disclose patient identifying information pursuant to a general designation under the consent requirements at § 2.31. In addition, a couple of commenters requested that SAMHSA impose a List of Disclosures requirement on audit and evaluation agencies. One commenter requested that SAMHSA not finalize the proposed changes in the SNPRM without mechanisms in place to enable individuals who have been adversely

impacted to identify the source of a disclosure and initiate sanctions.

SAMHSA Response

SAMHSA appreciates the recommendations to add mechanisms to enable individuals who have been adversely impacted to identify the source of a disclosure, including adding a List of Disclosures requirement. SAMHSA is contemplating future rulemaking for 42 CFR part 2, and will take these recommendations under consideration.

e. Other Commenter Recommendations for Additional Restrictions and Safeguards

Public Comments

SAMHSA also received comments recommending other types of protections and safeguards. One commenter recommended SAMHSA reinforce patients' rights to file grievances and complaints and suggested that SAMHSA explore the ability to impose a confidentiality certificate on information disclosed to third parties similar to 42 U.S.C. 241(d), which protects the privacy of research subjects. A couple of commenters suggested strengthening patient protections by adding re-disclosure prohibitions in the statute similar to the confidentiality protections extended to certain veterans' medical records, including substance use disorder patient records in Title 38.

Another commenter stated that given stigma and risk of adverse impact, it was critical to have additional protections in place such as substantial penalties for disclosure violations and failure to maintain tracking of disclosures and mechanisms for an individual to identify and correct errors in an electronic health record and for identifying the source of the disclosed errors. This commenter stated that, because there is no clear mechanism to correct errors in records, it is critical that initial sharing of information be restricted until such mechanisms are developed.

In addition, two commenters stated that the proposed audit and evaluation revisions could conflict with intended court order protections at §§ 2.64 through 2.67 and requested SAMHSA clarify the necessity to obtain court orders in such investigations and prosecutions as a result of a Medicare, Medicaid, or CHIP audit or evaluation.

SAMHSA Response

SAMHSA appreciates the recommendations for identifying the source of a disclosure under § 2.33, and strengthening language regarding a patient's right to file a grievance. SAMHSA is contemplating future rulemaking for 42 CFR part 2, and will take these recommendations under advisement at that time.

In addition, SAMHSA does not have the authority to make statutory revisions, so SAMHSA cannot add re-disclosure prohibitions to the authorizing statute. With regard to the comment regarding the imposition of substantial penalties, the part 2 regulations already include provisions to implement the statutory criminal penalties for violations. Further, SAMHSA does not have the authority to require a mechanism for making corrections in an electronic health record.

SAMSHA believes that permitting contractors, subcontractors, and legal representatives to obtain information for audit and evaluation purposes does not contradict or undermine protections currently within §§ 2.64 through 2.67. For instance, § 2.53 provides that the audit and evaluation provisions ''do not authorize the part 2 program, the federal, state, or local government agency, or any other individual or entity to disclose or use patient identifying information obtained during the audit or evaluation for any purposes other than those necessary to complete the audit or evaluation.'' Similarly, § 2.53(d) explicitly states that, except as provided, ''patient identifying information disclosed under this section may be disclosed only back to the part 2 program or other lawful holder from which it was obtained and may be used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by a court order entered under § 2.66.''

3. Impact on Privacy and Confidentiality and Part 2 Goals

SAMHSA specifically sought comment on the implications of the proposed revisions on the privacy and confidentiality of substance use disorder patient records and the overall goals of 42 CFR part 2.

Public Comment

SAMHSA received several comments that addressed this request, some of which were general in nature, while others were specific to proposed revisions in either § 2.32 or in § 2.33. All commenters expressed support for preserving patients' confidentiality. One commenter expressed general concerns about parties trying to alter federal confidentiality protections in a manner that will not benefit patients. These concerns included prospective patients avoiding seeking treatment over fears that the proposed broader dissemination of their treatment information may lead to that information becoming known by friends, family, employers, insurers, and other providers of medical services. Commenters expressed concern regarding the privacy and confidentiality impact of the SNPRM changes to §§ 2.32 and 2.33. These commenters asserted that: (1) The changes would, over time, result in gradual disclosure of part 2 data as a result of failing to communicate through the notice the importance of avoiding improper re-disclosures; (2) substance use disorder patients would not likely agree to the broad use of their personal information for activities that they do not understand or are perhaps incapable of refusing (*e.g.,* incompetent); and (3) terms such as ''health care operations'' and ''quality improvement'' are too general, allowing activities that have few limits or boundaries. A couple of commenters stated that the proposed changes would result in patients attempting to exclude their records from research and quality improvement systems or avoiding lifesaving treatment services. In addition, one commenter expressed concern that SAMHSA may have unintentionally abrogated its responsibility to protect vulnerable patients.

SAMHSA Response

As stated previously, this final rule builds on efforts in the January 18, 2017, 42 CFR part 2 final rule (82 FR 6052) to better reflect changes in the health care system, such as the increasing use of electronic health records, and drive toward greater integration of physical and behavioral health care. Despite efforts to enhance integration, SAMHSA remains committed to protecting the confidentiality of patient records. This rule updates 42 CFR part 2 to balance these important needs. However, as an added protection and consistent with the 21st Century Cures Act, prior to March 21, 2018, the Secretary of HHS will convene relevant stakeholders to determine the effects of 42 CFR part 2 on patient care, health outcomes, and patient privacy. The information obtained at the meeting will help to inform the course of any further part 2 rule-making, and SAMHSA will consider these comments on privacy and confidentiality in conjunction with those made during the stakeholder meeting.

III. Rulemaking Analysis

Regulatory Impact Analysis (RIA)

In this final rule, SAMHSA finalizes certain revisions to 42 CFR part 2 as follows: Prohibition on re-disclosure (§ 2.32); the disclosures permitted with written consent (§ 2.33), including the payment and health care operations activities for which lawful holders may disclose patient identifying information to their contractors, subcontractors, and legal representatives. In addition, SAMHSA clarifies that the audit and evaluation provision (§ 2.53) permits certain disclosures to contractors, subcontractors, and legal representatives for purposes of carrying out an audit or evaluation, and that audits and evaluations may be performed on behalf of federal, state, and local governments providing financial assistance to or regulating the activities of lawful holders of patient identifying information as well as part 2 programs.

Notably, SAMHSA explicitly sought comment on costs and benefits of its proposed changes. Of the 55 public comments received on the proposed rule, none substantively focused on cost or burden issues. Public comments support SAMHSA's view in this final rule that these modifications will enhance information-sharing and efficiency of such payment and health care operations as claims processing, business management, training, and customer service and facilitate audit and evaluation activities. Further, SAMHSA believes that the re-disclosure provisions will make it easier for some part 2 programs and other lawful holders to use electronic health systems.

The January 18, 2017, final rule noted that in ''the absence of data and studies specifically focused on compliance with 42 CFR part 2, SAMHSA has estimated these costs based on a range of published costs associated with HIPAA implementation and compliance.'' SAMHSA notes that the HIPAA Omnibus Final Rule (78 FR 5566, Jan. 25, 2013) similarly provided a transition period for covered entities to incorporate new provisions into agreements between business associates and covered entities (up to 20 months after publication of the final rule for some agreements, provided certain conditions were met) and anticipated that there would be little added cost as these contracts would already be required. SAMHSA believes that the cost of updating agreements among part 2 programs and other lawful holders to reflect the provisions adopted in this final rule would be negligible. In order to provide entities with maximum flexibility reflecting their unique contractual arrangements, contracts may include statements about required compliance with 42 CFR part 2; however, no specific language beyond this concept is required by the rule. This rule provides up to two years from the effective date to comply with this section. Because part 2 programs and other lawful holders can modify their contracts during the normal renegotiation of contracts as existing contracts expire or, if such contracts are not regularly updated, can make such changes up to two years from this final rule's effective date, new regulatory language required by § 2.33(c), as revised, should impose a minimal burden.

SAMHSA similarly believes that the abbreviated notice of the prohibition on re-disclosure adopted in this final rule provides additional options to part 2 entities that will facilitate adoption of electronic health records and reduce regulatory burdens. Entities not wishing to use the abbreviated notice may use the standard prohibition on re-disclosure notice. As the revised notice has limited characters, SAMHSA believes that it can be more readily used with existing electronic health record systems.

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. PRA issues were discussed in the SNPRM. SAMHSA stated that it anticipated no substantive changes in PRA requirements should changes proposed in the SNPRM be adopted. SAMHSA received no public comment on our assumptions as they relate to the PRA requirements. SAMHSA continues to believe that the final rule imposes no new PRA burdens.

SAMHSA has examined the impact of this final rule under Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, September 19, 1980), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995), and Executive Order 13132 on Federalism (August 4, 1999).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review, as established in Executive Order 12866. Executive Order 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' The changes finalized in this rule will not have an annual effect on the economy of $100 million or more in at least one year. Therefore, this final rule is not an economically significant regulatory action as defined by Executive Order 12866, or a significant regulation under Executive Order 13771. The Regulatory Flexibility Act (RFA) requires agencies that issue a regulation to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration; (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. (States and individuals are not included in the definition of ''small entity''). For similar rules, HHS considers a rule to have a significant economic impact on a substantial number of small entities if at least five percent of small entities experience an impact of more than three percent of revenue. This final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' This final rule does not trigger the Unfunded Mandates Reform Act, because it will not result in expenditures of this magnitude by states or other government entities.

IV. Provisions of Technical Amendments

This section contains corrections to the final regulations published in the **Federal Register** on January 18, 2017 (82 FR 6988). The word ''manage'' was inadvertently omitted from the

regulation text at § 2.15 concerning incompetent and deceased patients. It should read ''to manage their own affairs'' rather than ''to their own affairs.'' A typographical error and reference in the regulation to ''paragraph (a)(8)'' should have instead read ''paragraph (a)(6)'' in the text of the regulations at § 2.35 concerning disclosures to elements of the criminal justice system which have referred patients. As a result, we are making technical corrections in 42 CFR part 2 at §§ 2.15 and 2.35.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making these technical corrections final without prior notice and opportunity for comment because the changes address minor typographical errors, misprints, or omissions, which are noncontroversial and do not substantively change the requirements of the rule. Furthermore, the minor corrections do not impose any additional obligations on any party. Thus, notice and public comment is impracticable, unnecessary, or contrary to the public interest.

Conclusion

SAMHSA is finalizing changes to clarify the payment and health care operations activities for which lawful holders may disclose patient identifying information to their contractors, subcontractors, and legal representatives. In addition, SAMHSA clarifies that the audit and evaluation provision permits certain disclosures to contractors, subcontractors, and legal representatives for purposes of carrying out an audit or evaluation under § 2.53. SAMHSA is finalizing changes to clarify that audits and evaluations may be performed on behalf of federal, state and local governments providing financial assistance to, or regulating the activities of lawful holders, as well as part 2 programs. The final rule also includes an abbreviated notice of the prohibition on re-disclosure. Finally, SAMHSA is making minor technical corrections to select provisions of the 42 CFR part 2 final rule published in the **Federal Register** on January 18, 2017.

List of Subjects in 42 CFR Part 2

Alcohol abuse, Alcoholism, Drug abuse, Grant programs—health, Health records, Privacy, Reporting, and Recordkeeping requirements.

For the reasons stated in the preamble of this final rule, 42 CFR part 2 is amended as follows:

PART 2—CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT RECORDS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 42 U.S.C. 290dd–2.

§ 2.15 [Amended]

■ 2. Amend § 2.15(a)(1) by removing the phrase ''to their own affairs'' and adding in its place the phrase ''to manage their own affairs''.

■ 3. Revise § 2.32 to read as follows:

§ 2.32 Prohibition on re-disclosure.

(a) *Notice to accompany disclosure.* Each disclosure made with the patient's written consent must be accompanied by one of the following written statements:

(1) This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65; or

(2) 42 CFR part 2 prohibits unauthorized disclosure of these records.

(b) [Reserved]

■ 4. Revise § 2.33 to read as follows:

§ 2.33 Disclosures permitted with written consent.

(a) If a patient consents to a disclosure of their records under § 2.31, a part 2 program may disclose those records in accordance with that consent to any person or category of persons identified or generally designated in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of §§ 2.34 and 2.35, respectively.

(b) If a patient consents to a disclosure of their records under § 2.31 for payment and/or health care operations activities, a lawful holder who receives such records under the terms of the written consent may further disclose those records as may be necessary for its contractors, subcontractors, or legal representatives to carry out payment and/or health care operations on behalf of such lawful holder. Disclosures to contractors, subcontractors, and legal representatives to carry out other purposes such as substance use disorder patient diagnosis, treatment, or referral for treatment are not permitted under this section. In accordance with § 2.13(a), disclosures under this section must be limited to that information which is necessary to carry out the stated purpose of the disclosure.

(c) Lawful holders who wish to disclose patient identifying information pursuant to paragraph (b) of this section must have in place a written contract or comparable legal instrument with the contractor or voluntary legal representative, which provides that the contractor, subcontractor, or voluntary legal representative is fully bound by the provisions of part 2 upon receipt of the patient identifying information. In making any such disclosures, the lawful holder must furnish such recipients with the notice required under § 2.32; require such recipients to implement appropriate safeguards to prevent unauthorized uses and disclosures; and require such recipients to report any unauthorized uses, disclosures, or breaches of patient identifying information to the lawful holder. The lawful holder may only disclose information to the contractor or subcontractor or voluntary legal representative that is necessary for the contractor or subcontractor or voluntary legal representative to perform its duties under the contract or comparable legal instrument. Contracts may not permit a contractor or subcontractor or voluntary legal representative to re-disclose information to a third party unless that third party is a contract agent of the contractor or subcontractor, helping them provide services described in the contract, and only as long as the agent only further discloses the information back to the contractor or lawful holder from which the information originated.

■ 5. Amend § 2.35 by revising paragraph (a)(2) as follows:

§ 2.35 Disclosure to elements of the criminal justice system which have referred patients.

(a) * * *

(2) The patient has signed a written consent meeting the requirements of

§ 2.31 (except paragraph (a)(6) of this section which is inconsistent with the revocation provisions of paragraph (c) of this section) and the requirements of paragraphs (b) and (c) of this section.

■ 6. Amend § 2.53 by:

■ a. Revising paragraphs (a) introductory text, (a)(1)(i) and (ii), (a)(2).

■ b. Revising paragraphs (b) introductory text, (b)(2)(i) and (ii).

■ c. Revising paragraph (c)(5).

■ d. Revising paragraph (d).

The revisions and addition read as follows:

§ 2.53 Audit and evaluation.

(a) *Records not copied or removed.* If patient records are not downloaded, copied or removed from the premises of a part 2 program or other lawful holder, or forwarded electronically to another electronic system or device, patient identifying information, as defined in § 2.11, may be disclosed in the course of a review of records on the premises of a part 2 program or other lawful holder to any individual or entity who agrees in writing to comply with the limitations on re-disclosure and use in paragraph (d) of this section and who:

(1) * * *

(i) Any federal, state, or local governmental agency that provides financial assistance to a part 2 program or other lawful holder, or is authorized by law to regulate the activities of the part 2 program or other lawful holder;

(ii) Any individual or entity which provides financial assistance to the part 2 program or other lawful holder, which is a third-party payer covering patients in the part 2 program, or which is a quality improvement organization performing a utilization or quality control review, or such individual's or entity's or quality improvement organization's contractors, subcontractors, or legal representatives.

(2) Is determined by the part 2 program or other lawful holder to be qualified to conduct an audit or evaluation of the part 2 program or other lawful holder.

(b) *Copying, removing, downloading, or forwarding patient records.* Records containing patient identifying information, as defined in § 2.11, may be copied or removed from the premises of a part 2 program or other lawful holder or downloaded or forwarded to another electronic system or device from the part 2 program's or other lawful holder's electronic records by any individual or entity who:

(2) * * *

(i) Any federal, state, or local governmental agency that provides financial assistance to the part 2 program or other lawful holder, or is authorized by law to regulate the activities of the part 2 program or other lawful holder; or

(ii) Any individual or entity which provides financial assistance to the part 2 program or other lawful holder, which is a third-party payer covering patients in the part 2 program, or which is a quality improvement organization performing a utilization or quality control review, or such individual's or entity's or quality improvement organization's contractors, subcontractors, or legal representatives.

* * * * *

(c) * * *

(5) If a disclosure to an individual or entity is authorized under this section for a Medicare, Medicaid, or CHIP audit or evaluation, including a civil investigation or administrative remedy, as those terms are used in paragraph (c)(2) of this section, the individual or entity may further disclose the patient identifying information that is received for such purposes to its contractor(s), subcontractor(s), or legal representative(s), to carry out the audit or evaluation, and a quality improvement organization which obtains such information under paragraph (a) or (b) of this section may disclose the information to that individual or entity (or, to such individual's or entity's contractors, subcontractors, or legal representatives, but only for the purposes of this section).

* * * * *

(d) Limitations on disclosure and use. Except as provided in paragraph (c) of this section, patient identifying information disclosed under this section may be disclosed only back to the part 2 program or other lawful holder from which it was obtained and may be used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by a court order entered under § 2.66.

* * * * *

Dated: December 19, 2017.

Elinore F. McCance-Katz

Assistant Secretary for Mental Health and Substance Use.

Approved: December 20, 2017.

Eric D. Hargan,

Acting Secretary, Department of Health and Human Services.

[FR Doc. 2017–28400 Filed 1–2–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–8513]

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 II				
New York:				
Amsterdam, City of, Montgomery County.	360440	May 19, 1975, Emerg; July 16, 1984, Reg; January 19, 2018, Susp.	January 19, 2018.	January 19, 2018.
Amsterdam, Town of, Montgomery County.	360441	July 16, 1975, Emerg; December 1, 1987, Reg; January 19, 2018, Susp.	.....do*	Do.
Canajoharie, Town of, Montgomery County.	360442	June 13, 1975, Emerg; January 6, 1983, Reg; January 19, 2018, Susp.	.....do	Do.
Canajoharie, Village of, Montgomery County.	360443	July 26, 1974, Emerg; November 3, 1982, Reg; January 19, 2018, Susp.	.....do	Do.
Florida, Town of, Montgomery County ..	360445	July 22, 1975, Emerg; December 1, 1987, Reg; January 19, 2018, Susp.	.....do	Do.
Fort Johnson, Village of, Montgomery County.	360447	July 22, 1975, Emerg; January 19, 1983, Reg; January 19, 2018, Susp.	.....do	Do.
Fultonville, Village of, Montgomery County.	360449	January 17, 1975, Emerg; October 15, 1982, Reg; January 19, 2018, Susp.	.....do	Do.
Glen, Town of, Montgomery County.	361295	February 10, 1977, Emerg; February 19, 1986, Reg; January 19, 2018, Susp.	.....do	Do.
Hagaman, Village of, Montgomery County.	360450	June 18, 1975, Emerg; March 18, 1986, Reg; January 19, 2018, Susp.	.....do	Do.
Minden, Town of, Montgomery County	360451	November 10, 1975, Emerg; January 19, 1983, Reg; January 19, 2018, Susp.	.....do	Do.

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
Mohawk, Town of, Montgomery County	360452	July 18, 1975, Emerg; August 5, 1985, Reg; January 19, 2018, Susp.	.....do	Do.
Palatine, Town of, Montgomery County	361413	March 8, 1977, Emerg; May 4, 1987, Reg; January 19, 2018, Susp.	.....do	Do.
Root, Town of, Montgomery County	360455	November 3, 1975, Emerg; April 1, 1988, Reg; January 19, 2018, Susp.	.....do	Do.
Saint Johnsville, Town of, Montgomery County.	360456	March 9, 1977, Emerg; March 16, 1983, Reg; January 19, 2018, Susp.	.....do	Do.
Saint Johnsville, Village of, Montgomery County.	360457	October 23, 1974, Emerg; February 19, 1986, Reg; January 19, 2018, Susp.	.....do	Do.
Region IV				
Florida: Fanning Springs, City of, Gilchrist and Levy Counties.	120146	August 22, 1975, Emerg; September 5, 1984, Reg; January 19, 2018, Susp.	.....do	Do.
Region VI				
Texas:				
Dayton Lakes, City of, Liberty County ..	481593	August 12, 1985, Emerg; November 15, 1989, Reg; January 19, 2018, Susp.	January 19, 2018.	January 19, 2018.
Hardin, City of, Liberty County	481270	June 1, 1976, Emerg; April 9, 1985, Reg; January 19, 2018, Susp.	.....do	Do.
Kenefick, City of, Liberty County	481523	N/A, Emerg; June 20, 2008, Reg; January 19, 2018, Susp.	.....do	Do.
Region X				
Oregon:				
Eagle Point, City of, Jackson County	410093	June 5, 1974, Emerg; September 30, 1980, Reg; January 19, 2018, Susp.	.....do	Do.
Jackson County, Unincorporated Areas	415589	December 31, 1970, Emerg; April 1, 1982, Reg; January 19, 2018, Susp.	.....do	Do.
Shady Cove, City of, Jackson County ..	410099	August 23, 1974, Emerg; September 30, 1980, Reg; January 19, 2018, Susp.	.....do	Do.
Washington: Camas, City of, Clark County	530026	April 24, 1974, Emerg; February 18, 1981, Reg; January 19, 2018, Susp.	.....do	Do.

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

Dated: December 21, 2017.

Eric Letvin,

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

[FR Doc. 2017–28429 Filed 1–2–18; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90, WT Docket No. 10–208; DA 17–1218]

Mobility Fund Phase II Challenge Process Handsets and Access Procedures for the Challenge Process Portal

AGENCY: Federal Communications Commission.

ACTION: Final rule; requirements and procedures.

SUMMARY: In this document, the Rural Broadband Auctions Task Force, with the Wireline Competition Bureau and the Wireless Telecommunications Bureau, provide further guidance on the handsets that mobile wireless providers in the Mobility Fund Phase II challenge process can designate for challengers to use when conducting speed tests in areas deemed presumptively ineligible for MF–II support. This document adopts procedures for challengers to request access to the Universal Service Administrative Company challenge process portal.

DATES: Parties may submit the list of provider-approved handsets as part of their 4G LTE coverage data filings due by January 4, 2018, or they may elect to supplement those filings with the handset list by no later than thirty days following the publication of this document in the **Federal Register.**

ADDRESSES: Submit responses to the MF–II 4G LTE data collections, including the list of provider-approved handsets, at *www.fcc.gov/MF2-LTE-Collection.* Submit waivers by email to *mf2challengeprocess@fcc.gov* or by hard copy to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, FCC, 445 12th Street SW, Room 6–C217, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auction and Spectrum Access Division, Jonathan McCormack, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice (*MF–II Challenge Process Handset Public Notice*), WC Docket No. 10–90, WT Docket No. 10–208, DA 17–1218, adopted on December 20, 2017, and released on December 20, 2017. The complete text of the *MF–II Challenge Process Handset Public Notice* is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The complete text is also available on

the Commission's website at *https://ecfsapi.fcc.gov/file/122011224060/DA-17-1218A1.pdf.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

1. The Rural Broadband Auctions Task Force (Task Force), in conjunction with the Wireline Competition Bureau and the Wireless Telecommunications Bureau (Bureaus), provides further requirements for the handsets that mobile wireless providers in the Mobility Fund Phase II (MF–II) challenge process must designate for challengers to use when conducting speed tests in areas deemed presumptively ineligible for MF–II support. In addition, the Bureaus adopt procedures for challengers to request access to the Universal Service Administrative Company (USAC) challenge process portal.

I. Handset Requirements

2. Under the *MF–II Challenge Process Order,* 82 FR 42473, September 8, 2017, the MF–II challenge process will begin with a new, one-time collection of current, standardized coverage data on qualified 4G LTE service, which the Commission will use to establish the map of areas presumptively eligible for MF–II support.

3. As part of the new, one-time data collection, each mobile wireless provider with qualified 4G LTE coverage is required to identify at least three readily-available handset models appropriate for testing its coverage, at least one of which must be compatible with industry-standard drive test software. The Commission also directed the Bureaus to propose and adopt further guidance on the types of devices that may be used for speed tests.

4. After release of the *MF–II Challenge Process Order,* the Task Force, in conjunction with the Bureaus, released instructions for submitting the new 4G LTE coverage data, including the handset list, and announced a deadline of January 4, 2018, to submit the required coverage information. Pursuant to the Commission's direction, the Bureaus subsequently sought comment on proposed requirements to ensure that at least one designated handset is compatible with industry-standard drive test software.

5. After consideration of these comments, the Bureaus provide further requirements for the types of devices that may be used for speed tests. First, each provider must identify in its filing at least one device that is either: (a) Officially supported by the latest versions of industry-standard drive test software, such as JDSU, ZK–SAM, Rohde & Schwartz, or TEMS; or (b) engineering-capable and able to be unlocked and put into diagnostic mode to interface with drive test software. Second, at least one of the three specified devices must run the Android operating system. This device can be the same device as the one that meets the requirements adopted for compatibility with drive-test software, but it need not be. Because the coverage data submitted by affiliated entities will be consolidated when made available to challengers through the USAC portal, the Bureaus will consolidate the submitted provider handset data for such entities to the extent that the lists of handsets differ.

6. Parties may file the foregoing handset information with their January 4, 2018 filings, or they may elect to supplement those filings with that handset information no later than thirty days following the publication of the *MF–II Challenge Process Handset Public Notice* in the **Federal Register.**

II. Accessing the USAC Portal

7. Participants in the MF–II challenge process must use the USAC portal to file a challenge and/or respond to a challenge, as well as to access certain information that is pertinent to a challenge. The Commission directed the Bureaus to detail the process by which an interested party may request a USAC account to access the portal.

8. The process for interested parties and challenged providers to request access to the USAC portal is as follows. Any eligible service provider wishing to participate in the challenge process must provide to the Commission, via web-based form, the legal name of the entity, its FCC Registration Number (FRN), and the name(s) and email address(es) of the user(s) (up to a maximum of three users) that should be granted access to the portal. Any government entity (*i.e.,* a local, state, or Tribal government entity) that wishes to participate in the challenge process also must provide the legal name of the entity, its legal jurisdiction, and the name(s) and email address(es) of the user(s) (up to a maximum of three users) that should be granted access to the portal. The web page address and date by which to submit this contact information will be announced at a later date.

9. The Bureaus encourage parties that may have an interest in participating in the challenge process to provide this contact information as soon as the form is available. Providing this contact information does not represent a commitment or obligation to participate in the challenge process.

10. For a party that files a waiver petition with the Commission seeking to participate in the MF–II challenge process as a challenger (because it is not a service provider or a government entity), the Bureaus require such a party to submit the first and last name of the user(s) that should have access to the portal on its behalf, and the email address(es) of the user(s), up to a maximum of three users, as part of its petition for waiver. Any waiver petition must be submitted to *mf2challengeprocess@fcc.gov.* The Bureaus strongly encourage any interested party to file a waiver petition as soon as practicable.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

11. The *MF–II Challenge Process Handset Public Notice* implements the information collection requirements adopted in the *MF–II Challenge Process Order* and does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 44 U.S.C. 3501–3520. The Commission sought and received PRA approval from the Office of Management and Budget (OMB) under its emergency processing procedures for the information collection requirements associated with the qualified 4G LTE coverage data collection, as adopted in the *MF–II Challenge Process Order* and further explained in the *MF–II Challenge Process Handset Public Notice.* The OMB control number for this collection is OMB 3060 1242. The Commission is currently seeking PRA approval for the information collection requirements related to the challenge process itself, as adopted in the *MF–II Challenge Process Order* and further explained in the *MF–II Challenge Process Handset Public Notice.* The *MF–II Challenge Process Handset Public Notice* does not adopt any additional information collection requirements beyond those adopted in the *MF–II Challenge Process Order.*

B. Supplemental Final Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *USF/ICC Transformation FNPRM,* 76 FR 78383, December 16, 2011, the *2014 CAF FNPRM,* 80 FR 4445, January 27, 2015, and the *MF–II FNPRM,* 82 FR 13413,

March 13, 2017 (collectively, *MF–II FNPRMs*). A Supplemental Initial Regulatory Flexibility Analysis (SIRFA) was also filed in the *MF–II Challenge Process Comment Public Notice,* 82 FR 51180, November 3, 2017, in this proceeding. The Commission sought written public comment on the proposals in *MF–II FNPRMs* and in the *MF–II Challenge Process Comment Public Notice,* including comments on the IRFAs and SIRFA. The Commission received three comments in response to the *MF–II FNPRM* IRFA. No comments were filed addressing the *USF/ICC Transformation FNPRM* IRFA, the *2014 CAF FNPRM* IRFA, or the *MF–II Challenge Process Comment Public Notice* SIRFA. The Commission included Final Regulatory Flexibility Analyses (FRFAs) in connection with the *2014 CAF Order,* the *MF–II Order,* and the *MF–II Challenge Process Order* (collectively, the *MF–II Orders*). This Supplemental Final Regulatory Flexibility Analysis (SFRFA) supplements the FRFAs in the *MF–II Orders* to reflect the actions taken in the *MF–II Challenge Process Handset Public Notice* and conforms to the RFA.

1. Need for, and Objectives of, The *MF–II Challenge Process Handset Public Notice*

13. The *MF–II Challenge Process Handset Public Notice* provides further requirements on the handsets that mobile wireless providers in the MF–II challenge process must designate for challengers to use when conducting speed tests in areas deemed presumptively ineligible for MF–II support. In addition, the *MF–II Challenge Process Handset Public Notice* adopts procedures for challengers to request access to the USAC challenge process portal.

14. Following the release of the *MF–II Orders,* the Commission released the *MF–II Challenge Process Comment Public Notice.* The *MF–II Challenge Process Comment Public Notice* proposed and sought comment on specific parameters and procedures to implement the MF–II challenge process, including requirements for the provider-approved handsets that prospective challengers will use to conduct speed tests, and the process by which challengers and respondents can request access to the USAC portal. The *MF–II Challenge Process Comment Public Notice* did not change matters adopted in the *MF–II Orders* and requested comment on how the proposals in the *MF–II Challenge Process Comment Public Notice* might affect the previous regulatory flexibility analyses in this proceeding.

15. The *MF–II Challenge Process Handset Public Notice* establishes procedures for providers to identify at least three readily available handset models appropriate for testing those providers' coverage, and establishes that the Bureaus will consolidate submitted provider handset data for affiliated entities to the extent that the lists of handsets differ. In addition, providers are required to specify at least one handset running on the Android operating system, and at least one handset that is either compatible with the latest versions of drive test software, or is capable of being unlocked and configured to run the latest versions of drive test software.

16. The procedures also require all eligible service providers wishing to participate in the challenge process to provide to the Commission the legal name of the entity, its FRN, and the name(s) and email address(es) of the user(s) (up to a maximum of three users) that should be granted access to the portal. Any government entity (*i.e.,* a local, state, or Tribal government entity) that wishes to participate in the challenge process also must provide the legal name of the entity, its legal jurisdiction, and the name(s) and email address(es) of the user(s) (up to a maximum of three users) that should be granted access to the portal. A web-based form will be used to collect this information. A party that files a waiver petition with the Commission seeking to participate in the MF–II challenge process as a challenger (because it is not a service provider or a government entity), must submit the first and last name of the user(s) that should have access to the portal on its behalf, and the email address(es) of the user(s), up to a maximum of three users, as part of its petition for waiver.

17. Finally, the requirements established in the *MF–II Challenge Process Handset Public Notice* are designed to anticipate the challenges faced by small entities (*e.g.,* governmental entities or small service providers) in complying with the Bureaus' implementation of the Commission's rules and our proposals. For example, the requirement that providers specify a minimum of three devices, at least one of which must be running on the Android operating system, is intended to provide small entities with sufficient flexibility to choose a device that fits their needs and budgets.

18. Accordingly, the handset requirements and portal access procedures established in the *MF–II Challenge Process Handset Public Notice* are consistent with the *MF–II Orders* and the prior regulatory flexibility analyses set forth in this proceeding, and no changes to the Bureaus' earlier analyses are required.

2. Summary of Significant Issues Raised by Public Comments in Response to the SIRFA

19. There were no comments filed that specifically addressed the proposed procedures presented in the SIRFA.

3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

20. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

21. The Chief Counsel did not file any comments in response to the proposed procedures in this proceeding.

4. Description and Estimate of the Number of Small Business Entities To Which the Procedures Will Apply

22. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

23. As noted above, FRFAs were incorporated into the *MF–II Orders.* In those analyses, the Bureaus described in detail the small entities that might be significantly affected. In the *MF–II Challenge Process Handset Public Notice,* the Bureaus incorporate by reference the descriptions and estimates of the number of small entities from the previous FRFAs in the *MF–II Orders.*

5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

24. The data, information and document collection required by the *MF–II Orders* as described in the previous FRFAs and the SIRFA in the *MF–II Challenge Process Comment*

Public Notice in this proceeding are hereby incorporated by reference.

6. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.

26. The analysis of the Commission's efforts to minimize the possible significant economic impact on small entities as described in the previous *MF–II Order* FRFAs are hereby incorporated by reference. As discussed above, the requirements and procedures established in the *MF–II Challenge Process Handset Public Notice* are intended to provide small entities with sufficient flexibility to choose a device that fits their needs and budgets thereby minimizing significant economic impact on small entities.

7. Report to Congress

27. The Commission will send a copy of the *MF–II Challenge Process Handset Public Notice,* including this SFRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *MF–II Challenge Process Handset Public Notice,* including this SFRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *MF–II Challenge Process Handset Public Notice,* and SFRFA (or summaries thereof) will also be published in the **Federal Register.**

IV. Contact Information

28. For information on the one-time 4G LTE coverage data collection, see *4G LTE Collection Instructions Public Notice,* or consult the Commission's MF–II 4G LTE Data Collection web page at *www.fcc.gov/MF2-LTE-Collection.* Please note that responses to the MF–II 4G LTE data collection are due by January 4, 2018. Parties with questions about the collection should email *ltedata@fcc.gov* or contact Ken Lynch at (202) 418–7356 or Ben Freeman at (202) 418–0628.

29. For further information concerning the *MF–II Challenge Process Comment Public Notice,* contact Jonathan McCormack, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at (202) 418–0660.

Federal Communications Commission.

William W. Huber,

Associate Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2017–28421 Filed 1–2–18; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R4–ES–2016–0029 and FWS–R4–ES–2016–0031; 4500030113]

RIN 1018–BA78; RIN 1018–BA79

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Black Warrior Waterdog and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended for the Black Warrior waterdog (*Necturus alabamensis*) and designate critical habitat. The effect of this regulation will be to add this species to the List of Endangered and Threatened Wildlife and designate critical habit for this species. In total, approximately 673 kilometers (420 miles) of streams and rivers in Blount, Etowah, Jefferson, Lawrence, Marshall, Tuscaloosa, Walker, and Winston Counties, Alabama, fall within the boundaries of the critical habitat designation.

DATES: This rule is effective February 2, 2018.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* and *http://www.fws.gov/daphne/.* Comments, materials, and documentation that we considered in this rulemaking will be available by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Alabama Ecological Services Field Office, 1208 Main Street, Daphne, AL 36526; by telephone 251–441–5184; or by facsimile 251–441–6222.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for the critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2016–0031, and at the Alabama Ecological Services Field Office (*https://www.fws.gov/alabama*) (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this final rule will also be available at the U.S. Fish and Wildlife Service website and Field Office set out above, and may also be included in the preamble and at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William Pearson, Field Supervisor, U.S. Fish and Wildlife Service (see **ADDRESSES** above). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

This document consists of: (1) A final rule to list the Black Warrior waterdog as endangered and (2) a final critical habitat designation for the Black Warrior waterdog.

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

What this rule does. This rule will finalize the listing of the Black Warrior waterdog (*Necturus alabamensis*) as an endangered species and will finalize designation of critical habitat for the species under the Act. We are designating critical habitat for the species in four units, on public and private property totaling 673 kilometers (420 miles) of streams and rivers in Blount, Etowah, Jefferson, Lawrence, Marshall, Tuscaloosa, Walker, and Winston Counties, Alabama. This rule adds the Black Warrior waterdog to the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) and adds critical habitat for this species to 50 CFR 17.95(d).

The basis for our action. Under the Act, we may determine that a species is endangered or threatened based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or

predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the Black Warrior waterdog is endangered by habitat loss and water quality degradation resulting from point source and non-point source pollution, urbanization, legacy effects of past forestry and other land use practices, surface coal mining, sedimentation, and impoundments.

Under the Act, if we determine that any species is a threatened or endangered species we must, to the maximum extent prudent and determinable, designate critical habitat. Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Economic analysis. We prepared an economic analysis of the impacts of designating critical habitat. We published an announcement and solicited public comments on the draft economic analysis (81 FR 69475, October 6, 2016). The analysis found no significant economic impact of the designation of critical habitat.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all comments and information received from the public during the comment period.

Previous Federal Action

Please refer to the proposed listing rule (81 FR 69500) and the proposed designation of critical habitat (81 FR 69475) for the Black Warrior waterdog, both published October 6, 2016, for a detailed description of previous Federal actions concerning this species.

Summary of Comments and Recommendations

In the proposed listing and critical habitat rules published on October 6, 2016, we requested that all interested parties submit written comments on the proposals by December 5, 2016. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the following: *AL.com;* The Blount Countian; The Cullman Times; Daily Mountain Eagle; Decatur Daily; Moulton Advertiser; Northwest Alabamian; and The Times Record. We did not receive any requests for a public hearing.

Peer Reviewer Comments

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the species and the geographic region in which the species occurs, the species' habitat and biological needs, and conservation biology principles. We received responses from four of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the Black Warrior waterdog. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final listing and critical habitat rule. Peer reviewer comments are summarized below and incorporated into the final rule as appropriate.

(1) Comment: Two reviewers stated that one of the proposed units, Lye Branch (Tuscaloosa County), should be removed from the critical habitat designation since the specimens collected there were not Black Warrior waterdog (*Necturus alabamensis*) but another species of *Necturus,* the Gulf Coast waterdog (*N. beyeri*).

Our Response: Based on the information provided, we have removed the Lye Branch unit from the designation in our critical habitat final rule. See Summary of Changes from the Proposed Rule, below, for more information.

(2) Comment: Several peer reviewers recommended that additional units be included in the critical habitat designation. Three peer reviewers recommended adding Clear Creek (Winston County), and two of those peer reviewers also recommended the addition of Turkey Creek (Jefferson County) to the critical habitat designation. One peer reviewer recommended ''other headwater streams, as not to overlook streams potentially important to the recovery.'' All three peer reviewers noted that these other areas have suitable habitat and potentially support (or may in the future support) the species and would be crucial to the recovery of the Black Warrior waterdog.

Our Response: The streams mentioned by the commenters are encompassed within the species' historical range, the upper Black Warrior Basin. However, the Black Warrior waterdog has never been documented in these headwater streams this far up in the basin, although some lower segments of these streams may contain suitable habitat. Since they do not provide connectivity between occupied sites for genetic exchange, and therefore it is unknown if a population of the species could be successfully reestablished in an area that never had waterdogs, we determined that these sites were not essential to the conservation of the species (see response to comment 11 below).

(3) Comment: One Federal agency and some public commenters expressed concern about the use of eDNA. The concern relates to the potential for ''false positives'' and potential limitations of the use of eDNA as a surrogate for species occurrence, as well as whether the use of eDNA warrants consideration as the best science to support both listing and designating critical habitat.

Our Response: Positive eDNA detections indicate that the DNA of the target species was present in the water sample (at the collection location), but it does not definitively reveal whether the species is still present. Studies on decay rate of eDNA indicate that it remains detectable for 2–3 weeks following release (Dejan *et al.* 2011), and, in using this guideline, we assume that the organismal source (Black Warrior waterdog) was present in the stream within the prior 2–3-week time window. Information that eDNA cannot provide is abundance of target species, whether the eDNA was derived from a living or dead individual(s), or if the population is viable.

We recognize that detection of eDNA does not confirm species' current presence with absolute certainty, because the target species may have died or moved from the sampled area. Additionally, a false positive, assuming presence of the targeted live organism at a site when it is absent, can occur if the eDNA was transported to the site via a

flood, or transferred between drainages by human collectors. However, because eDNA persists for only a few weeks, the frequency of such false positives is likely low. A false positive could also occur if the eDNA in a sample was from a closely related species and that eDNA was not distinguishable from Black Warrior waterdog eDNA. However, researchers have identified and applied eDNA markers unique to the Black Warrior waterdog that are distinct from markers in other *Necturus* species (*e.g.,* de Souza *et al.* p. 5 and S2), thus avoiding species misidentification.

Since the Black Warrior waterdog is difficult to capture, sampling for eDNA in the historical range of the species is an appropriate tool, bolstering confidence in assessing whether occupancy is likely. We used eDNA to narrow our focus on sites where additional sampling was more likely to capture live waterdogs, but we are not designating any streams as critical habitat, nor are we determining listing status, solely based on eDNA. That said, based on the comment, we have added more discussion about eDNA to the final rule.

(4) Comment: A Federal agency was concerned that our economic analysis may have been an underestimation of the costs associated with consultations under the Act, as well as of the number of additional consultations as a result of the listing and critical habitat designation for the Black Warrior waterdog.

Our Response: The economic analysis estimates that the incremental costs of critical habitat for the Black Warrior waterdog will be limited to administrative costs of consultation. This is due to the fact that all projects with a Federal nexus would already be subject to section 7 requirements regardless of whether critical habitat is designated due to the presence of the waterdog or other listed species with similar conservation needs. In addition, possible project modifications stemming from section 7 consultation are unlikely to be affected by the critical habitat designation because (a) the species is so closely associated with its aquatic habitat that there is unlikely to be a difference between measures needed to avoid jeopardizing the species in areas of occupied habitat and (b) in unoccupied areas, other listed aquatic species are impacted by similar factors as the waterdog. Specifically, there are 26 listed species that occur within the Black Warrior River Basin, including 14 aquatic species and 2 plant species that may be found within the critical habitat for the Black Warrior waterdog. Eight of these listed species have critical habitat that overlaps portions of the Black Warrior waterdog's critical habitat, and the entire range of the threatened flattened musk turtle (*Sternotherus depressus*) overlaps with the range of the Black Warrior waterdog. Therefore, any activities with a Federal nexus will be subject to section 7 consultation requirements regardless of the Black Warrior waterdog critical habitat designation.

Based on the historical consultation rate for species that co-occur or share habitat with the waterdog, the economic analysis estimates that fewer than 2 formal consultations, 23 informal consultations, and 206 technical assistance efforts are likely to occur in a given year.

(5) Comment: A Federal agency noted that some of its operations likely co-occur with proposed occupied and unoccupied critical habitat for the Black Warrior waterdog, at stream crossings used to access existing transmission line rights-of-way (ROWs) for maintenance purposes and construction of new transmission line ROWs. The Federal agency recommended that the Service specify suitable best management practices (BMPs) at stream crossings to minimize or prevent impacts to Black Warrior waterdog, so that actions at stream crossings either will not affect or are not likely to adversely affect this species.

Our Response: For stream crossing access for ROW and new transmission line construction, the Service will provide BMPs during informal or formal consultation. The additional administrative costs of such ROW projects with a Federal nexus are described above.

In accordance with policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), we added ''transmission line ROW maintenance'' to the actions unlikely to result in a violation of section 9 of the Act if carried out in accordance with existing regulations (see Available Conservation Measures). These actions are now stated in the rule as ''Normal agricultural practices, silvicultural practices, and transmission line ROW maintenance, including herbicide and pesticide use, which are carried out in accordance with any existing regulations, permits, and label requirements, and best management practices.''

State Comments

(6) Comment: A State agency and some private organizations provided information on forestry compliance rates for BMPs and stream management zones (SMZs) and the positive impact on water quality.

Our Response: We acknowledge the improvements and progress that many agencies and organizations have made over the years in relation to land use and certified BMPs, including a 98 percent compliance rate in Alabama. We made changes to the listing and critical habitat designation to reflect these recent improvements in certified BMPs and forest management. We note that a majority of the adverse effects of forestry on waterdog habitat (*e.g.,* sedimentation, streambank and channel modification) appear to be the legacy of activities conducted prior to the existence of the Act and various other laws designed to protect water quality and aquatic habitats.

Public Comments

(7) Comment: A commenter suggested that there is not sufficient information on the Black Warrior waterdog's biology and ecological relationships upon which to make a listing determination.

Our Response: We are required to make our listing determination based on the best scientific and commercial data available at the time of our rulemaking. We found that the Black Warrior waterdog warrants listing as an endangered species under the Act, based on the severity and immediacy of threats currently impacting the species. The overall range has been significantly reduced, and the remaining habitat and populations face threats from a variety of factors such as water quality degradation and small populations that are isolated from each other by unsuitable habitat created mainly by impoundments and pollution (Factors A and E) acting in combination to reduce the overall viability of the species. The risk of extinction is high because the number of populations has decreased, and the remaining populations are small, isolated, and have limited potential for recolonization (Factor E).

(8) Comment: One commenter requested that the Black Warrior waterdog be listed as threatened instead of endangered, due to lack of information on the species' biology and needs.

Our Response: We considered the best scientific and commercial data available regarding the Black Warrior waterdog to evaluate its status under the Act and found that the species meets the definition of endangered due to the species' contracted range, loss of habitat due to water quality degradation (sedimentation, toxins, and nutrients), fragmentation of the populations caused by impoundments, rangewide (not localized) threats, and ongoing threats that are presently acting on the species. A threatened species status is not

appropriate for this species due to a reduction of suitable habitat available for the species and the severity of the stressors that are imminent and occurring rangewide, and are expected to continue into the future, such that the species is in immediate danger of extinction. Additionally, only two of the waterdog locations support strong numbers of animals to the point they can be collected on a routine basis. At the remaining sites surveyed since 1990, only one or two waterdogs have been captured, which speaks to the current poor status of the species.

(9) Comment: One commenter suggested the relevance of the flattened musk turtle as a surrogate species was not adequately explained.

Our Response: We used the flattened musk turtle as a surrogate species because the Black Warrior waterdog and flattened musk turtle occupy the same range and habitat, and similar factors influence the habitat and conservation of each species. However, we did not rely solely on the flattened musk turtle to discern the habitat needs of the Black Warrior waterdog. We also relied on information about the Neuse River waterdog (*Necturus lewisi*), a closely related species in the same genus, because of its similar biology and life history, as well as recently published Black Warrior waterdog research.

(10) Comment: One commenter noted that the lower 22.5 miles of Locust Fork and 44.5 miles of Mulberry Fork, both of which were proposed for designation as critical habitat, are navigable and used for barge traffic. The commenter requested that we consider whether those lower reaches exhibit the features of critical habitat for the Black Warrior waterdog. The commenter also requested that we identify measures to allow navigation maintenance activities ''without unreasonable burdens of cost or time'' if Section 7 consultation or Section 10 permitting is required.

Our Response: The Locust Fork critical habitat unit (Unit 2) is occupied by the Black Warrior waterdog and contains the following physical or biological features: Abundant rock crevices and rock slabs, leaf litter, and instream flow with moderate velocity and continuous daily discharge that allows for a longitudinal connectivity regime consisting of both surface runoff and ground water sources, exclusive of flushing flows caused by stormwater runoff, that are essential to the conservation of the Black Warrior waterdog. We have removed the Mulberry Fork unit (Unit 6 in the proposed rule), including its lower 44.5 miles from the final critical habitat rule. The Black Warrior waterdog has been extirpated from Mulberry Fork, likely because Mulberry Fork has incurred more habitat degradation in comparison to Locust Fork, where the waterdog remains extant. In short, Locust Fork meets the definition of critical habitat under the Act for occupied habitat. Mulberry Fork, however, does not meet the definition under the Act for unoccupied habitat as it is not essential for conservation of the species and therefore, is not included as critical habitat in the final rule (see our response to comment 11 below).

We would not expect direct effects to the species from navigation maintenance activities because areas with suitable physical and biological features in lower Locust Fork are close to the stream margins, away from the navigation channel. Navigation maintenance activities are unlikely to be affected by the critical habitat designation any more than they would be by the listing of the species because (a) the species is so closely associated with its aquatic habitat there is unlikely to be a difference between measures needed to avoid jeopardizing the species in areas of occupied habitat and (b) in unoccupied areas, other listed aquatic species are impacted by similar factors as the waterdog. Therefore, any activities with a Federal nexus will be subject to section 7 consultation requirements and, if necessary, section 10 permitting requirements to inform the consultation, regardless of the Black Warrior waterdog critical habitat designation.

(11) Comment: Several private organizations commented that our proposal to designate unoccupied areas as critical habitat had not been properly supported or explained in the proposed rule.

Our Response: In order to designate unoccupied areas, we are required by section 3(5)(A) of the Act to determine that such areas are essential for the conservation of the species. We determine from the record whether any unoccupied areas are necessary to support the species' recovery. The proposed rule outlined criteria for designation of critical habitat, which included a consideration of unoccupied areas that relied on the following criteria: (1) The importance of the stream to the overall status of the species and the contribution to the future recovery of the Black Warrior waterdog; (2) whether the area could be restored to contain the necessary habitat to support the Black Warrior waterdog; (3) whether the site provides connectivity between occupied sites for genetic exchange; and (4) whether a population of the species could potentially be reestablished in the area.

We received public comments indicating the Service inappropriately evaluated these units for inclusion in critical habitat and did not explain why these units were essential for the conservation of the Black Warrior waterdog. In response to these comments, we reevaluated the Lake Tuscaloosa, Lost Creek, and Mulberry Fork units, considering the four criteria listed above and the conservation strategy for the Black Warrior waterdog, and determined that our conclusion in the proposed rule, that the three unoccupied units are essential for the conservation of the Black Warrior waterdog, was in error.

Within the Lake Tuscaloosa unit, even though both of these sections are considered to be in the historical range of the species, both are isolated from each other and other populations of Black Warrior waterdog by two large impoundments (Lake Tuscaloosa and Holt Lake), and we had failed to consider this in the proposed rule. Upon further review, based on these impoundments, we now conclude habitat connectivity, one of the four criteria we considered in determining whether unoccupied areas are essential for the conservation of the species, is not met for the Lake Tuscaloosa unit. This lack of habitat connectivity with occupied sites in turn affects the unit's satisfaction of another criterion, the importance of the stream to the overall status of the species and its contribution to future recovery. Although this unit still contains suitable habitat in the upper reaches and may play a role in the recovery of the species, we find that because it does not provide habitat connectivity between occupied sites to allow for genetic exchange it is not essential for the conservation of the species.

Regarding the Lost Creek unoccupied unit, in a site assessment completed in March 2000, habitat in Lost Creek was determined to be poor to unsuitable water quality for the Black Warrior waterdog (Bailey 2000, pp. 7–8). This reduces the likelihood that a population of waterdogs could be established in this unit. More importantly, like the Lake Tuscaloosa unit, upon reevaluation we have determined that this unit is isolated from other occupied areas by an impoundment (Lake Tuscaloosa) and therefore lacks the connectivity to occupied stream reaches, which in the proposed rule was one of the criteria for determining that the area was essential for the conservation of the species. Similarly, the importance of the stream to the overall status of the species and

the contribution to the future recovery are also reduced due to this lack of habitat connectivity with occupied sites. While this unit still contains somewhat suitable habitat in the upper reaches and may play a role in the recovery of the species, we find that, because it does not provide habitat connectivity between occupied sites to allow for genetic exchange, it is not essential for the conservation of the species.

Regarding the Mulberry Fork unit, as with the other two units we have, upon reevaluation, determined that impounded areas at the confluence of occupied tributary streams prohibit natural recolonization of this unit. The lower reach of Mulberry Fork is impounded by Bankhead Lake as far upstream as the mouth of Blackwater Creek (Bailey 2000, p. 9). In a site assessment completed in March 2000, habitat was described as a sluggish, muddy, and impounded area at the confluence with Sipsey Fork (Bailey 2000, p. 10). While this unit does connect to the occupied Blackwater Creek unit, the large expanse of impounded water provides a barrier to the Black Warrior waterdogs expanding from the occupied unit into Mulberry Fork. Therefore, since the Mulberry Fork unit is isolated from other occupied areas by impounded areas of unsuitable habitat, it does not meet the connectivity criteria we considered in determining whether unoccupied areas are essential for the conservation of the species. The importance of the stream to the overall status of the species and the contribution to the future recovery are also reduced due to this lack of habitat connectivity with occupied sites. While this unit still contains somewhat suitable habitat in the upper reaches and may play a role in the recovery of the species, we find that it does not provide habitat connectivity between occupied sites to allow for genetic exchange and is not essential for the conservation of the species.

Although the proposed units Lake Tuscaloosa, Lost Creek, and Mulberry Fork may have some degree of suitable habitat in the upper reaches and may be able to support the reintroduction of Black Warrior waterdogs, in the proposed rule we incorrectly determined that these areas were essential for the conservation of the species, as noted in the public comments. However, we correctly identified these units as providing habitat for reintroduction and future recovery activities.

Therefore, we have determined that these four units are not essential for Black Warrior waterdog conservation and have not included these units in this final critical habitat designation. Although we no longer regard the unoccupied units (Lake Tuscaloosa, Lost Creek, or Mulberry Fork) as essential for the conservation of the species, we recognize that these areas may offer suitable habitat through restoration for the Black Warrior waterdog and may be useful for *ex situ* (offsite) conservation measures at a future time.

Summary of Changes From the Proposed Rule

We made the following significant changes to the rule based on peer review and public comments: We have removed four units from the final critical habitat designation—the Lye Branch, Lake Tuscaloosa, Lost Creek, and Mulberry Fork units.

Based on further analysis after taking into consideration information provided during the comment period, it was determined that the Lye Branch stream segment (16 kilometers (10 miles)) (set forth in the proposed rule as Unit 1) was not historically occupied by the Black Warrior waterdog but by another species of waterdog. Based on this information, we determined that the unit is outside the known historical range of the Black Warrior waterdog.

As described in our response to Comment 11, we have also removed the Lake Tuscaloosa unit, approximately 108 rkm (67 rmi) of stream and river habitat (set forth in the proposed rule as Unit 2), the Lost Creek unit, approximately 93 rkm (58 rmi) of stream and river habitat (set forth in the proposed rule as Unit 4), and the Mulberry Fork unit, approximately 183 rkm (114 rmi) of stream habitat (set forth in the proposed rule as Unit 6) from the final critical habitat designation because after further analysis we determined that those unoccupied areas were not essential for the conservation of the species and therefore did not fall within the definition of ''critical habitat.''

Summary of Biological Status

The Black Warrior waterdog is a large, aquatic, nocturnal salamander that permanently retains a larval form and external gills throughout its life (Conant and Collins 1998, pp. 419–420). Found only in streams within the Black Warrior River Basin (Basin) in Alabama, the waterdog inhabits streams above the Fall Line, which is the contact zone between the Coastal Plain and the adjacent Piedmont physiographic province. Due to their highly permeable skin (Duellman and Trueb 1986, p. 197) and external gills, Black Warrior waterdogs are very sensitive to declines in water quality.

Populations and Distribution

Historically, the waterdog was known from 11 sites, 2 of which have been lost due to impoundments. Since 1990 (current), the waterdog has been reported from 13 sites. These sites are in Blount (Blackburn Fork of the Little Warrior River), Marshall (Slab Creek, tributary to Locust Fork), Tuscaloosa (Yellow Creek, North River, Carroll Creek, Mulberry Fork), Walker (Lost Creek, Little Blackwater Creek), and Winston (Sipsey Fork, Blackwater Creek, Browns Creek, Brushy Creek, Capsey Creek) Counties, Alabama. Each of the 13 sites verified as a Black Warrior waterdog locality represents an individual population.

Information concerning the current status of Black Warrior waterdog populations is limited. Only the Sipsey Fork and Brushy Creek populations, in Bankhead National Forest (BNF), appear to be maintaining numbers sufficient enough to be captured regularly. At other sites surveyed since 1990, only one or two waterdogs have been captured. In Sipsey Fork, 52 waterdogs were captured over a 3-year period, representing 173,160 trap hours, a rate of 1 waterdog per 3,330 trap hours (Durflinger-Moreno *et al.* 2006, pp. 70–71). A high proportion of sexually mature individuals were captured during this period, suggesting that recruitment and survival rates of the young age classes may be low in Sipsey Fork (Durflinger-Moreno *et al.* 2006, p. 79). More recently, in surveys from 2012 to 2016 (Godwin 2016, entire), seven waterdogs were captured in Sipsey Fork (408 trap-nights; catch per unit effort (CPUE) = 0.017 waterdogs per trap-night) and four were captured in Brushy Creek (140 trap-nights; CPUE = 0.029). The density of Black Warrior waterdogs in Sipsey Fork and Brushy Creek in BNF, relative to the lower densities detected at other sites in the species' range, indicates the importance of this federally owned land for the species' recovery and long-term survival.

Because Black Warrior waterdogs are extremely difficult to detect in surveys, little is known regarding the species' demography. However, we may infer some of the characteristics of a healthy population based on capture data from the most the robust extant population (Durflinger-Moreno 2006, entire) in the Sipsey Fork drainage. We would expect a healthy population at a minimum to have an adult sex ratio close to 1:1. Additionally, a stable population would be expected to have larval, juvenile, and adult age classes present annually, as a measure of stable recruitment and reproduction rates. Species' abundance

data are lacking, but in 1938, during spring and fall, 135 specimens were collected at a single site in Mulberry Fork (Bart *et al.* 1997, p. 193). In comparison, 52 waterdogs were captured in Sipsey Fork over three years of sampling, in 1994, 1995 and 1997. Thus, based on these historic and current data, and given the Sipsey Fork population is likely depressed relative to historic populations, a recovered or conserved species could be estimated to have aggregations of at least 100 individuals per year, represented by all age classes, and at multiple sites within each currently occupied sub-basin in the Black Warrior river.

The captures of four waterdogs in Brushy Creek confirmed the accuracy of eDNA (environmental DNA, described below) previously detected in Brushy Creek water samples (de Souza *et al.* 2016, p. 8). In 2013 and 2014, eDNA samples indicated Black Warrior waterdogs may still present in Rush Creek (Brushy Creek tributary) and Locust Fork, and newly found in Gurley Creek (Locust Fork tributary) and Yellow Creek (Big Yellow Creek/Black Warrior River tributary), although no waterdogs were captured at the time (Godwin 2014, pers. comm.). Similarly, in 2016, a Black Warrior waterdog was captured in Yellow Creek, validating the results of the eDNA survey in that stream.

Detecting the presence of the Black Warrior waterdog is difficult, presumably because the species currently occurs only at low densities. The relationship between cumulative number of site visits and the cumulative number of sites containing waterdogs indicated that 200 additional surveys would be needed to discover a single new locality for the species (Guyer 1997, p. 4). This relationship is further supported by the findings of de Souza (2016, p. 10), which indicated that, at an occupied site, 10 and 32 eDNA replicate water samples in the cool season and warm season, respectively, would be necessary for 95 percent detection probability of the waterdog.

Only through the use of eDNA have we been able to determine that the waterdog is likely present at some historical locations. Researchers use eDNA as a surveillance tool to monitor for the genetic presence of an aquatic species. According to Strickler (2015, p. 1), ''. . . when an aquatic animal can't be seen or heard, it leaves traces of itself in the water by shedding skin, excreting waste, releasing gametes and decomposing. Investigators collect a water sample to detect the target species' DNA and determine whether the species has recently been in the water body.'' Positive eDNA detections indicate that the DNA of the targeted species was present in a water sample at the collection location but do not definitively tell us that the species is still present. Studies on decay rate of eDNA indicate it remains 2 to 3 weeks following release (Dejean *et al.* 2011), and, in using this guideline, we assume that the organismal source (Black Warrior waterdog) was present in the stream within the prior 2- to 3-week time window. Information that eDNA cannot provide is the abundance of the target species, whether the eDNA was derived from living or dead individuals, or if the population is viable.

To prevent incorrectly identifying presence of Black Warrior waterdog based on eDNA when a similar species was present, de Souza *et al.* (2016 p. 5 and S2) included DNA from similar *Necturus* species in analyses of the eDNA samples from the Black Warrior drainage. Part of the eDNA analyses included a primer search (primers are used to amplify DNA samples) that identified the primers that combined with Black Warrior waterdog DNA but not the DNA of non-target *Necturus* species (de Souza *et al.* 2016, S2). Non-target species (those to avoid misidentifying as Black Warrior waterdog) in the analyses were *N. lodingi,* an undescribed species in Gulf drainages from Mobile Bay eastward (Shelton-Nix, p. 200), mudpuppy, dwarf waterdog, and Gulf Coast waterdog. Among the non-target species only the Gulf Coast waterdog could potentially co-occur naturally at sites along the Fall Line, since its range extends from the Coastal Plain to the Fall Line, whereas the Black Warrior waterdog range extends from the Piedmont to the Fall Line. It is also possible that mudpuppies could co-occur as a result of introductions by human transport from the Tennessee River drainage, which lies just north of Black Warrior drainage divide. In summary, given the analytical design applied to the eDNA, it is unlikely any samples were from *Necturus* species other than Black Warrior waterdog.

Biology and Habitat

Black Warrior waterdogs are associated with stream depths of 1 to 4 meters (m) (3.3 to 13.1 feet (ft)), reduced sedimentation, and large leaf packs (leaves that fall into streams accumulate in packs usually behind branches, rocks, and other obstructions) supporting mayfly (Ephemeroptera spp.) and caddisfly (Trichoptera spp.) larvae.

Except for habitat affinities, life-history data concerning the Black Warrior waterdog and other species of *Necturus* waterdogs are somewhat limited. As closely related species in the same genus, there are general characteristics that all *Necturus* species share, such as retention of the larval state (*e.g.,* gills) as adults. As an example, although geographically separated (allopatric), the Black Warrior waterdog and the Neuse River waterdog both utilize high-gradient streams that are above the Fall Line and contain hard substrate, leafpacks, and macroinvertebrates. Because the two species likely evolved in similar habitats, an influential factor in determining life-history traits, we used the Neuse River waterdog as a surrogate to decipher some of the biological and ecological attributes that have not yet been determined for the Black Warrior waterdog. When such data were lacking for the Neuse River waterdog and Black Warrior waterdog, we relied on data from other *Necturus* species.

Summary of Factors Affecting the Species

The Act directs us to determine whether any species is an endangered species or a threatened species because of any one of five factors affecting its continued existence. In this section, we summarize the factors affecting the Black Warrior waterdog to assess the species' viability. For additional detail, see the proposed listing rule (81 FR 69500, October 6, 2016).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Water quality degradation is considered the primary reason for the extirpation of the Black Warrior waterdog over much of its historical range (Bailey 2000, pp. 19–20). Together with large impoundments (discussed below), it is the predominant threat to the continued existence of the species. Changes in water chemistry and flow patterns, resulting in a decrease in water quality and quantity, have detrimental effects on salamander ecology because they can render aquatic habitat unsuitable. Substrate modification is also a major concern for aquatic salamander species (Geismar 2005, p. 2; O'Donnell *et al.* 2006, p. 34). When interstitial spaces between substrates become compacted or filled with fine sediment, the amount of available foraging habitat and protective cover for salamanders is reduced, resulting in population declines. Most streams surveyed for the Black Warrior waterdog showed evidence of water quality degradation and were correspondingly biologically depauperate, lacking the full complement of species that would

be expected under natural, undisturbed habitat conditions (Bailey 1992, p. 2; Bailey 1995, p. 11; Durflinger-Moreno *et al.* 2006, p. 78).

Discharges

Contributors to water quality degradation in the Black Warrior Basin include point source (end of pipe) discharges and runoff from urban, mining, agricultural and, historically, forestry land uses (Deutsch *et al.* 1990, pp. 1–62; Upper Black Warrior Technical Task Force 1991, p. 1; O'Neil and Sheppard 2001, p. 2). These sources contribute pollution to the Basin via sediments, fertilizers, herbicides, pesticides, animal wastes, septic tank and gray water leakage, and oils and greases. Pollution has a direct effect on the survival of Black Warrior waterdogs, which, due to their highly permeable skin (Duellman and Trueb 1986, p. 197) and external gills, are very sensitive to declines in water quality.

Urbanization

Urbanization is a significant source of water quality degradation that can reduce the survival of aquatic organisms, including the Black warrior waterdog (Bowles *et al.* 2006, p. 119; Chippindale and Price 2005, pp. 196–197). Urban development can stress aquatic systems in a variety of ways, including increasing the frequency and magnitude of high flows in streams, increasing sedimentation, increasing contamination and toxicity, and changing stream morphology and water chemistry (Coles *et al.* 2012, pp. 1–3, 24, 38, 50–51). Sources and risks of an acute or catastrophic contamination event, such as a leak from an underground storage tank or a hazardous materials spill on a highway, increase as urbanization increases.

Several researchers have examined the negative impact of urbanization on stream salamander habitat, finding connections between salamander abundances and levels of development within a watershed. A study on the dusky salamander (*Desmognathus fuscus*) in Georgia (Orser and Shure 1972, p. 1,150) found a decrease in stream salamander density with increasing urban development. A similar relationship between populations and urbanization was found for dusky salamander, two-lined salamander (*Eurycea bislineata*), southern two-lined salamander (*E. cirrigera*), and other species in North Carolina (Price *et al.* 2006, pp. 437–439; Price *et al.* 2012a, p. 198), Maryland, and Virginia (Grant *et al.* 2009, pp. 1,372–1,375). Abundance of dusky and two-lined salamanders was most closely related to the amount and type of habitat within the entire watershed, as opposed to areas immediately adjacent to the stream (Willson and Dorcas 2003, pp. 768–770).

Large population centers such as the cities of Birmingham, Tuscaloosa, and Jasper contribute substantial runoff to the Black Warrior Basin. The watershed occupied by these three cities contains more industrial and residential land area than other river basins in Alabama. Streams draining these areas have a history of serious water quality problems, as described above. Entire species of fish, mussels, and snails (Mettee *et al.* 1989, pp. 14–16; Hartfield 1990, pp. 1–8), and populations of the flattened musk turtle (Service 1990, p. 3), have been extirpated from large areas of the watershed primarily due to water quality degradation.

Spills

Associated with urbanization is the development of transportation systems, including roads, rails, airports, locks, and docks. Accidents, crashes, and derailments, resulting in spills, occur along these transportation corridors. Since 1990, more than 1,200 spills in the Basin have been reported to the U.S. Coast Guard National Response Center. One of several spills in the Basin took place in the Black Warrior River in 2013. Approximately 164 gallons of crude oil were accidently pumped into the river. Emergency response teams cleaned the river, but a sheen of crude oil remained visible (Taylor 2013, entire). The threat from spills remains unchanged.

Forestry

Runoff from forestry operations and road construction has been a source of pollution in the Basin when certified BMPs were not followed to protect streamside management zones (Hartfield 1990, pp. 4–6; Service 2000, p. 13). Forestry activities that were poorly or inadequately managed in the past can have long-lasting effects in the high-gradient, highly erodible soils within the Basin, as seen by the legacy effects on Bankhead National Forest (Laschet 2014, pers. obs.). However, modern forestry operations in Alabama have a certified BMP compliance of 98 percent and, therefore, mostly are not currently significant contributors to nonpoint source pollution. According to Alabama's BMPs for forestry, SMZs should be a width of 35 ft (50 ft for sensitive areas) from the stream bank, providing a level of protection to instream habitat. Recently, the forest industry has begun to self-regulate SMZs through a third-party certification program in which mills will not accept timber from foresters who do not comply with SMZ requirements.

Surface Coal Mining

Surface coal mining represents another threat to the biological integrity of streams in the Basin and has undoubtedly affected the distribution of the Black Warrior waterdog (Bailey 1995, p. 10). Strip mining for coal results in hydrologic disturbance (*i.e.,* erosion, sedimentation, decline in groundwater levels, and general degradation of water quality) that affects many aquatic organisms (Service 2000, p. 12). Runoff from coal surface mining can generate pollution through acidification, increased mineralization, and sediment loading. Impacts are more often associated with past activities and abandoned mines, since presently operating mines are required to employ environmental safeguards established by the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) and the Clean Water Act of 1972 (33 U.S.C. 1251 *et seq.*) (Service 2000, p. 12).

Coal mining in the Basin is currently a threat to the Black Warrior waterdog. Abandoned mines that have been inadequately reclaimed will continue to contribute pollutants to streams into the future. Recently, new coal mines, which have the potential to discharge additional pollutants into the waters in the range of the Black Warrior waterdog, have been proposed in Sipsey Fork and Mulberry Fork (Dillard 2011, pers. comm.; Alabama Surface Mining Commission 2012, pp. 1–4).

Impoundments

In addition to water quality degradation, creation of large impoundments has reduced suitable habitat within the Basin. Two historical populations of the Black Warrior waterdog, Black Warrior River near Tuscaloosa and Mulberry Fork at Cordova, have been lost due to impoundments. Impoundments behind Bankhead, Lewis, and Holt dams have flooded thousands of hectares (acres) of habitat previously considered suitable for the Black Warrior waterdog. The entire main channel of the Black Warrior River, over 272 kilometers (km) (170 miles (mi)), has been affected by impoundments (Hartfield 1990, p. 7), which do not have the shallow, flowing water associated with the waterdog. As a result, impoundments generally are unsuitable habitat for the species, although on one occasion two waterdogs were found in the upper end of Lewis Smith Reservoir (U.S. Forest Service record, in Godwin 2016, p. 5) where

Sipsey Fork enters and stream habitat transitions to lake habitat. The abundance of large predatory fish in impoundments further renders them unsuitable for the Black Warrior waterdog.

Historically, Brushy Creek was a tributary of Sipsey Fork. Construction of Lewis Smith Reservoir separated the flowing connection between Brushy Creek and Sipsey Fork, essentially splitting the single BNF population in two isolated halves. Impoundments have been entrapments for waterdogs, isolating and inhibiting genetic exchange between populations in tributaries no longer connected by suitable flowing habitat.

Summary of Factor A

The Black Warrior waterdog has experienced substantial destruction, modification, and curtailment of its habitat and range. Specific species stressors include degradation of water quality and habitat from point source discharges and runoff, urbanization, legacy effects of poor forest management, surface coal mining, agriculture, and the construction of dams and their impoundments, together affecting hundreds of stream miles in the species' range. The amount of habitat already lost amplifies the current and future threat from point and nonpoint source pollution, accidental spills, and violation of permitted discharges. Due to a reduction of suitable habitat available for the species and the severity and magnitude of this stressor, we consider the present or threatened destruction, modification, or curtailment of habitat and range a threat to the Black Warrior waterdog. While changes to land management and river operations have reduced impacts to the river system, ongoing activities continue to affect water quality.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Based on best available data, there is no evidence that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the Black Warrior waterdog.

Factor C. Disease or Predation

No diseases or incidences of predation have been reported for the Black Warrior waterdog. Also, there is no evidence of predation on *Necturus* species by fish in creeks and streams as reported by Bart and Holzenthal (1985, p. 406). Predation of adult mudpuppy (*N. maculosus*) by fish, crayfish, turtles and watersnakes has been observed rarely (Petranka 1998, p. 429), and is almost certainly an occurrence for Black Warrior waterdogs as well. A study of dwarf waterdog (*N. punctatus*) feeding behavior in the presence of predators indicated movement of the species to leaf pack habitat was driven by food availability rather than predator avoidance (Sollenberger 2013, entire). Given the very infrequent observations of predation on waterdogs and no reports of deleterious effects of predation on *Necturus* species, we do not consider predation to be an important factor influencing Black Warrior waterdog populations. Therefore, the best available data do not indicate that disease or predation is a threat to the Black Warrior waterdog in its preferred habitat outside of impounded areas, which harbor greater densities of larger fish predators and are more open than stream habitats, providing less cover for avoiding potential predators such as birds.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the Black Warrior waterdog discussed under other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species.'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws and regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

The Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended December 22, 1987, requires all permitted mining operations to minimize disturbances and adverse impacts to fish, wildlife, and related environmental values, as well as implement enhancement measures where practicable. It further recognizes the importance of land and water resources restoration as a high priority in reclamation planning. However, the continued decline of many species, including the flattened musk turtle, fishes, and a number of mussels in the Black Warrior Basin, is often attributed to mining activities (Dodd *et al.* 1988, pp. 55–61; Mettee *et al.* 1989, pp. 12–13; Hartfield 1990, pp. 1–8; Bailey and Guyer 1998, pp. 77–83; Service 2000, pp. 12–13), even though SMCRA is in effect.

The Alabama Department of Conservation and Natural Resources (ADCNR) recently added the Black Warrior waterdog to its list of non-game State-protected species (ADCNR 2012, pp. 1–4). Although this change will make it more difficult to obtain a collecting permit for the species, it does not offer any additional protection for habitat loss and degradation. The ADCNR also recognizes the Black Warrior waterdog as a Priority 2 species of high conservation concern in its State Wildlife Action Plan due to its rarity and restricted distribution (ADCNR 2005, p. 298). However, this designation also does not offer any regulatory protections.

Alabama Department of Environmental Management (ADEM) has established minimum water-quality standards for some occupied stream segments within the Black Warrior River drainage under the authority of the Clean Water Act of 1972. These standards are believed to be protective of aquatic species. In Locust Fork, Mulberry Fork, and other tributaries of the Black Warrior River occupied by the Black Warrior waterdog, a combined total of 275 km (171 mi) have been identified on the Alabama 303(d) List (a list of water bodies failing to meet their designated water-use classifications) as impaired by siltation and nutrients (ADEM 2010, pp. 1–3). The sources of these impairments have been identified as runoff from agricultural fields, abandoned surface mines, and industrial or municipal sites. Multiple stream reaches within the occupied habitat of the Black Warrior waterdog (Locust Fork, Mulberry Fork, Yellow Creek, and North River) fail to meet current regulatory standards. Even with current regulations, surviving waterdog populations are negatively affected by discharges, highway construction, mining (current and unreclaimed sites), and other activities with a Federal nexus (see discussion under *Factor A,* above).

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Demographic Factors

The remaining Black Warrior waterdog populations are isolated from each other by unsuitable habitat created by impoundments, pollution, and other

factors as described under the *Factor A* discussion, above. Waterdog population densities are low even in the relatively best localities, and factors related to low population compound these threats.

Species that are restricted in range and population size are more likely to suffer loss of genetic diversity due to genetic drift, potentially increasing their susceptibility to inbreeding depression, decreasing their ability to adapt to environmental changes, and reducing the fitness of individuals (Soule 1980, pp. 157–158; Hunter 2002, pp. 97–101; Allendorf and Luikart 2007, pp. 117–146). These low population densities combined with fragmentation of habitat renders populations extremely vulnerable to inbreeding depression (negative genetic effects of small populations, *e.g.,* Wright *et al.* 2008, p. 833) and may reduce mating to a frequency insufficient to sustain populations with newly recruited cohorts. Additionally, low population densities reduce species' resiliency to catastrophic events such as floods, droughts, or chemical spills (Black Warrior River Watershed Management Plan n.d., p. 4.4), which may be compounded by the effects of climate change in the future (see discussion below). It is likely that some of the Black Warrior waterdog populations are below the effective population size required to maintain long-term genetic and population viability. The long-term viability of a species is based on the conservation of numerous populations throughout its geographic range (Harris 1984, pp. 93–104), which provides a level of redundancy that reduces the risk of environmental change to the species as a whole (Shaffer and Stein 2000, p. 310). The level of isolation and fragmentation of Black Warrior waterdog populations makes natural repopulation following localized extirpations virtually impossible without human intervention.

Climate Change

Climate change has the potential to increase vulnerability of the Black Warrior waterdog to random catastrophic events. Various emissions scenarios suggest that, by the end of the 21st century, average global temperatures are expected to increase 0.3 °C to 4.8 °C (0.5 °F to 8.6 °F), relative to the period 1986–2005 (IPCC 2013, p. 15). By the end of 2100, it is virtually certain that there will be more frequent hot and fewer cold temperature extremes over most land areas on daily and seasonal timescales, and it is very likely that heat waves and extreme precipitation events will occur with a higher frequency and intensity (IPCC 2013, pp. 15–16). In the southeastern United States the frequency, duration, and intensity of droughts are likely to increase (Thomas *et al.* 2009, p. 112). Droughts cause decreases in water flow and dissolved oxygen levels and increases in temperature in the river system. Studies of aquatic salamanders have reported decreased occupancy, loss of eggs, decreased egg-laying, and extirpation from sites during periods of drought (Camp *et al.* 2000, p. 166; Miller *et al.* 2007, pp. 82–83; Price *et al.* 2012b, pp. 317–319).

Determination of Status

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for determining whether a species is an endangered species or threatened species and should be included on the Federal Lists of Endangered and Threatened Wildlife and Plants (*i.e.,* ''listed''). Under section 4(a)(1) of the Act, we may list a species based on (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. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

Determination of Status Throughout All of the Species' Range

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to the Black Warrior waterdog. Two populations have been extirpated due to construction of dams that eliminated habitat on the Black Warrior River (Factor A). Current threats to the species include habitat destruction and degradation from point source pollution, runoff, and contaminant spills from industry, urbanization, surface coal mining, agriculture, and legacy effects of past forestry practices (Factor A). The small size and level of fragmentation of remaining Black Warrior waterdog populations leaves the species vulnerable to inbreeding depression and reduced genetic fitness, natural stochastic events, including storms and droughts (Factor E). Existing regulatory mechanisms have not led to a reduction or removal of threats impacting the Black Warrior waterdog (Factor D). These ongoing threats to the species are rangewide and expected to continue in the future.

The Black Warrior waterdog is currently in danger of extinction throughout its entire range due to the immediacy and severity of threats currently impacting the species. The risk of extinction is high because there are few (13) extant populations and the majority of the populations are small and isolated. Several of these populations are likely below the effective size needed to remain viable without human intervention, owing to barriers to natural immigration. Therefore, on the basis of the best available scientific and commercial information, we list the Black Warrior waterdog as an endangered species. We find that a threatened species status is not appropriate for this species due to a reduction of suitable habitat available for the species and the severity of the stressors that are imminent and occurring rangewide, are ongoing, and are expected to continue into the future, such that the species is in immediate danger of extinction. Additionally, only two waterdog populations appear to be maintaining numbers sufficiently large to be captured regularly. At the remaining sites surveyed since 1990, only one or two waterdogs have been captured, which speaks to the current poor status of the species. Because of the contracted range and small population size of Black Warrior waterdog and because the threats are occurring rangewide, are ongoing, and are expected to continue into the future, we conclude that the species is in immediate danger of extinction.

Determination of Status in a Significant Portion of the Range

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.'' The phrase ''significant portion of its range'' is not defined by the Act, and a district court has held that aspects of the Service's Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species and ''Threatened Species'' (79 FR 37577 (July 1, 2014)) (SPR Policy) were not valid. *Center for Biological Diversity* v. *Jewel,* No. 14–cv–02506–RM (D. Ariz. Mar. 29, 2017) (Pygmy-Owl Decision).

Although the court's order in that case has not yet gone into effect, if the court denies the pending motion for reconsideration, the SPR Policy would become vacated. Therefore, we have examined the plain language of the Act

and court decisions addressing the Service's application of the SPR phrase in various listing decisions, and for purposes of this rulemaking we are applying the interpretation set out below for the phrase ''significant portion of its range'' and its context in determining whether or not a species is an endangered species or a threatened species. Because the interpretation we are applying is consistent with the SPR Policy, we summarize herein the bases for our interpretation, and also refer the public to the SPR Policy itself for a more-detailed explanation of our reasons for interpreting the phrase in this way.

An important factor that influences the question of whether an SPR analysis is necessary here is what the consequence would be if the Service were to find that the Black Warrior waterdog is in danger of extinction or likely to become so throughout a significant portion of its range. Two district court decisions have evaluated whether the outcomes of the Service's SPR determinations were reasonable. As described in the SPR Policy, both courts found that, once the Service determines that a ''species''—which can include a species, subspecies, or DPS under ESA Section 3(16)—meets the definition of ''endangered species'' or ''threatened species,'' the species must be listed in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act). See *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207, 1222 (D. Mont. 2010) (delisting of the Northern Rocky Mountains DPS of gray wolf; appeal dismissed as moot because of public law vacating the listing, 2012 U.S. App. LEXIS 26769 (9th Cir. Nov. 7, 2012)); *WildEarth Guardians* v. *Salazar,* No. 09–00574–PHX–FJM, 2010 U.S. Dist. LEXIS 105253, 15–16 (D. Ariz. Sept. 30, 2010) (Gunnison's prairie dog). The issue has not been addressed by a Federal Court of Appeals.

Consistent with the district court case law, we interpret that the consequence of finding that the Black Warrior waterdog is in danger of extinction or likely to become so throughout a significant portion of its range would be that the entire species would be listed as an endangered species or threatened species, respectively, and the Act's protections would be applied to all individuals of the species wherever found. Thus, the ''throughout all'' phrase and the SPR phrase provide two independent bases for listing. We note that in the Act Congress placed the ''all'' language before the SPR phrase in the definitions of ''endangered species'' and ''threatened species.'' This suggests that Congress intended that an analysis based on consideration of the entire range should receive primary focus. Thus, the first step we undertook, above, in our assessment of the status of the species was to determine its status throughout all of its range. Having determined that the species is in danger of extinction throughout all of its range, we now examine whether it is necessary to determine its status throughout a significant portion of its range.

We conclude that in this situation we do not need to conduct an SPR analysis. This conclusion is consistent with the Act because the species is currently in danger of extinction throughout all of its range due either to high-magnitude threats across its range, or to threats that are so high in particular areas that they severely affect the species across its range. Therefore, the species is in danger of extinction throughout every portion of its range, and an analysis of whether the species is in danger of extinction or likely to become so throughout any significant portion of its range would be redundant and unnecessary. In addition, because the phrase ''significant portion of its range'' (SPR) could provide a second and independent basis for listing the Black Warrior waterdog in its entirety, an SPR analysis could would be either unnecessary or confusing. An SPR analysis could lead to a conclusion that, in addition to being an ''endangered species'' because of its status throughout all of its range, the Black Warrior waterdog is also an ''endangered species'' or ''threatened species'' because of its status throughout a significant portion of its range. The former clearly would be an unnecessary finding, because we have already determined that the species is an ''endangered species'' because of its status throughout all of its range. The latter would create confusion because it could lead to a conclusion that the species warrants listing both as an endangered species (because of its status throughout all of its range) and as a threatened species (because of its status in the SPR). We accordingly conclude that we do not need to conduct further analysis of whether the Black Warrior waterdog is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing actions results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline, shortly after a species is listed, and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting or delisting, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our Alabama Ecological Services Field Office (see **ADDRESSES**).

Implementation of recovery actions generally requires the participation of a

broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Alabama would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Black Warrior waterdog. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the Black Warrior waterdog. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within Black Warrior waterdog habitat that may require consultation as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Service, U.S. Forest Service, and Bureau of Land Management; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; construction and maintenance of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; construction and maintenance of roads or highways by the Federal Highway Administration; land management practices supported by programs administered by the U.S. Department of Agriculture; Environmental Protection Agency pesticide registration; and projects funded through Federal loan programs which include, but are not limited to, roads and bridges, utilities, recreation sites, and other forms of development.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to endangered wildlife, a permit may be issued for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Normal agricultural practices, silvicultural practices, and transmission line ROW maintenance, including herbicide and pesticide use, which are carried out in accordance with any existing regulations, permit, and label requirements, and certified best management practices; and

(2) Normal residential development and landscape activities, which are carried out in accordance with any existing regulations, permit requirements, and best management practices.

Based on the best available information, the following activities may potentially result in a violation of section 9 the Act; this list is not comprehensive:

(1) Unauthorized introduction of nonnative species that compete with or prey upon the Black Warrior waterdog;

(2) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of this taxa, as defined by section 10(h)(1) of the Act;

(3) Unauthorized destruction or alteration of Black Warrior waterdog habitat that results in destruction or loss of leaf packs and rocky substrate (rock crevices in the creek or stream);

(4) Unauthorized discharge of chemicals or fill material into any waters in which the Black Warrior waterdog is known to occur; and

(5) Actions, intentional or otherwise, that would result in the destruction of eggs or cause mortality or injury to hatchling, juvenile, or adult Black Warrior waterdogs.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define ''geographical area occupied by the species'' as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the specific features that support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we may designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific and commercial data available. They require our staff, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. However, additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to

designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. For example, physical features might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

We derive the specific physical or biological features essential for Black Warrior waterdog from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the proposed listing (81 FR 69500) and critical habitat rule (81 FR 69475), both published in the **Federal Register** on October 6, 2016. We have determined that the following physical or biological features are essential for Black Warrior waterdog.

Space for Individual and Population Growth and for Normal Behavior

The Black Warrior waterdog is found in the Black Warrior Basin above the Fall Line, characterized by rocky habitat with little sand. According to Mount (1981, p. 23), optimal habitat for the flattened musk turtle, a species listed as threatened under the Act (52 FR 22418; June 11, 1987) that has the same range as the waterdog, consists of a ''segment of a free flowing large creek or small river having the following characteristics: (1) Drainage area between 50 and 500 square miles, (2) depth averaging two feet, with vegetated shallows alternating with pools at least three to four feet deep, (3) pools with detectable current, (4) abundance of submerged rocks with crevices, overlapping flat rocks, or accumulations of boulders, (5) abundant molluscan fauna, (6) low silt load and minimal silt deposits, (7) relatively low nutrient content and bacterial count, (8) moderate temperatures (maximum 85 °F), and (9) minimal pollution by synthetic chemicals and toxic inorganic materials.'' Since the Black Warrior waterdog and the flattened musk turtle occupy the same range and similar habitats, this description of optimal habitat is applicable to both species with the difference that the Black Warrior waterdog finds refuge under boulders or rocks and in crevices, lays its eggs on the underside of boulders, and uses deposited leaf packs (Bailey and Guyer 2004, pp. 36–37; Durflinger-Moreno *et al.* 2006, pp. 69, 76, 78) on the streambed, likely for foraging on aquatic insect larvae and for sheltering.

Necturus species in general have similar feeding habits, reproductive strategies, and physical characteristics. For example, although geographically separated (allopatric), the Black Warrior waterdog and the Neuse River waterdog both utilize high-gradient streams that are above the Fall Line and contain hard substrate, leafpacks, and macroinvertebrates. Because the two species likely evolved in similar habitats, an influential factor in determining life-history traits, we used the Neuse River waterdog as a surrogate to determine some of the biological and ecological attributes that have not yet been determined for the Black Warrior waterdog. When such data were lacking for the Neuse River waterdog and Black Warrior waterdog, we relied on data from other *Necturus* species. Furthermore, as discussed above, because the flattened musk turtle has an identical range to the Black Warrior waterdog, we relied on the turtle's known habitat affinities to identify some of the habitat features important to the Black Warrior waterdog.

The tributaries of the Neuse River have gradients similar to the tributaries of the Black Warrior River Basin. According to Ashton (1985, pp. 103–104), adult and juvenile Neuse River waterdogs use habitats characterized by moderate stream flow and relatively high dissolved oxygen concentrations, which is consistent with other *Necturus* species found in southern States. Studies of the Neuse River waterdog indicate that adult waterdogs use areas with large bedrock outcrops, large boulders with sandy-gravel bottoms, and stream banks with rock outcroppings.

The Black Warrior waterdog needs geomorphically stable streams with substrate consisting of clay or bedrock with little sand, and containing abundant rock crevices, rock slabs, and leaf packs. The connectivity of these stream habitats is also essential in accommodating growth and other normal behaviors of the Black Warrior waterdog and in promoting gene flow within the species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Food—Feeding habits of the Black Warrior waterdog are likely similar to the feeding habits of Neuse River waterdog, since both species are found in similar microhabitats. Both adult and juvenile Neuse River waterdogs appear to be opportunistic feeders. Braswell and Ashton (1985 pp. 22–27) found that larval waterdog diets consist primarily of a variety of aquatic arthropods (orders *Ostracoda, Copepoda, Isopoda,* and *Amphipoda*) with some insect larvae (orders *Odonata, Ephemeroptera, Plecoptera, Trichoptera, Diptera,* and *Coleoptera*). Black Warrior waterdogs have been found in close association with mayfly (Ephemeroptera) and caddisfly (Tricoptera) larvae (Durflinger-Moreno *et al.* 2006). Adult Neuse River waterdog diet was more expansive than the juvenile diet and included aquatic arthropods, other aquatic and terrestrial invertebrates (earthworms, centipedes, beetles, grubs), and aquatic and terrestrial vertebrates (fish and salamanders) (Braswell and Ashton 1985, pp. 13, 24–25).

Since aquatic invertebrates are an important component of the Black Warrior waterdog's diet, it is essential to also take into consideration specific habitat requirements of these prey. Merrit and Cummins (1996) described caddisfly and mayfly habitat as a wide variety of standing and flowing water habitats, with the greatest diversity being found in rocky-bottom streams with an abundance of oxygen. As a result, they further identify the food sources for these aquatic insects as a variety of detritus (leaf packs), algae, diatoms, and macrophytes.

Water—As little is known about the specific water quality needs of the Black Warrior waterdog, we evaluated and based the water quality parameters on various factors, specifically Mount's (1983) description of optimal habitat, Neuse River waterdog literature, prey species requirements (insect larvae),

Alabama Department of Environmental Management (ADEM) water quality standards, and water quality requirements for currently listed aquatic species found in the Basin, as follows: rush darter (*Etheostoma phytophilum*), Alabama moccasinshell (*Medionidus acutissimus*), dark pigtoe (*Pleurobema furvum*), orangenacre mucket (*Lampsilis perovalis*), ovate clubshell (*Pleurobema perovatum*), triangular kidneyshell (*Ptychobranchus greenii*), upland combshell (*Epioblasma metastriata*), and southern acornshell (*Epioblasma othcaloogensis*).

Appropriate water quality parameters to support the Black Warrior waterdog's primary prey base and other listed species in the Basin include:

- Water that lacks harmful levels of pollutants, including inorganic contaminants such as copper, arsenic, mercury, and cadmium; organic contaminants such as human and animal waste products; endocrine-disrupting chemicals; pesticides; nitrogen, potassium, and phosphorus fertilizers; and petroleum distillates (ADEM 2014, pp. 12–15);
- Water temperature not exceeding 85 °F;
- Dissolved oxygen 5.5 milligrams per liter (mg/L) or greater;
- Turbidity of an average monthly reading of 15 nephelometric turbidity units (NTUs; units to measure sediment discharge) above background readings;
- 115 mg/L of total suspended solids (measured as mg/L of sediment in water) or less; and
- A specific conductance (ability of water to conduct an electrical current, based on dissolved solids in the water) of no greater than 225 microsiemens (µS) per centimeter at 80 °F (October 10, 2012; 77 FR 61664).

The Black Warrior waterdog has similar hydrologic requirements as those of the Neuse River waterdog, which are usually found in streams greater than 15 meters (m) (50 feet (ft)) wide and deeper than 100 centimeters (cm) (3 ft) and are not found in streams where water flow ceases under normal summer dry weather conditions (Braswell and Aston 1985, pp. 26–30). However, based on eDNA detections, the Black Warrior waterdog could be using streams as narrow as 4 m (13 ft) wide (Godwin 2014, pers. comm.). In regard to instream flow, the Black Warrior waterdog benefits from moderate stream velocity and continuous daily discharge that allows for longitudinal connectivity (the pathway along the entire length of a stream).

The quality of the chemical and physical environment of the streams in the upper Black Warrior River Basin is essential to the survival of the Black Warrior waterdog. Optimal water quality lacks harmful levels of pollutants, including inorganic contaminants such as copper, arsenic, mercury, and cadmium; organic contaminants such as human and animal waste products; endocrine-disrupting chemicals; pesticides; nitrogen, potassium, and phosphorus fertilizers; and petroleum distillates (ADEM 2014, pp. 13–15). A decrease in water quality and instream flow would cause a decline in the major food species for the Black Warrior waterdog.

Natural variations of instream flows maintain the stream bottom substrates, providing oxygen and other attributes to various invertebrate life stages. Sedimentation contributes to turbidity of the water and has been shown to reduce photosynthesis in aquatic plants, suffocate aquatic insects, smother aquatic eggs, clog gills, and fill in essential interstitial spaces used by aquatic organisms for spawning and foraging. Sedimentation has been shown to wear away and suffocate periphyton (organisms that live attached to objects underwater) and disrupt aquatic insect communities (Waters 1995, pp. 53–86; Knight and Welch 2004, pp. 132–135).

Cover or Shelter

Suitable substrates for the Black Warrior waterdog are dominated by clay or bedrock with little sand, and also contain abundant rock crevices and rock slabs for retreats (shelter) and areas for egg laying. Based on capture data, the Black Warrior waterdog utilizes leaf pack for shelter from predators and as foraging areas for prey species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Little is known about the specific requirements of Black Warrior waterdog's reproduction. Based on Neuse River waterdog research, breeding sites are large bedrock outcrops or large boulders with sand and gravel beneath them (Ashton 1985, p. 95). Data collected from the Cincinnati Zoo (unpublished) indicate that the Black Warrior waterdog has similar tendencies of depositing eggs under rock slabs or in rock crevices, and the female guarding the eggs. Juvenile Black Warrior waterdogs are often found in leaf packs in the stream.

Sedimentation can be destructive to Black Warrior waterdogs and their habitat when it contains toxicants and is excessive. Bailey (2000, p. 2) reported that Black Warrior waterdogs are virtually in constant contact with the substrate and; therefore, also with any toxic chemicals present. He also reported that juveniles and adults are impacted by the exposure. Further, excessive sedimentation of the crevices and leaf packs removes foraging, feeding, breeding, and retreat areas for the Black Warrior waterdog (Laschet 2014, pers. obs.).

Habitats Protected From Disturbance or Representative of the Historical Geographical and Ecological Distributions of the Species

Currently, there are no areas that are undisturbed or that are representative of the historical geographical and ecological distribution of the species that the Black Warrior waterdog typically inhabits. The Bankhead National Forest is an area that can reveal a glimpse of representative historical geographical and ecological features of the species' habitat and is currently considered the stronghold of the species. Streams in this area typically are geomorphically stable with substrate consisting of clay or bedrock with little sand, and containing abundant rock crevices and rock slabs. These streams also contain cool, clean, flowing water having a dissolved oxygen level of 5.5 mg/L or higher; moderate water velocity; aquatic macroinvertabrate prey items; leaf packs; and adequate water quality (ADEM 2010, pp. 1–3).

In summary, based on the information described above, we have determined that the following physical or biological features are essential to the conservation of the Black Warrior waterdog.

(1) Geomorphically stable, medium to large streams (typically 4 m (13 ft) wide or greater) with:

(a) Substrate consisting of clay or bedrock with little sand, and containing abundant rock crevices, rock slabs, and leaf packs;

(b) Moderate water velocity; and

(c) Prey base of aquatic macroinvertebrates.

(2) Water that lacks harmful levels of pollutants, including inorganic contaminants such as copper, arsenic, mercury, and cadmium; organic contaminants such as human and animal waste products; endocrine-disrupting chemicals; pesticides; nitrogen, potassium, and phosphorus fertilizers; and petroleum distillates.

(3) Appropriate water quality parameters to support Black Warrior waterdog and primary prey base, including:

(a) Water temperature not exceeding 85 °F;

(b) Dissolved oxygen 5.5 mg/L or greater;

(c) Turbidity of an average monthly reading of 15 NTUs above background readings;

(d) 115 mg/L of total suspended solids or less; and

(e) A specific conductance of no greater than 225 μS per centimeter at 80 °F.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection.

The features essential to the conservation of the Black Warrior waterdog may require special management considerations or protections to reduce the following threats: (1) Urbanization activities and inadequate stormwater management (such as stream channel modification for flood control or gravel extraction) that could cause an increase in bank erosion; (2) significant changes in the existing flow regime within the streams due to water diversion or withdrawal; (3) significant alteration of water quality; (4) significant alteration in quantity of groundwater, prevention of water percolating into the aquifer recharge zone, and alteration of spring discharge sites; (5) significant changes in stream bed material composition and quality due to changes in stream flow characteristics, construction projects, and maintenance activities; (6) off-road vehicle use; (7) sewer, gas, and water easements; (8) bridge construction; (9) culvert and pipe installation; and (10) other watershed and floodplain disturbances that release sediments or nutrients into the water.

Management activities that could ameliorate these threats include, but are not limited to: Use of certified BMPs designed to reduce sedimentation, erosion, and bank side destruction; select harvest of trees along banks, and leaving 50 percent canopy cover (of deciduous trees) along banks; moderation of surface and ground water withdrawals to maintain natural flow regimes; increased use of stormwater management and reduction of stormwater flows into the systems; preservation of headwater springs and spring runs; regulation of off-road vehicle use; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

These management activities could protect the physical or biological features essential for the conservation of the species by eliminating, or reducing to negligible levels, the threats affecting the physical and biological features of each unit. The major threats to the Black Warrior waterdog habitat are sedimentation, water quality degradation (increased nutrients, turbidity, and toxins), and fragmentation from impoundments.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b) we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are designating critical habitat in areas within the geographical area occupied by the Black Warrior waterdog at the time of listing in 2017. We are not designating any areas outside the geographic area occupied by the species because we did not find any areas that were essential for the conservation of the species (see explanation under response to comment 11, above).

For the purpose of designating critical habitat for the Black Warrior waterdog, we defined the geographical area currently occupied by the species. We used information from surveys and reports prepared by the Alabama Department of Conservation and Natural Resources, Alabama Geological Survey, Alabama Natural Heritage Program, Auburn University, Alabama Power Company, U.S. Forest Service, Natural Resources Conservation Service, and Service to identify the specific locations occupied by the Black Warrior waterdog. Currently, occupied habitat for the species is isolated and limited to four units. Within these four units, the species is located within seven tributaries in the Black Warrior River Basin. Three of the tributaries are on Bankhead National Forest (Winston County) and include Sipsey Fork, Brushy Creek, and Rush Creek. The other four tributaries are Locust Fork; Gurley Creek, which feeds into Locust Fork (Blount and Jefferson Counties); Blackwater/Browns Creek in Winston County; and Yellow Creek in Tuscaloosa County (Godwin 2014, entire). We have determined that these four units (which include all seven tributaries)—Sipsey Fork, Locust Fork, Blackwater Creek, and Yellow Creek—meet the criteria for designation as critical habitat. As discussed below, some of these units contain all of the identified elements of physical or biological features and support multiple life-history processes. Some units contain only some elements of the physical or biological features necessary to support the Black Warrior waterdog's particular use of that habitat.

Mapping Black Warrior Waterdog Critical Habitat

In identifying critical habitat units for the Black Warrior waterdog, we proceeded through a multi-step process. We obtained and reviewed historical records for the Black Warrior waterdog's distribution from Bankhead National Forest and Alabama Natural Heritage Program, as well as both published and unpublished documentation from our files. Once the historical range was determined, we looked at whether the physical and biological features were present at these historical sites. Then, we reviewed surveys conducted over the last 8 years, including surveys currently being undertaken. We conducted species present-or-absent surveys of known and historical sites and sampled and observed the habitat. Since the Black Warrior waterdog is difficult to detect and capture, we contracted with Alabama Natural Heritage Program and Auburn University to conduct sampling surveys including the use of eDNA. With the survey results, we confirmed the Black Warrior waterdog's distribution in the Black Warrior River Basin. We determined occupied areas with data collected from surveys conducted over the last 8 years to present. We considered areas that do not have recent capture or sighting data to be unoccupied by the species.

Our approach to delineating critical habitat units was applied in the following manner:

(1) We overlaid Black Warrior waterdog locations into a GIS database. This provided us with the ability to examine slope, elevation, geologic type, hydrologic factors, vegetation community, and topographic features. These data points verified the previously recorded elevation ranges for Black Warrior waterdog.

(2) In addition to the GIS layers listed above, we then excluded impoundments and dams as barriers for the species, as described in *Physical or Biological Features,* above.

(3) We then drew critical habitat boundaries that captured the locations as discussed above. The final critical habitat designation was then mapped using Projected Coordinate System,

NAD 1983 UTM Zone 16N with a Projection of Transverse Mercator.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Black Warrior waterdog. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are designating as critical habitat streams that we have determined are occupied at the time of listing and contain physical or biological features to support life-history processes essential to the conservation of the species.

Four units were designated based on one or more of the elements of physical or biological features being present to support the Black Warrior waterdog's life processes. Some units contained all of the identified elements of physical or biological features and supported multiple life processes. Some units contained only some elements of the physical or biological features necessary to support the Black Warrior waterdog's particular use of that habitat.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2016–0031, on the Service's website at *http://www.fws.gov/daphne/*, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Final Critical Habitat Designation

We are designating approximately 673 river kilometers (420 river miles) in five units as critical habitat for the Black Warrior waterdog. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Black Warrior waterdog.

All of the areas designated as critical habitat for the Black Warrior waterdog include stream and river channels within the normal high water line.

Table 1 shows the occupancy status of each unit and units that overlap with existing critical habitat units for other federally listed species.

TABLE 1—BLACK WARRIOR WATERDOG CRITICAL HABITAT UNITS AND EXISTING OVERLAPPING CRITICAL HABITAT DESIGNATION FOR FEDERALLY LISTED SPECIES

Unit	Location	Private ownership rkm/rmi	Federal ownership rkm/rmi	Existing critical habitat rkm/rmi	Total length rkm/rmi
1	Yellow Creek	30/19			30/19
2	Locust Fork	391/243		* 101/63	391/243
3	Blackwater Creek	128/80			128/80
4	Sipsey Fork	11/7	113/71	** 103/64	124/78
Totals		560/349	113/71	204/127	673/420

* Alabama moccasinshell *(Medionidus acutissimus),* dark pigtoe *(Pleurobema furvum),* orangenacre mucket *(Lampsilis perovalis),* ovate clubshell *(Pleurobema perovatum),* upland combshell *(Epioblasma metastriata),* triangular kidneyshell *(Ptychobranchus greenii).*

** Alabama moccasinshell, dark pigtoe, orangenacre mucket, ovate clubshell, southern acornshell *(Epioblasma othcaloogensis),* triangular kidneyshell.

We present brief descriptions of all the units, and reasons why they meet the definition of critical habitat for the Black Warrior waterdog, below. All units are within private ownership, except Unit 4, which also includes Federal ownership.

Unit 1: Yellow Creek, Tuscaloosa County, Alabama

Unit 1 includes 30 rkm (19 rmi) of stream and river habitat. The unit consists of the headwaters of Yellow Creek to Holt Lake. This area is within the geographical area occupied at the time of listing (*i.e.,* currently occupied). Godwin (2016, pers. comm.) reported a capture of a Black Warrior waterdog in this area. This area contains the following physical or biological features that are essential for the Black Warrior waterdog: Abundant rock crevices and rock slabs, leaf litter, and instream flow with moderate velocity and continuous daily discharge that allows for a longitudinal connectivity regime inclusive of both surface runoff and ground water sources and exclusive of flushing flows caused by stormwater runoff.

Threats to the physical and biological features in Unit 1 that may require special management considerations or protection include:

- Agriculture, silviculture, and urbanization activities that could result in increased bank erosion;
- Significant changes in the existing flow regime due to inadequate stormwater management, water diversion, or water withdrawal;
- Significant alteration of water quality; and
- Significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities; off-road vehicle use; sewer, gas, and water easements; bridge and road construction and maintenance; culvert and pipe installation; and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 2: Locust Fork, Blount, Etowah, Jefferson, and Marshall Counties, Alabama

Unit 2 includes 391 rkm (243 rmi) of stream and river habitat. The unit consists of the headwaters of Locust Fork to Bankhead Lake, from the headwaters of Slab Creek to the confluence of Locust Fork, from the headwaters of Blackburn Fork to the confluence of Locust Fork, and from the headwaters of Gurley Creek to the confluence of Locust Fork. This area is

within the geographical area occupied at the time of listing (*i.e.,* currently occupied). Based on a literature review by Bailey (2000, p. 1), Black Warrior waterdog specimens have been collected from the Locust Fork area. Black Warrior waterdogs were also collected in the upper Locust Fork in 2012 along with positive eDNA samples in this area. This area contains the following physical or biological features: Abundant rock crevices and rock slabs, leaf litter, and instream flow with moderate velocity and continuous daily discharge that allows for a longitudinal connectivity regime consisting of both surface runoff and ground water sources, exclusive of flushing flows caused by stormwater runoff, that are essential for the Black Warrior waterdog.

Threats to the physical and biological features in Unit 2 that may require special management considerations or protection include:

- Agriculture, silviculture, and urbanization activities that could result in increased bank erosion;
- Significant changes in the existing flow regime due to inadequate stormwater management, water diversion, or water withdrawal;
- Significant alteration of water quality; and
- Significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities; off-road vehicle use; sewer, gas, and water easements; bridge and road construction and maintenance; culvert and pipe installation; and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 3: Blackwater Creek, Walker and Winston Counties, Alabama

Unit 3 includes 128 rkm (80 rmi) of stream and river habitat. The unit consists of the headwaters of Blackwater Creek to the confluence of Mulberry Fork, and from the headwaters of Brown Creek to the confluence of Blackwater Creek. This area is within the geographical area occupied at the time of listing based on a literature review by Bailey (2000, p. 1). Black Warrior waterdogs were collected in Brown Creek in 2006. Black Warrior waterdogs were likely still present based on eDNA results (Godwin 2014, pers. comm.). This area contains the following physical or biological features: Abundant rock crevices and rock slabs, leaf litter, and instream flow with moderate velocity and continuous daily discharge that allows for longitudinal connectivity regime consisting of both surface runoff and ground water sources, exclusive of flushing flows caused by stormwater runoff, that are essential for the Black Warrior waterdog.

Threats to the physical and biological features in Unit 3 that may require special management considerations or protection include:

- Agriculture, silviculture, and urbanization activities that could result in increased bank erosion;
- Significant changes in the existing flow regime due to inadequate stormwater management, water diversion, or water withdrawal;
- Significant alteration of water quality; and
- Significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities; off-road vehicle use; sewer, gas, and water easements; bridge and road construction and maintenance; culvert and pipe installation; and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 4: Sipsey Fork, Lawrence and Winston Counties, Alabama

Unit 4 includes 124 rkm (78 rmi) of stream and river habitat. The unit consists of the headwaters of Sipsey Fork to Lewis Smith Lake, from the headwaters of Brushy Creek to Lewis Smith Lake, from the headwaters of Rush Creek to the confluence of Brushy Creek, and from the headwaters of Capsey Creek to the confluence of Brushy Creek. This area falls within the boundary of Bankhead National Forest, although some areas are private inholdings.

This area is within the geographical area occupied at the time of listing, based on recent captures (Godwin 2016, entire). This area contains the following physical or biological features: abundant rock crevices and rock slabs, leaf litter, and instream flow with moderate velocity and continuous daily discharge that allows for longitudinal connectivity consisting of both surface runoff and ground water sources, exclusive of flushing flows caused by stormwater runoff, that are essential for the Black Warrior waterdog.

Threats to the physical and biological features in Unit 4 that may require special management considerations or protection include:

- Agriculture, silviculture, and urbanization activities that could result in increased bank erosion;
- Significant changes in the existing flow regime due to inadequate stormwater management, water diversion, or water withdrawal;
- Significant alteration of water quality; and
- Significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities; off-road vehicle use; sewer, gas, and water easements; bridge and road construction and maintenance; culvert and pipe installation; and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a new definition of destruction or adverse modification on February 11, 2016 (81 FR 7214). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or

authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the Black Warrior waterdog. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of these species or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Black Warrior waterdog. These activities include, but are not limited to:

(1) Actions that would significantly alter water chemistry or temperature. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the tolerances of the species' prey items and result in direct or cumulative adverse effects to the Black Warrior waterdog and its lifecycle.

(2) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the Black Warrior waterdog by increasing the sediment deposition to levels that would adversely affect its ability to complete its lifecycle.

(3) Actions that would significantly alter channel morphology or geometry. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would degrade or eliminate the Black Warrior waterdog and/or its habitat. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the Black Warrior waterdog or its prey items.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the final critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute, as well as the legislative history, is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In this final rule, we have not considered any areas for exclusion from critical habitat.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, constitute our draft economic analysis of the proposed critical habitat designation and related factors (IEc 2015). The analysis, dated July 15, 2015, was made available for public review from October 6, 2016, through December 5, 2016. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the Black Warrior waterdog is summarized below and available in the screening analysis for the Black Warrior waterdog (IEc 2015, entire), available at *http://www.regulations.gov* in Docket No. FWS–R4–ES–2016–0031.

The final critical habitat designation for the Black Warrior waterdog is likely to result, annually, in less than 2 formal consultations, 23 informal consultations, and 206 technical assistance efforts related to silviculture, mining, impoundments, commercial and residential development, pipelines, agriculture and other activities that impact water quality. According to the finding in the screening analysis, the administrative cost of addressing adverse modification in the consultations is estimated to be between about $410 to $9,000 per consultation. Accordingly, the incremental administrative cost is not likely to exceed $150,000 annually. This designation of critical habitat is not likely to cause more requirements under State or local regulations, nor is it expected to have perceptional effects on the markets.

Exclusions Based on Economic Impacts

As discussed above, the Service considered the economic impacts of the critical habitat designation and the Secretary is not exercising his discretion to exclude any areas from this designation of critical habitat for the Black Warrior waterdog based economic impacts.

A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the Alabama Ecological Services Field Office (see **ADDRESSES**) or by downloading from the internet at *http://www.regulations.gov.*

Exclusions Based on Impacts to National Security and Homeland Security

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' Nevertheless, when designating critical habitat under section 4(b)(2), the Service must consider impacts on national security, including homeland security, on lands or areas not covered by section 4(a)(3)(B)(i). Accordingly, we will always consider for exclusion from the designation areas for which DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns. No DoD lands occur within or are affected by the designation.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no permitted conservation plans or other non-permitted conservation agreements or partnerships for the Black Warrior waterdog, and the final designation does not include any tribal lands or tribal trust resources. We anticipate no impact on tribal lands, partnerships, permitted or non-permitted plans or agreements from this critical habitat designation. Accordingly, the Secretary is not exercising his discretion to exclude any areas from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

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 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.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as

independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Black Warrior waterdog conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of

designating critical habitat for the Black Warrior waterdog in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for the Black Warrior waterdog does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this final critical habitat designation with, appropriate State resource agencies in Alabama. We received comments from Alabama and have addressed them in the Summary of Comments and Recommendations section of the rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the Black Warrior waterdog. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands affected by the designation.

References Cited

A complete list of all references cited is available on the internet at *http://www.regulations.gov* and upon request from the Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Alabama Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Waterdog, Black Warrior'' under ''AMPHIBIANS'' to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
AMPHIBIANS				
*	*	*	*	*
Waterdog, Black Warrior	*Necturus alabamensis*	Wherever found	E	83 FR [Insert **Federal Register** page where the document begins], 1/3/2018.
*	*	*	*	*

■ 3. In § 17.95, amend paragraph (d) by adding an entry for ''Black Warrior Waterdog (*Necturus alabamensis*)'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Black Warrior Waterdog (*Necturus alabamensis*)

(1) Critical habitat units are depicted for Blount, Etowah, Jefferson, Lawrence, Marshall, Tuscaloosa, Walker, and Winston Counties, Alabama, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Black Warrior waterdog, which describe a riverine system with habitat to support all life-history stages of the Black Warrior waterdog, consists of the following components:

(i) Geomorphically stable, medium to large streams (typically 4 meters (m) (13 feet (ft)) wide or greater) with:

(A) Substrate consisting of clay or bedrock with little sand, and containing abundant rock crevices, rock slabs, and leaf packs;

(B) Moderate water velocity; and

(C) Prey base of aquatic macroinvertebrates.

(ii) Water that lacks harmful levels of pollutants, including inorganic contaminants such as copper, arsenic, mercury, and cadmium; organic contaminants such as human and animal waste products; endocrine-disrupting chemicals; pesticides; nitrogen, potassium, and phosphorus fertilizers; and petroleum distillates.

(iii) Appropriate water quality parameters to support Black Warrior waterdog and primary prey base, including:

(A) Water temperature not exceeding 85° F;

(B) Dissolved oxygen 5.5 milligrams per liter (mg/L) or greater;

(C) Turbidity of an average monthly reading of 15 nephelometric turbidity units above background readings;

(D) 115 mg/L of total suspended solids or less; and

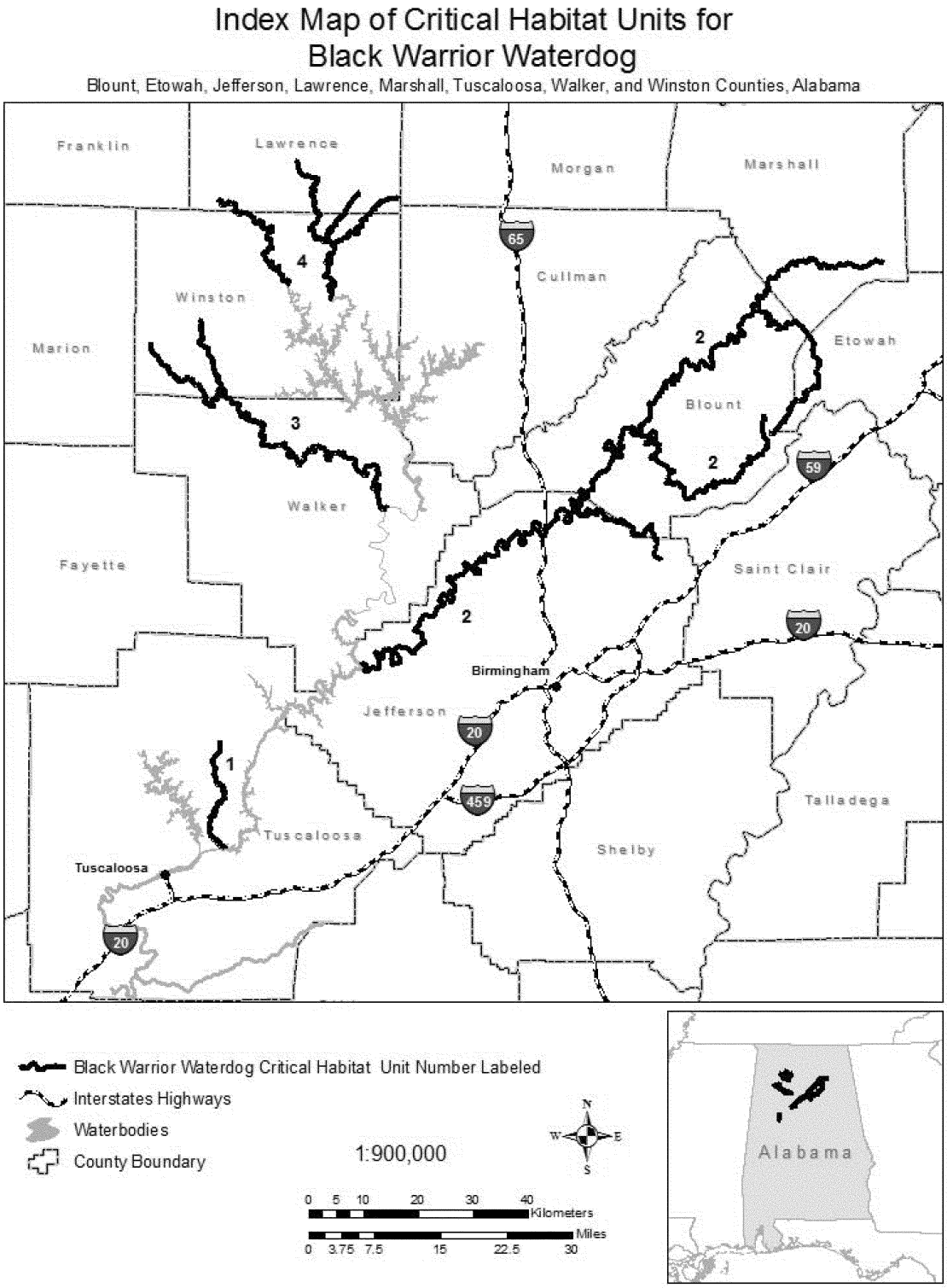
(E) A specific conductance of no greater than 225 microsiemens (μS) per centimeter at 80 °F.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on February 2, 2018.

(4) *Critical habitat map units.* Data layers defining map units were created from the USGS National Hydrography Datasets High Resolution Flowline layer using Universal Transverse Mercator (UTM) Zone 16N coordinates. Segments were mapped using 1983 UTM Zone 16 projection. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *http://www.fws.gov/daphne/,* at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2016–0031, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

BILLING CODE 4333–15–P

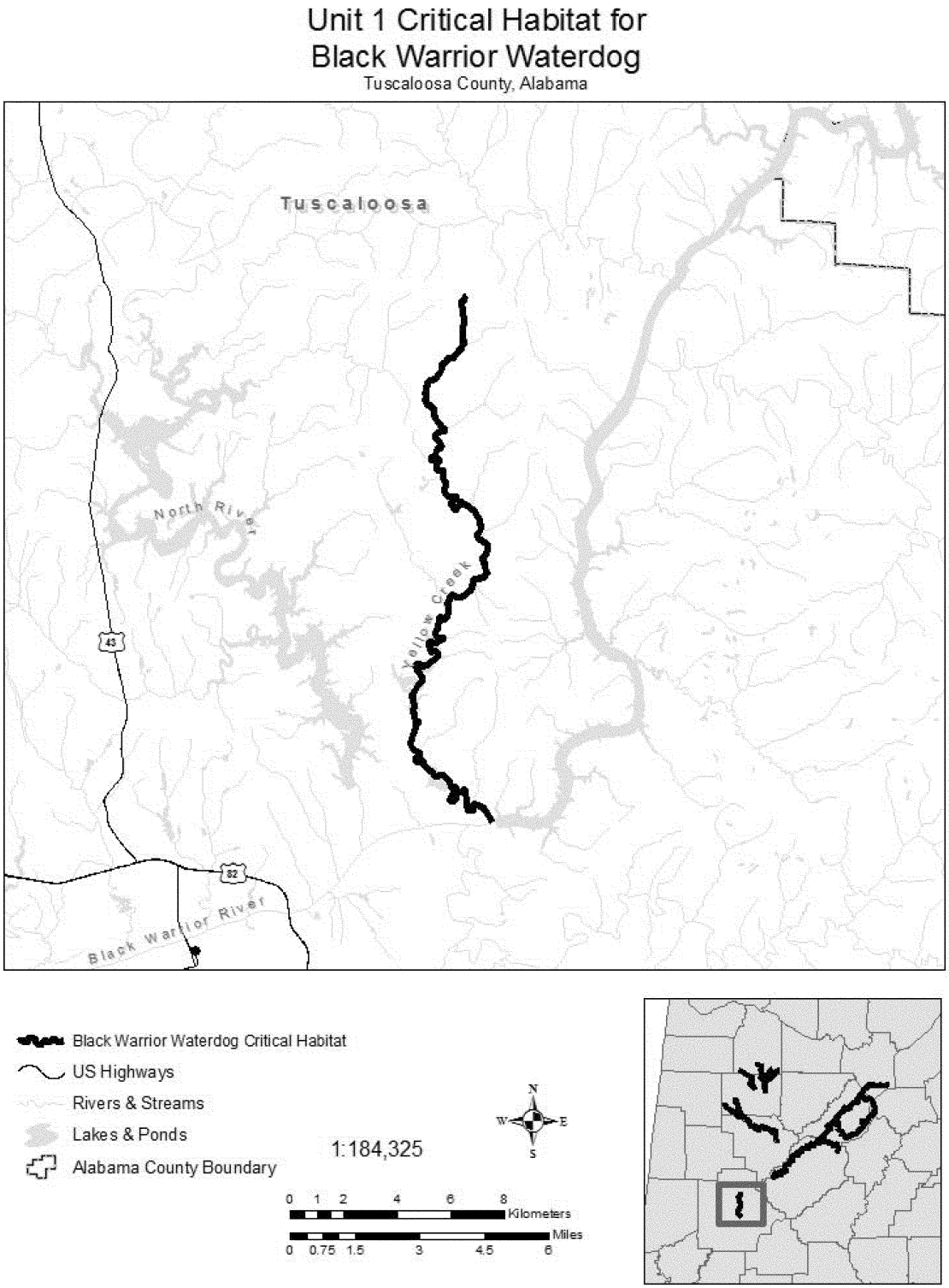
(5) *Note:* Index map follows:



(6) *Unit 1:* Yellow Creek; Tuscaloosa County, Alabama.

(i) *General description:* Unit 1 is approximately 30 rkm (19 rmi) of stream and river habitat from the headwaters of Yellow Creek to Holt Lake.

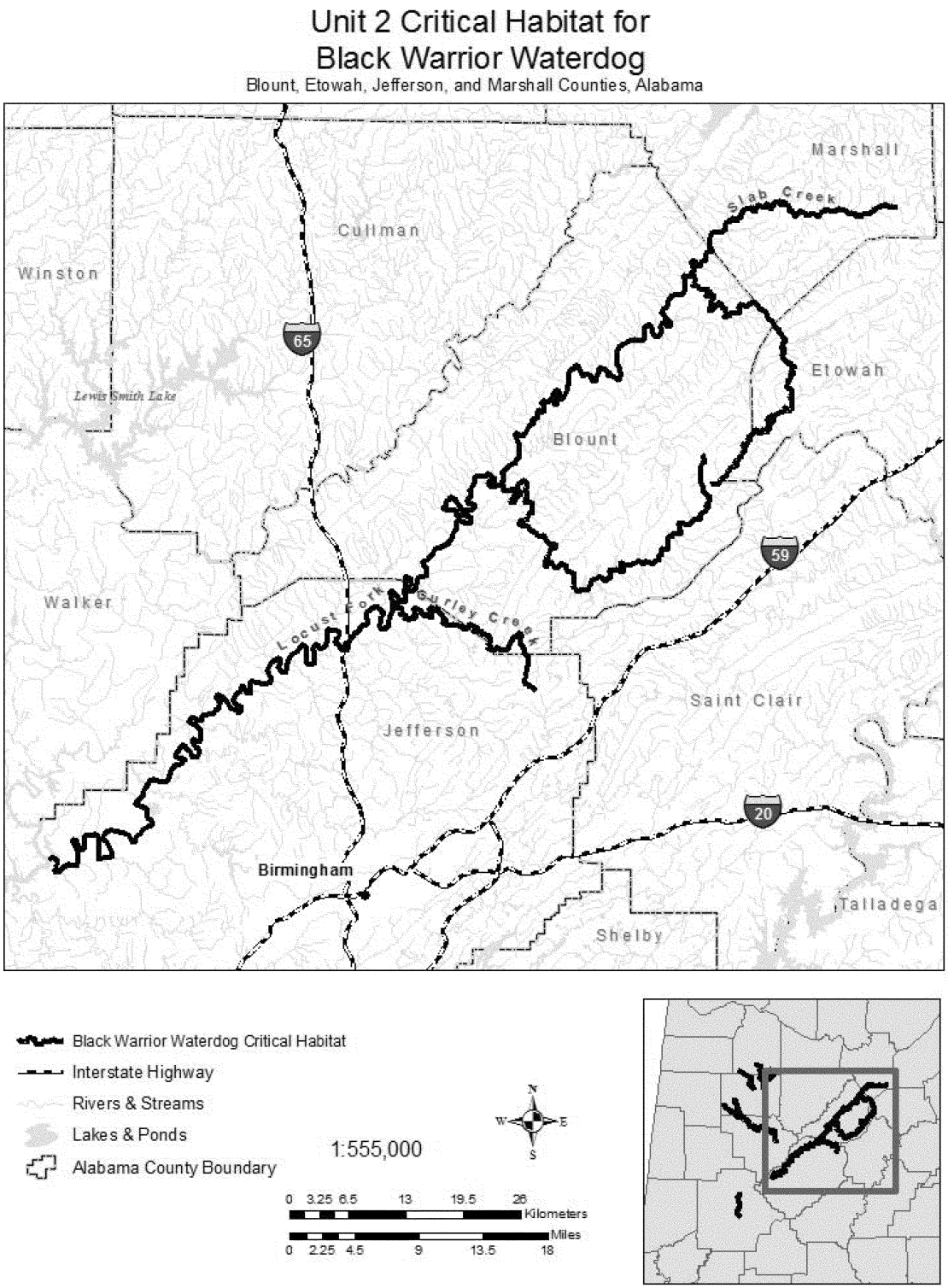
(ii) Map of Unit 1 follows:



(7) *Unit 2:* Locust Fork; Blount, Etowah, Jefferson, and Marshall Counties, Alabama.

(i) *General description:* Unit 2 is approximately 391 rkm (243 rmi) of stream and river habitat from the headwaters of Locust Fork to Bankhead Lake, from the headwaters of Slab Creek to the confluence of Locust Fork, from the headwaters of Blackburn Fork to the confluence of Locust Fork, and from the headwaters of Gurley Creek to the confluence of Locust Fork.

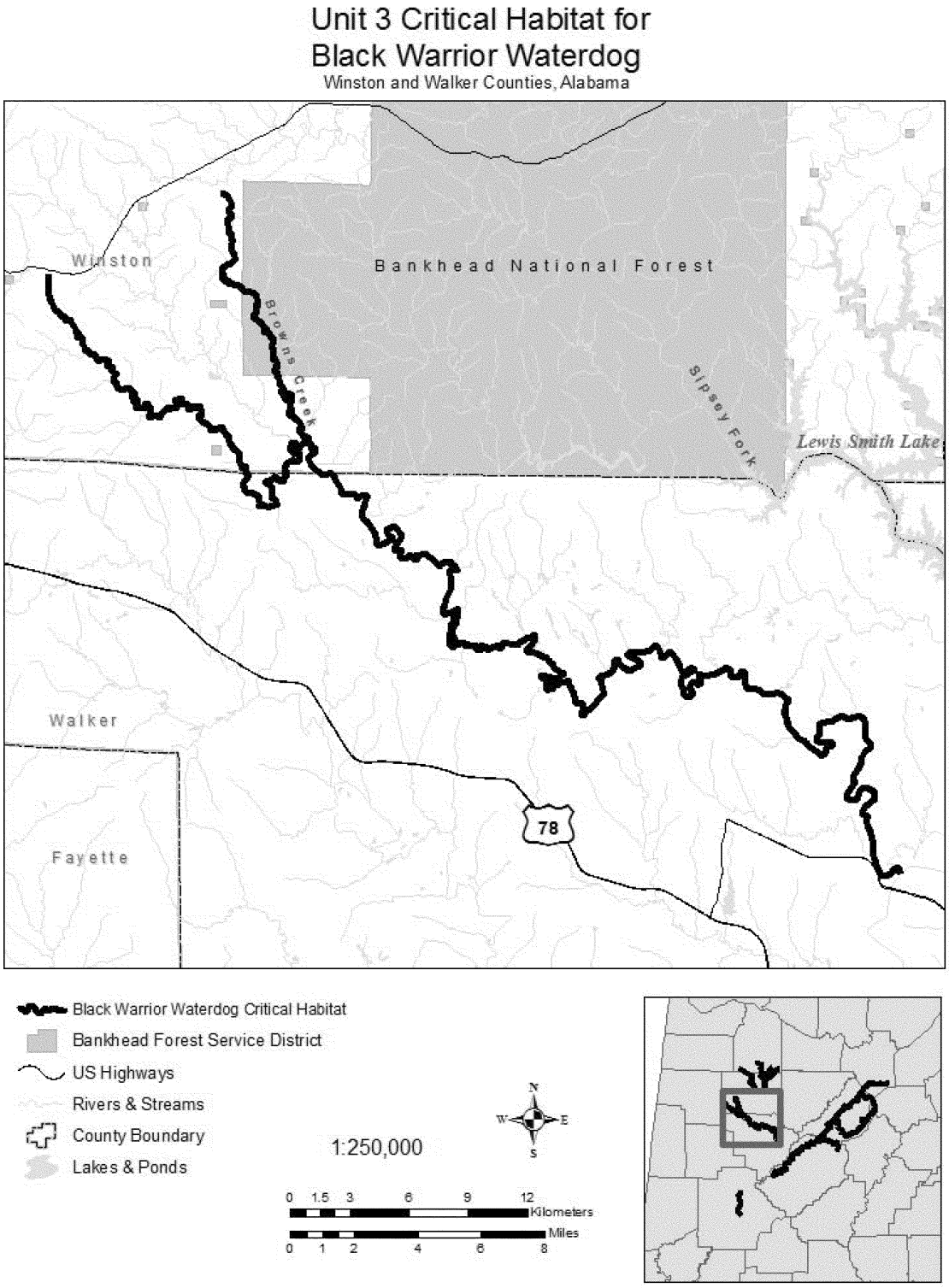
(ii) Map of Unit 2 follows:



(9) *Unit 3:* Blackwater Creek; Walker and Winston Counties, Alabama.

(i) *General description:* Unit 3 consists of approximately 128 rkm (80 rmi) of stream and river habitat from the headwaters of Blackwater Creek to the confluence of Mulberry Fork, from the headwaters of Brown Creek to the confluence of Blackwater Creek.

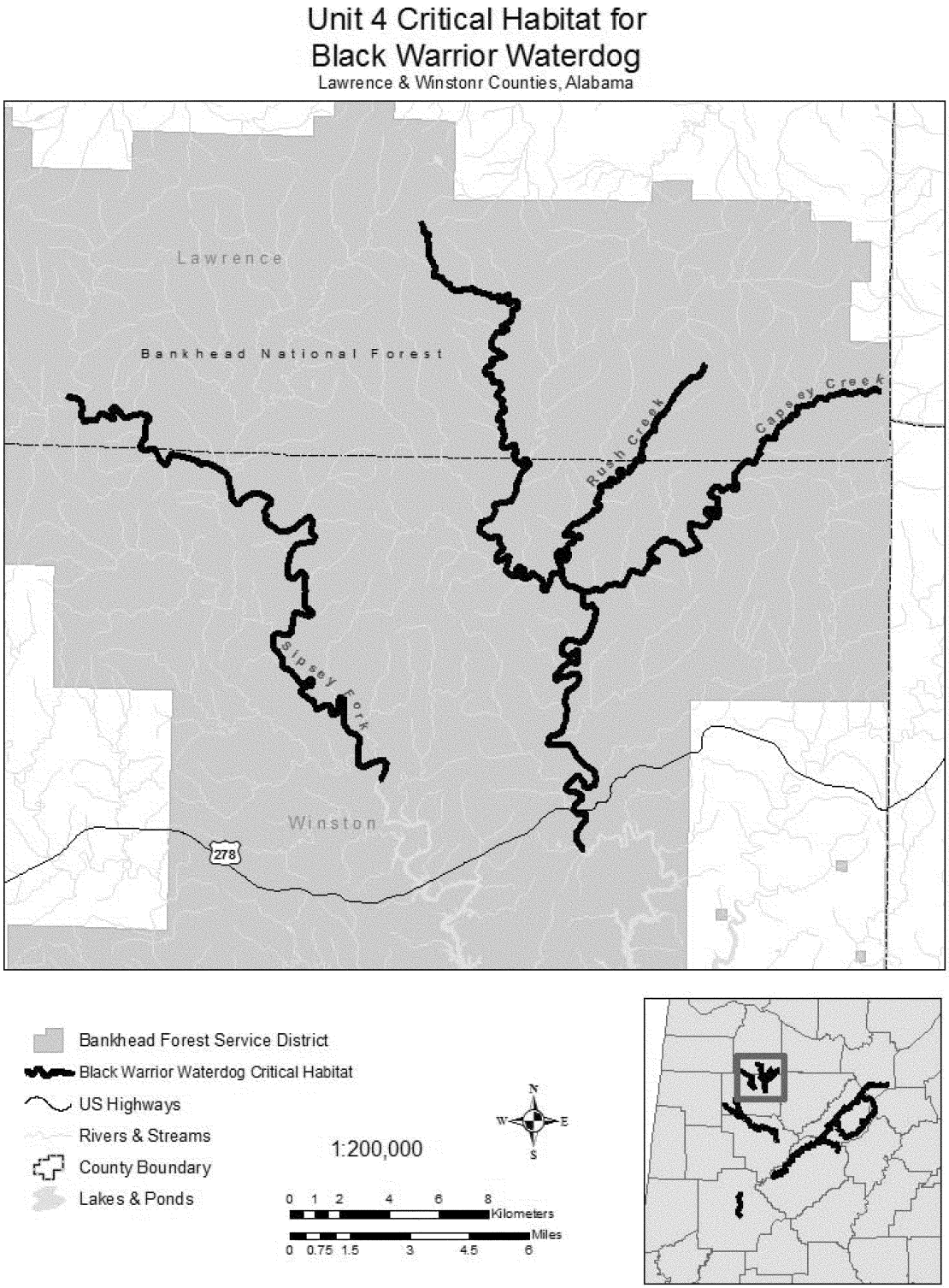
(ii) Map of Unit 3 follows:



(10) *Unit 4:* Sipsey Fork; Lawrence and Winston Counties, Alabama.

(i) *General description:* Unit 4 consists of approximately 124 rkm (78 rmi) of stream and river habitat from the headwaters of Sipsey Fork to Lewis Smith Lake, from the headwaters of Brushy Creek to Lewis Smith Lake, from the headwaters of Rush Creek to the confluence of Brushy Creek, and from the headwaters of Capsey Creek to the confluence of Brushy Creek.

(ii) Map of Unit 4 follows:



* * * * *

Dated: November 21, 2017.

James W. Kurth,

Deputy Director for U.S. Fish and Wildlife Service, Exercising the Authority of the Director for U.S. Fish and Wildlife Service.

[FR Doc. 2017–28386 Filed 1–2–18; 8:45 am]

BILLING CODE 4333–15–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 160920866–7167–02]

RIN 0648–XF894

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Jig Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using jig gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2018 Pacific cod total allowable catch apportioned to vessels using jig gear in the Central Regulatory Area of the GOA.

DATES: Effective 0000 hours, Alaska local time (A.l.t.), January 1, 2018, through 1200 hours, A.l.t., June 10, 2018.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2018 Pacific cod total allowable catch (TAC) apportioned to vessels using jig gear in the Central Regulatory Area of the GOA is 37 metric tons (mt), as established by the final 2017 and 2018 harvest specifications for groundfish of the GOA (82 FR 12032, February 27, 2017) and inseason adjustment (82 FR 12032, February 27, 2017).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2018 Pacific cod TAC apportioned to vessels using jig gear in the Central Regulatory Area of the GOA is necessary to account for the incidental catch in other anticipated fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt and is setting aside the remaining 37 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using jig gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by vessels using jig gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 27, 2017.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 28, 2017.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–28389 Filed 12–28–17; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 160920866–7167–02]

RIN 0648–XF907

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Hook-and-Line Gear in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2018 Pacific cod total allowable catch apportioned to catcher vessels using hook-and-line gear in the Western Regulatory Area of the GOA.

DATES: Effective 0000 hours, Alaska local time (A.l.t.), January 1, 2018, through 1200 hours, A.l.t., June 10, 2018.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2018 Pacific cod total allowable catch (TAC) apportioned to catcher vessels using hook-and-line gear in the Western Regulatory Area of the GOA is 39 metric tons (mt), as established by the final

2017 and 2018 harvest specifications for groundfish of the GOA (82 FR 12032, February 27, 2017) and inseason adjustment (82 FR 60327, December 20, 2017).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2018 Pacific cod TAC apportioned to catcher vessels using hook-and-line gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt and is setting aside the remaining 39 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using hook-and-line gear in the Western Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels using hook-and-line gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 27, 2017.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 28, 2017.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–28390 Filed 12–28–17; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 2
Wednesday, January 3, 2018

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Docket No. R–1591]

RIN 7100 AE–92

Consumer Leasing (Regulation M)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing to revise its Regulation M, which was issued to implement the Consumer Leasing Act (CLA). Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws, including the CLA, from the Board to the Bureau of Consumer Financial Protection (Bureau). Under section 1029 of the Dodd-Frank Act, however, the Board retains authority to issue rules for motor vehicle dealers that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, and are otherwise not subject to the Bureau's regulatory authority. The Board is proposing to revise its Regulation M and the accompanying Official Staff Commentary to reflect this change in the persons covered by the Board's Regulation M.

DATES: Comments must be received on or before March 5, 2018.

ADDRESSES: You may submit comments, identified by Docket No. R–1591 and RIN 7100–AE–92, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW (between 18th and 19th Street NW), between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Lorna M. Neill, Senior Counsel, Division of Consumer and Community Affairs, at (202) 452–3667, Board of Governors of the Federal Reserve System. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background and Legal Authority

The Consumer Leasing Act of 1976 (CLA), 15 U.S.C. 1667–1667f, was enacted as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The purpose of the CLA is to ensure meaningful and accurate disclosure of the terms of personal property leases for personal, family, or household use ''so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements.'' TILA Section 102(b), 15 U.S.C. 1601(b).[1] Before Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[2] the CLA was implemented by the Board's Regulation M, published at 12 CFR part 213. An Official Staff Commentary interprets the requirements of the Board's Regulation M (12 CFR part 213 (Supp. I)). The CLA and Regulation M have generally applied to consumer leases for the use of personal property in which the contractual obligation has a term of more than four months and the lessee's total contractual obligation under the lease does not exceed a specified dollar threshold.[3] They require lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions.

Title X of the Dodd-Frank Act transferred rulemaking authority for the CLA to the Bureau of Consumer Financial Protection (Bureau).[4] This transfer was effective on July 21, 2011. In connection with the transfer, the Bureau published its own version of Regulation M, 12 CFR part 1013, to implement the CLA (Bureau's Regulation M).[5] The Bureau's Regulation M substantially duplicates the Board's Regulation M and covers financial institutions and other persons for which the Bureau has rulemaking authority under section 1022 of the Dodd-Frank Act (12 U.S.C. 5512).

Under section 1029(a) and (c) of the Dodd-Frank Act (12 U.S.C. 5519(a) and (c)), the Board retains rulemaking authority under the CLA over certain motor vehicle dealers that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[6] Thus, except as described below,

[1] *See also* 12 CFR 213.1(b).

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] The threshold was $54,600 for 2017. *See* 81 FR 86256 (Nov. 30, 2016). From January 1, 2018, through December 31, 2018, the threshold is set at $55,800. *See* 82 FR 51977 (Nov. 9, 2017).

[4] Public Law 111–203, sections 1061 and 1100A, 124 Stat. 1376, 2035 and 2107 (2010).

[5] 12 CFR part 1013. *See* 76 FR 78500 (Dec. 19, 2011) (Interim Final Rule). In April 2016, the Bureau adopted the Interim Final Rule as final, subject to any intervening final rules published by the Bureau. *See* 81 FR 25323 (Apr. 28, 2016).

[6] Dodd-Frank Act section 1029(a) states as follows: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority, including any authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a).

Dodd-Frank Act section 1029(c) states as follows: ''Except as provided in subsections (b) and (d) [concerning the Federal Trade Commission (FTC)], nothing in this title [X, Bureau of Consumer Financial Protection], shall be construed as modifying, limiting, or superseding the operation of any provision of Federal law, or otherwise affecting the authority of the Board of Governors, the Federal Trade Commission, or any other Federal agency,

these motor vehicle dealers remain subject to the Board's Regulation M. Authority to enforce Regulation M against motor vehicle dealers subject to the Board's Regulation M is assigned by statute to the FTC.[7]

Section 1029(b) of the Dodd-Frank Act provides that the Bureau's rulemaking authority applies to motor vehicle dealers only to the extent that the dealer is engaged in any of the following activities:

- Providing consumers with services related to residential or commercial mortgages or self-financing transactions involving real property;
- Operating a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases is provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or
- Offering or providing a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

12 U.S.C. 5519(b).

As a result of the transfer of rulemaking authority under the CLA to the Bureau, the Board's Regulation M covers only motor vehicle dealers excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act (12 U.S.C. 5519). Consequently, the Board is publishing proposed revisions to Regulation M and the accompanying Official Staff Commentary to reflect the narrower scope of the Board's rulemaking authority. Specific proposed revisions are discussed in the section-by-section analysis below.

II. Section-by-Section Analysis

Section 213.1 Authority, Scope, Purpose, and Enforcement

Section 213.1 addresses matters relating to authority, scope, purpose, and enforcement for Regulation M. To reflect the changed scope of the Board's Regulation M, the Board is proposing revisions to § 213.1 and the Official Staff Commentary to § 213.1, as described below.

1(a) Authority

Section 213.1(a) states that Regulation M is issued by the Board to implement the CLA. It also states that information collection requirements contained in Regulation M have been approved by the Office of Management and Budget under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The Board proposes to remove the sentence referencing information collections. Under the PRA, collections of information are not approved one time; instead collections of information must be reapproved every three years. As discussed in Part V, below, the proposed rule would not impose additional information collections or revise existing information collections for covered entities.

1(b) Scope and Purpose

Section 213.1(b) states, in relevant part, that Regulation M applies to all persons that are lessors of personal property under consumer leases as those terms are defined in § 213.2(e)(1) and (h). The Board proposes to revise this section to state additionally that the Board's Regulation M covers only persons identified as persons excluded from the Bureau's rulewriting and other authorities under section 1029 of the Dodd-Frank Act, namely, ''motor vehicle dealers to which 12 U.S.C. 5519(a) applies.''

The Board also proposes to add a new comment 1–1. New comment 1–1 would follow the statutory language to explain the meaning of ''motor vehicle dealers to which 12 U.S.C. 5519(a) applies.'' The proposed comment would clarify that section 1029 of the Dodd-Frank Act (12 U.S.C. 5519) excludes certain motor vehicle dealers from the authority of the Bureau, and that the persons excluded are subject to the rulemaking authority of the Board and the Board's Regulation M. The proposed comment would explain that the Board's regulation generally covers motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. The comment would further state that, for purposes of the CLA, a motor vehicle dealer is subject to the authority of the Bureau instead of the Board's Regulation M to the extent that the dealer operates a line of business that involves the extension of retail leases involving motor vehicles directly to consumers and the contract governing such extension of retail leases is not routinely assigned to an unaffiliated third party financing or leasing source.[8]

The proposed comment also would clarify that, for determining the persons covered by the Board's Regulation M, the terms ''motor vehicle'' and ''motor vehicle dealer'' have the meanings assigned to them by section 1029 of the Dodd-Frank Act.[9] Otherwise, in applying the Board's Regulation M, determining whether leased property is a motor vehicle would continue to be governed by state or other applicable law. *See* comment 4(f)–1.

The Board also proposes to re-number current comment 1–1 as comment 1–2 and revise it. Current comment 1–1 explains the applicability of Regulation M to foreign entities. This comment states that Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents of any state (including foreign nationals) as defined in § 213.2(p). This comment further explains that Regulation M does not apply to a foreign branch of a U.S. bank or to a leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad. The Board proposes to revise comment 1–1 (which would be re-numbered 1–2) to reflect that the Board's Regulation M now applies solely to ''motor vehicle dealers to which 12 U.S.C. 5519(a) applies.'' Thus, in the first sentence of proposed comment 1–2, the reference to U.S. branches of foreign banks and leasing companies and to foreign branches of U.S. banks would be replaced by a reference to ''motor vehicle dealers to which 12 U.S.C. 5519(a) applies.'' The revised comment would state that the Board's Regulation M applies to ''motor vehicle dealers to which 12 U.S.C. 5519(a) applies'' that offer consumer leases to residents of any state (including foreign nationals) as defined in § 213.2(p).

The Board proposes to remove the second sentence of the comment, which states that Regulation M does not apply to ''a foreign branch of a U.S. bank or to a leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.'' This sentence addresses financial institution lessors that have worldwide branching networks. The Board does not believe that motor vehicle dealers intended to be covered by the Board's Regulation M operate in this way, and therefore believes that this guidance is inapplicable.

These proposed changes are intended to reflect only the new scope of the Board's Regulation M under the Dodd-Frank Act and are not intended to

with respect to a person described in subsection (a).'' 12 U.S.C. 5519(c).

[7] *See* TILA section 108(c), 15 U.S.C. 1607(c). *See also* Dodd-Frank Act section 1029(c) and (d), 12 U.S.C. 5519(c) and (d).

[8] *See* 12 U.S.C. 5519(b).

[9] *See* 12 U.S.C. 5519(f).

change the substantive principles of foreign applicability expressed in the comment. The Board invites comments on the proposed changes.

Section 213.2 Definitions

2(e) Consumer Lease

Section 213.2(e) defines ''consumer lease'' under Regulation M. The Board proposes no changes to the current definition, but proposes to eliminate comment 2(e)–7 and comment 2(e)–8 as unnecessary because the regulation's coverage is now limited to certain motor vehicle lessors and these comments address leases outside of motor vehicle and motor vehicle-related leasing. Accordingly, the Board also proposes to re-number comments 2(e)–9, 2(e)–10, and 2(e)–11 as comments 2(e)–7, 2(e)–8, and 2(e)–9, respectively, and make certain non-substantive technical revisions.

Current comment 2(e)–7 identifies the specific types of leases of personal property considered incidental to a service and therefore not subject to Regulation M. These are home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming; security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection; and propane gas service where the consumer must lease a propane tank to receive the service. Comment 2(e)–8 states that the lease of a safe deposit box is not a consumer lease under § 213.2(e).

Section 213.4 Content of Disclosures

Section 213.4 identifies the information that a lessor must disclose to a consumer before consummation of a consumer lease. The Board is not proposing any revisions to the content of disclosures for motor vehicle leases. Comment is solicited on whether any revisions to § 213.4 are appropriate in light of the narrower coverage of the Board's regulation as a result of the Dodd-Frank Act.

4(t) Non-Motor Vehicle Open-End Leases

Section 213.4(t) applies to non-motor vehicle, open-end leases and refers to the statutory requirement to provide certain disclosures if the lessee is liable at the end of the lease term for the anticipated fair market value of the leased property. The Board is proposing to delete this provision as unnecessary in light of the regulation's application only to certain motor vehicle dealers. The Board solicits comment on whether covered dealers might offer non-vehicle open-end leases for ''related or ancillary products'' that would be covered by the Board's Regulation M[10] and, if so, whether such leases would have end-of-term liability as referenced in existing § 213.4(t).

Section 213.7 Advertising

7(a) Authority

Section 213.7 prescribes rules for advertising consumer leases. Comment 7(a)–1 explains who is covered by the advertising rules. Currently, the comment states that all ''persons'' must comply with the advertising rules, not just those that meet the definition of a lessor. Thus, ''automobile dealers, merchants, and others'' must comply with the advertising rules if they advertise consumer lease transactions, even if they are not themselves lessors. The comment clarifies, however, that owners and personnel of the media in which an advertisement appears or through which it is disseminated are not subject to civil liability for violations under section 185(b) of the CLA (15 U.S.C. 1667d(b)).

The Board proposes to revise this comment to reflect the limited scope of the Board's Regulation M. Thus, the proposed comment would state that ''motor vehicle dealers to which 12 U.S.C. 5519(a) applies'' must comply with the advertising provisions in this section. The Board also proposes to revise the subsequent sentence, which would state that motor vehicle dealers to which 12 U.S.C. 5519(a) applies that are not themselves lessors also must comply with the advertising provisions of the regulation if they advertise consumer lease transactions.

In addition, the Board proposes to remove the last sentence of comment 7(a)-1, which states that owners and personnel of the media in which an advertisement appears or through which it is disseminated are not subject to civil liability for violations of the advertising provisions.[11] The sentence is no longer necessary because those persons are no longer covered by the Board's Regulation M.

Appendix A to Part 213—Model Forms

Appendix A–3—Model Furniture Lease Disclosures

Appendix A–3 to part 213 contains model disclosures for furniture leases. The Board proposes to eliminate the model furniture lease disclosures in appendix A–3 and accompanying Official Staff comment 4 to appendix A as inapplicable given the limited scope of the Board's Regulation M prescribed by section 1029 of the Dodd-Frank Act. 15 U.S.C. 5519. Furniture leases are no longer covered by the Board's Regulation M because furniture leasing is not an activity related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or servicing of motor vehicles.[12]

Appendix B—Federal Enforcement Agencies

Appendix B to part 213 identifies which federal agency enforces Regulation M for particular classes of businesses. The Bureau eliminated this appendix in its Regulation M.[13] The Board proposes to simplify the regulation by also eliminating this appendix, which is not necessary to implement the CLA. Enforcement of Regulation M is appropriately addressed in § 213.1(c), which references the relevant CLA provisions on enforcement and liability.

III. Request for Comment

The Board requests comment on the proposed revisions, which are not intended to alter the substantive requirements of the CLA and existing Regulation M, and invites commenters to identify any additional revisions to the Board's Regulation M that commenters believe are necessary in light of section 1029 of the Dodd-Frank Act (12 U.S.C. 5519).

IV. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities. Based on its analysis, and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* Title X of the Dodd-Frank Act transferred rulemaking authority for a number of

[10] Dodd-Frank Act section 1029(b)(3), 15 U.S.C. 5519(b)(3).

[11] *See* 15 U.S.C. 1667c(b) and 1667d(b).

[12] Dodd-Frank Act section 1029(b)(3), 15 U.S.C. 5519(b)(3).

[13] 76 FR 78500 (Dec. 19, 2011) (''Appendix B, entitled 'Federal Enforcement Agencies,' has been eliminated, because it was designed to be informational only and is unnecessary for purposes of implementing the CLA.''). *See also* 81 FR 25323 (Apr. 28, 2016).

consumer financial protection laws from the Board to the Bureau, effective July 21, 2011, including the CLA. The Bureau issued the Bureau Interim Final Rule to implement CLA in connection with the transfer of CLA rulemaking authority to the Bureau. Pursuant to Section 1029 of the Dodd-Frank Act, however, the Board retains rulemaking authority for consumer financial protection laws to the extent that such laws could cover motor vehicle dealers identified in Section 1029(a) of the Dodd-Frank Act. The Board does not believe that any motor vehicle dealers identified in Section 1029(a) would incur any additional compliance burden as a result of the Board's proposal, because these entities are already subject to the Board's Regulation M and no substantive changes to Regulation M's requirements are proposed.

2. *Small entities affected by the proposed rule.* The Board does not believe that any motor vehicle dealers identified in Section 1029(a) would incur additional compliance burden as a result of the Board's proposal, because these entities are already subject to the Board's Regulation M. Therefore, the Board believes the proposed rule would not affect any entity, including any small entity.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would re-state, without substantive revisions, the Board's Regulation M, 12 CFR part 213, and would therefore not impose any new recordkeeping, reporting, or compliance requirements on any entities.

4. *Other federal rules.* The Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed restatement of the Board's Regulation M, 12 CFR part 213.

5. *Significant alternatives to the proposed revisions.* The Board is not aware of any significant alternatives that would further minimize any significant economic impact of the proposed rule on small entities, but solicits comment on this matter.

V. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), federal agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed rule and determined that it does not create any new or revise any existing collection of information under section 3504(h) of title 44.

List of Subjects in 12 CFR Part 213

Advertising, Consumer leasing, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons discussed in the Supplementary Information, the Board proposes to amend Regulation M, 12 CFR part 213, as follows:

PART 213—CONSUMER LEASING (REGULATION M)

■ 1. The authority citation for part 213 is revised to read as follows:

Authority: 12 U.S.C. 5519; 15 U.S.C. 1604 and 1667f; Sec. 1100E, Pub. L. 111–203, 124 Stat. 1376 (15 U.S.C. 1603 *note*).

■ 2. Section 213.1 is amended by revising paragraph (a) and paragraph (b) introductory text to read as follows:

§ 213.1 Authority, scope, purpose, and enforcement.

(a) *Authority.* The regulation in this part, known as Regulation M, is issued by the Board of Governors of the Federal Reserve System to implement the consumer leasing provisions of the Truth in Lending Act, which is title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*).

(b) *Scope and purpose.* This part applies to all persons that are lessors of personal property under consumer leases as those terms are defined in § 213.2(e)(1) and (h) and that are motor vehicle dealers to which 12 U.S.C. 5519(a) applies. The purpose of this part is—

* * * * *

§ 213.4 [Amended]

■ 3. Section 213.4(t) is removed.

Appendix A to Part 213—[Amended]

■ 4. Appendix A to part 213 is amended by removing and reserving section A–3.

Appendix B to Part 213—[Removed and Reserved]

■ 5. Appendix B to part 213 is removed and reserved.

■ 6. In supplement I to part 213:

■ a. *Section 213.1—Authority, Scope, Purpose, and Enforcement* is revised.

■ b. Under *Section 213.2—Definitions,* subsection *2(e) Consumer lease* is revised.

■ c. Under *Section 213.7—Advertising,* subsection *7(a) General rule* is revised.

■ d. *Appendix A—Model Forms* is revised.

The revisions read as follows:

Supplement I to Part 226—Official Staff Commentary to Regulation M

* * * * *

Section 213.1—Authority, Scope, Purpose, and Enforcement

1. *Motor vehicle dealers to which 12 U.S.C. 5519(a) applies.* Section 1029 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), excludes certain motor vehicle dealers from the authority of the Bureau of Consumer Financial Protection (Bureau). *See* 12 U.S.C. 5519. The persons excluded from the authority of the Bureau by that provision are subject to the authority of the Board and this part, and generally are motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. However, for purposes of the Consumer Leasing Act, 15 U.S.C. 1667–1667f, a motor vehicle dealer is subject to the authority of the Bureau instead of the Board's Regulation M to the extent that the dealer operates a line of business that involves the extension of retail leases involving motor vehicles directly to consumers and the contract governing such extension of retail leases is not routinely assigned to an unaffiliated third party financing or leasing source. *See* 12 U.S.C. 5519(b). Accordingly, for determining the persons covered by the Board's Regulation M, ''motor vehicle'' and ''motor vehicle dealer'' have the meanings assigned to them by section 1029 of the Dodd-Frank Act. *See* 12 U.S.C. 5519(f). Otherwise, in applying the Board's Regulation M, whether leased property is a motor vehicle is determined by state or other applicable law. *See* comment 4(f)–1.

2. *Foreign applicability.* Regulation M applies to motor vehicle dealers to which 12 U.S.C. 5519(a) applies that offer consumer leases to residents of any state (including foreign nationals) as defined in § 213.2(p).

Section 213.2—Definitions

* * * * *

2(e) Consumer lease.

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must

be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–9 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–9 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

8. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

9. *Threshold.* For purposes of § 213.2(e)(1), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2017 through December 31, 2018, the threshold amount is $55,800.

* * * * *

Section 213.7—Advertising

7(a) General rule.

1. *Persons covered.* Motor vehicle dealers to which 12 U.S.C. 5519(a) applies must comply with the advertising provisions in this section, not just those that meet the definition of a lessor in § 213.2(h). Thus, motor vehicle dealers to which 12 U.S.C. 5519(a) applies who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions.

2. ''*Usually and customarily.*'' Section 213.7(a) does not prohibit the advertising of a single item or the promotion of a new leasing program, but prohibits the advertising of terms that are not and will not be available. Thus, an advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

3. *Total contractual obligation of advertised lease.* Section 213.7 applies to advertisements for consumer leases, as defined in § 213.2(e). Under § 213.2(e), a consumer lease is exempt

from the requirements of this Part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. See comment 2(e)–9. Accordingly, § 213.7 does not apply to an advertisement for a specific consumer lease if the total contractual obligation for that lease exceeds the threshold amount in effect when the advertisement is made. If a lessor promotes multiple consumer leases in a single advertisement, the entire advertisement must comply with § 213.7 unless all of the advertised leases are exempt under § 213.2(e). For example

i. Assume that, in an advertisement, a lessor states that certain terms apply to a consumer lease for a specific automobile. The total contractual obligation of the advertised lease exceeds the threshold amount in effect when the advertisement is made. Although the advertisement does not refer to any other lease, some or all of the advertised terms for the exempt lease also apply to other leases offered by the lessor with total contractual obligations that do not exceed the applicable threshold amount. The advertisement is not required to comply with § 213.7 because it refers only to an exempt lease.

ii. Assume that, in an advertisement, a lessor states certain terms (such as the amount due at lease signing) that will apply to consumer leases for automobiles of a particular brand. However, the advertisement does not refer to a specific lease. The total contractual obligations of the leases for some of the automobiles will exceed the threshold amount in effect when the advertisement is made, but the total contractual obligations of the leases for other automobiles will not exceed the threshold. The entire advertisement must comply with § 213.7 because it refers to terms for consumer leases that are not exempt.

iii. Assume that, in a single advertisement, a lessor states that certain terms apply to consumer leases for two different automobiles. The total contractual obligation of the lease for the first automobile exceeds the threshold amount in effect when the advertisement is made, but the total contractual obligation of the lease for the second automobile does not exceed the threshold. The entire advertisement must comply with § 213.7 because it refers to a consumer lease that is not exempt.

* * * * *

Appendix A—Model Forms

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or for quarterly or other regular or irregular periodic payments. The model form may also be modified to reflect that a transaction is an extension. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

2. *Examples of acceptable changes.*

i. Using the first person, instead of the second person, in referring to the lessee.

ii. Using ''lessee,'' ''lessor,'' or names instead of pronouns.

iii. Rearranging the sequence of the nonsegregated disclosures.

iv. Incorporating certain state ''plain English'' requirements.

v. Deleting or blocking out inapplicable disclosures, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items (this should facilitate use of multipurpose standard forms).

vi. Adding language or symbols to indicate estimates.

vii. Adding numeric or alphabetic designations.

viii. Rearranging the disclosures into vertical columns, except for § 213.4(b) through (e) disclosures.

ix. Using icons and other graphics.

3. *Model closed-end or net vehicle lease disclosure.* Model A–2 is designed for a closed-end or net vehicle lease. Under the ''Early Termination and Default'' provision a reference to the lessee's right to an independent appraisal of the leased vehicle under § 213.4(l) is included for those closed-end leases in which the lessee's liability at early termination is based on the vehicle's realized value.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–27325 Filed 1–2–18; 8:45 am]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 34–82373; FOIA–192; File No. S7–09–17]

RIN 3235–AM25

Freedom of Information Act Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is publishing for comment proposed amendments to the Commission's regulations under the Freedom of Information Act (''FOIA''). This rule proposes revisions to the Commission's regulations under the FOIA to reflect changes required by the FOIA Improvement Act of 2016 (''Improvement Act''); and clarify, update, and streamline the language of several procedural provisions.

DATES: Comments should be received by February 2, 2018.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form located at *http://www.sec.gov/rules/proposed.shtml;*
- Send an email to *rule-comments@sec.gov,* including File Number S7–09–17 on the subject line; or
- Use the Federal eRulemaking Portal located at *http://www.regulations.gov,* following the instructions for submitting comments.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–09–17. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington DC 20549, on official working days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Mark Tallarico, Senior Counsel, Office of the General Counsel, (202) 551–5132; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is proposing revisions to its regulations under the FOIA, 5 U.S.C. 552. As required by the Improvement Act, Public Law 114–185, 130 Stat. 538, the Commission has reviewed its FOIA regulations to identify any changes that are necessary to conform its regulations to the Improvement Act. In connection with that review, the Commission has identified both changes necessitated by the Improvement Act and other areas where it would be beneficial to clarify, update, and streamline the language of several procedural provisions. Due to the scope of the proposed revisions, the proposed rule would replace the Commission's current FOIA regulations in their entirety (17 CFR 200.80 through 200.80f).

II. Discussion of the Proposed Rule

A. Changes To Conform to the Improvement Act

The Commission is proposing four changes to the Commission's FOIA regulations to conform them to the Improvement Act. First, the proposed rule revises Section 200.80(a) to provide that records the FOIA requires to be made available for public inspection will be available in electronic format. Second, the proposed rule revises Section 200.80(c) to provide that a request for records may be denied to the extent the exemptions in 5 U.S.C. 552(b) apply to the requested records and Commission staff reasonably foresees that disclosure would harm an interest protected by the applicable exemption, the disclosure of the requested records is prohibited by law, or the requested records are otherwise exempted from disclosure under 5 U.S.C. 552(b)(3). Third, the proposed rule revises the regulations to state that FOIA requesters may seek assistance from the Office of FOIA Services' FOIA Public Liaisons (Sections 200.80(b), (d), and (e)) and to advise FOIA requesters of their right to seek dispute resolution services offered by the Office of Government Information Services in the case of a denied request (Section 200.80(e)). Fourth, the proposed rule revises Section 200.80(g) to incorporate the amendments to the FOIA requiring agencies to waive fees, under certain circumstances, if they do not comply with the time limits under the FOIA.

B. Proposed Amendments To Update, Clarify, and Streamline the FOIA Regulations

The remaining proposed changes are to certain procedural provisions. Those changes clarify, update, and streamline the Commission's regulations, and most of the changes make the regulations consistent with existing practices. The proposed regulations, among other things, update the various methods for submitting FOIA requests and administrative appeals (Sections 200.80(b) and (f)); describe certain information that is required when submitting requests for records about oneself or another individual (Section 200.80(b)); explain the situations in which the Office of FOIA Services staff will work with other Federal agencies that have an interest in agency records that may be responsive to a request (Section 200.80(c)); incorporate language that allows the Office of FOIA Services to seek a one-time clarification of an ambiguous request and toll the time period for responding to the request until the requester clarifies the request (Section 200.80(c)); clarify when the 20-day statutory time limit for responding to requests begins (*i.e.,* when requests are received by the Office of FOIA Services and when requests are modified so that they reasonably describe the records sought) (Section 200.80(d)); clarify the Office of FOIA Services' system for multi-track processing of requests (Section 200.80(d)); and enable the Office of FOIA Services to aggregate requests involving related matters where it appears that multiple requests together constitute a single request that would involve unusual circumstances (Section 200.80(d)).

Two of the procedural changes impose possible burdens on requesters. First, requesters must include their full names and return addresses in their request (Section 200.80(b)). Second, the Office of FOIA Services may aggregate related requests from one requester (or a group of requesters), and that aggregation may permit the Office of FOIA Services to extend deadlines for processing the request or place the request in a queue for complex requests. Other procedural changes provide more flexibility to requesters. For example, the proposed rule provides that administrative appeals need only be sent to the Office of FOIA Services (no longer requiring appeals to be sent to both the Office of FOIA Services and the Office of the General Counsel) (Section 200.80(f)).

The proposed rule also clarifies, consistent with existing practice, that the Office of FOIA Services will close requests if requesters do not take certain steps within set time periods. For example, requesters must respond to the Office of FOIA Services' one-time clarification request within 30 calendar days (Section 200.80(d)); agree to pay anticipated fees within 30 calendar days of the Office of FOIA Services' fee estimate (Section 200.80(g)); and, when required to do so, make an advance payment within 30 calendar days of the Office of FOIA Services' fee notice (Section 200.80(g)).

C. Proposed Revisions to Fee Provisions

The proposed rule also revises the Office of FOIA Services' fee procedures and fee schedule in Section 200.80(g). Two of the revisions could change current practices. First, the proposed rule allows the Office of FOIA Services to collect fees before sending records to a requester instead of seeking payment when the records are sent. Second, the proposed rule removes from the rule the set duplication fee of 24 cents per page and instead refers requesters to the FOIA fee page on the Commission's website, where the current fee will be posted.[1] The duplication fee posted on the website will reflect the direct costs of photocopying or producing a printout, taking into account various factors including the salary of the employee(s) performing the work and the cost of materials. The duplication fee posted on the Commission's website will be adjusted as appropriate to reflect current costs. Eliminating the set duplication fee will allow the Office of FOIA Services to align its photocopying and printout fees with the actual costs of duplicating records for production to requesters (in paper format) without having to amend the regulations.

[1] The Commission anticipates that the initial posted fee will be 15 cents per page, and the Commission is already charging this lower cost.

The proposed rule also codifies several existing practices. For example, it states that fees for duplicating records onto electronic medium (including the costs associated with scanning materials, where applicable) will be the direct costs of duplicating records for requesters; clarifies that the Office of FOIA Services will not process any requests once it determines that a fee may be charged unless the requester commits to pay the estimated fees; adds and clarifies fee-related definitions; clarifies the direct costs that can be charged by the Office of FOIA Services as part of search, review, and duplication fees; and sets forth the various methods by which FOIA processing fees can be paid.

D. Proposed Elimination of Certain Provisions

The proposed rule eliminates certain provisions in the Commission's current FOIA regulations that repeat information contained in the FOIA statute and do not need to be in the Commission's regulations. Among the provisions that the Commission is proposing to remove are: (1) The list of information the FOIA requires the Commission to publish in the **Federal Register** (Section 200.80(a)(1) of the current regulations), (2) the categories of records the FOIA requires the Commission to make available for public inspection (Section 200.80(a)(2) of the current regulations), and (3) the nine categories of records that are exempt from disclosure under 5 U.S.C. 552(b) (Section 200.80(b) of the current regulations). Finally, the Commission is proposing to eliminate Appendices A through F. Appendices A through D and F provide general information that is available on the Commission's website to the extent it is relevant to the public. The information in Appendix E is revised and updated and moved to Section 200.80(g) (Fees) of the proposed regulations.

E. Structure of the Proposed Rule

The structure of the regulations will be revised accordingly: Section 200.80(a) (General provisions); Section 200.80(b) (Requirements for making requests); Section 200.80(c) (Processing requests); Section 200.80(d) (Time limits and expedited processing); Section 200.80(e) (Responses to requests); Section 200.80(f) (Administrative appeals); and Section 200.80(g) (Fees).

III. General Request for Comments

We request and encourage any interested person to submit comments on any aspect of the proposals, other matters that might have an impact on the proposals, and suggestions for additional changes. We note that comments are of particular assistance to us if accompanied by analysis of the issues addressed in those comments and any data that may support the analysis. We urge commenters to be as specific as possible.

IV. Economic Analysis

The Commission is sensitive to the economic effects, including the costs and benefits, that result from its rules. Section 23(a)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition and prohibits any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[2] Further, Section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[3] As discussed further below, the Commission preliminarily believes that the economic effects of the proposed amendments would be limited. The Commission notes that, where possible, it has attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed amendments. In some cases, however, the Commission is unable to quantify the economic effects because it lacks the information necessary to provide a reasonable estimate. Additionally, some of the potential benefits of the amendments are inherently difficult to quantify.

The proposed revisions fall into four categories. First, as discussed in more detail above, the Commission is proposing amendments to its regulations to conform the regulations to the Improvement Act. Consistent with the Improvement Act, the proposed rule provides: (1) Records required to be made available pursuant to the FOIA will be made available in electronic format; (2) records will be withheld under the exemptions in 5 U.S.C. 552(b) only if Commission staff reasonably foresees that disclosure would harm an interest protected by the applicable exemption or disclosure is prohibited by law; (3) FOIA requesters may seek assistance from the Office of FOIA Services' FOIA Public Liaisons and will be advised that they have the right to seek dispute resolution services from the Office of Government Information Services if their request is denied; and (4) the Office of FOIA Services is required to waive fees, in certain circumstances, if it does not comply with the time limits under the FOIA. The Commission believes that these changes would have minimal impact on FOIA requesters because they largely codify the Commission's existing practices. To the extent the amendments result in these practices being followed more consistently, they could benefit the public by increasing the amount of information available, making more information available in an electronic format, and ensuring that requesters know of their right to seek alternative dispute resolution. The Commission also believes that the public could benefit from the increased transparency regarding these practices. The Commission does not expect these proposed amendments to result in additional costs to any member of the public.

Second, the Commission is proposing amendments to procedural provisions, which are intended to better reflect and improve existing practice. Most of these changes codify existing Office of FOIA Services practice, including: (1) Adding to the regulation additional methods for submitting FOIA requests and administrative appeals; (2) clarifying the existing procedures for submitting requests for records about oneself or another individual; (3) clarifying the existing procedures for submitting a proper FOIA request and seeking clarification of a request; (4) clarifying existing procedures for submitting an administrative appeal; and (5) clarifying the existing practice that limits administrative appeals to written filings (*i.e.,* there is no opportunity for personal appearance, oral argument, or hearing on appeal). The Commission does not expect these changes to result in additional costs to any member of the public. The Commission also expects that there would be some benefit to FOIA requesters from the increased transparency regarding these practices.

Two proposed procedural changes could affect members of the public. First, FOIA requesters will be required to include their full names and addresses in their requests. Providing a full name and address is not itself burdensome, but some requesters may prefer to remain anonymous and could be deterred from submitting FOIA requests by this requirement. However,

[2] 15 U.S.C. 78w(a).

[3] 15 U.S.C. 78c(f).

because nearly all FOIA requesters provide this information already, the Commission expects that the economic impact of the amendment will be minimal. Second, the Office of FOIA Services will be able to aggregate related requests from one requester (or a group of requesters). The Office of FOIA Services could aggregate requests that on their own do not involve ''unusual circumstances,'' as defined in the proposed regulations, or warrant placement in a track for complex requests, so aggregation may lead to extended deadlines for processing a request or cause a request to be handled after other complex requests. Based on past experience, the Commission expects that few requests will be aggregated. In addition, if the aggregation of requests results in the requests being placed in a track for complex requests that could extend the processing time, the requester could modify the request so that it can be processed more quickly. Thus, the Commission expects that the impact of this amendment also will be minimal.

Third, the Commission is proposing to revise the Office of FOIA Services' fee procedures and fee schedule in several ways, including: (1) Eliminating from the rule the per page duplication fee for copying or printing requested records, and instead referring requesters to the FOIA fee page on the Commission's website; (2) allowing the Office of FOIA Services to collect fees before sending records to a requester instead of seeking payment when the records are sent; (3) clarifying the direct costs that can be charged by the Office of FOIA Services as part of its search, review, and duplication fees; and (4) codifying the existing Office of FOIA Services practice of charging requesters the actual cost of production for materials produced in an electronic format. In general, lowering fees associated with FOIA requests could encourage additional FOIA submissions, while raising fees could deter them. However, as discussed below, the Commission does not anticipate that any of its proposed changes to the Office of FOIA Services' fee procedures would impose significant new costs on FOIA requesters.

With respect to the elimination of the set per page duplication fee, the Commission anticipates that the initial posted fee will be 15 cents per page, and the Office of FOIA Services has already lowered its per page duplication fee from 24 cents to 15 cents to reflect its actual duplication costs. Even if the Office of FOIA Services were to increase the per page duplication fee in the future, the impact of any increase would likely be minimal. Information about the fees the Commission has collected for FOIA requests for the past six years serves as a baseline from which the Commission can estimate the economic effects of this proposed change. Table 1 shows the number of requests received and processed by the Commission during fiscal years 2011 through 2016 and the fees the Commission collected. The fees collected by the Commission for processing FOIA requests include charges for staff time associated with locating, reviewing, and copying responsive documents. The Commission collects fees for duplication of 24 cents per page for paper copies and the costs of production for other types of media. The fee schedule for FOIA requests is available on the Commission's website.

TABLE 1—FOIA REQUESTS IN FISCAL YEARS 2011 TO 2016

Fiscal year	Requests received	Requests processed	Fees collected for processing requests
2011	11,555	11,562	$78,005.94
2012	11,292	11,302	27,577.00
2013	12,275	12,167	35,954.30
2014	14,862	14,757	22,670.81
2015	16,898	16,207	19,890.07
2016	14,458	15,196	41,029.68

As shown in Table 1, from fiscal year 2011–2016, the Office of FOIA Services collected an average of $37,521.30 per year in fees for processing an average of 13,532 requests. These amounts correspond to an average fee of $2.77 collected per request processed.[4] Even if all of those fees were for duplication (which they were not), a one cent per page increase in duplication fees would result in an increase in total fees collected of approximately $1,563.39,[5] corresponding to an average fee of $2.89 collected per request processed.[6]

With respect to the amendment providing that the FOIA Office can collect fees before sending records to a requester (instead of seeking payment when the records are sent), the Commission expects that any additional cost will be limited to a slight delay in receiving documents. The timing of the collection would not itself impose any additional costs on FOIA requesters because the timing would not alter the amount of fees charged. Any delay in receiving the documents would not be significant because a FOIA requester could make an electronic payment upon receipt of the request for payment, and the Office of FOIA Services would then provide the documents. The Commission notes that some requesters may choose to forego receiving the records in question if the fees are substantial, though even this impact may be muted because requesters would have been advised of and approved potential charges before requests are processed by the FOIA Office.

The proposed clarification regarding direct costs and codification of existing practice with respect to fees for materials produced in an electronic format are consistent with existing practice, and the Commission therefore does not expect these amendments to impose any additional burden on the public. The other proposed changes to the Office of FOIA Services' fee procedures also codify existing processes and will therefore not impose any additional burden on requesters. These proposed changes include: (1) Clarifying that the Office of FOIA Services will not process any requests once it determines that a fee may be charged unless the requester commits to pay the estimated fees; and (2) adding and clarifying certain fee-related definitions. The Commission does not expect these amendments to result in additional costs to any member of the public. To the contrary, the Commission

[4] Calculated as $37,521.30/13,532 = $2.77.

[5] To arrive at this estimated increase, we divide $37,521.30 in duplication fees by a cost of $0.24 per page to derive an estimate of approximately 156,339 pages of copies on average per fiscal year. 156,339 pages × $0.01 increase in per-page duplication fees = $1,563.39 in additional total processing fees.

[6] Calculated as ($37,521.30 + $1,563.39)/13,532 = $2.89.

believes that the public could benefit from the increased transparency regarding these practices.

Finally, the Commission is proposing to eliminate certain provisions in its FOIA regulations that are restatements of provisions in the FOIA statute. The Commission does not expect these amendments to result in any economic effects, as the elimination of these redundant provisions would not have any substantive consequence.

The Commission believes that the proposed amendments would not have any significant impact on efficiency, competition, or capital formation. The Commission requests comment on all aspects of the benefits and costs of the proposal, including any anticipated impacts on efficiency, competition, or capital formation.

V. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980 (''RFA'') requires the Commission to undertake an initial regulatory flexibility analysis of the effect of the proposed rule amendments on small entities unless the Commission certifies that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. As discussed above, most of the proposed changes are procedural. Many of the changes codify existing practices and are therefore unlikely to have any economic impact on requesters. With respect to the changes to the fee schedule, under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. These fees are typically nominal, and the proposed changes to the fees are therefore similarly nominal and would not have a significant economic impact on a FOIA requester, even a small entity. In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that the proposed amendments to the FOIA regulations, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission requests comment regarding the appropriateness of its certification.

VI. Paperwork Reduction Act

The proposed rule would not impose any new ''collection of information'' requirement as defined by the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.;* nor would it create any new filing, reporting, recordkeeping, or disclosure reporting requirements. Accordingly, we are not submitting the proposed rule to the Office of Management and Budget for review under the PRA.[7] We request comment on whether our conclusion that there are no new collections of information is correct.

VII. Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996, a rule is considered ''major'' where, if adopted, it results or is likely to result in: (i) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effect on competition, investment, or innovation.[8] We request comment on the potential impact of the proposed rule on the economy on an annual basis, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

VIII. Statutory Authority and Text of Proposed Rule Amendments

The amendments contained herein are being proposed under the authority set forth in Public Law 114–185 § 3(a), 130 Stat. 538; 5 U.S.C. 552; 15 U.S.C. 77f(d), 77s, 77ggg(a), 78d–1, 78w(a), 80a–37(a), 80a–44(b), 80b–10(a), and 80b–11(a).

List of Subjects in 17 CFR Part 200

Administrative practice and procedure; Freedom of information.

Text of Proposed Amendments

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 200 as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D—Information and Requests

■ 1. The authority citation for subpart D is revised to read as follows:

Authority: 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 77sss, 78m(F)(3), 78w, 80a–37, 80a–44(a), 80a–44(b), 80b–10(a), and 80b–11, unless otherwise noted.

Section 200.80 also issued under Public Law 114–185 sec. 3(a), 130 Stat. 538; 5 U.S.C. 552; 15 U.S.C. 77f(d), 77s, 77ggg(a), 78d–1, 78w(a), 80a–37(a), 80a–44(b), 80b–10(a), and 80b–11(a), unless otherwise noted.

Section 200.82 also issued under 15 U.S.C. 78n.

Section 200.83 also issued under E.O. 12600, 3 CFR, 1987 Comp., p. 235.

■ 2. Revise § 200.80 to read as follows:

§ 200.80 Securities and Exchange Commission records and information.

(a) *General provisions.* (1) This section contains the rules that the U.S. Securities and Exchange Commission follows in processing requests for records under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, as amended. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (''OMB Guidelines''). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the Commission's Privacy Act regulations at subpart H, as well as this section.

(2) *Proactive disclosure of Agency records.* (i) Records that the FOIA requires to be made available for public inspection in an electronic format (pursuant to 5 U.S.C. 552(a)(2)) are accessible through the Commission's website, *http://www.sec.gov.* Each division and office of the Commission is responsible for determining which of its records are required to be made publicly available in an electronic format, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each division and office shall ensure that its posted records and indexes are reviewed and updated on an ongoing basis.

(ii) Those who do not have access to the internet may obtain these records by contacting the Commission's Office of FOIA Services by telephone at 202–551–7900, by email at *foiapa@sec.gov,* or by visiting the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–2736, on official working days between the hours of 10:00 a.m. and 3:00 p.m.

(b) *Requirements for making requests for records*— (1) *How made and addressed.* The Commission has a centralized system for responding to FOIA requests, with all requests processed by the Office of FOIA Services. Requests for agency records must be in writing and include the requester's full name and a legible return address. Requesters may also include other contact information, such as an email address and a telephone number. Requests may be submitted by

[7] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[8] Public Law 104–121, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

U.S. mail or delivery service and addressed to the Freedom of Information Act Officer, SEC, 100 F Street NE, Washington, DC 20549. Requests may also be made by facsimile (202–772–9337), email (*foiapa@sec.gov*), or online at the Commission's website (*http://www.sec.gov*). The request (and envelope, if the request is mailed or hand-delivered) should be marked ''Freedom of Information Act Request.''

(2) *Requests for records about oneself or another individual.* (i) A requester who is making a request for records about himself or herself must comply with the verification of identity provisions set forth in subpart H of this part to obtain any documents that would not be available to the public under the FOIA.

(ii) For requests for records about another individual, a requester may receive greater access by submitting either a notarized authorization signed by the individual permitting disclosure of his or her records or proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). The Office of FOIA Services can require a requester to supply additional information if necessary to verify that a particular individual has consented to disclosure.

(3) *Description of records sought.* A FOIA request must reasonably describe the agency records sought with sufficient specificity with respect to names, dates, and subject matter to enable personnel within the divisions and offices of the Commission to locate them with a reasonable effort. Before submitting a request, a requester may contact the Office of FOIA Services' FOIA Public Liaisons to discuss the records they are seeking and to receive assistance in describing the records (contact information for these individuals is on the Commission's website, *http://www.sec.gov*). If the Office of FOIA Services determines that a request does not reasonably describe the records sought, it shall inform the requester what additional information is needed or how the request is insufficient. A requester who is attempting to reformulate or modify such a request may discuss the request with the Office of FOIA Services' designated FOIA contact, its FOIA Public Liaisons, or a representative of the Office of FOIA Services, each of whom is available to assist the requester in reasonably describing the records sought. When a requester fails to provide sufficient information within 30 calendar days after having been asked to reasonably describe the records sought, the Office of FOIA Services shall notify the requester in writing that the request has not been properly made, that no further action will be taken, and that the FOIA request is closed. Such a notice constitutes an adverse determination under paragraph (e)(2) of this section for which the Office of FOIA Services shall follow the procedures for a denial letter under paragraph (e)(2) of this section. In cases where a requester has modified his or her request so that it reasonably describes the requested records, the date of receipt for purposes of the 20-day time limit of paragraph (d) of this section shall be the date of receipt of the modified request.

(c) *Processing requests*—(1) *In general.* (i) A request for records may be denied to the extent the exemptions in 5 U.S.C. 552(b) apply to the requested records and:

(A) Commission staff reasonably foresees that disclosure would harm an interest protected by the applicable exemption; or

(B) The disclosure of the requested records is prohibited by law or is exempt from disclosure under 5 U.S.C. 552(b)(3).

(ii) In determining which records are responsive to a request, the Office of FOIA Services ordinarily will include only records in the agency's possession as of the date that it begins its search.

(2) *Re-routing of misdirected requests.* Any division or office within the Commission that receives a written request for records should promptly forward the request to the Office of FOIA Services for processing.

(3) *Consultation, referral, and coordination.* When reviewing records located in response to a request, the Office of FOIA Services will determine whether another Federal agency is better able to determine if the record is exempt from disclosure under the FOIA. As to any such record, the Office of FOIA Services will proceed in one of the following ways:

(i) *Consultation.* In instances where a record is requested that originated within a division or office within the Commission and another Federal agency has a significant interest in the record (or a portion thereof), the Office of FOIA Services will consult with that Federal agency before responding to a requester. When the Office of FOIA Services receives a request for a record (or a portion thereof) in its possession that originated with another entity within the Federal Government that is not subject to the FOIA, the Office of FOIA Services will typically consult with that entity prior to making a release determination.

(ii) *Referral.* When the Office of FOIA Services receives a request for a record (or a portion thereof) in its possession that originated with another Federal agency subject to the FOIA, the Office of FOIA Services will typically refer the record to that agency for direct response to the requester. Ordinarily, the agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the Office of FOIA Services and the originating agency jointly agree that the Office of FOIA Services is in the best position to make a disclosure determination regarding the record, then the record may be handled as a consultation and processed by the Office of FOIA Services. Whenever the Office of FOIA Services refers a record to another Federal agency for direct response to the requester, the Office of FOIA Services shall notify the requester in writing of the referral and inform the requester of the name of the agency to which the record was referred.

(iii) *Coordination.* If disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an exemption, the Office of FOIA Services generally will coordinate with the originating agency to seek its views as to disclosure of the record and then advise the requester of the release determination for the record that is the subject of the coordination.

(iv) *Classified information.* On receipt of any request involving classified information, the Commission staff in possession of the information shall determine whether the information is currently and properly classified and take appropriate action to ensure compliance with subpart J of this part. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another Federal agency under an executive order concerning the classification of records, the Office of FOIA Services shall refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever agency records contain information that has been classified by another Federal agency, the Office of FOIA Services shall refer the responsibility for responding to that portion of the request to the agency that classified the underlying information except in circumstances that come within paragraph (c)(3)(iii) of this section.

(d) *Time limits and expedited processing.* — (1) *In general.* The Office of FOIA Services will seek to respond to requests according to their order of receipt within each track of the Office of FOIA Services' multitrack processing

system as described in paragraph (d)(4) of this section.

(2) *Initial response.* A determination whether to comply with a FOIA request shall be made within 20 days (excepting Saturdays, Sundays, and legal public holidays) from the date the Office of FOIA Services receives a request for a record under this part, except when the circumstances described in paragraphs (d)(3), (5), or (7) of this section are applicable. In instances where a FOIA requester has misdirected a request that is re-routed pursuant to paragraph (c)(2) of this section, the response time shall commence on the date that the request is first received by the Office of FOIA Services, but in any event not later than 10 working days after the request is first received by any division or office of the Commission.

(3) *Clarification of request.* The Office of FOIA Services may seek clarification of a request (or a portion of a request) for records. The request for clarification generally should be in writing. The first time the Office of FOIA Services seeks clarification, the time for responding to the entire request (set forth in paragraph (d)(2) of this section) is tolled until the requester responds to the clarification request. The tolled period will end when the Office of FOIA Services receives a response from the requester that reasonably describes the requested records. If the Office of FOIA Services asks for clarification and does not receive a written response from the requester within 30 calendar days from the date of the clarification request, the Office of FOIA Services will presume that the requester is no longer interested in the record(s) sought and notify the requester that any portion of the request as to which clarification was sought has been closed.

(4) *Multitrack processing.* The Office of FOIA Services shall use a multitrack system for processing FOIA requests. The Office of FOIA Services shall designate one track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (d)(7) of this section. The Office of FOIA Services shall use two or more additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work and/or time needed to process the request. Among the factors the Office of FOIA Services may consider are the time to perform a search, the number of pages that must be reviewed in processing the request, and the need for consultations or referrals. The Office of FOIA Services shall advise requesters of the track into which their request falls and, when appropriate, shall offer the requesters an opportunity to narrow the scope of their request so that it can be placed in a different processing track.

(5) *Unusual circumstances.* The Office of FOIA Services may extend the time period for processing a FOIA request in ''unusual circumstances.'' To extend the time, the Office of FOIA Services shall notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request is expected to be completed. If the extension exceeds 10 working days, the Office of FOIA Services shall provide the requester, in writing, with an opportunity to modify the request or arrange an alternative time frame for processing the request or a modified request. The Office of FOIA Services shall also make available its FOIA Public Liaisons to assist in the resolution of any disputes and notify the requester of the right to seek dispute resolution services from the Office of Government Information Services. For purposes of this section, ''unusual circumstances'' include:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request.

(iii) The need to consult with another Federal agency having a substantial interest in the determination of the FOIA request or among two or more divisions or offices within the Commission having substantial subject-matter interest therein.

(6) *Aggregating requests.* The Office of FOIA Services may aggregate requests in cases where it reasonably believes that multiple requests, submitted either by a requester or by a group of requesters acting in concert, together constitute a single request that would involve unusual circumstances, as defined in paragraph (d)(5) of this section. Multiple requests involving unrelated matters shall not be aggregated. The Office of FOIA Services shall advise requesters, in writing, when it determines to aggregate multiple requests and comply with paragraph (d)(5) of this section. Aggregation of requests for this purpose will be conducted independent of aggregation requests for fee purposes under paragraph (g)(8) of this section.

(7) *Expedited processing.* The Office of FOIA Services shall grant a request for expedited processing if the requester demonstrates a ''compelling need'' for the records. ''Compelling need'' means that a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to an individual's life or physical safety or, if the requester is primarily engaged in disseminating information, an urgency to inform the public about an actual or alleged Federal Government activity.

(i) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(ii) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining why there is a ''compelling need'' for the records.

(iii) The Office of FOIA Services shall determine whether to grant or deny a request for expedited processing and provide notice of that determination within 10 calendar days of receipt of the request by the Office of FOIA Services. A request for records that has been granted expedited processing shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that determination shall be decided expeditiously.

(8) *Appeals.* An administrative appeal shall be decided within 20 days (excepting Saturdays, Sundays, and legal public holidays) from the date the Office of FOIA Services receives such appeal except in the unusual circumstances specified in paragraph (d)(5) of this section. In those unusual circumstances, the 20-day time limit may be extended by written notice to the person making the appeal setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension of more than 10 working days.

(e) *Responses to requests for records*—(1) *Acknowledgment of requests.* Upon receipt of a request for records, the Office of FOIA Services ordinarily will send the requester an acknowledgment letter that provides an assigned request number for further reference and, if necessary, confirms whether the requester is willing to pay fees.

(2) *Responses to requests.* (i) Any letter determining whether to comply with a request will inform the requester of the right to seek assistance from the Office of FOIA Services' FOIA Public Liaisons.

(ii) If the Office of FOIA Services makes a determination to grant a request in whole or in part, it shall notify the requester in writing of such determination, disclose records to the requester, and collect any applicable fees.

(iii) If the Office of FOIA Services makes an adverse determination regarding a request, it shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the requested record does not exist (or is not subject to the FOIA), cannot be located, or has previously been destroyed; or the requested record is not readily producible in the form or format sought by the requester. Adverse determinations also include designations of requesters' fee category, denials of fee waiver requests, or denials of requests for expedited processing.

(iv) An adverse determination letter shall be signed and include:

(A) The names and titles or positions of each person responsible for the adverse determination;

(B) A brief statement of the reasons for the adverse determination, including any FOIA exemption applied by the official denying the request;

(C) For records disclosed in part, markings or annotations to show the applicable FOIA exemption(s) and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible;

(D) An estimate of the volume of any records or information withheld by providing the number of pages withheld in their entirety or some other reasonable form of estimation. This estimate is not required if the volume is otherwise indicated by deletions marked on the records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable FOIA exemption;

(E) A statement that the adverse determination may be appealed under paragraph (f) of this section, and a description of the requirements for filing an administrative appeal set forth in that paragraph; and

(F) A statement of the right of the requester to seek dispute resolution services from the Office of FOIA Services' FOIA Public Liaisons or the Office of Government Information Services (''OGIS'').

(3) *Mediation services.* OGIS offers mediation services to resolve disputes between requesters and the Office of FOIA Services as a non-exclusive alternative to litigation. Requesters with concerns about the handling of their requests may contact OGIS.

(f) *Administrative appeals*—(1) *Administrative review.* If a requester receives an adverse determination as described in paragraph (e)(2)(iii) of this section, or the request has not been timely determined within the time period prescribed in paragraph (d)(2) of this section or within an extended period permitted under paragraph (d)(5) of this section, the requester may file an appeal to the Office of the General Counsel consistent with the procedures described in paragraphs (f)(2) through (4) of this section. A requester generally must submit a timely administrative appeal before seeking review by a court of an adverse determination.

(2) *Time limits.* Appeals can be submitted in writing or electronically, as described in paragraph (f)(3) of this section. The appeal must be received within 90 calendar days of the date of the written denial of the adverse determination and must be received no later than 11:59 p.m., Eastern Time, on the 90th day. If the Office of FOIA Services has not issued a determination on a request, an appeal may be submitted any time after the statutory time period for responding to a request ends.

(3) *Contents of appeal.* Appeals should be clearly and prominently identified at the top of the first page as ''Freedom of Information Act Appeal'' and should provide the assigned FOIA request number. The appeal should include a copy of the original request and adverse determination. Appeals should include a statement of the requester's arguments as to why the records requested should be made available and why the adverse determination was in error. If only a portion of the adverse determination is appealed, the requester must specify which part is being appealed.

(4) *How to file and address an appeal.* If submitted by U.S. mail or delivery service, the appeal must be sent to the Office of FOIA Services at 100 F Street NE, Washington, DC 20549. Appeals may also be made by facsimile at 202–772–9337, email (*foiapa@sec.gov*), or online at the Commission's website (*http://www.sec.gov*). A legible return address must be included with the FOIA appeal. The requester may also include other contact information, such as a telephone number and/or email address.

(5) *Adjudication of appeals.* The Office of the General Counsel has the authority to grant or deny all appeals, in whole or in part. In appropriate cases the Office of the General Counsel may refer appeals to the Commission for determination. No opportunity for personal appearance, oral argument, or hearing on appeal is provided. Upon receipt of an appeal, the Office of FOIA Services ordinarily will send the requester an acknowledgment letter that confirms receipt of the requester's appeal.

(6) *Determinations on appeals.* A determination on an appeal must be made in writing. A determination that denies an appeal, in whole or in part, shall include a brief explanation of the basis for the denial, identify the applicable FOIA exemptions asserted, and describe why the exemptions apply. As applicable, the determination will provide the requester with notification of the statutory right to file a lawsuit in accordance with 5 U.S.C. 552(a)(4), and will inform the requester of the mediation services offered by the Office of Government Information Services as a non-exclusive alternative to litigation. If the Office of FOIA Services' determination is remanded or modified on appeal, the Office of the General Counsel will notify the requester of that determination in writing.

(g) *Fees*— (1) *In general.* The Office of FOIA Services shall charge fees for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines, except where fees are limited under paragraph (g)(4) of this section or when a waiver or reduction is granted under paragraph (g)(12) of this section. To resolve any fee issues that arise under this section, the Office of FOIA Services may contact a requester for additional information. The Office of FOIA Services shall ensure that searches, review, and duplication are conducted in an efficient manner. The Office of FOIA Services ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check, certified check, or money order, or where possible, by electronic payment.

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

(i) *Commercial use request* is a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. The Office of FOIA Services will determine whether to place a requester in the commercial use category on a case-by-case basis based on the requester's intended use of the information.

(ii) *Direct costs* are those expenses the Office of FOIA Services and any staff within the divisions and offices of the Commission incur in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include the salary of the employee(s) performing the work (*i.e.,*

the basic rate of pay for the employee(s), plus 16% of that rate to cover benefits), the cost of materials, and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space and of heating or lighting a facility in which the service is performed.

(iii) *Duplication* is reproducing a record, or the information contained in it, to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others. The Office of FOIA Services shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(iv) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research.

(v) *Noncommercial scientific institution* is an institution that is not operated to further a commercial, trade, or profit interest and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

(vi) *Representative of the news media* or *news media requester* is any person or entity that is organized and operated to publish or broadcast news to the public and that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. The Office of FOIA Services will determine whether to grant a requester news media status on a case-by-case basis based upon the requester's intended use of the requested material.

(vii) *Review* is the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. Review time includes doing all that is necessary to prepare the record for disclosure, such as redacting the record and marking any applicable exemptions. Review time also includes time spent obtaining and considering formal objections to disclosure made by a submitter under § 200.83, but it does not include time spent resolving legal or policy issues regarding the application of exemptions.

(viii) *Search* is the review, manually or by automated means, of agency records for the purpose of locating those records that are responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(3) *Charging fees.* In responding to FOIA requests, the Office of FOIA Services shall charge the fees summarized in chart form in paragraph (g)(3)(i) of this section and explained in paragraphs (g)(3)(ii) through (v) of this section, unless fees are limited under paragraph (g)(4) of this section or a waiver or reduction of fees has been granted under paragraph (g)(12) of this section.

(i) The four categories of requesters and the chargeable fees for each are:

Requester category	Search fees	Review fees	Duplication fees
(A) Commercial use requesters	Yes	Yes	Yes.
(B) Educational and noncommercial scientific institutions.	No	No	Yes (first 100 pages, or equivalent volume, free).
(C) Representatives of the news media	No	No	Yes (first 100 pages, or equivalent volume, free).
(D) All other requesters	Yes (first 2 hours free)	No	Yes (first 100 pages, or equivalent volume, free).

(ii) *Search fees.* (A) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (g)(4) of this section. The Office of FOIA Services may charge for time spent searching even if no responsive records are located or it is determined that the records are entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by agency employees.

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

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

(iii) *Review fees.* Review fees shall be charged to requesters who make commercial use requests. Review fees shall be assessed in connection with the initial review of the record, *i.e.,* the review agency employees conduct to determine whether an exemption applies to a particular record or portion of a record. Also, if an exemption asserted to withhold a record (or a portion thereof) is deemed to no longer apply, any costs associated with the re-review of the records to consider the use of other exemptions may be assessed as review fees. Review fees shall be the direct costs of conducting the review by the involved employees. Review fees can be charged even if the records reviewed ultimately are not disclosed.

(iv) *Search and review services (review applies to commercial-use requesters only).* (A) The Office of FOIA Services will establish and charge average rates for the groups of employees' salary grades typically involved in the search and review of records. Those groups will consist of employees at:

(*1*) Grades SK–8 or below;

(*2*) Grades SK–9 to SK–13; and

(*3*) Grades SK–14 or above.

(B) The average rates will be based on the hourly salary (*i.e.,* basic salary plus locality payment), plus 16 percent for benefits, of employees who routinely perform search and review services. The average hourly rates are listed on the FOIA web page of the Commission's website at *http://www.sec.gov* and will be updated as salaries change. Fees will

be charged in quarter-hour increments. No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(v) *Duplication fees.* Duplication fees shall be charged to all requesters, subject to the limitations of paragraph (g)(4) of this section. Fees for either a photocopy or printout of a record (no more than one copy of which need be supplied) are identified on the FOIA web page of the Commission's website at *www.sec.gov.* For copies of records produced on tapes, disks, or other media, the Office of FOIA Services shall charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For all other forms of duplication, the Office of FOIA Services shall also charge the direct costs.

(4) *Limitations on charging fees.* (i) No search or review fees will be charged for requests by educational institutions (unless the requests are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.

(ii) Except for requesters seeking records for a commercial use, the Office of FOIA Services shall provide without charge the first 100 pages of duplication (or the cost equivalent for other media) and the first two hours of search.

(iii) Fees will not be charged where the costs of collecting and processing the fee are likely to equal or exceed the amount of the fee.

(iv) The Office of FOIA Services will not assess search fees (or, in the case of requests from representatives of the news media or educational or noncommercial scientific institutions, duplication fees) when 5 U.S.C. 552(a)(4)(A)(viii) prohibits the assessment of those fees.

(5) *Notice of anticipated fees.* (i) When the Office of FOIA Services determines or estimates that the fees to be assessed in accordance with this section will exceed the amount it would cost the Office of FOIA Services to collect and process the fees, the Office of FOIA Services shall notify the requester of the actual or estimated amount of fees, unless the requester has indicated a willingness to pay fees as high as the estimated fees. If only a portion of the fee can be estimated readily, the Office of FOIA Services shall advise the requester accordingly. If the requester is not a commercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge.

(ii) In cases in which a requester has been notified that the actual or estimated fees will amount to more than it would cost the Office of FOIA Services to collect and process the fees, or amount to more than the amount the requester indicated a willingness to pay, the Office of FOIA Services will do no further work on the request until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a requester who is not a commercial use requester designates that the requester seeks only that which can be provided by the statutory entitlements. The Office of FOIA Services will toll the response period while it notifies the requester of the actual or estimated amount of fees and this time will be excluded from the 20 working day time limit (as specified in paragraph (d)(2) of this section). The requester's agreement to pay fees must be made in writing, must designate an exact dollar amount the requester is willing to pay, and must be received within 30 calendar days from the date of the notification of the fee estimate. If the requester fails to submit an agreement to pay the anticipated fees within 30 calendar days from the date of the Office of FOIA Services' fee notice, the Office of FOIA Services will presume that the requester is no longer interested in the records and notify the requester that the request has been closed.

(iii) The Office of FOIA Services shall make available their FOIA Public Liaisons or other FOIA professionals to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(6) *Charges for other services.* Although not required to provide special services, if the Office of FOIA Services chooses to do so as a matter of administrative discretion, the direct costs of providing the service shall be charged. Examples of such special services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail. The cost for the attestation of records with the Commission seal (*i.e.,* certifying records as true copies) is $4.00 per record, which may be waived for records certified electronically. Requests for certified copies of records or documents shall ordinarily be serviced within 20 working days. Requests will be processed in the order in which they are received.

(7) *Charging interest.* The Office of FOIA Services may begin to charge interest on any unpaid bill starting on the 31st calendar day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and accrue from the date of the billing until the payment is received. The Office of FOIA Services shall take all steps authorized by the Debt Collection Act of 1982, as amended, and the Commission's Rules Relating to Debt Collection to effect payment, including offset, disclosure to consumer reporting agencies, and use of collection agencies.

(8) *Aggregating requests.* If the Office of FOIA Services reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Office of FOIA Services may aggregate those requests and charge accordingly. Among the factors the Office of FOIA Services shall consider in deciding whether to aggregate are whether the requests were submitted close in time and whether the requests seek documents about related matters. The Office of FOIA Services may presume that multiple requests that involve related matters made by the same requester or a group of requesters within a 30 calendar day period have been made to avoid fees. For requests separated by a longer period, the Office of FOIA Services will aggregate them only where it determines that aggregation is warranted in view of all the circumstances involved.

(9) *Advance payments.* (i) For requests other than those described in paragraphs (g)(9)(ii) and (iii) of this section, the Office of FOIA Services shall not require a requester to make advance payment (*i.e.,* payment made before the Office of FOIA Services begins to process or continues to work on a request). Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(ii) When the Office of FOIA Services determines or estimates that a total fee to be charged under this section will exceed $250.00, it shall notify the requester of the actual or estimated fee and may require the requester to make an advance payment of the entire anticipated fee before beginning to process the request. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with the Office of FOIA Services' FOIA Public Liaisons or other FOIA professionals to modify the request in

an effort to meet the requester's needs at a lower cost.

(iii) When a requester has previously failed to pay a properly charged FOIA fee to the Office of FOIA Services or other Federal agency within 30 calendar days of the date of billing, the Office of FOIA Services shall notify the requester that he or she is required to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the Office of FOIA Services begins to process a new request or continues processing a pending request from that requester. Where the Office of FOIA Services has a reasonable basis to believe that a requester has misrepresented the requester's identity to avoid paying outstanding fees, it may require that the requester provide proof of identity and pay in advance.

(iv) When the Office of FOIA Services requires advance payment or payment due under paragraphs (g)(9)(ii) and (iii) of this section, the Office of FOIA Services will not further process the request until the required payment is made. The Office of FOIA Services will toll the processing of the request while it notifies the requester of the advanced payment due and this time will be excluded from the 20 working day time limit (as specified in paragraph (d)(2) of this section). If the requester does not pay the advance payment within 30 calendar days from the date of the Office of FOIA Services' fee notice, the Office of FOIA Services will presume that the requester is no longer interested in the records and notify the requester that the request has been closed.

(10) *Tolling.* When necessary for the Office of FOIA Services to clarify issues regarding fee assessment with the requester, the time limit for responding to a FOIA request is tolled until the Office of FOIA Services resolves such issues with the requester.

(11) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute (except the FOIA) that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the Office of FOIA Services shall inform the requester how to obtain records from that program. Provision of such records is not handled under the FOIA.

(12) *Requirements for waiver or reduction of fees.* (i) Records responsive to a request will be furnished without charge, or at a charge reduced below that established under paragraph (g)(3) of this section, if the requester asks for such a waiver in writing and the Office of FOIA Services determines, after consideration of information provided by the requester, that the requester has demonstrated that:

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

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

(ii) In deciding whether disclosure of the requested information is likely to contribute significantly to public understanding of the operations or activities of the government, the Office of FOIA Services shall consider all four of the following factors:

(A) *The subject of the request:* Whether the subject of the requested records concerns the operations or activities of the government. The subject of the requested records must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(B) *The informative value of the information to be disclosed:* Whether the disclosure is likely to contribute to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding.

(C) *The contribution to an understanding of the subject by the public likely to result from disclosure:* Whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media satisfies this consideration.

(D) *The significance of the contribution to public understanding:* Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities. The public's understanding of the subject in question prior to the disclosure must be significantly enhanced by the disclosure.

(iii) In deciding whether disclosure of the requested information is primarily in the commercial interest of the requester, the Office of FOIA Services shall consider the following factors:

(A) *The existence and magnitude of a commercial interest:* Whether the requester has a commercial interest that would be furthered by the requested disclosure. The Office of FOIA Services shall consider any commercial interest of the requester (with reference to the definition of ''commercial use requester'' in paragraph (g)(2)(i) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(B) *The primary interest in disclosure:* Whether the public interest is greater than any identified commercial interest in disclosure. The Office of FOIA Services ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(iv) If only a portion of the requested records satisfies both the requirements for a waiver or reduction of fees, a waiver or reduction of fees will be granted for only that portion.

(v) Requests for a waiver or reduction of fees should address all the factors identified in paragraphs (g)(12)(ii) and (iii) of this section.

(vi) Denials of requests for a waiver or reduction of fees are adverse determinations (as defined in paragraph (e)(2)(iii) of this section) and may be appealed to the General Counsel in accordance with the procedures set forth in paragraph (f) of this section.

§ 200.80a [Removed]

■ 3. Remove § 200.80a.

§ 200.80b [Removed]

■ 4. Remove § 200.80b.

§ 200.80c [Removed]

■ 5. Remove § 200.80c.

§ 200.80d [Removed]

■ 6. Remove § 200.80d.

§ 200.80e [Removed]

■ 7. Remove § 200.80e.

§ 200.80f [Removed]

■ 8. Remove § 200.80f.

By the Commission.

Dated: December 21, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–27967 Filed 1–2–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 220

[Docket No.

RIN 0596–AD31

National Environmental Policy Act Compliance

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The Forest Service is proposing to revise its National Environmental Policy Act (NEPA) procedures with the goal of increasing efficiency of environmental analysis. This will help the Forest Service implement its core mission by increasing the health and productivity of our Nation's forests for the benefit of all Americans, and in turn foster productive and sustainable use of National Forest System lands. The Agency's NEPA procedures are a key component of its overall environmental analysis and decision-making process. The Agency is seeking comments from the public on ways it can achieve the goals of increased efficiency of environmental analysis.

DATES: Comments must be received in writing by February 2, 2018.

ADDRESSES: Please submit comments via one of the following methods:

1. *Public participation portal (preferred): https://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-1797.*

2. *Mail:* NEPA Services Group, c/o Amy Barker; USDA Forest Service, Geospatial Technology and Applications Center, 2222 West 2300 South, Salt Lake City, UT 84119.

3. *Email: nepa-procedures- revision@fs.fed.us.*

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received online via the public reading room at *https://cara.ecosystem-management.org/Public/ReadingRoom?project=ORMS-1797,* or at U.S. Forest Service, Ecosystem Management Coordination, 201 14th St. SW, 2 Central, Washington, DC 20024. Visitors are encouraged to call ahead to (202) 205–1475 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Jim Smalls; Assistant Director, Ecosystem Management Coordination; 202–205–1475. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service is proposing to revise its NEPA procedures (including its regulations at 36 CFR part 220, Forest Service Manual 1950, and Forest Service Handbook 1909.15) with the goal of increasing efficiency of environmental analysis. The Agency will continue to hold true to its commitment to deliver scientifically based, high-quality analysis to decision makers that honors its environmental stewardship responsibilities while maintaining robust public participation. These values are at the core of the Forest Service mission.

Reforming the Forest Service's NEPA procedures is needed for a variety of reasons. An increasing percentage of the Agency's resources are spent each year to provide the necessary resources for wildfire suppression, resulting in fewer resources available for other management activities such as restoration. In 1995, fire made up 16 percent of the Forest Service's annual appropriated budget. In 2017, more than 50 percent of the Forest Service's annual budget will be dedicated to wildfire. Along with this shift in resources, there has also been a corresponding shift in staff, with a 39 percent reduction in all non-fire personnel since 1995. Additionally, the Agency has a backlog of more than 6,000 special use permits awaiting completion, and over 80 million acres of National Forest System land are in need of restoration to reduce the risk of wildfire, insect epidemics, and forest diseases.

Increasing efficiency of environmental analysis will enable the Agency to complete more projects needed to increase the health and productivity of our national forests and grasslands. The Agency's goal is to complete project decision making in a timelier manner, to improve or eliminate inefficient processes and steps, and where appropriate increase the scale of analysis and the amount of activities authorized in a single analysis and decision. Improving the efficiency of environmental analysis and decision making will enable the agency to ensure lands and watersheds are sustainable, healthy, and productive; mitigate wildfire risk; and contribute to the economic health of rural communities through use and access opportunities.

Agency NEPA Procedures

Each Federal agency is required to develop NEPA procedures that supplement the Council on Environmental Quality (CEQ) regulations and reflect the agency's unique mandate and mission. The CEQ encourages agencies to periodically review their NEPA procedures. The Forest Service's NEPA procedures were last reviewed in 2008 when the Agency moved a subset of its NEPA procedures from the Forest Service Manual and Handbook to the Code of Federal Regulations. However, the Agency's NEPA procedures still reflect in part the policies and practices established by the Agency's 1992 NEPA Manual and Handbook. The proposed revision of the Forest Service's NEPA procedures will be developed in consultation with CEQ.

Request for Comment

The Agency is seeking public comment on the following:

- Processes and analysis requirements that can be modified, reduced, or eliminated in order to reduce time and cost while maintaining science-based, high-quality analysis; public involvement; and honoring agency stewardship responsibilities.
- Approaches to landscape-scale analysis and decision making under NEPA that facilitate restoration of National Forest System lands.
- Classes of actions that are unlikely, either individually or cumulatively, to have significant impacts and therefore should be categorically excluded from NEPA's environmental assessment and environmental impact statement requirements, such as integrated restoration projects; special use authorizations; and activities to maintain and manage Agency sites (including recreation sites), facilities, and associated infrastructure.
- Ways the Agency might expand and enhance coordination of environmental review and authorization decisions with other Federal agencies, as well as State, Tribal, or local environmental reviews.

Dated: December 20, 2017.

Tony Tooke,

Chief, USDA, Forest Service.

[FR Doc. 2017–28298 Filed 1–2–18; 8:45 am]

BILLING CODE 3411–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 17–310; FCC 17–164]

Promoting Telehealth in Rural America

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes measured steps as part of a Notice of Proposed Rulemaking and Order to ensure that rural healthcare providers get the support they need while guarding against waste, fraud, and abuse, considers a series of measures to ensure the Rural Health Care (RHC) Program operates efficiently and considers the appropriate size of the funding cap. The Commission takes targeted, immediate action in the Order section of the item to mitigate the impact of the existing RHC Program cap on rural healthcare providers in funding year (FY) 2017. Because the Order section does not establish any final rules, we do not incorporate the Order section in this document.

DATES: Comments are due February 2, 2018, and reply comments are due on or before February 20, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 17–310, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's website: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Radhika Karmarkar, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 17–310; FCC 17–164, adopted on December 14, 2017 and released on December 18, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-164A1.pdf.*

I. Introduction

1. In this Notice of Proposed Rulemaking (NPRM), the Commission proposes measured steps to ensure that rural healthcare providers get the support they need while guarding against waste, fraud, and abuse. The Commission considers a series of measures to ensure the Rural Health Care (RHC) Program operates efficiently and in the appropriate size of the funding cap.

2. As technology and telemedicine assume an increasingly critical role in healthcare delivery, a well-designed RHC Program is more vital than ever. Trends suggest that rural communities across the country are falling behind when it comes to the availability of high-quality healthcare. Indeed, the American Hospital Association (AHA) reports that ''obtaining access to care in rural America is a significant challenge.'' Over the last seven years, over 80 rural hospitals have closed and hundreds more are at risk of closing. On a per capita basis, there are far fewer doctors in rural areas than in urban areas. In sum, ''rural hospitals are facing one of the great slow-moving crises in American health care.''

3. By improving rural healthcare provider access to modern communications services, the RHC Program can help in overcoming some of the obstacles to healthcare delivery faced in isolated communities. Through broadband-enabled technology, a rural clinic can transmit an x-ray in a matter of seconds to a radiologist located thousands of miles away. Via video-conferencing, a woman with a high-risk pregnancy has access to the type of pre-natal care that enables her baby to be delivered much closer to term. This in turn leads to fewer days in the Neonatal Intensive Care Unit for the baby and potentially places the child and family on a more positive future trajectory. With a high-speed data connection, a surgeon can perform an emergency procedure remotely. In places where the nearest pharmacist is a plane ride away, vending machine-like devices can dispense prescription medications.

4. The efforts by the Commission's Connect2HealthFCC (Connect2Health) Task Force have illustrated the significant impact communications services can have on addressing the healthcare needs of persons living in rural and underserved areas, and how communities are leveraging broadband-enabled health technologies to improve access to health and care throughout the country. For example, in Mississippi, the Connect2Health Task Force highlighted the positive impact of public-private partnerships on health outcomes and how broadband-enabled health technologies have made a difference to diabetes patients in Mississippi. Additionally, in Texas, the Connect2Health Task Force emphasized how broadband-enabled health technologies can improve access to mental health care.

5. It is therefore crucial that the benefits of the RHC Program are fully realized across the nation. But current RHC Program rules and procedures may be holding back the promise of the RHC Program for the rural healthcare providers that need it most. For the second funding year (FY) in a row, demand for RHC Program support is anticipated to exceed available program funding, leaving healthcare providers to potentially pay more for service than expected. Unfortunately, part of that growth is due to an increase in waste, fraud, and abuse in the RHC Program. Further, the Telecommunications (Telecom) Program, a component of the RHC Program, has not been significantly reviewed or revised since its inception in 1997.

II. Notice of Proposed Rulemaking

A. Addressing RHC Program Funding Levels

1. Revisiting the RHC Program Funding Cap

6. The current cap on the RHC Program has remained at $400 million since its inception in 1997. RHC Program demand, however, exceeded the cap in FY 2016 and is expected to exceed the cap in FY 2017 and in future years. The proration that comes with capped funding may be especially hard on small, rural healthcare providers with limited budgets, and so the Commission examines whether a cap of $400 million is an appropriate level of

funding for the RHC Program going forward. Since the time the cap was set, the RHC Program has grown and changed and now, under the Healthcare Connect Fund (HCF) Program, covers more services than its predecessor program. With this change in RHC Program eligibility comes an increased demand for services. Likewise, advances in technology have improved telehealth and telemedicine capabilities and with it a need for expanded bandwidth.

7. The Commission seeks comment on increasing the cap for the RHC Program and whether to retroactively increase the cap for FY 2017. Looking ahead, beyond FY 2017, by how much should the Commission increase the cap? Likewise, what would be an appropriate increase for FY 2017? One metric would be to consider what the cap would have been if adjusted by inflation since its adoption. If the Commission had adjusted the $400 million cap annually for inflation since 1997, based on the GDP–CPI (which the E-rate Program uses to adjust its cap), the RHC Program cap would have been approximately $571 million for FY 2017. Another consideration, however, is whether potential waste in the Telecom Program (which the Commission discusses in more depth below) has contributed to the RHC Program reaching the cap sooner than anticipated—when the Commission adopted the HCF Program in 2012, it did not expect the RHC Program to reach the cap in the foreseeable future. Growth in the Telecom Program has outpaced inflation since the HCF Program was adopted. Since 2011, inflation-based demand for the Telecom Program would have increased from $102 million to approximately $110 million in FY 2016. In that case, total RHC Program demand for FY 2016 would have been $270 million, including $160 million in actual HCF Program demand. Does this fact argue against a cap increase or to moderate any such increase? Further, some commenters argue that the current scope of the RHC Program and advances in telehealth and telemedicine warrant a further increase in the cap. How should advances in medical services delivered over communications services impact the Commission's evaluation of the cap? The Commission asks that commenters provide data in the record regarding the current state of the telehealth market, specifically data on the types of telehealth services used by Program participants, the bandwidth required for such services, and any trends in services that will likely impact the needs of rural healthcare providers in the telehealth arena in the near future. What other factors should the Commission consider before increasing the cap? Should the Commission consider the universe of potential rural healthcare providers and estimate the average or median support needed? How should the Commission factor the impact of an increased cap on other programs within the Universal Service Fund (USF or Fund) and on the consumers that ultimately will pay for any increases? The Commission recognizes that any increase in Program expenditures must be paid for with contributions from ratepayers and that the Commission must carefully balance the need to meet universal service support demands against the effects of a greater contribution burden. The Commission seeks comment on how the Commission should evaluate this trade off as it considers the appropriate funding level.

8. Additionally, within the RHC Program, multiyear commitments and upfront costs are capped within the HCF Program to $150 million per funding year. The Commissions seek comment on whether the $150 million cap for multiyear commitments and upfront costs within the HCF Program should also be adjusted—*i.e.,* increased, eliminated, or modified in some other way.

9. Finally, the funding caps for some of the other federal universal service support programs incorporate inflation adjustments. Commenters, likewise, argue that the RHC Program cap should be adjusted annually for inflation. The Commission seeks comment on whether to adopt a similar mechanism here to automatically increase the RHC Program caps for inflation and, if so, what form such a mechanism should take.

10. The Commission also seeks comment on whether to roll over unused funds committed in one funding year into a subsequent funding year. The Commission seeks comment on the types of unused funds from a given funding year to roll over to subsequent funding years. For example, the Commission proposes to include in any roll over mechanism unused or released funds the Universal Service Administrative Company (USAC) previously held in reserve for appeals and any funds committed to a healthcare provider but not used by the healthcare provider. The Commission seeks comment on specific limitations that should apply to funds that are rolled over. Should roll over funding be limited to RHC funding requests received only for the next funding year? Or, may unused funds from one year be rolled over to multiple funding years until they are ultimately disbursed? In the latter case, should the Commission establish separate caps on the amount that may be rolled over from a single funding year, as well as the cumulative amount of roll over funding? The Commission notes that, in the E-rate Program, all unused funding from previous funding years is made available for subsequent funding years.

11. The Commission also seeks comment on how to best distribute the roll over funds across the RHC Program. Should roll over funds first be used to defray the impact on, for example, individual rural healthcare providers with any remaining unused funds being used for rural consortia applicants? What are the material differences between individual healthcare providers and those participating in a consortium?

2. Prioritizing Funding if Demand Reaches the Cap

12. In 2012, the Commission considered whether to adopt a mechanism by which to prioritize funding if demand exceeded the $400 million funding cap. Given the funding levels at that time, however, the Commission determined that the existing rule requiring proration would be sufficient while it conducted further proceedings regarding prioritization. The recent growth in RHC Program demand and the uncertainty associated with possible proration makes it difficult for healthcare providers to make service selections and telehealth plans, and can create unexpected financial difficulties for healthcare providers, especially in highly remote areas. The Commission seeks comment on whether to consider changes in how to prioritize the funding of eligible RHC Program requests. Below, the Commission discusses a number of prioritization approaches, some of which could be combined to more efficiently distribute funds.

13. At the outset, the Commission notes that section 254(b) of the Act requires that to preserve and advance universal service by establishing, among other things, access to advanced telecommunications for health care and specific and predictable support mechanisms. By adopting a prioritization plan, would the RHC Program disbursements be more specific and predictable when demand exceeds the cap? Are there additional principles the Commission could adopt to further a prioritization plan? Are there prioritization methods other than those described below that the Commission should consider? Is proration, itself a method of prioritization, preferable to some alternate form of prioritization?

14. The Commission also seeks comment on the mechanics of how to distribute funding if a prioritization system is adopted. For example, would the Commission fully fund the requests at 100 percent (or some other percentage), starting with the requests that meet its highest prioritization criteria and then proceed through the prioritization tiers at 100 percent funding (or the chosen percentage), until funds are depleted? Or, should the Commission fund the highest prioritization requests at, for example, 100 percent, and the requests at the next prioritization tier at, for example, 95 percent, with decreasing support as the prioritization declines? Are there other ways to distribute funding based on an adopted prioritization system that would maximize the efficient use of RHC Program support?

15. *Prioritizing Based on Rurality or Remoteness.* The Commission first seeks comment on whether to prioritize requests from healthcare providers based on the rurality or the remoteness of the area served by an eligible healthcare provider. Given the directive from Congress to support eligible rural healthcare providers, should the Commission consider using gradations of rurality to prioritize funding requests, ranking areas as extremely rural, rural, less rural, and urban, and prioritizing Program support first to the most rural areas?

16. The Act does not define the terms ''rural'' or ''rural area.'' The RHC Program, however, employs a definition of ''rural area'' that relies upon a healthcare provider's location relative to the Census Bureau's Core Based Statistical Area designations. Does section 254(h)(1)(A) of the Act, which requires that rates for telecommunications services for healthcare providers serving rural areas be comparable to urban rates, permit the Commission to consider how rural a given healthcare provider's site is in determining how much funding to allocate to that healthcare provider? Could the Commission prioritize funding requests based on the varied levels of rurality contained in its current definition of ''rural area,'' with the highest priority given to the healthcare providers in the most rural areas? Likewise, should the Commission consider the rurality of a healthcare provider in the HCF Program under section 254(h)(2)(A) when prioritizing funds?

17. Using FY 2016 data, approximately 3,500 healthcare providers received approximately $165 million (or about 53 percent) of the commitments in the extremely rural areas, approximately 1,580 healthcare providers received approximately $41 million (or about 13 percent) of the commitments in rural areas, and approximately 1,870 healthcare providers received approximately $50 million (or about 16 percent) of the commitments in less rural areas.

18. The Commission seeks comment on the value this proposal would provide. Would this approach or a similar approach focus RHC Program dollars to areas in greatest need of access to health care? Are there other factors to consider as the Commission decides whether to target scarce RHC Program funds to the most rural areas?

19. The Commission also must explore how to handle requests for funding from consortia under the HCF Program. Consortia allow diverse healthcare providers to pool resources and expertise in order to access high-capacity broadband at affordable prices; the participation of urban-based healthcare providers in the consortia can provide value to the rural healthcare providers. What factors would the Commission use to determine the rurality of a consortium, and thus the prioritization of its request if the consortium has rural and urban healthcare providers? Would the Commission balance or average the number of rural healthcare providers with the urban healthcare providers? Or would the Commission consider the interdependence between the healthcare providers say, for example, if a highly skilled urban healthcare provider supported a number of extremely rural healthcare providers versus a consortium of healthcare providers where the rurality of the member healthcare providers did not vary greatly? Alternatively, could the Commission consider the rurality of the individual healthcare provider for prioritization purposes? Would healthcare providers in the same consortium serving areas with different gradations of rurality receive different levels of prioritization?

20. The Commission also seeks comment on whether to adopt the approach of the Department of Veterans Affairs' (VA) Highly Rural Transportation Grant program as a proxy for rurality in the RHC Program. This VA program provides veterans who live in highly rural counties, defined as counties with fewer than seven people per square mile, with free transportation to VA or VA-authorized health care facilities. These eligible counties are located in eleven states. GCI identifies these areas as ''Highly Rural'' and proposes that funding requests for healthcare providers in Highly Rural areas be prioritized over other funding requests in both the Telecom and HCF Programs. Under this proposal, however, if demand exceeds the RHC Program cap and proration is required, GCI proposes to require Highly Rural healthcare providers to pay a minimum amount that increases each year over five years to ''bring greater fiscal discipline to the Telecommunications Program so that Highly Rural priority will not unduly restrict support outside of Highly Rural communities.'' Under GCI's proposal, additional costs of service to healthcare providers in these ''Highly Rural'' areas would be limited in FY 2018 to the higher of the urban rate or one percent of the rural rate. In FY 2019 through FY 2022, the amount that highly rural healthcare providers would pay would increase by one percent per year, so that in FY 2019 they would pay two percent of the rural rate, in FY 2020 three percent, and so on up to a maximum contribution of five percent in FY 2022. GCI argues that ''[p]hased-in increased contributions for Highly Rural healthcare providers in [the] Telecom Program addresses concerns about sufficient 'skin in the game' to hold down costs.'' The Commission seeks comment on this proposal and whether one percent of the rural rate (or the urban rate, whichever is higher) is the appropriate minimum payment amount and whether one percent incremental increases and the five percent cap are appropriate. Further, the Commission seeks comment on whether it's a need to safeguard the HCF Program under GCI's proposal. The Commission also seeks comment on other ways to alleviate the burden of proration in extremely rural high cost areas.

21. Alternatively, the Commission seeks comment on whether to modify its current definition of the term ''rural area'' or adopt a new definition entirely. Does the definition of rural area in § 54.600(b) of the Commission's rules meet the needs of the RHC Program for purposes of prioritization? Would the definitions of ''rural'' as used in the Connect America Fund Program, the E-rate Program, or the Lifeline Program better target the most rural areas than the current RHC Program definition? Would it make sense to prioritize the extremely high cost census blocks identified as eligible for Remote Areas Fund funding for RHC Program prioritization? Finally, are there alternative definitions of ''rural'' the Commission should consider enhancing the efficiency of the RHC Program?

22. *Prioritizing Based on Type of Service.* The Commission seeks comment on whether to prioritize

distribution of funds based on type of funding request. The RHC Program supports telecommunications services, advanced telecommunications and information services, and infrastructure. Healthcare providers may request funding for the monthly costs of telecommunications or information services, or for one-time upfront costs such as for infrastructure. Would prioritizing the funding request based on whether the request is for a recurring cost or a one-time infrastructure cost advance the goals of the RHC Program? Does one type of support, such as monthly recurring costs or one-time, upfront costs, have a greater impact in rural areas? Are there other meaningful distinctions to make between types of services, such as prioritizing broadband services of a certain speed or type over voice services? Is the Commission limited by the statutory language of section 254(h)(1)(A) and/or section 254(h)(2)(A) of the Act in prioritizing funding requests based on the type of service requested?

23. *Prioritizing Based on RHC Program.* The Telecom Program and HCF Program have similar, but slightly different focuses. One, the Telecom Program, seeks to improve healthcare providers' access to telecommunications services by discounting the rural rate for service to match the urban rate, making access more affordable for the rural healthcare provider; the other, the HCF Program, seeks to expand access to affordable broadband for healthcare providers, especially in rural areas, and encourages the creation of state and regional broadband health care networks. Should the Commission prioritize one RHC Program over the other? Currently, the Commission's rules provide for equal treatment of the two programs when the cap is exceeded, for purposes of prorating support. The Commission also notes that section 254(h)(2)(A) of the Act requires the Commission to establish competitively neutral rules for healthcare provider access to advanced telecommunications and information services to the extent ''economically reasonable.'' Some entities nevertheless have argued that funding for the Telecom Program is mandatory and that the Commission therefore is required to fund Telecom Program requests in their entirety before funding HCF Program requests. The Commission seeks comment on the relevance of these and other statutory provisions to the Commission's options for prioritizing support. The Commission also seeks comment on how prioritizing one program over the other might affect funding between the two programs and how it would, or would not, lead to an efficient use of the RHC Program's funding and accomplish Congress's goals for this universal service support program.

24. *Prioritizing Based on Economic Need or Healthcare Professional Shortages.* The Commission seeks comment on whether the RHC Program should likewise take into consideration the economic need of the population served by the healthcare provider when prioritizing disbursements. If so, would Medicaid eligibility be an appropriate measure of economic need? Would Medicaid eligibility be an appropriate measure to use to prioritize funds to maximize the efficiency of the Commission's funding dollars? Is there another metric of economic need that would be more appropriate? If the Commission prioritize funding based on economic need of the population served by the healthcare provider, how would consortia be handled?

25. The Commission also seeks comment on whether to prioritize funding to areas with health care professional shortages. Telemedicine and telehealth can be a valuable resource where a shortage of health professionals is present. For example, using telemedicine and telehealth, rural healthcare providers that may be understaffed or lack highly skilled health professionals can connect with medical professionals and specialists located elsewhere to provide care to the patient and avoid the need and expense of either the patient or professional traveling to the other. The Health Resources and Services Administration (HRSA) currently identifies Health Professional Shortage Areas (HPSA), based on geographic area, population groups and facilities; Medically Underserved Areas and Medically Underserved Populations (MUA/P), which identify geographic areas and populations with a lack of access to primary care services; and state identified rural health care clinics that do not otherwise qualify for HPSA or MUA/P designation. The Commission seeks comment on whether prioritizing funding requests based on the designations by the HRSA would better serve its goal of using each funding dollar to its maximum benefit. If the Commission were to use these designations, would it also be required to consider whether the persons served by the healthcare provider lived in rural areas to satisfy the requirements of section 254(h)(1)(A) of the Act? Would this overlay of HRSA designations on the rural areas focus funding on the areas of the country that most need access to health care? Would this target the RHC Program funding to its most efficient use?

3. Targeting Support to Rural and Tribal Healthcare Providers

26. Recognizing that the primary emphasis of the RHC Program is to defray the cost of supported services for *rural* healthcare providers, the Commission seeks comment in this section on several proposals to direct proportionally more funding to rural healthcare providers, including healthcare providers on rural Tribal lands.

27. *Rural Healthcare Providers in HCF Program.* Currently, the HCF Program provides support for non-rural healthcare providers in majority-rural consortia. Although the HCF Program places an emphasis on increasing broadband access to healthcare providers that serve rural areas, the Commission recognized in the *HCF Order* (78 FR 13935, March 1, 2013), that non-rural healthcare provider participation may confer benefits upon affiliated rural healthcare providers, including lower broadband costs, access to medical specialists, administrative support, and technical expertise. The Commission agrees that non-rural healthcare provider participation in HCF consortia benefits rural healthcare providers and patients, and therefore propose the measures below to promote continued non-rural healthcare providers' participation yet still direct the greater part of HCF Program support to rural healthcare providers.

28. First, the Commission seeks comment on increasing the HCF Program consortia ''majority rural'' healthcare provider requirement from a ''more than 50 percent rural healthcare providers'' threshold to some higher percentage. As of November 2017, 27 HCF consortia were required to meet the existing ''majority rural'' requirement and had rural healthcare provider percentages ranging from 45 to 100 percent, with an average of 79 percent rural healthcare providers. The Commission seeks comment on whether the current ''majority rural'' threshold accurately reflects the needs of rural healthcare providers, and whether to increase the minimum percentage of rural healthcare providers in HCF consortia. If so, what might be an appropriate percentage? What would be the practical implications of an increase in the percentage of rural healthcare providers necessary in a consortium?

29. Second, the Commission seeks comment on elimination of the three-year grace period during which HCF consortia may come into compliance with the ''majority rural'' requirement.

As of November 2017, of the 160 HCF consortia that were still within the three-year grace period for ''majority rural'' compliance, 143, or 89 percent, already had met the requirement and had rural healthcare provider percentages ranging from 55 to 100 percent, with an average of 81 percent rural healthcare providers. If commenters propose that the Commission establishes a grace period of less than three years, what period would be appropriate, and why?

30. Finally, the Commission seeks comment on whether to require a direct healthcare-service relationship between an HCF consortium's non-rural and rural healthcare providers that receive Program support. Currently, the Commission does not require a consortium's non-rural healthcare providers to provide clinical care or other healthcare-related services to patients of their affiliated rural healthcare providers. Should non-rural healthcare provider support be limited to only those healthcare providers directly providing healthcare-related services to rural areas? Or, should the Commission provide HCF support to some percentage of each consortium's non-rural healthcare providers that do not provide healthcare services to rural areas, recognizing that, among other things, many non-rural healthcare providers provide significant non-healthcare-related benefits to affiliated rural healthcare provider consortia members, such as consortium formation and leadership; administrative resources; and greater bargaining power with service providers?

31. *Rural Tribal Healthcare Providers in Telecom and HCF Programs.* Given emphasis on targeting more support to rural healthcare providers and healthcare providers on rural Tribal lands, the Commission seeks comment from Tribal governments in particular on whether any of the proposals here would impact Tribal populations and, if so, how. Additionally, the Commission seeks comment on what measures would help ensure that adequate Telecom and HCF Program support is directed toward healthcare providers on rural Tribal lands.

B. Promoting Efficient Operation of the RHC Program To Prevent Waste, Fraud, and Abuse

32. In light of the pricing increases and shrinking out-of-pocket costs borne by healthcare providers, the Commission next turn to the issue of inadequate price-sensitivity in the Telecom Program. In the *HCF Order,* the Commission stated that reforms to the Telecom Program could provide greater incentives for healthcare providers to make more cost-efficient service purchases and the Commission believes promoting price-sensitivity and encouraging healthcare providers to make more efficient purchasing decisions is particularly important considering growth in the RHC Program. Efficiency entails both ensuring that limited Telecom Program funding is directed to healthcare providers that need it and encouraging healthcare providers to be price sensitive in choosing services and carriers. One goal of the Telecom Program is to reduce the effect of healthcare providers' location on the effective (out-of-pocket) price of available services. If incentives were well aligned, healthcare providers receiving support would choose the same service levels that an identical urban counterpart would purchase under the circumstances. At the same time, the Commission seeks to ensure that, by improving efficiency, and not restricting necessary funding for those healthcare providers whose service costs are legitimately high due to their unique geography and topography.

1. Controlling Outlier Costs in the Telecom Program

33. To ensure that limited funding is distributed efficiently, the Commission proposes to establish objective benchmarks to identify outlier funding requests, using information already provided by Telecom Program participants to USAC. The Commission seeks comment on whether establishing an objective benchmark to identify those outlying funding requests will provide greater transparency for RHC Program participants and clearer guidance to USAC. Under the Commission's proposal, outlier funding requests that exceed the benchmark will be subject to enhanced review by USAC before issuing commitments. Then, the Commission seeks comment on the measures to use in evaluating those outlier requests for funding support.

a. Identifying Healthcare Providers With Particularly High Support Levels

34. Under section 254(h)(1)(A) of the Act, rural healthcare providers pay discounted rates for telecommunications services that are ''reasonably comparable'' to rates charged for ''similar services'' in urban areas. A discount rate benchmark identifies those healthcare providers paying a smaller share of the costs toward their selected services. For example, some healthcare providers in the Telecom Program receive discounts in excess of 99 percent and therefore contribute less than one percent of the price of services. In contrast, a healthcare provider with a discount rate of 75 percent, for example, pays one fourth of the service costs. Since high discount rates will tend to suggest high differentials between the rural and urban rates, the Commission seeks comment on using the discount rate to establish a benchmark based on data from the preceding funding year, and a rebuttable presumption that Telecom Program support levels above the benchmark will not result in rates that meet the Act's ''reasonably comparable'' standard.

35. Specifically, the Commission seeks comment on establishing a benchmark based on the discount rates in the Telecom Program, which USAC would use to identify outlying high-support requests. One approach would make the benchmark discount rate equal to the lowest discount rate from among the five percent of healthcare providers receiving the highest discount rates in the immediately preceding funding year—in 2016, five percent of healthcare providers got discounts of 99 percent or more and received more than 52 percent of all Telecom Program funding. Each year, USAC would publish this benchmark well in advance of the filing window period to assist service providers in making bids and rural healthcare providers in making service selections. This approach could limit the pool of applicants the rate applies to while maximizing its impact—but the benchmark would change significantly year to year.

36. Another approach would require USAC to set a fixed benchmark (such as 90 percent or 99 percent) that would remain either static from year to year or change gradually over time (such as a 99 percent initial benchmark that decreases 1 percent each year and stops at 90 percent). The Commission seeks comment on the appropriate level of this discount rate cutoff.

37. Should the benchmark also incorporate other considerations, such as the overall size of a healthcare provider's funding request? Should the benchmark be calculated on a nationwide basis or per state? Commenters should also discuss other measures that may be useful benchmarks. Alternatively, since high discount rates may reflect in large part unusually high rural rates, should the Commission consider setting benchmarks directly based on the service costs? For instance, should the Commission look at those rural rates for service that are above a certain percentile when compared to rural rates contained in all funding requests, possibly normalized by some

characteristic of the healthcare providers? How would such a benchmark be implemented?

b. Funding Requests That Exceed the Benchmark

38. In this section, the Commission addresses what steps to take when a healthcare provider's request in the Telecom Program exceeds the established benchmark. The Commission's objective is to make service providers and healthcare providers more sensitive to price in an effort to reduce unnecessary spending while at the same time allowing for support in accordance with the Act. The proposals below are intended to incentivize healthcare providers to consider costs more carefully and, thereby, ensure a more efficient use of scarce RHC Program funds.

(i) Enhanced Review for Outlier Funding Requests

39. The Commission proposes that a funding request that exceeds the relevant benchmark be subject to a two-step enhanced review—one to determine whether the rural rate is improperly high and another to determine whether the urban rate is improperly low. Under current rules, a carrier is supposed to calculate the rural rate by taking its own ''average of the rates actually being charged to commercial customers'' in the relevant area, looking to the rates charged by other carriers or costs only as a secondary approach. And under current rules, urban rates are set as ''no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state.''

40. As a first step, the Commission seeks comment on requiring the carrier to justify the underlying costs in the rural rate presented in the funding request, including the costs materially affecting the price of each feature that the healthcare provider included in its Request for Proposal (RFP). Under this approach, USAC would limit the acceptable rural rate associated with the funding request to those specific costs plus a reasonable rate of return. That allowable return on the rate set for rate-of-return carriers is currently 10.75 percent, and is set to decline by 0.25 percent annually until 2021, when it will be 9.75 percent. The Commission seeks comment on limiting the rural rate to what can be cost-justified as one form of enhanced review of rural rates.

41. If the Commission adopts this approach, what information should the service provider be required to submit to justify costs? Which features, if different from those being analyzed under the enhanced similarity review, should be included? Should such a cost review limit the mark up that resellers can impose on resold services? In the past, the Commission has suggested that a wholesale discount of 17 percent to 25 percent would reasonably reflect the avoided costs of a wholeseller—should the Commission look beyond those discounts in selecting a maximum markup? The Commission seeks comment on this approach and especially solicit examples of how similar reviews have been conducted in other contexts. For example, should the Commission incorporate the Commission's recent non-exhaustive list of expenses that should not be included in the cost base for rate-of-return carriers into the cost study analysis proposed here? Should the Commission continue to incorporate updates to the items in the *High Cost Public Notice* (FCC 15–133, *rel.* Oct. 19, 2015)? To ensure that support is limited to ''telecommunications services which are necessary for the provision of health care services,'' the Commission seeks comment on whether to adapt the ''used or useful'' standard from the High-Cost context to this proposed cost review? As the Commission has noted, plant that is actually being used to send signals to customers is ''used and useful.'' For example, should the Commission adapt that test to the review of a service that exceeds the healthcare provider's minimum needs? In that case, should USAC limit support to a return on only the costs needed to provide the healthcare provider's minimum needs?

42. Commenters should discuss whether this proposal should replace the current comprehensive support calculation in § 54.607(b) of the Commission's rules. The Commission also seeks comment on the costs and benefits of carrying out this approach. In addition, commenters should discuss how this enhanced review would interact with other reforms discussed below, such as proposals for calculating the urban and rural rates.

43. As an alternative first step, the Commission seeks comment on USAC limiting the rural rate to the lowest market rate it can find for identical or similar services in the rural area. The Commission expects that USAC would examine at least the commercial rates that the carrier itself used in creating an average rural rate in evaluating the lowest cost option, as well as the rates charged by other service providers for commercial customers and any other rates for such services that USAC can find. What would be the impact of such an approach? What data sources should USAC look to in determining other commercial rates in the rural area?

44. Second, the Commission seeks comment on USAC setting the urban rate based on the highest urban rate for an identical or similar service in any city of 50,000 or more in that state. Such a change would take the ability to set the urban rate out of the hands of a carrier that might be seeking to compete for a rural healthcare provider by offering an artificially low urban rate. What factors should the Commission consider in evaluating this option?

45. Alternatively, the Commission seeks comment on requiring USAC to conduct a detailed review of the healthcare provider's funding request to ensure that the rural and urban services being compared are sufficiently similar. USAC's analysis would include a feature-by-feature review of the similarity between the requested rural services and their urban counterparts, as well as the similarity between the services being provided in comparable rural areas. USAC's similarity review would be based on the service information contained in the documents supporting the healthcare provider's funding request. The Commission also seeks comment on how to best address those support requests that do not satisfy the similar services stage of the enhanced review inquiry. Should USAC deny those funding requests outright, or allow healthcare providers and their service providers to recalculate and reapply with a revised urban rate?

46. Which of these approaches will best balance the Commission's goals of fairness and efficiency? Are there alternative approaches the Commission should consider? What burdens would each of the enhanced review options have on rural healthcare providers, their carriers, and USAC? What options would lead to the best incentives for rural healthcare providers to choose cost-effective options? Would any of the options be particularly efficient at ferreting out waste, fraud, and abuse in the RHC Program? Would any of the options be sufficient to encourage carriers to bid to serve rural healthcare providers at rural-urban differentials that would be low enough to avoid the enhanced review?

(ii) Capping Funding Requests That Exceed the Benchmark

47. As an alternative to enhanced review, the Commission seeks comment on capping high-support funding requests in the Telecom Program to ensure efficient distribution of funding to the greatest number of healthcare providers. Under this alternative,

healthcare providers whose support requests exceed the proposed benchmark would be conclusively deemed to be requesting service at rates that are not reasonably comparable to those charged for similar services in urban areas, and support would be capped at the benchmark. Carriers are limited under the Act to receive only the difference between rural rates and reasonably comparable rates in urban areas for similar services. The Commission seeks comment on this alternative, including on associated issues such as the appropriate geographic unit to which to apply it.

48. The Commission also seeks comment on an alternative proposal in which to establish discount rate tiers that would provide diminishing support to healthcare providers as their service costs increase relative to similar healthcare providers. To provide certainty to healthcare providers, these tiers would be established each year based on the preceding funding year's participant data. Under this ''soft'' funding cap approach, healthcare providers would be grouped based on specific, identified factors such as entity size, geographic location, and purchased services. For example, within each healthcare provider group, the Telecom Program could fully fund the urban–rural rate difference if the cost of the requested service falls at or below the 25th percentile of spending for the relevant group. For requests with costs in the second-lowest quartile between the 25th percentile and the median for the group, funding would be substantial but less than the full urban–rural rate difference, and funding would decrease accordingly for succeeding quartiles above the median cost. Thus, under this marginal ''soft'' funding cap approach, only healthcare providers' marginal spending increases relative to similar healthcare providers will be subject to diminishing support.

49. The Commission seeks comment on whether this approach provides helpful incentives for healthcare providers to seek the lowest costs for services. The Commission also seeks comment on how it can best be implemented. Is quartile of healthcare provider eligible service spending the best way to establish marginal support tiers? What level of marginal support for each tier will provide the most efficient reduction? What factors should the Commission consider in grouping healthcare providers in order to best compare their spending or service levels? For example, if the Commission distinguishes between healthcare providers by size, should the Commission measure size by patient capacity, actual patient numbers, staff levels, or some other measure? What service features should the Commission use for grouping similar healthcare providers? Are the features in similar services proposal appropriate, or should the Commission include additional features for purposes of this proposal?

50. The Commission believes the approaches discussed above meet the efficiency goals because they ensure that healthcare providers—even those receiving particularly high levels of support—will continue to receive support for necessary telecommunications services under the Telecom Program while also realigning healthcare providers' incentives to select services and carriers more efficiently. The Commission seeks comment on how these various proposals help align healthcare providers' incentives to select services and carriers efficiently, thereby promoting these efficiency goals for the Program.

2. Reforming the Rules for Calculating Support in the Telecom Program

51. In accordance with the goal of calculating funding disbursements in a consistent and transparent manner and minimizing excessive RHC Program spending, the Commission next seeks to reduce opportunities for manipulating the rural and urban rates in the Telecom Program more generally.

a. Calculating Urban and Rural Rates

52. The Commission proposes more detailed requirements about how the urban and rural rates are determined in the Telecom Program to minimize potential variances and rate manipulation. The Commission believes these changes will ultimately reduce the burden on healthcare providers and service providers to calculate urban and rural rates, and the need for USAC to engage in detailed rate reviews.

53. The subsidy provided to the service provider is based on the difference between the ''urban rate'' and the ''rural rate.'' The concepts of urban rate and rural rate are defined in the Commission's rules. Pursuant to the rules, the rural rate is calculated in one of three ways. In the first instance, the rural rate is ''the average of the rates actually being charged to commercial customers, other than [healthcare providers], for identical or similar services provided by the telecommunications carrier providing the service in the rural area in which the [healthcare provider] is located.'' If the service provider is not providing an identical or similar service in the rural area, then the rural rate should be ''the average of the tariffed and other publicly available rates . . . charged for the same or similar services in that rural area . . . by other carriers.'' If there are no tariffed or publicly available rates for such services in that rural area, then the Commission's rules provide a mechanism for deriving a cost-based rate.

54. The Commission recognizes that there are often few customers of a size comparable to the healthcare provider in the rural area and often even fewer service providers. This circumstance may make it difficult to develop an average rate consistent with the Commission's rules for determining the rural rate. The Commission is moreover concerned that, at times, permitting service providers to put forward rural rates based only on their own rates to other rural customers may artificially inflate the rural rate by excluding other service providers' service rates to rural customers for functionally similar services. This situation also risks conflating the rural rate concept with the carrier's own price for providing service, and opens the door to potentially boundless rural rate increases, and difficult-to-detect abuse. Moreover, healthcare providers may have little incentive to check service provider pricing (since rural healthcare providers pay the urban rate no matter what the differential under current rules).

55. Nevertheless, the Commission appreciates that reliance on publicly available rate data leads to greater transparency. To address the issue about the paucity of rate data in rural areas, the Commission offers several proposals. Going forward, rather than distinguishing between the rates of the healthcare provider's selected service provider and the rates of other service providers, the rural rate would be the average of *all* publicly available rates charged for the ''same or similar services'' in the rural area in which the healthcare provider is located. This average of all publicly available rates would include the service provider's own rates to other non-healthcare provider customers, as well as tariffed rates in the rural area, and undiscounted rates offered to schools and libraries in the rural area via the E-rate Program. Are there other sources of publicly available rate information that the Commission should consider adding? Should the Commission retain the inclusion of tariffed rates in the calculation of the rural rate? Is there a risk that service providers may be able to file tariffs with artificially high rates in order to increase the rural rate? If so, can the Commission mitigate that risk

by limiting the use of tariffed rates to services actually being provided to at least one non-healthcare provider commercial customer in the rural area? In addition, the Commission proposes, in the event the only available rates in the healthcare provider's rural area are the service provider's own rates, to require the service provider to calculate a rural rate based on publicly available rates in another comparable rural area in the healthcare provider's state where at least one other service provider offers publicly available rates for functionally similar services. Through this proposal the Commission seeks to minimize the service provider's ability to offer an unjustified, high rural rate. To this end, should the Commission direct USAC to substitute publicly available rates it is aware of in the healthcare provider's rural area if those rates are lower than the rate average submitted by the healthcare provider? The Commission also seeks comment on whether USAC should establish a database containing all the rate information submitted each year. If so, in subsequent years the rural rate could be based on an average of the rates in the rural area from the preceding year.

56. The Commission also seeks comment on whether to retain § 54.609(d) of the rules, which provides that healthcare providers may receive support for satellite service even if there is a functionally equivalent terrestrial service in the healthcare provider's rural area, but such support may not exceed the amount of support that would be available for the relevant terrestrial service. In light of the Commission's proposals to reform the rules for calculating the rural rate, along with the proposals for competitive bidding reform, § 54.609(d) of the Commission's rules may no longer be necessary. The Commission's rural rate proposal, for example, would place a check on the service provider's rate by requiring the rural rate be calculated by taking an average of publicly available rates including at least one other service provider in addition to the healthcare provider's service provider. Using a competitive service provider's rate to limit support to a healthcare provider may make unnecessary limitations to § 54.609(d of the rules on support available for satellite service where terrestrial service is also available. If the Commission retains § 54.609(d) of the rules, should the Commission modify that provision, based on Alaska Communications Systems' (ACS) suggestion, to cap support at the lower of the satellite service rate or the terrestrial service rate where both services are available? Is it the case that the prices for satellite and terrestrial services diverge greatly only in Alaska, or does this occur in other parts of the country as well? If the Commission were to modify § 54.609(d) of the rules in the manner suggested by ACS, should the Commission require all healthcare providers to provide rate information about both satellite and terrestrial services, or should there be some criteria for determining when such a comparison is required?

57. The Commission likewise seeks comment on whether to retain the cost-based support mechanism in § 54.609(b) of the rules. Currently, service providers may propose a rural rate, supported by the service provider's itemized costs of providing the requested service. The above proposals would reduce the chance that there are no publicly available rates to use in calculating a rural rate for a service. Nevertheless, the Commission seeks comment on whether the rule would continue to benefit service providers that may believe that rural rates calculated consistent with its proposal above are unfair. Are there alternatives that would ensure that the rural rate was calculated in a manner such that establishing a cost-based rural rate would not be necessary?

58. The Commission also proposes to modify its rules regarding the calculation of the urban rate. Under the current rules, the urban rate can be ''no higher than the highest tariffed or publicly-available rate . . . for a functionally similar service'' offered in a city in that state of 50,000 or more at a distance no greater than the standard urban distance (SUD). Basing the urban rate on only one rate example may lead to ''cherry-picking'' and a search for the lowest possible rate regardless of whether this rate is representative of the *average* urban rate for a similar service. This incentive to find the lowest possible urban rate so as to maximize the discount contributes to excessive Telecom Program spending. Requiring a rate average would eliminate this incentive.

59. The Commission next explores the best sources for the various rate data required to calculate the average rates and the discount. While the healthcare provider currently submits urban and rural rate data along with its application, healthcare providers may obtain these rates from carriers, third party consultants or through other means. The Commission seeks comment on standardizing this process by having the healthcare provider's service provider give the healthcare provider the urban and rural rates and averages for the relevant urban and rural areas, along with rate documentation to the healthcare provider. The healthcare provider would then file that documentation with its application. The Commission believes the service provider can most easily access the rate information and this approach will ease the burden on healthcare providers and USAC to compare urban and rural rates from difference sources. The Commission seeks comment on this approach.

60. Nevertheless, having the carrier, the entity with the most to gain financially, provide the rate information may promote incentives that are not aligned with the Commission's goals of efficiency in the RHC Program. To remove concerns about misaligned incentives and provide greater transparency in the Telecom Program review process, the Commission seeks comment on whether USAC should collect and make available the relevant urban and rural rate data, rather than the service provider. Under this approach, for each relevant urban and rural area, USAC would collect and aggregate the prior year's Telecom Program and E-rate rate data as well as any other publicly available rate data. USAC would post this rate data on its website. At the time of application, a healthcare provider's service provider would develop an average rural and urban rate for the relevant service based on a combination of its own price data and that found on USAC's website. The Commission seeks comment on this idea and ask how USAC can best accumulate reliable rate information. How would this approach work in the event there is no data, or insufficient data, from the preceding year for the rural area in which the healthcare provider is located and/or the relevant urban area?

61. The Commission must next define the geographic contours of rural and urban areas for the purpose of determining the urban and rural rates. The Commission believes that averaging rates within state rural areas containing similar cost attributes is consistent with the goal of section 254(h)(1)(A) of the Act to ensure that healthcare providers in rural and urban areas pay reasonably comparable rates. The Commission seeks comment on that belief. Consistent with that approach, the Commission proposes to establish an appropriate rural definition for the RHC Program that is simple to understand and apply. The rural area must be completely enclosed by a state and should contain enough telecommunications service offerings to calculate a meaningful average rural rate. The Commission seeks examples of such appropriate rural areas. The

Commission also seeks comment on methods to ensure services are averaged with similarly rural services. Should the Commission consider establishing tiers of rurality so average rates in the most rural areas will not be reduced by including rates from only slightly rural areas? The relevant rural area could be defined by the boundaries of the tier in which the healthcare provider is located and the rural rate would be the average of the rates of ''similar services'' within that boundary. What data sources could the Commission look to in order to ensure healthcare providers and service providers are only using rates from like rural areas when calculating the discount? Should the Commission consider using types of rural areas that align with the prioritization tiers discussed below? Would establishing rural areas in this manner result in appropriate rates and discounts for RHC Program participants? The Commission seeks comment on any other approaches consistent with the statute.

62. As for urban areas, should the Commission continue to follow the approach currently set forth in the Commission's rules, whereby the urban rate is based on rate data from any city in the relevant state with a population of 50,000 or more? Given the increased availability of telecommunications services in smaller cities, should the Commission modify the city population size used to generate the urban rate? The Commission seeks comment on methods to identify the appropriate urban rate for discount calculation.

63. Finally, the Commission seeks comment on whether, in lieu of using rate averaging to instead adopt a median-based approach. Might such an approach, rather than an average-based approach, limit the effect of very high and low rates?

b. Defining Similar Services

64. To limit possible waste and modernize the rules to reflect services actually purchased by healthcare providers, the Commission seeks comment on services supported by the Program. The Commission first seeks comment on changes to the Commission's interpretation of ''similar services.'' Under section 254(h)(1)(A) of the Act, and the Commission's rules, carriers are permitted to receive reimbursement for the difference between the urban and average rural rates for ''similar services.'' In 2003, the Commission concluded that services are ''similar'' under 254(h)(1)(A) of the Act if they are ''*functionally* similar as viewed from the perspective of the end user.'' To implement this standard, the Commission established a voluntary ''safe harbor'' whereby a healthcare provider could claim that two services are similar if they both fall within one of five speed tiers (the highest tier grouped all services at 50 Mbps and above) and are either symmetrical or asymmetrical. Although the Commission anticipated updating these tiers to account for market changes and to ''reflect technological developments,'' the tiers have not been updated since 2003. The Commission's experiences with the RHC Program shows that having a voluntary safe-harbor system based on speed tiers that do not reflect current healthcare provider service needs has led to significant variability in how the ''similar services'' analysis is conducted and is a potential source of waste.

65. The current safe-harbor healthcare providers and service providers use when calculating urban and rural rate determinations may be contributing to RHC Program waste as it allows healthcare providers and service providers to rely on services that are in fact materially different. For example, due to the highest tier grouping all bandwidths of 50 Mbps or higher, in determining the applicable discount rate for a 60 Mbps service under the safe-harbor, the average rural rate could be set based on rates for two services at 200 Mbps and three services at 500 Mbps, all of which are priced significantly higher than the undiscounted price for the 60 Mbps service. The healthcare provider could also select an urban rate based on the price of a 50 Mbps service. These services, however, are unlikely to be ''*functionally* similar as viewed from the perspective of the end user'' given the huge disparity between a 50 Mbps service and a 300 Mbps service. Yet the safe-harbor tiers currently permit a comparison of these services when calculating the discount for the service ordered.

66. Going forward, the Commission proposes to retain the concept of ''*functionally* similar as viewed from the perspective of the end user,'' and require healthcare providers to analyze similarity under specific criteria. First, the Commission proposes to retain the concept of bandwidth tiers from the current safe-harbor framework, but update the speeds to ensure that each tier includes only bandwidths in a range that are ''*functionally* similar as viewed from the perspective of the end user.'' As with the existing safe-harbor, each tier will be made up of bandwidths within a specific range and any service within that range will be considered ''similar'' for purposes of the bandwidth criterion.

67. Next, the Commission seeks comment on how the bandwidth tiers should be established and updated. The Commission proposes that the bandwidth tiers be set by reference to the healthcare providers' requested bandwidth in each instance. For example, the tier for a healthcare provider requesting a 50 Mbps service would include all services within 30 percent of 50 Mbps (*i.e.,* 35 Mbps to 65 Mbps), where the average rural rate would be the average rate of all services within this 30 percent bandwidth range in the relevant rural area. All services within the stated percentage above or below the bandwidth requested by the healthcare provider would be considered ''similar'' for purposes of the bandwidth criteria. Under this approach, there would be no need to update the bandwidth tiers over time. If the Commission adopts this approach, what is an appropriate percentage to establish the range? Should this percentage vary depending on the bandwidth requested? Should the Commission use something besides a percentage? In the alternative, the Commission seeks comment on resetting the current bandwidth tiers at higher bandwidths and updating those tiers periodically over time based on common bandwidths for which healthcare providers seek funding. For example, one bandwidth tier could consist of all services in a rural area with bandwidth speeds between 1 Gbps and 2 Gbps.

68. The Commission also seeks comment on other criteria to use to establish ''similar services.'' For example, should packetization be a criterion? Packetized services can provide traffic prioritization and can be purchased in more granular bandwidth increments than non-packetized, TDM-based services. Do these differences mean that packetized and non-packetized services cannot be ''*functionally* similar as viewed from the perspective of the end user?''

69. In addition, as the Commission explores revisiting the service tiers, should the Commission consider adopting a minimum bandwidth requirement? What about minimum requirements for other service characteristics? Would any minimum requirements be appropriate for the Telecom or the HCF Programs? The Commission seeks comment on whether to do so and, if so, appropriate minimum levels. Also, could a list of services eligible for support under each of the RHC Programs be useful? Further, the Commission seeks comment on supporting services that have not traditionally received support in the

RHC Program. For example, under the statute, could the Commission support patient home monitoring services? The Commission notes the statute defines ''health care provider'' as one of the following entities: Post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; community health centers or health centers providing health care to migrants; local health departments or agencies; community mental health centers; not-for-profit hospitals; rural health clinics; skilled nursing facilities; and consortia of those entities. How would support for patient home monitoring or any other service not currently supported comply with the statute given the definition of health care provider? If allowable under the statute, how would the support mechanism work vis-à-vis the Commission's proposed support calculation and competitive bidding rules?

c. Eliminating Distance-Based Analysis

70. The Commission next proposes to eliminate the distance-based support approach considering its limited use and the administrative benefits that result from using one standardized support calculation methodology. Under the current rules, carrier support is based on an urban/rural rate comparison or, if the offered service includes an explicit distance-based charge, USAC will provide support for distance-based charges up to the maximum allowable distance (MAD) equal to the distance of the requested service as calculated in the service's distance-based charge minus the SUD. The SUD is the average of the longest diameters of all cities with a population of 50,000 people or more in a state. The MAD is the distance from the healthcare provider to the farthest point on the jurisdictional boundary of the city in that state with the largest population. The healthcare provider must pay for any distance-based charges incurred for mileage greater than the MAD. The per-mile charge can be ''no higher than the distance-based charges for a functionally similar service in any city in that state with a population of 50,000 over the SUD.'' Despite these detailed rules, virtually no healthcare providers use a distance-based approach.

71. The Commission proposes to eliminate any consideration of a distance-based approach. Based on the low use of this methodology, the Commission believes it is no longer necessary to use as a proxy for the appropriate support amount. The Commission also believes eliminating this option will reduce the administrative burden on USAC by eliminating the need to manage two separate rate methodologies. Moreover, eliminating this option and focusing support on urban/rural rate comparisons, particularly in conjunction with some of the changes on which the Commission seeks comment elsewhere in this item, will also simplify the application process for healthcare provider and service providers. The Commission seeks comment on removing the distance-based approach.

72. In the absence of a distance-based approach, should there be some other method to determine rates for supported telecommunications services in those limited cases where ''similar'' urban and rural services cannot be found to generate a discount rate? Under the Commission's current rules, carriers may submit a ''cost-based rate'' to the Commission or state (for intrastate services) if they cannot find similar services to use in calculating the rural rate. If the Commission eliminates a distance-based approach, could the enhanced review described above be used in lieu of the current cost-based approach? If, after conducting such a review, USAC deemed the costs to be justified, would such an approach provide sufficient safeguards to enable the Commission to find the rural rate ''reasonably comparable'' to an urban rate? The Commission seeks comment on these proposals.

3. Defining the ''Cost-Effectiveness'' Standard Across the RHC Programs

73. To receive funding for eligible services under the Telecom and HCF Programs, applicants must conduct a competitive bidding process and select the most ''cost-effective'' service offering. In each Program, ''cost-effective'' is the ''method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the applicant deems relevant to choosing a method of providing the required health care services.'' The ability to look at ''features, quality of transmission, reliability, and other factors'' places virtually no limitation on how healthcare providers make their service selections. Moreover, healthcare providers need not provide much detail about their service needs when posting their requests for services, nor do they need to provide detailed information to potential bidders about how they will score responsive bids. This lack of transparency about the healthcare provider's needs and its anticipated vendor selection process, may lead to inefficiencies in the competitive bidding process.

74. As a result, under the current system, a healthcare provider could post a request for services merely stating that it seeks a connection between points A and B to transmit voice and video. In response to this request for services, the healthcare provider could receive two bids—one offering 100 Mbps service for $10 a month and the second offering 1 Gbps service for $100 a month but with additional features such as additional bandwidth or others not specified in the request. Under the current ''cost-effectiveness'' standard and vendor selection process, the healthcare provider can select the 1 Gbps service even if its basic communications needs could have been met by the cheaper 100 Mbps service. The healthcare provider can simply state that the 1 Gbps service was the most ''cost-effective'' after including the additional features in its consideration. Nevertheless, selecting services that exceed the healthcare provider's needs is a waste of RHC Program funds. Such selections are particularly troubling at a time when the RHC Program is already having difficulty meeting the funding needs of healthcare providers.

75. The Commission seeks comment on ways to minimize opportunities for this type of waste. For example, the Commission seeks comment on whether narrowing the current definition of ''cost effectiveness'' could help to prevent such wasteful spending as well as give healthcare providers more structure as they develop their bid evaluation processes. Should the Commission define ''cost-effectiveness'' in both Programs as the lowest-price service that meets the minimum requirements for the products and services that are essential to satisfy the communications needs of the applicant? Would this standard, combined with the Commission's other competitive bidding requirements, provide a sufficient safeguard against wasteful spending and allow for flexibility in the bid evaluation to reflect the differing needs of healthcare providers? Should the Commission require healthcare providers to be more specific about their communications service needs in their RFPs and/or requests for services, including a description of what the minimum requirements are to meet those needs and to list the specific evaluation criteria in their RFPs and/or requests for services to provide more transparency in the bidding process? Should the Commission provide more guidance for healthcare providers in how they structure their vendor selection and evaluation processes? The

Commission seeks comment and solicits information about other systems or procedures to employ improving the competitive bidding process in the RHC Program.

C. Improving Oversight of the RHC Program

76. Below, the Commission explores proposals to simplify and streamline various RHC Program requirements to improve the stakeholder experience and ease administrative burdens. The Commission believes these proposals will facilitate smoother and swifter funding determinations, while minimizing the opportunity for waste, fraud, and abuse.

1. Establishing Rules on Consultants, Gifts, and Invoicing Deadlines

77. In this section, the Commission seeks comment on several proposals to minimize waste, fraud, and abuse in the Telecom and HCF Programs. In particular, the Commission proposes to revise RHC Program rules to codify requirements for consultants or anyone acting on behalf of RHC Program applicants as well as gift restrictions. The Commission anticipates that the measures proposed here, if codified in the Commission's rules, will assist in its continuing effort to ensure that the Fund is being used by applicants as Congress intended and will deter RHC Program participants from engaging in improper conduct.

a. Establishing Rules on the Use of Consultants

78. To harmonize the Commission's rules under the Telecom and HCF Programs regarding consultants, the Commission proposes to adopt specific requirements that will give consultants well-defined boundaries as they guide applicants through the RHC Program funding process. Under HCF Program rules, applicants are required to identify, through a ''declaration of assistance,'' any consultants, service providers, or any other outside experts who aided in the preparation of their applications. These disclosures facilitate the ability of USAC, the Commission, and law enforcement officials to identify and prosecute individuals who manipulate the competitive bidding process or engage in other illegal acts. Currently, applicants participating in the Telecom Program are not required to make similar disclosures. Therefore, to align RHC Program requirements regarding the use of consultants, the Commission proposes to adopt a new rule in the Telecom Program containing a similar ''declaration of assistance'' requirement for Telecom Program applicants and seek comment on this proposal. Should the Commission also require service providers to disclose the names of any consultants or third parties who helped them identify the healthcare provider's RFP or helped them to connect with the healthcare provider in some other way? Would requiring the consultant or outside expert to obtain a unique consultant registration number from USAC, as is the current practice in the E-rate Program, be a more effective way of identifying those individuals providing consulting services to RHC Program participants? Should the Commission also require the applicant to describe the relationship it has with the consultant or other outside expert providing the assistance?

79. Other than the ''declaration of assistance'' requirement for HCF Program participants, the Commission has not adopted detailed rules regarding consultant participation in the RHC Program. USAC procedures, however, subject consultants to the same prohibitions as the applicant itself with respect to the competitive bidding process. In particular, USAC procedures prohibit consultants or outside experts who have an ownership interest, sales commission arrangement, or other financial stake with respect to a bidding service provider from performing any of the following functions on behalf of the applicant: (1) Preparing, signing, or submitting the FCC Form 461 or FCC Form 465 or supporting documentation; (2) serving as consortium leaders or another point of contact on behalf of a healthcare provider; (3) preparing or assisting in the development of the competitive bidding evaluation criteria; or (4) participating in the bid evaluation or service provider selection process (except in their role as potential providers). The purpose of these procedures is to ensure that consultants or outside experts do not undermine the competitive bidding process by simultaneously acting on behalf of the healthcare provider and the service provider. These procedures are essential in order to ensure the integrity of the competitive bidding process, to ensure that the competitive bidding process has been conducted in a fair and open manner, and in order to prevent waste, fraud, and abuse. The Commission seeks comment on whether to require healthcare providers and service providers to certify on the appropriate form that the consultants or outside experts they hire have complied with RHC Program rules, including fair and open competitive bidding. The Commission also seeks comment on whether to require healthcare providers and service providers to certify that the consultants and outside experts they hire do not have an ownership interest, sales commission arrangement, or other financial stake in the vendor chosen to provide the requested services. Should the Commission also hold healthcare providers and service providers accountable for the actions of their consultants or outside experts should those consultants or experts have engaged in improper conduct? Are there other measures not mentioned here that would improve the Commission's and USAC's ability to ensure consultant and outside expert participation comports with the requirements of the RHC Program?

b. Establishing Consistent Gift Restrictions

80. Under E-rate Program rules, specific restrictions apply with respect to the receipt of gifts by applicants from service providers participating in or seeking to participate in the E-rate Program. Although there is no specific rule in the RHC Program, a gift from a service provider to an RHC applicant is nonetheless considered to be a violation of the Commission's competitive bidding rules because it undermines the integrity of the competitive bidding process. The Commission proposes to codify this requirement by adding for the RHC Program a gift rule that is similar to the codified rule in the E-rate Program.

81. The E-rate Program gift rules are consistent with the gift rules applicable to federal agencies, which permit only certain *de minimis* gifts. Generally, federal rules prohibit a federal employee from directly or indirectly soliciting or accepting a gift (*i.e.,* anything of value, including meals, tickets to sporting events, or trips) from someone who does business with his or her agency or accepting a gift given as a result of the employee's official position. Two exceptions to this rule include (1) modest refreshments that are not offered as part of a meal (*e.g.,* coffee and donuts provided at a meeting) and items with little intrinsic value solely for presentation (*e.g.,* certificates and plaques); and (2) items that are worth $20 or less, as long as those items do not exceed $50 per employee from any one source per calendar year. Like the federal rules, E-rate Program rules also include an exception for gifts to family members and personal friends when those gifts are made using personal funds of the donor (without reimbursement from an employer) and are not related to a business transaction or business relationship.

82. The Commission proposes to codify these rules for the RHC Program and seeks comment on this proposal. Specifically, the Commission seeks comment on whether the codified E-rate gift restrictions are suitable for the RHC Program. Do they provide sufficient guidance about the appropriateness of a particular offering or gift? Do they offer a fair balance between prohibiting gifts that may compromise a procurement process and acknowledging the realities of professional interactions? Are there other gift restrictions that should be considered for the RHC Program? If so, what are they and under what conditions should they apply or be applied? Should service providers be allowed to make charitable donations to healthcare providers participating in the RHC Program? If so, what parameters should be in place for allowing such donations?

83. Regarding the applicability of gift restrictions in the RHC Program, the Commission seeks comment on which entities should be subject to such restrictions. Should they apply to both applicants *and* service providers participating in or seeking to participate in the RHC Program? Should they apply to consultants and their employees, as well as to family members of the consultants and employees? Should they also apply to healthcare providers that may be part of a consortium but are not eligible to receive RHC Program support? Are there any challenges to applying a gift restriction in this manner? If so, what are the challenges and how could they be addressed or minimized?

84. The Commission also seeks comment on when gift restrictions should apply. Should they be triggered only during the time period that an applicant's competitive bidding process is taking place (*i.e.,* the 28-day period after an FCC Form 461, FCC Form 465, or RFP is posted) or should they also apply outside of the bidding period (*i.e.,* before and/or after such forms or documents are posted)? Should the Commission require applicants and anyone acting on behalf of applicants to certify that they have not solicited or accepted a gift or any other thing of value from their selected service provider or any other service provider participating in their competitive bidding process? Should the Commission also require service providers to certify that they have not offered or provided a gift or any other thing of value to the applicant for which it will provide services? The Commission reminds commenters that any gift restrictions to adopt will apply in addition to the applicant and service provider's state and local restrictions regarding gifts.

c. Harmonizing Invoicing Deadlines

85. The Commission proposes to adopt a new rule establishing the same invoicing deadline for the Telecom Program as that applicable to the HCF Program. Currently, there is no deadline in the Telecom Program for service providers to complete and submit their online invoices to USAC. Consequently, over the years, USAC has often had to contact applicants and service providers to encourage them to complete and submit their invoices. Allowing service providers to submit invoices whenever they choose has compromised USAC's ability to administer the Telecom Program's disbursement process efficiently and effectively and has forced USAC to keep committed but undisbursed funding on its books for excessively long periods of time.

86. To alleviate further inefficiencies with respect to the disbursement process, the Commission proposes to adopt a firm invoice filing deadline for Telecom Program participants, similar to the invoicing deadline adopted in the HCF Program. In particular, the Commission seeks comment on whether to require service providers in the Telecom Program to submit all invoices to USAC within six months (180 days) of the end date of the time period covered by the funding commitment. In the Commission's experience, the HCF Program invoicing deadline has resulted in more efficient administration of the HCF Program's disbursement process, as well as faster funding timetables. It also provides specific guidance to applicants and service providers when submitting applications for universal service support. The Commission seeks comment on whether there are other ways to eliminate delays and lack of response from service providers in submitting invoices to USAC. The Commission invites commenters to also address the appropriate consequences should the service provider fail to submit an invoice to USAC in a timely manner.

2. Streamlining the RHC FCC Forms Application Process

87. The Commission seeks comment on ways to streamline the data collection requirements as part of the FCC Forms for the RHC Program. Currently, the HCF and Telecom Programs each have their own online forms to collect information, leading to a total of seven FCC Forms. The use of multiple online forms for the RHC Program can cause confusion on the part of applicants and reduces the administrative efficiency of the application process. Applicants often must familiarize themselves with two sets of fairly intricate filing requirements. This complexity may lead many applicants to hire outside consultants to assist them in submitting the necessary information to seek funding under the RHC Program every year.

88. As one means to streamline and improve the efficiency of the application process, while also reducing the administrative burden upon applicants, the Commission proposes condensing the RHC Program application process to use fewer online FCC Forms. The Commission proposes to use four forms—Eligibility Form, Request for Services Form, Request for Funding Form, and Invoicing/Funding Disbursement Form. Applicants could use the same online form whether applying under the Telecom or HCF Programs by indicating on each online form under which RHC Program they seek funding for services. Applicants thus would no longer have to switch between the online forms when applying for services under both the HCF and Telecom Programs. The Commission seeks comment on the feasibility of this proposal and whether certain data fields on the current online FCC Forms could impede this approach to simplify the application process. Also, are there data elements requested on the online forms that, in applicants' view, are no longer needed? The Commission welcomes alternative proposals to streamline the RHC FCC Forms application process to alleviate the burden upon applicants. Commenters should be detailed in their proposals as to which data elements should be eliminated and those that should continue to apply.

89. SHLB suggests the Commission improve the processing of consortia applications and find ways to speed the processing of the various FCC HCF Forms and streamline the treatment of individual health care sites. Because the SHLB filings did not contain specific suggestions, and due to changes in the RHC Program procedures after the recent increase in demand, the Commission seeks comment here on how to improve the processing of consortia applications. What are the obstacles faced by commenters when filing consortia applications? From the applicants' perspective, what are the reasons for the delay in the review and processing of consortia applications? Are there ways in which the Commission can, in the instant rulemaking, facilitate USAC's ability to process consortia applications more

quickly? Commenters should provide specific examples of the problems they encounter during the consortia application review process. At the same time, the Commission has directed USAC to ensure that funding is disbursed to eligible recipients for eligible services. Thus, any suggestions provided should account for the Commission's need to balance administrative efficiency with protecting against waste, fraud, and abuse.

3. Applying Lessons Learned From the HCF Program to the Telecom Program

90. In this section, the Commission seeks comment on a number of proposals to bolster competitive bidding rules in the Telecom Program. These proposals are consistent with the Commission's goals to simplify the application and disbursement process for applicants and service providers, while also reducing the complexity of administering the Programs. Greater harmonization of the codified rules applying to both RHC Programs will also make the establishment of one set of application forms simpler. In some cases, this alignment of rules involves merely the codification of requirements that were laid out in preceding orders and, thus, should not be viewed as a change in applicant obligations.

a. Aligning the ''Fair and Open'' Competitive Bidding Standard

91. To enhance RHC Program transparency and increase administrative efficiency, the Commission proposes to align the ''fair and open'' competitive bidding standard applied in each Program. Although this standard is codified under HCF Program rules, it is not codified under the Telecom Program, although numerous Commission orders state that an applicant must conduct a fair and open competitive bidding process prior to submitting a request for funding, and indeed, a process that is not ''fair and open'' is inherently inconsistent with ''competitive bidding.'' For consistency purposes, the Commission now seeks to codify this standard under the Telecom Program as well. Because the Commission is merely proposing to codify an existing requirement, RHC Program participants that are already complying with the Commission's competitive bidding rules should not be impacted. The Commission seeks comment on this proposal. The Commission also proposes to apply the ''fair and open'' standard to all participants under each RHC Program, including applicants, service providers, and consultants, and require them to certify compliance with the standard. The Commission seeks comment on this proposal.

b. Aligning Competitive Bidding Exemptions in Both RHC Programs

92. The Commission proposes to harmonize the Commission's rules that exempt certain applicants from the competitive bidding requirements in the Telecom and HCF Programs. Applicants qualifying for an exemption are not required to initiate a bidding process by preparing and posting an FCC Form 461 (in the HCF Program) or an FCC Form 465 (in the Telecom Program). Instead, qualifying applicants may proceed directly to filing a funding request in each respective Program. The Commission seeks comment on whether to apply the following HCF Program competitive bidding exemptions to the Telecom Program: (1) Applicants who are purchasing services and/or equipment from master services agreements (MSAs) negotiated by federal, state, Tribal, or local government entities on behalf of such applicants; (2) applicants purchasing services and/or equipment from an MSA that was subject to the HCF and Pilot Programs competitive bidding requirements; (3) applicants seeking support under a contract that was deemed ''evergreen'' by USAC; and (4) applicants seeking support under an E-rate contract that was competitively bid consistent with E-rate Program rules. With the exception of ''evergreen'' contracts, none of these exemptions apply in the Telecom Program. The Commission therefore seeks comment on whether to apply these exemptions, or variants thereof, to the Telecom Program. The Commission also seeks comment on whether other situations may warrant a competitive bidding exemption. In addition, to improve uniformity across both Programs, the Commission proposes to codify the existing ''evergreen'' contract exemption in the Telecom Program. The Commission seeks comment on this proposal.

c. Requiring Submission of Documentation With Requests for Services

93. The Commission next proposes rules in the Telecom Program regarding the submission of competitive bidding documentation during the application process. Currently, after selecting a service provider in the Telecom Program, the applicant must submit to USAC paper copies of bids it received in response to its request for services (*i.e.,* FCC Form 465). Under the rules applicable to the HCF Program, however, the applicant must submit as part of its request for services (*i.e.,* FCC Form 461 or RFP, if applicable) certifications attesting to RHC Program compliance, bid evaluation criteria and a matrix demonstrating how it will choose a service provider, a declaration of assistance, and an RFP and network plan, if applicable. The Commission has found that requiring HCF Program applicants to provide this information up front with their requests for services makes the bid evaluation process more transparent for service providers seeking to bid and for USAC to review. Incorporating this requirement in the Telecom Program will likely yield similar benefits. The Commission therefore proposes to require Telecom Program applicants to provide, contemporaneously with their requests for services (*i.e.,* FCC Forms 465 and/or RFPs), certifications attesting to their compliance with Telecom Program rules, bid evaluation criteria and worksheets demonstrating how they will select a service provider, and a declaration of assistance (if applicable). The Commission seeks comment on this proposal and whether requiring such information would be burdensome for applicants. For administrative ease, should the Commission revise the request for services forms in both Programs to include a scoring matrix for applicants to use in their vendor evaluations? Is there other documentation that should be included with the applicant's request for services to ensure that a fair and open procurement will take place?

d. Requiring Submission of Documentation With Funding Requests

94. The Commission also proposes to change Telecom Program requirements regarding the types of documents that must accompany the applicant's funding requests. In the Telecom Program, the applicant must submit with its funding request (*i.e.,* FCC Form 466) proof of the rural rate or cost of service, proof of the urban rate (if the applicant uses an urban rate other than what is posted on USAC's website), a copy of its signed service contract, and copies of all bids received in response to its request for services. Similarly, in the HCF Program, the applicant must submit with its funding request (*i.e.,* FCC Form 462) certain certifications attesting to its compliance with HCF Program rules, a copy of its signed service contract, competitive bidding documentation, cost allocations, and other documentation for consortium applicants, if applicable. While this requirement is codified in the Commission's rules for the HCF

Program, there is no analogous rule under the Telecom Program. Therefore, to improve uniformity and transparency across both Programs, the Commission proposes to codify the existing requirement that applicants provide supporting documentation with their funding requests in the Telecom Program. The Commission seeks comment on this proposal and, in particular, whether to require applicants to provide additional documentation contemporaneously with their funding requests. For example, the Commission proposes to require applicants to provide: (1) Certifications from applicants attesting to their compliance with Telecom Program rules; and, (2) competitive bidding documentation, including winning and losing bids, bid evaluation worksheets, memos, meeting minutes or similar documents related to the vendor selection, and copies of any correspondence with vendors prior to and during the bidding, evaluation, and award phases of the process. Requiring this documentation for both RHC Programs facilitates USAC's ability to determine whether the healthcare provider abided by its evaluation criteria in reviewing bids and ultimately selected the most cost-effective service provider. This documentation also provides USAC with greater means to ensure and verify that Program participants are not engaging in fraudulent conduct, such as pre-bidding negotiations with potential service providers, or otherwise violating the Commission's competitive bidding rules, such as failing to comply with the 28-day waiting period. The Commission seeks comment on whether this requirement would be burdensome for applicants. Is there other supporting documentation that should be included with the applicant's request for funding to ensure that a fair and open procurement took place? The Commission also seeks comment on whether to require service providers to certify on each invoice submission that they have reviewed and complied with all applicable requirements for the program, including the applicable competitive bidding requirements.

e. Unifying Data Collection on RHC Program Support Impact

95. As the Commission seeks to better monitor RHC Program effectiveness, the Commission seeks comment on whether all RHC Program participants should report on the telehealth applications (*e.g.,* tele-psychiatry, tele-stroke, transmission of EHRs, etc.) they provide over their supported communications services. Currently, consistent with the requirements in the *HCF Order,* only healthcare providers participating in HCF consortia are required to report annually about the telehealth applications they provide over their supported connections. Understanding how all RHC participants use their supported communications services would provide information about the role of the RHC Program in delivering telehealth services to rural areas. In addition, although USAC does currently obtain some information through the Telecom and HCF application process about the types of services, bandwidths, and prices associated with RHC Program participants, might it be useful to require RHC Program participants to report on this information in a way that more directly correlates to the telehealth applications for which the communications services will be used? The Commission seeks comment on incorporating lessons learned by the Connect2Health Task Force that could guide us in understanding future telehealth trends. Would it be useful, from a transparency perspective, to make this and any other information provided to USAC available to RHC Program participants? Moreover, would it be beneficial to see whether there are correlations between certain telehealth applications and certain communications services? Might awareness of such correlations, or lack thereof, facilitate decisions by this Commission and other policymakers in the future?

4. Managing Filing Window Periods

96. In light of RHC Program growth and the potential for FY 2016 demand to exceed the $400 million cap before the end of FY 2016, the Bureau established multiple filing window periods for FY 2016 and beyond, consistent with the Commission's rules. By establishing multiple filing window periods, the Bureau provided a mechanism for USAC to more efficiently administer the RHC Program and process requests while providing an incentive for applicants to timely submit their requests for funding. Additionally, the Bureau found that filing window periods provide a greater opportunity for healthcare providers to receive at least some support rather than none at all, even when demand exceeds the cap.

97. The Commission proposes to continue with the filing window periods process established by the Bureau and USAC for administering RHC Program funds. The Commission believes this process furthers its goals of supporting health care delivery in as many parts of rural America as possible and provides USAC with a mechanism to more efficiently manage the application process. The Commission seeks comment on this proposal. The Commission seeks comment on any specific concerns regarding the current process and how to potentially adjust the current process to better align with applicants' business needs and filing schedules. The Commission also seeks comment on whether there is a more efficient way to manage requests for funding when the demand exceeds, or is likely to exceed, the funding cap. Commenters proposing an alternative to the current process should ensure that any alternative process distributes funding in a manner that is both equitable and administratively manageable.

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

98. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for the Notice of Proposed Rulemaking (NPRM), of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

99. Through this NPRM, the Commission seeks to improve the Rural Health Care (RHC) Program's capacity to distribute telecommunications and broadband support to health care providers—especially small, rural healthcare providers (HCPs)—in the most equitable, effective, efficient, clear, and predictable manner as possible. Telemedicine has become an increasingly vital component of healthcare delivery to rural Americans and, in Funding Year (FY) 2016, for the first time in the RHC Program's twenty-year history, demand for support exceeded the $400 million annual cap which necessitated reduced, *pro rata* distribution of support. In light of the significance and scarcity of RHC Program support, the Commission proposes and seeks comment on several measures to most effectively meet HCPs'

needs while responsibly stewarding the RHC Program's limited funds.

2. Legal Basis

100. The legal basis for the NPRM is contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

101. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

102. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 28.8 million businesses.

103. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

104. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

105. Small entities potentially affected by the proposals herein include eligible rural non-profit and public health care providers and the eligible service providers offering them services, including telecommunications service providers, internet Service Providers (ISPs), and vendors of the services and equipment used for dedicated broadband networks.

a. Healthcare Providers

106. *Offices of Physicians (except Mental Health Specialists).* This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of general or specialized medicine (except psychiatry or psychoanalysis) or surgery. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has created a size standard for this industry, which is annual receipts of $11 million or less. According to 2012 U.S. Economic Census, 152,468 firms operated throughout the entire year in this industry. Of that number, 147,718 had annual receipts of less than $10 million, while 3,108 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms operating in this industry are small under the applicable size standard.

107. *Offices of Physicians, Mental Health Specialists.* This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of psychiatry or psychoanalysis. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for businesses in this industry, which is annual receipts of $11 million dollars or less. The U.S. Economic Census indicates that 8,809 firms operated throughout the entire year in this industry. Of that number 8,791 had annual receipts of less than $10 million, while 13 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small under the applicable standard.

108. *Offices of Dentists.* This U.S. industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.Sc. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry. The SBA has established a size standard for that industry of annual receipts of $7.5 million or less. The 2012 U.S. Economic Census indicates that 115,268 firms operated in the dental industry throughout the entire year. Of that number 114,417 had annual receipts of less than $5 million, while 651 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes that a majority of business in the dental industry are small under the applicable standard.

109. *Offices of Chiropractors.* This U.S. industry comprises establishments of health practitioners having the degree of DC (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic. These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts

of $7.5 million or less. The 2012 U.S. Economic Census statistics show that in 2012, 33,940 firms operated throughout the entire year. Of that number 33,910 operated with annual receipts of less than $5 million per year, while 26 firms had annual receipts between $5 million and $9,999,999. Based on that data, the Commission concludes that a majority of chiropractors are small.

110. *Offices of Optometrists.* This U.S. industry comprises establishments of health practitioners having the degree of O.D. (Doctor of Optometry) primarily engaged in the independent practice of optometry. These practitioners examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions. Offices of optometrists prescribe and/or provide eyeglasses, contact lenses, low vision aids, and vision therapy. They operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers, and may also provide the same services as opticians, such as selling and fitting prescription eyeglasses and contact lenses. The SBA has established a size standard for businesses operating in this industry, which is annual receipts of $7.5 million or less. The 2012 Economic Census indicates that 18,050 firms operated the entire year. Of that number, 17,951 had annual receipts of less than $5 million, while 70 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes that a majority of optometrists in this industry are small.

111. *Offices of Mental Health Practitioners (except Physicians).* This U.S. industry comprises establishments of independent mental health practitioners (except physicians) primarily engaged in (1) the diagnosis and treatment of mental, emotional, and behavioral disorders and/or (2) the diagnosis and treatment of individual or group social dysfunction brought about by such causes as mental illness, alcohol and substance abuse, physical and emotional trauma, or stress. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has created a size standard for this industry, which is annual receipts of $7.5 million or less. The 2012 U.S. Economic Census indicates that 16,058 firms operated throughout the entire year. Of that number, 15,894 firms received annual receipts of less than $5 million, while 111 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes that a majority of mental health practitioners who do not employ physicians are small.

112. *Offices of Physical, Occupational and Speech Therapists and Audiologists.* This U.S. industry comprises establishments of independent health practitioners primarily engaged in one of the following: (1) Providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $7.5 million or less. The 2012 U.S. Economic Census indicates that 20,567 firms in this industry operated throughout the entire year. Of this number, 20,047 had annual receipts of less than $5 million, while 270 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes that a majority of businesses in this industry are small.

113. *Offices of Podiatrists.* This U.S. industry comprises establishments of health practitioners having the degree of D.P.M. (Doctor of Podiatric Medicine) primarily engaged in the independent practice of podiatry. These practitioners diagnose and treat diseases and deformities of the foot and operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for businesses in this industry, which is annual receipts of $7.5 million or less. The 2012 U.S. Economic Census indicates that 7,569 podiatry firms operated throughout the entire year. Of that number, 7,545 firms had annual receipts of less than $5 million, while 22 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

114. *Offices of All Other Miscellaneous Health Practitioners.* This U.S. industry comprises establishments of independent health practitioners (except physicians; dentists; chiropractors; optometrists; mental health specialists; physical, occupational, and speech therapists; audiologists; and podiatrists). These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $7.5 million or less. The 2012 U.S. Economic Census indicates that 11,460 firms operated throughout the entire year. Of that number, 11,374 firms had annual receipts of less than $5 million, while 48 firms had annual receipts between $5 million and $9,999,999. Based on this data, the Commission concludes the majority of firms in this industry are small.

115. *Family Planning Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing a range of family planning services on an outpatient basis, such as contraceptive services, genetic and prenatal counseling, voluntary sterilization, and therapeutic and medically induced termination of pregnancy. The SBA has established a size standard for this industry, which is annual receipts of $11 million or less. The 2012 Economic Census indicates that 1,286 firms in this industry operated throughout the entire year. Of that number 1,237 had annual receipts of less than $10 million, while 36 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that the majority of firms in this industry are small.

116. *Outpatient Mental Health and Substance Abuse Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse. These establishments generally treat patients who do not require inpatient treatment. They may provide a counseling staff and information regarding a wide range of mental health and substance abuse issues and/or refer patients to more extensive treatment programs, if necessary. The SBA has established a size standard for this industry, which is $15 million or less in annual receipts. The 2012 U.S. Economic Census indicates that 4,446 firms operated throughout the entire year. Of that

number, 4,069 had annual receipts of less than $10 million while 286 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

117. *HMO Medical Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in providing a range of outpatient medical services to the health maintenance organization (HMO) subscribers with a focus generally on primary health care. These establishments are owned by the HMO. Included in this industry are HMO establishments that both provide health care services and underwrite health and medical insurance policies. The SBA has established a size standard for this industry, which is $32.5 million or less in annual receipts. The 2012 U.S. Economic Census indicates that 14 firms in this industry operated throughout the entire year. Of that number, 5 firms had annual receipts of less than $25 million, while 1 firm had annual receipts between $25 million and $99,999,999. Based on this data, the Commission concludes that approximately one-third of the firms in this industry are small.

118. *Freestanding Ambulatory Surgical and Emergency Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in (1) providing surgical services (*e.g.,* orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (*e.g.,* setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis. Outpatient surgical establishments have specialized facilities, such as operating and recovery rooms, and specialized equipment, such as anesthetic or X-ray equipment. The SBA has established a size standard for this industry, which is annual receipts of $15 million or less. The 2012 U.S. Economic Census indicates that 3,595 firms in this industry operated throughout the entire year. Of that number, 3,222 firms had annual receipts of less than $10 million, while 289 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

119. *All Other Outpatient Care Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing general or specialized outpatient care (except family planning centers, outpatient mental health and substance abuse centers, HMO medical centers, kidney dialysis centers, and freestanding ambulatory surgical and emergency centers). Centers or clinics of health practitioners with different degrees from more than one industry practicing within the same establishment (*i.e.,* Doctor of Medicine and Doctor of Dental Medicine) are included in this industry. The SBA has established a size standard for this industry, which is annual receipts of $20.5 million or less. The 2012 U.S. Economic Census indicates that 4,903 firms operated in this industry throughout the entire year. Of this number, 4,269 firms had annual receipts of less than $10 million, while 389 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

120. *Blood and Organ Banks.* This U.S. industry comprises establishments primarily engaged in collecting, storing, and distributing blood and blood products and storing and distributing body organs. The SBA has established a size standard for this industry, which is annual receipts of $32.5 million or less. The 2012 U.S. Economic Census indicates that 314 firms operated in this industry throughout the entire year. Of that number, 235 operated with annual receipts of less than $25 million, while 41 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that approximately three-quarters of firms that operate in this industry are small.

121. *All Other Miscellaneous Ambulatory Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing ambulatory health care services (except offices of physicians, dentists, and other health practitioners; outpatient care centers; medical and diagnostic laboratories; home health care providers; ambulances; and blood and organ banks). The SBA has established a size standard for this industry, which is annual receipts of $15 million or less. The 2012 U.S. Economic Census indicates that 2,429 firms operated in this industry throughout the entire year. Of that number, 2,318 had annual receipts of less than $10 million, while 56 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of the firms in this industry are small.

122. *Medical Laboratories.* This U.S. industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner. The SBA has established a size standard for this industry, which is annual receipts of $32.5 million or less. The 2012 U.S. Economic Census indicates that 2,599 firms operated in this industry throughout the entire year. Of this number, 2,465 had annual receipts of less than $25 million, while 60 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small.

123. *Diagnostic Imaging Centers.* This U.S. industry comprises establishments known as diagnostic imaging centers primarily engaged in producing images of the patient generally on referral from a health practitioner. The SBA has established size standard for this industry, which is annual receipts of $15 million or less. The 2012 U.S. Economic Census indicates that 4,209 firms operated in this industry throughout the entire year. Of that number, 3,876 firms had annual receipts of less than $10 million, while 228 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small.

124. *Home Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: Personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy. The SBA has established a size standard for this industry, which is annual receipts of $15 million or less. The 2012 U.S. Economic Census indicates that 17,770 firms operated in this industry throughout the entire year. Of that number, 16,822 had annual receipts of less than $10 million, while 590 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small.

125. *Ambulance Services.* This U.S. industry comprises establishments primarily engaged in providing transportation of patients by ground or air, along with medical care. These services are often provided during a

medical emergency but are not restricted to emergencies. The vehicles are equipped with lifesaving equipment operated by medically trained personnel. The SBA has established a size standard for this industry, which is annual receipts of $15 million or less. The 2012 U.S. Economic Census indicates that 2,984 firms operated in this industry throughout the entire year. Of that number, 2,926 had annual receipts of less than $15 million, while 133 firms had annual receipts between $10 million and $24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

126. *Kidney Dialysis Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient kidney or renal dialysis services. The SBA has established assize standard for this industry, which is annual receipts of $38.5 million or less. The 2012 U.S. Economic Census indicates that 396 firms operated in this industry throughout the entire year. Of that number, 379 had annual receipts of less than $25 million, while 7 firms had annual receipts between $25 million and $49,999,999 Based on this data, the Commission concludes that a majority of firms in this industry are small.

127. *General Medical and Surgical Hospitals.* This U.S. industry comprises establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. These hospitals have an organized staff of physicians and other medical staff to provide patient care services. These establishments usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services. The SBA has established a size standard for this industry, which is annual receipts of $38.5 million or less. The 2012 U.S. Economic Census indicates that 2,800 firms operated in this industry throughout the entire year. Of that number, 877 has annual receipts of less than $25 million, while 400 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that approximately one-quarter of firms in this industry are small.

128. *Psychiatric and Substance Abuse Hospitals.* This U.S. industry comprises establishments known and licensed as psychiatric and substance abuse hospitals primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders. The treatment often requires an extended stay in the hospital. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. Psychiatric, psychological, and social work services are available at the facility. These hospitals usually provide other services, such as outpatient services, clinical laboratory services, diagnostic X-ray services, and electroencephalograph services. The SBA has established a size standard for this industry, which is annual receipts of $38.5 million or less. The 2012 U.S. Economic Census indicates that 404 firms operated in this industry throughout the entire year. Of that number, 185 had annual receipts of less than $25 million, while 107 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that more than one-half of the firms in this industry are small.

129. *Specialty (Except Psychiatric and Substance Abuse) Hospitals.* This U.S. industry consists of establishments known and licensed as specialty hospitals primarily engaged in providing diagnostic, and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse). Hospitals providing long-term care for the chronically ill and hospitals providing rehabilitation, restorative, and adjustive services to physically challenged or disabled people are included in this industry. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. These hospitals may provide other services, such as outpatient services, diagnostic X-ray services, clinical laboratory services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services. The SBA has established a size standard for this industry, which is annual receipts of $38.5 million or less. The 2012 U.S. Economic Census indicates that 346 firms operated in this industry throughout the entire year. Of that number, 146 firms had annual receipts of less than $25 million, while 79 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that more than one-half of the firms in this industry are small.

130. *Emergency and Other Relief Services. This industry comprises establishments primarily* engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (*e.g.,* wars). The SBA has established a size standard for this industry which is annual receipts of $32.5 million or less. The 2012 U.S. Economic Census indicates that 541 firms operated in this industry throughout the entire year. Of that number, 509 had annual receipts of less than $25 million, while 7 firms had annual receipts between $25 million and $49,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small

b. Providers of Telecommunications and Other Services

(i) Telecommunications Service Providers

131. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers and under the SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated during that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus using the SBA's size standard the majority of Incumbent LECs can be considered small entities.

132. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest NAICS Code category is Wired Telecommunications

Carriers and the applicable size standard under SBA rules consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers that may be affected are small entities.

133. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is Wired Telecommunications Carriers and under the size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most competitive access providers are small businesses that may be affected by its actions. According to Commission data the *2010 Trends in Telephone Report* (*rel.* September 30, 2010), 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or few employees and 186 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

134. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

135. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

136. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by the Commissions actions. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

137. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under the SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms has 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have *more* than 1,500 employees. Therefore, more than half of these entities can be considered small.

138. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 shows that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

139. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a

small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million and 42 firms had gross annual receipts of $25 million to $49, 999,999. Thus, the Commission estimates that a majority of ''All Other Telecommunications'' firms potentially affected by its action can be considered small.

(ii) Internet Service Providers

140. *Internet Service Providers (Broadband).* Broadband internet service providers include wired (*e.g.,* cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, under this size standard the majority of firms in this industry can be considered small.

141. *Internet Service Providers (Non-Broadband).* Internet access service providers such as Dial-up internet service providers, VoIP service providers using client-supplied telecommunications connections and internet service providers using client-supplied telecommunications connections (*e.g.,* dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Consequently, under this size standard a majority of firms in this industry can be considered small.

c. Vendors and Equipment Manufacturers

142. *Vendors of Infrastructure Development or ''Network Buildout.''* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are ''Radio and Television Broadcasting and Wireless Communications Equipment'' with a size standard of 1,250 employees or less and ''Other Communications Equipment Manufacturing'' with a size standard of 750 employees or less.'' U.S. Census Bureau data for 2012 shows that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2012 shows that 383 establishments operated for the year. Of that number 379 firms operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, the Commission concludes that the majority of Vendors of Infrastructure Development or ''Network Buildout'' are small.

143. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.'' The SBA size standard for Telephone Apparatus Manufacturing is all such firms having 1,250 or fewer employees. According to U.S. Census Bureau data for 2012, there were a total of 266 establishments in this category that operated for the entire year. Of this total, 262 had employment of under 1,000, and an additional 4 had employment of 1,000 to 2,499. Thus, under this size standard, the majority of firms can be considered small.

144. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

145. *Other Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (*e.g.,* highway, pedestrian, railway, traffic) manufacturing. The SBA has established a size for this industry as all such firms having 750 or fewer employees. U.S. Census Bureau data for 2012 shows that 383 establishments operated in that year. Of that number 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, the Commission concludes that the majority of Other Communications Equipment Manufacturers are small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

146. The reporting, recordkeeping, and other compliance requirements proposed in this NPRM likely would positively and negatively financially impact both large and small entities, including healthcare providers and service providers, and any resulting financial burdens may

disproportionately impact small entities given their typically more limited resources. In weighing the likely financial benefits and burdens of the Commission's proposed requirements, however, the determination that its proposed changes would result in more equitable, effective, efficient, clear, and predictable distribution of RHC support, far outweighing any resultant financial burdens on small entity participants.

147. *Provision of Rate Information in the Telecom Program.* Because the service provider can most easily access rate information, the Commission proposes that both the rural and urban rates used in the discount calculation be provided by the service provider to the HCP and submitted by the HCP in its application.

148. *Application Documentation.* The Commission proposes to require Telecom Program applicants to provide, contemporaneously with their requests for services (*i.e.,* FCC Form 465 and/or RFPs), certifications attesting to their compliance with Telecom Program rules; bid evaluation criteria and worksheets demonstrating how they will select a service provider; and a declaration of assistance (if applicable). The Commission seeks comment on this proposal and whether requiring such information would be burdensome for applicants.

149. *Consultant and Invoicing Requirements.* To harmonize the Commission's rules under the Telecom and HCF Programs, and to ensure sufficient program oversight, efficiency, and certainty, the Commission proposes a new rule in the Telecom Program containing a ''declaration of assistance'' requirement similar to that in the HCF Program. The Commission also proposes a new rule establishing the same six-month invoicing deadline for the Telecom Program as that applicable in the HCF Program.

150. *Unifying Data Collection on RHC Program Support Impact.* As the Commission seeks to better monitor RHC Program effectiveness, the Commission seeks comment on whether all RHC Program participants should report on the telehealth applications (*e.g.,* tele-psychiatry, tele-stroke, transmission of EHRs, etc.) they provide over the supported communications services. Currently, only healthcare providers participating in HCF consortia are required to report annually about the telehealth applications they provide over their supported connections.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

151. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

152. As indicated above, in this NPRM, while the Commission proposes several changes that could increase the economic burden on small entities, the Commission also proposes many changes that would streamline and simplify the application process; maximize efficient and fair distribution of support; and increase support for small entities relative to their larger counterparts, thereby decreasing the net economic burden on small entities. In the instances in which a proposed change would increase the financial burden on small entities, the Commission has determined that the net financial and other benefits from such changes would outweigh the increased burdens on small entities.

153. *Addressing RHC Program Funding Levels.* To increase RHC program support, and thereby increase support available for rural, mostly small, healthcare providers, the Commission seeks comment on several measures, including whether to: (1) Prospectively increase the $400 million annual RHC Program support cap, such as *via* an inflation adjustment or some other method; (2) retroactively increase the FY 2017 RHC Program support cap; and (3) ''roll over'' unused funds committed in one funding year into a subsequent funding year.

154. *Prioritizing Funding if Demand Reaches the Cap.* To more appropriately target RHC support if demand exceeds the $400 million annual cap, the Commission seeks comment on whether to prioritize funding requests from HCPs based on: Rurality or remoteness of the area served; which Program (Telecom or HCF); type of services requested; economic need of the population served; and/or health care professional shortage area status.

155. *Targeting Support to Rural and Tribal HCPs.* Recognizing that the primary emphasis of the RHC Program is to defray the cost of supported services for *rural* HCPs, which most often are small HCPs, the Commission seeks comment on increasing the HCF Program consortia ''majority rural'' HCP requirement from a ''more than 50 percent rural HCPs'' threshold to some higher percentage. The Commission also seeks comment on eliminating the three-year grace period during which HCF consortia may come into compliance with the ''majority rural'' requirement. Additionally, the Commission seeks comment on requiring a direct healthcare-related relationship between a consortium's non-rural and rural healthcare providers. And, the Commission seeks comment from Tribal governments in particular on whether these proposals would impact Tribal populations, and what other measures would help ensure that adequate Telecom and HCF Program support is directed toward rural HCPs on Tribal lands.

156. *Controlling Outlier Costs.* To ensure efficient and equitable funding distribution, the Commission seeks comment on establishing objective benchmarks to identify and scrutinize particularly high funding requests in the Telecom Program, using information already provided by participants to USAC. As an alternative to this proposed enhanced review, the Commission seeks comment on capping high-support funding requests in the Telecom Program to enable funding distribution to more HCPs.

157. *Rate Calculations.* To minimize potential rate variances and manipulations, the Commission seeks comment on establishing more detailed requirements about how the urban and rural rates are determined in the Telecom Program. The Commission also proposes to eliminate the Telecom Program's distance-based support calculation approach in light of its limited use and the administrative benefits for HCPs and service providers that would result from using one standardized support calculation methodology.

158. *Defining* ''*Cost Effective.*'' To improve Program uniformity and safeguard against wasteful or abusive spending, the Commission seeks comment on defining ''cost-effectiveness'' in both Programs as the ''lowest-price service that meets the minimum requirements for the products and services that are essential to satisfy the communications needs of the applicant.''

159. *Clarification of Gift Prohibition.* To provide clarity to RHC Program participants and ensure a fair competitive bidding process, the Commission proposes to codify a gift rule similar to the E-rate Program rule, which, consistent with the gift rules applicable to federal agencies, permits only certain *de minimis* gifts from service providers to applicants. While gifts from service providers to RHC Program applicants already are considered to be violations of the Commission's competitive bidding rules, the Commission believes that codifying the existing gift prohibition will provide applicants and service providers with enhanced clarity and understanding of this safeguard on program integrity.

160. *Streamlining and Harmonizing the Application Process.* To streamline the application process and reduce the administrative burden upon applicants, the Commission proposes that applicants use consolidated forms for both the Telecom and HCP Programs (Eligibility, Request for Services, Request for Funding, and Invoicing/Funding Disbursement), instead of the current requirement that separate forms be used for each program. To harmonize the Commission's Telecom and HCF Program rules and to ensure sufficient program oversight, efficiency, and certainty, the Commission proposes a new rule in the Telecom Program containing a ''declaration of assistance'' requirement similar to that in the HCF Program. The Commission also proposes a new rule establishing the same six-month invoicing deadline for the Telecom Program as that applicable in the HCF Program.

161. *Competitive Bidding Requirements.* To enhance RHC Program transparency and increase administrative efficiency, the Commission proposes to align the ''fair and open'' competitive bidding standard applied in each program by codifying this standard in the Telecom Program. While this standard is codified in HCF Program rules, it is not yet codified in Telecom Program rules, although numerous Commission orders clearly state that a Telecom Program applicant must conduct a fair and open competitive bidding process prior to submitting a funding request.

162. *Competitive Bidding Exemptions.* The Commission proposes to harmonize the Commission's rules that exempt certain applicants from the competitive bidding requirements in the Telecom and HCF Programs. Currently, there are five exemptions to the HCF Program's competitive bidding requirements: (1) Applicants purchasing services and/or equipment from master services agreements (MSAs) negotiated by federal, state, Tribal, or local government entities on behalf of such applicants; (2) applicants purchasing services and/or equipment from an MSA that was subject to the HCF and Pilot Program competitive bidding requirements; (3) applicants seeking support under a contract deemed ''evergreen'' by USAC; and (4) applicants seeking support under an E-rate contract that was competitively bid consistent with E-rate Program rules. With the exception of ''evergreen'' contracts, none of these exemptions apply in the Telecom Program. The Commission therefore seeks comment on whether to apply these exemptions, or variants thereof, to the Telecom Program, and ask whether other situations may warrant competitive bidding exemptions. In addition, to improve uniformity across both Programs, the Commission proposes to codify the existing ''evergreen'' contract exemption in the Telecom Program.

163. *Competitive Bidding Documentation.* To harmonize the Telecom Program's competitive bidding documentation requirements with those in the HCF Program, which should simplify the application process for HCPs and service providers, the Commission proposes to require Telecom Program applicants to provide, contemporaneously with their requests for services (*i.e.,* FCC Forms 465 and/or RFPs), certifications attesting to their compliance with Telecom Program rules; bid evaluation criteria and worksheets demonstrating how they will select a service provider; and a declaration of assistance (if applicable). The Commission seeks comment on this proposal and whether requiring such information would be burdensome for applicants.

164. *Funding Request Supporting Documentation.* To improve uniformity and transparency across both Programs, the Commission proposes to codify the existing requirement that applicants provide supporting documentation with their funding requests in the Telecom Program. While this requirement is codified in the Commission's rules for the HCF Program, there is not yet an analogous rule under the Telecom Program.

165. *Funding Request Filing Windows.* In light of RHC Program growth and the potential for FY 2016 demand to exceed the $400 million cap before the end of FY 2016, the Wireline Competition Bureau (Bureau) established multiple filing window periods for FY 2016 and beyond, consistent with the Commission's rules. By establishing multiple filing window periods, the Bureau provided a mechanism for USAC to more efficiently administer the Program and process requests while providing an incentive for applicants to timely submit their funding requests. Additionally, the Bureau found that filing window periods provide a greater opportunity for HCPs to receive at least some support rather than none at all, even when demand exceeds the cap. The Commission proposes to continue the filing-window process and believe that it furthers its goals of supporting health care delivery in as many parts of rural America as possible and more efficiently managing the application process.

166. *Companion Order to Carry Forward Unused Support and Allow Voluntary Price Reductions.* In addition to the NPRM's proposed changes that, if adopted, would minimize the net economic burden on small entities, the Commission also takes targeted, immediate action to mitigate the potential negative impact of the existing RHC Program annual support cap on rural, usually small, healthcare providers in FY 2017. Specifically, in the event of a proration of FY 2017 RHC support, the Commission directs USAC to carry forward for use in FY 2017 any available RHC Program funds from prior funding years and, on a one-time basis, commit these funds to rural, typically small, healthcare providers participating in the RHC Program in FY 2017. In the event of FY 2017 support proration, service providers to reduce their service prices charged to participating healthcare providers and thereby further minimize the negative financial impact of a FY 2017 proration on participating healthcare providers.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

167. None.

B. Initial Paperwork Reduction Act Analysis

168. The NPRM seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might

''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

C. Ex Parte Rules

169. *Permit-But-Disclose.* The proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b) of the rules. In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Comment Filing Procedures

170. *Comments and Replies.* The Commission invites comment on the issues and questions set forth in the NPRM and IRFA contained herein. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

171. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

172. In addition, one copy of each paper filing must be sent to each of the following: (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW, Room CY–B402, Washington, DC 20554; website: *www.bcpiweb.com;* phone: (800) 378–3160; (2) Radhika Karmarkar, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW, Room 5–A317, Washington, DC 20554; email: *Radhika.Karmarkar@fcc.gov* and (3) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW, Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov.*

173. Filing and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its website: *www.bcpi.com,* by email at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 or by facsimile at (202) 488–5563.

174. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. The Commission also strongly encourages parties to track the organization set forth in the NPRM in order to facilitate its internal review process.

175. For additional information on this proceeding, contact Radhika Karmarkar (202) 418–1523 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

V. Ordering Clauses

176. *Accordingly, it is ordered* that, pursuant to the authority contained in sections 1 through 4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403, this Notice of Proposed Rulemaking *is adopted.*

177. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before February 2, 2018, and reply comments on or before March 5, 2018.

178. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief

Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and record keeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Revise § 54.603 to read as follows:

§ 54.603 Competitive bidding and certification requirements and exemptions.

(a) *Competitive bidding requirement.* All applicants are required to engage in a competitive bidding process for services eligible for universal service support under the Telecommunications Program consistent with the requirements set forth in this subpart, unless they qualify for an exemption in paragraph (i) of this section. Applicants may engage in competitive bidding even if they qualify for an exemption. Applicants who utilize a competitive bidding exemption may proceed directly to filing a funding request as described in § 54.610.

(b) *Fair and open process.* (1) All entities participating in the Telecommunications Program, including vendors, must conduct a fair and open competitive bidding process, consistent with all applicable requirements.

(2) Vendors who intend to bid to provide supported services to a health care provider may not simultaneously help the health care provider choose a winning bid. Any vendor who submits a bid, and any individual or entity that has a financial interest in such a vendor, is prohibited from:

(i) Preparing, signing or submitting an applicant's request for services or supporting documentation;

(ii) Serving as the point of contact on behalf of the applicant;

(iii) Being involved in setting bid evaluation criteria; or

(iv) Participating in the bid evaluation or vendor selection process (except in their role as potential vendors).

(3) All potential bidders must have access to the same information and must be treated in the same manner.

(4) An applicant may not have a relationship, financial interest, or ownership interest with a service provider that would unfairly influence the outcome of a competition or furnish the service provider with inside information.

(5) An applicant may not turn over its responsibility for ensuring a fair and open competitive bidding process to a service provider or anyone working on behalf of a service provider.

(6) An employee or board member of the applicant may not serve on any board of any type of service provider that participates in the RHC Programs.

(7) An applicant may not accept or solicit, and a service provider may not offer or provide, any gift or other thing of value to employees or board members of the applicant, or anyone acting on the applicant's behalf.

(8) All applicants and vendors must comply with any applicable state, Tribal, or local competitive bidding requirements. The competitive bidding requirements in this section apply in addition to state, Tribal, and local competitive bidding requirements and are not intended to preempt such state, Tribal, or local requirements.

(c) *Cost-effective.* For purposes of the Telecommunications Program, ''cost-effectiveness'' is defined as the lowest-price service that meets the minimum requirements for the products and services that are essential to satisfy the communications needs of the applicant.

(d) *Bid evaluation criteria.* Applicants must develop evaluation criteria and demonstrate how the applicant will choose the most cost-effective bid before submitting a Request for Services. The applicant must specify on its bid evaluation worksheet and/or scoring matrix what its minimum requirements are for each of those criteria. The applicant must record on the bid evaluation worksheet or matrix each service provider's proposed service levels for the established criteria. After reviewing the bid submissions and identifying the bids that satisfy the applicant's minimum requirements, the applicant must then select the service provider that costs the least.

(e) *Request for services.* Applicants must submit the following documents to the Administrator in order to initiate competitive bidding.

(1) Form 465, including certifications. The applicant must provide the Form 465 and the following certifications as part of the request for services:

(i) The requester is a public or nonprofit entity that falls within one of the seven categories set forth in the definition of health care provider, listed in § 54.600(a);

(ii) The requester is physically located in a rural area;

(iii) The person signing the application is authorized to submit the application on behalf of the applicant and has examined the form and all attachments, and to the best of his or her knowledge, information, and belief, all statements contained therein are true;

(iv) The applicant has followed any applicable state, Tribal, or local procurement rules;

(v) All Telecommunications Program support will be used solely for purposes reasonably related to the provision of health care service or instruction that the health care provider is legally authorized to provide under the law of the state in which the services are provided and will not be sold, resold, or transferred in consideration for money or any other thing of value;

(vi) If the service or services are being purchased as part of an aggregated purchase with other entities or individuals, the full details of any such arrangement, including the identities of all co-purchasers and the portion of the service or services being purchased by the health care provider;

(vii) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules; and

(viii) The applicant has reviewed all applicable requirements for the Telecommunications Program and will comply with those requirements.

(2) *Bid evaluation criteria.* Requirements for bid evaluation criteria are described in paragraph (d) of this section and must be included with the applicant's Request for Services.

(3) *Declaration of Assistance.* All applicants must submit a ''Declaration of Assistance'' with their Request for Services. In the Declaration of Assistance, applicants must identify each and every consultant, vendor, and other outside expert, whether paid or unpaid, who aided in the preparation of their applications. Applicants must also describe the nature of the relationship they have with the consultant, vendor, or other outside expert providing the assistance.

(f) *Public posting by the Administrator.* The Administrator shall post the applicant's Form 465 and bid evaluation criteria on its website.

(g) *28-day waiting period.* After posting the documents described in

paragraph (f) of this section on its website, the Administrator shall send confirmation of the posting to the applicant. The applicant shall wait at least 28 days from the date on which its competitive bidding documents are posted on the website before selecting and committing to a vendor.

(1) *Selection of the most ''cost-effective'' bid and contract negotiation.* Each applicant is required to certify to the Administrator that the selected bid is, to the best of the applicant's knowledge, the most cost-effective option available. Applicants are required to submit the documentation listed in § 54.610 to support their certifications.

(2) Applicants who plan to request evergreen status under this section must enter into a contract that identifies both parties, is signed and dated by the health care provider after the 28-day waiting period expires, and specifies the type, term, and cost of service.

(h) *Gift restrictions.* (1) Subject to paragraphs (h)(3) and (4) of this section, an eligible health care provider or consortium that includes eligible health care providers and/or other eligible entities, may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the rural health care universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth $20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this rule, if the value of these items received by any individual does not exceed $50 from any one service provider per funding year. The $50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in paragraph (h)(2)(ii) of this section.

(2) For purposes of this paragraph:

(i) The terms ''health care provider'' or ''consortium'' shall include all individuals who are on the governing boards of such entities and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such health care provider or consortium with the Rural Health Care Program, including individuals who prepare, approve, sign or submit RHC Program applications, or other forms related to the RHC Program, or who prepare bids, communicate or work with RHC Program service providers, consultants, or with USAC, as well as any staff of such entities responsible for monitoring compliance with the RHC Program; and

(ii) The term ''service provider'' includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible health care provider or consortium that includes eligible health care providers, provided that such transactions:

(i) Are motivated solely by a personal relationship;

(ii) Are not rooted in any service provider business activities or any other business relationship with any such eligible health care provider; and

(iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible health care provider or consortium that includes eligible health care providers in the support of its programs as long as such contributions are not directly or indirectly related to RHC Program procurement activities or decisions and are not given by service providers to circumvent competitive bidding and other RHC Program rules.

(i) *Exemptions to competitive bidding requirements.* (1) *Government Master Service Agreement (MSA).* Eligible health care providers that seek support for services and equipment purchased from MSAs negotiated by federal, state, Tribal, or local government entities on behalf of such health care providers and others, if such MSAs were awarded pursuant to applicable federal, state, Tribal, or local competitive bidding requirements, are exempt from the competitive bidding requirements under this section.

(2) *Master Service Agreements approved under the Pilot Program or Healthcare Connect Fund.* An eligible health care provider site may opt into an existing MSA approved under the Pilot Program or Healthcare Connect Fund and seek support for services and equipment purchased from the MSA without triggering the competitive bidding requirements under this section, if the MSA was developed and negotiated in response to an RFP that specifically solicited proposals that included a mechanism for adding additional sites to the MSA.

(3) *Evergreen contracts.* (i) The Administrator may designate a multi-year contract as ''evergreen,'' which means that the service(s) covered by the contract need not be re-bid during the contract term.

(ii) A contract entered into by a health care provider or consortium as a result of competitive bidding may be designated as evergreen if it meets all of the following requirements:

(A) Is signed by the individual health care provider or consortium lead entity;

(B) Specifies the service type, bandwidth, and quantity;

(C) Specifies the term of the contract;

(D) Specifies the cost of services to be provided; and

(E) Includes the physical location or other identifying information of the health care provider sites purchasing from the contract.

(iii) Participants may exercise voluntary options to extend an evergreen contract without undergoing additional competitive bidding if:

(A) The voluntary extension(s) is memorialized in the evergreen contract;

(B) The decision to extend the contract occurs before the participant files its funding request for the funding year when the contract would otherwise expire; and

(C) The voluntary extension(s) do not exceed five years in the aggregate.

■ 3. Add § 54.610 to read as follows:

§ 54.610 Funding commitments.

(a) Once a vendor is selected, applicants must submit a ''Funding Request'' (and supporting documentation) to provide information about the services selected and certify that the services selected are the most cost-effective option of the offers received. The following information should be submitted to the Administrator with the Funding Request.

(1) *Request for funding.* The applicant shall submit a Request for Funding (Form 466) to identify the service; urban and rural rates; vendor(s); and date(s) of vendor selection.

(2) *Certifications.* The applicant must provide the following certifications as part of the Request for Funding:

(i) The person signing the application is authorized to submit the application on behalf of the applicant and has examined the form and all attachments, and to the best of his or her knowledge, information, and belief, all statements of fact contained therein are true;

(ii) Each vendor selected is, to the best of the applicant's knowledge, information and belief, the most cost-effective vendor available, as defined in § 54.603;

(iii) All Telecommunications Program support will be used only for eligible health care purposes;

(iv) The applicant is not requesting support for the same service from both the Telecommunications Program and the Healthcare Connect Fund;

(v) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules, and understands that any letter from the Administrator that erroneously commits funds for the benefit of the applicant may be subject to rescission;

(vi) The applicant has reviewed all applicable requirements for the program and complied with those requirements;

(vii) The applicant will maintain complete billing records for the service for five years; and

(viii) The applicant conducted a fair and open competitive bidding process, as described in § 54.603.

(3) *Contracts or other documentation.* All applicants must submit a contract or other documentation that clearly identifies the vendor(s) selected and the health care provider(s) who will receive the services:

(i) Proof of the urban and rural rates;

(ii) Costs for which support is being requested; and

(iii) The term of the service agreement(s) if applicable (*i.e.,* if services are not being provided on a month-to-month basis). For services provided under contract, the applicant must submit a copy of the contract signed and dated (after the Allowable Contract Selection Date) by the individual health care provider or Consortium Leader. If the services are not being provided under contract, the applicant must submit a bill, service offer, letter, or similar document from the vendor that provides the required information.

(4) *Competitive bidding documents.* Applicants must submit documentation to support their certifications that they have selected the most cost-effective option, including a copy of each bid received (winning, losing, and disqualified), the bid evaluation criteria, and the following documents (as applicable):

(i) Completed bid evaluation worksheets or matrices;

(ii) Explanation for any disqualified bids;

(iii) A list of people who evaluated bids (along with their title/role/relationship to the applicant organization);

(iv) Memos, board minutes, or similar documents related to the vendor selection/award;

(v) Copies of notices to winners; and

(vi) Any correspondence with vendors prior to and during the bidding, evaluation, and award phase of the process. Applicants who claim a competitive bidding exemption must submit relevant documentation to allow the Administrator to verify that the applicant is eligible for the claimed exemption.

■ 4. Add § 54.611 to read as follows:

§ 54.611 Payment process.

(a) The applicant must submit Form 467 to the Administrator confirming the service start date, the service end or disconnect date, or whether the service was never turned on.

(b) Upon receipt of the form, the Administrator shall generate a health care support schedule, which the service provider shall use to determine how much credit the applicant will receive for the services. The service provider must apply the credit to the applicant's bill during the next possible billing cycle and submit an online invoice to the Administrator. The service provider must certify on the invoice that it has reviewed all applicable requirements for the program, including the competitive bidding requirements described in § 54.603, and has complied with those requirements.

(c) Before the Administrator may process and pay an invoice, it must receive a completed Form 467 from the health care provider and an invoice from the service provider. All invoices must be received by the Administrator within six months (180 days) of the end date of the time period covered by the funding commitment.

■ 5. Amend § 54.642 by:

■ a. Revising paragraphs (b)(1), (2), and (4).

■ b. Adding paragraph (b)(5) through (8).

■ c. Revising paragraphs (c) and (d).

■ d. Revising paragraphs (e)(1), (2), and (3).

■ e. Revising paragraph (g)(1).

■ f. Adding paragraph (i).

The revisions and additions read as follows:

§ 54.642 Competitive bidding and certification requirements.

* * * * *

(b)(1) All entities participating in the Healthcare Connect Fund Program, including vendors, must conduct a fair and open competitive bidding process, consistent with all applicable requirements.

(2) Vendors who intend to bid to provide supported services to a health care provider may not simultaneously help the health care provider choose a winning bid. Any vendor who submits a bid, and any individual or entity that has a financial interest in such a vendor, is prohibited from: Preparing, signing or submitting an applicant's request for services or supporting documentation; serving as the point of contact on behalf of the applicant; being involved in setting bid evaluation criteria; or participating in the bid evaluation or vendor selection process (except in their role as potential vendors).

* * * * *

(4) An applicant may not have a relationship, financial interest, or ownership interest with a service provider that would unfairly influence the outcome of a competition or furnish the service provider with inside information.

(5) An applicant may not turn over its responsibility for ensuring a fair and open competitive bidding process to a service provider or anyone working on behalf of a service provider.

(6) An employee or board member of the applicant may not serve on any board of any type of service provider that participates in the RHC Programs.

(7) An applicant may not accept or solicit, and a service provider may not offer or provide, any gift or other thing of value to employees or board members of the applicant, or anyone working on the applicant's behalf.

(8) All applicants and vendors must comply with any applicable state, Tribal, or local competitive bidding requirements. The competitive bidding requirements in this section apply in addition to state, Tribal, and local competitive bidding requirements and are not intended to preempt such state, Tribal, or local requirements.

(c) *Cost-effective.* For purposes of the Healthcare Connect Fund Program, ''cost-effectiveness'' is defined as the lowest-price service that meets the minimum requirements for the products and services that are essential to satisfy the communications needs of the applicant.

(d) *Bid evaluation criteria.* Applicants must develop evaluation criteria and demonstrate how the applicant will choose the most cost-effective bid before submitting a request for services. The applicant must specify on its bid evaluation worksheet and/or scoring matrix what its minimum requirements are for each of those criteria. The applicant must record on the bid evaluation worksheet or matrix each service provider's proposed service

levels for the established criteria. After reviewing the bid submissions and identifying the bids that satisfy the applicant's minimum requirements, the applicant must then select the service provider that costs the least.

(e) * * *

(1) * * *

(i) The requester is a public or nonprofit entity that falls within one of the seven categories set forth in the definition of health care provider, listed in § 54.600(a).

(ii) The requester is physically located in a rural area.

(iii) The person signing the application is authorized to submit the application on behalf of the applicant and has examined the form and all attachments, and to the best of his or her knowledge, information, and belief, all statements contained therein are true.

(iv) The applicant has followed any applicable state, Tribal, or local procurement rules.

(v) All Healthcare Connect Fund Program support will be used solely for purposes reasonably related to the provision of health care service or instruction that the healthcare provider is legally authorized to provide under the law of the state in which the services are provided and will not be sold, resold, or transferred in consideration for money or any other thing of value.

(vi) If the service or services are being purchased as part of an aggregated purchase with other entities or individuals, the full details of any such arrangement, including the identities of all co-purchasers and the portion of the service or services being purchased by the healthcare provider.

(vii) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules.

(viii) The applicant has reviewed all applicable requirements for the Healthcare Connect Fund Program and will comply with those requirements.

(2) *Bid Evaluation Criteria.* Requirements for bid evaluation criteria are described in paragraph (d) of this section and must be included with the applicant's Request for Services.

(3) *Declaration of Assistance.* All applicants must submit a ''Declaration of Assistance'' with their Request for Services. In the Declaration of Assistance, applicants must identify each and every consultant, vendor, and other outside expert, whether paid or unpaid, who aided in the preparation of their applications. Applicants must also describe the nature of the relationship they have with the consultant, vendor, or other outside expert providing the assistance.

* * * * *

(g) * * *

(1) *Selection of the most ''cost-effective'' bid and contract negotiation.* Each applicant is required to certify to the Administrator that the selected bid is, to the best of the applicant's knowledge, the most cost-effective option available. Applicants are required to submit the documentation listed in § 54.643 to support their certifications.

* * * * *

(i) *Gift restrictions.* (1) Subject to paragraphs (i)(3) and (4) of this section, an eligible health care provider or consortium that includes eligible health care providers and/or other eligible entities may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the rural health care universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth $20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this rule, if the value of these items received by any individual does not exceed $50 from any one service provider per funding year. The $50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in paragraph (i)(2)(ii) of this section.

(2) For purposes of this paragraph:

(i) The terms ''health care provider or consortium'' shall include all individuals who are on the governing boards of such entities and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such health care provider or consortium with the Rural Health Care Program, including individuals who prepare, approve, sign or submit RHC Program applications, or other forms related to the RHC Program, or who prepare bids, communicate or work with RHC Program service providers, consultants, or with USAC, as well as any staff of such entities responsible for monitoring compliance with the RHC Program; and

(ii) The term ''service provider'' includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible health care provider or consortium that includes eligible health care providers, provided that such transactions:

(i) Are motivated solely by a personal relationship;

(ii) Are not rooted in any service provider business activities or any other business relationship with any such eligible health care provider; and

(iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible health care provider or consortium that includes eligible health care providers in the support of its programs as long as such contributions are not directly or indirectly related to RHC Program procurement activities or decisions and are not given by service providers to circumvent competitive bidding and other RHC Program rules, including those in § 54.633, requiring health care providers to contribute 35 percent of the total cost of all eligible expenses.

■ 6. Amend § 54.643 by adding paragraph (a)(2)(viii), and by revising paragraph (a)(4) to read as follows:

§ 54.643 Funding Commitments.

(a) * * *

(2) * * *

(viii) The applicant conducted a fair and open competitive bidding process, as described in § 54.642.

* * * * *

(4) *Competitive bidding documents.* Applicants must submit documentation to support their certifications that they have selected the most cost-effective option, including a copy of each bid received (winning, losing, and disqualified), the bid evaluation criteria, and the following documents (as applicable): Completed bid evaluation worksheets or matrices; explanation for any disqualified bids; a list of people who evaluated bids (along with their title/role/relationship to the applicant organization); memos, board minutes, or similar documents related to the vendor selection/award; copies of notices to winners; and any correspondence with vendors prior to and during the bidding, evaluation, and award phase of the

process. Applicants who claim a competitive bidding exemption must submit relevant documentation to allow the Administrator to verify that the applicant is eligible for the claimed exemption.

* * * * *

■ 7. Amend § 54.645 by revising paragraph (b) to read as follows:

§ 54.645 Payment Process.

* * * * *

(b) Before the Administrator may process and pay an invoice, both the Consortium Leader (or health care provider, if participating individually) and the vendor must certify that they have reviewed the document and that it is accurate. The service provider must certify on the invoice that it has reviewed all applicable requirements for the program, including the competitive bidding requirements described in § 54.642, and has complied with those requirements. All invoices must be received by the Administrator within six months (180 days) of the end date of the time period covered by the funding commitment.

[FR Doc. 2017–27746 Filed 1–2–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2017–0061; 4500030113]

RIN 1018–BC14

Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Panama City Crayfish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Panama City crayfish (*Procambarus econfinae*), a semi-terrestrial crayfish species native to Bay County, Florida, as a threatened species under the Endangered Species Act (Act). After review of the best available scientific and commercial information, we find that listing this species is warranted. Accordingly, we propose to list the Panama City crayfish as a threatened species under the Act. If we finalize this rule as proposed, it would extend the Act's protections to this species and add this species to the Federal List of Endangered and Threatened Wildlife (List).

DATES: We will accept comments received or postmarked on or before March 5, 2018. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 20, 2018.

ADDRESSES: *Document availability:* The report upon which this proposed rule is based (see **SUPPLEMENTARY INFORMATION**) is available at *http://www.regulations.gov* in Docket No. FWS–R4–ES–2017–0061 and on the Service's Southeast Region website at *https://www.fws.gov/southeast/.*

Comment submission: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2017–0061, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2017–0061; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

FOR FURTHER INFORMATION CONTACT: Catherine Phillips, Field Supervisor, U.S. Fish and Wildlife Service, Panama City Ecological Services Field Office, 1601 Balboa Avenue, Panama City, FL 32405; telephone 850–769–0552; facsimile 850–763–2177. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species is an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can be completed only by issuing a rule.

This rule proposes adding the Panama City crayfish (*Procambarus econfinae*) as a threatened species to the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (50 CFR 17.11(h)).

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We have determined that habitat loss and fragmentation from development (Factor A) is the primary threat to the Panama City crayfish.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the Panama City crayfish. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. Maps depicting the historical range and current populations are included in the SSA for reference.

Peer review. We solicited independent peer review of the SSA Report by six individuals with expertise in crayfish; aquatic invertebrates, population, or landscape ecology; genetics and conservation genetics; and/or speciation and conservation biology. We received comments from one of the six peer reviewers. The SSA report and other materials relating to this proposal can be found on the Service's Southeast Region website at *https://www.fws.gov/southeast/* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2017–0061.

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The Panama City crayfish's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Specific prohibitions and exceptions to those prohibitions that may be necessary and advisable for the Panama City crayfish's conservation. We intend to publish, as appropriate, a more tailored proposed rule with provisions set forth under section 4(d) of the Act for public review and comment in the future. Activities we are considering for potential exemption under a section 4(d) rule include, but are not necessarily limited to, exceptions for:

(a) Specific soil and vegetation restoration activities that will benefit the Panama City crayfish;

(b) Water quality improvement;

(c) Genetic and population monitoring;

(e) Activities that maintain native vegetation near occupied or likely to be occupied Panama City crayfish habitat;

(f) Sustainable silviculture practices that primarily occur adjacent to Panama City crayfish habitat and that are implemented according to certified best management practices; or

(g) Any additional activities that should fall under the 4(d) rule.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Panama City Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date listed above in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of six appropriate specialists regarding the SSA report, which informed this proposed rule. We received a response from one of the six peer reviewers. The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in crayfish biology, habitat, and stressors to the species. We invite any additional comment from the peer reviewers during this public comment period; these comments will be available along with other public comments in the docket for this proposed rule.

Previous Federal Action

In 2010, the Center for Biological Diversity (CBD) petitioned the Service to list 404 aquatic, riparian, and wetland species from the Southeastern United States under the Act. The Panama City crayfish was among these 404 species. On September 27, 2011, the Service published a substantial 90-day finding for 374 of the 404 species, including the Panama City crayfish, soliciting information about, and initiating status reviews for, those species (76 FR 59836). In 2015, CBD filed a complaint against the Service for failure to complete a 12-month finding for the Panama City crayfish within the statutory timeframe. The Service entered into a settlement agreement with CBD to address the complaint; the court-approved settlement agreement specified that a 12-month finding for the Panama City crayfish would be delivered to the **Federal Register** by September 30, 2017. On September 21, 2017, the Court approved an extension, allowing the Service to submit this 12-month finding to the **Federal Register** no later than December 29, 2017.

Background

A thorough review of the taxonomy, life history, and ecology of the Panama City crayfish (*Procambarus econfinae*) is presented in the SSA report, version 1.0 (Service 2017). The SSA report documents the results of our comprehensive biological status review for the Panama City crayfish, including an assessment of the potential stressors

to the species. The SSA report does not represent a regulatory decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does provide the scientific basis that informs that decision, which involves the further application of standards within the Act and its implementing regulations and policies. The full SSA report can be found on the Service's Southeast Region website at *https://www.fws.gov/southeast/* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2017–0061.

Species Description

The Panama City crayfish is a small, semi-terrestrial crayfish that grows to about 2 inches (in) (50.8 millimeters (mm)) in length (minus claws), and is found in south-central Bay County, Florida. The species' color pattern consists of a medium dark-brown background color, lighter brown mid-dorsal stripe, and darker brown dorsolateral stripes (FWC 2016, p.1). The Panama City crayfish was first described by Hobbs in 1942 from Bay County, Panama City, Florida. Currently, the Panama City crayfish is classified in the family Cambaridae and is considered a valid taxon by the scientific community (Taylor et al. 1996, 2007; Integrated Taxonomic Information System 2017). The life history of the Panama City crayfish specifically is not well known. Cambarid crayfish may live about 2.5 to 3 years (Hobbs 2001, p. 977), with a generation period of 2 years. For this family of crayfish, the majority breed more than once, with mating among mature yearlings frequent; however, many individuals do not become sexually active until late summer or fall. Females may produce between 30 and 160 eggs, and have been found with eggs and/or young from March through September. Juveniles are most frequently found in the summer and have been observed through December, so young appear to be produced from at least March through December. Juveniles can be carried overland by sheet flow during rainy periods, which aids in dispersal (Keppner and Keppner 2002, p. 11).

Eight crayfish species are known to occur within the range of the Panama City crayfish, although only the hatchet crayfish, *Procambarus kilbyi,* and the jackknife crayfish, *Procambarus hubbelli,* are found in the same habitat as the Panama City crayfish and may co-occur with it (FWC 2017). The Panama City crayfish is not known to hybridize with other species of crayfish.

Historically, the species inhabited natural and often temporary bodies of shallow fresh water within open pine flatwoods and wet prairie-marsh communities. However, most of these communities have been cleared for residential or commercial development or replaced with slash pine plantations. The Panama City crayfish currently is known to inhabit the waters of grassy, gently sloped ditches and swales, slash pine plantations, utility rights-of-way and a few remnant parcels protected under wetland and private easements (FWC 2016, p. 2).

The highest densities of Panama City crayfish have been recorded in areas with little to no shrub or tree cover (FWC 2016, p.2). Suitable habitat is normally dominated by herbaceous vegetation. Lowest population densities have occurred in small, open sites where shrubs or trees were present, or in the furrows between bedding rows in some pine plantations (Keppner and Keppner 2005). When encountered in dense titi (*Cyrilla racemiflora* and *Cliftonia monophylla*) swamps, the species was associated with temporarily inundated areas open to the sun with some herbaceous vegetation. Such sites may be considered secondary or suboptimal habitat for the species. On sites where mixed habitat features are present (*e.g.,* partially wooded sites or sites with permanent, deep-water ponds), the Panama City crayfish appears to select favorable areas dominated by herbaceous vegetation, with shallow or fluctuating water levels (FWC 2016, p. 3; Keppner and Keppner 2005).

The Panama City crayfish relies on particular soil types for burrow construction and supporting the herbaceous vegetation; these soil types are categorized as core or secondary soils. Core soils provide the best substrate to support the species; secondary soils are less ideal but still used. The core and secondary soil types that support Panama City crayfish within their known range are described in more detail in the SSA report (Service 2017, pp. 23–24).

Panama City crayfish build burrows for shelter and are categorized as secondary burrowers, which are normally in surface water when it is present on the hydric soils they inhabit (Hobbs 1981). They construct burrows that contact the water table as the surface water of their habitat recedes, and they occupy burrows when surface water is absent or during periods of extreme water temperatures. They emerge from the burrows when surface water is present again or water temperatures are favorable. It appears that they can survive significant periods of drought in their burrows when they can maintain contact with the water table. During these dry periods the Panama City crayfish excavates and lives in unbranched burrows up to three feet long that extend down to the water table, thereby enabling the species to remain adequately hydrated and survive (FWC 2016, p. 3).

Little is known about the specific feeding habits of the Panama City crayfish. Observations on Panama City crayfish that were held in aquaria spanning 1.5 plus years (Keppner 2014) indicate that they are detritivores and herbivores. Specimens were offered dead animal material, but they avoided it in favor of processing the substrate for particles of prepared fish food and the fresh aquatic vegetation that were provided as primary food sources. Herbaceous vegetation likely serves as a food source for the Panama City crayfish.

The Panama City crayfish historically ranged throughout south-central Bay County, Florida within a 56 square mile area (see Figure 1). The historical range likely created one population connected by core and secondary soils. As urban growth came to Panama City, the range became fragmented and isolated patches. Today, the species has 13 localized populations that can be divided into two distinct groups: The western and eastern group. The western group includes 8 separate populations and the eastern group includes 5 separate populations. The 13 populations are described in more detail in the SSA report (Service 2017, pp. 35–54).

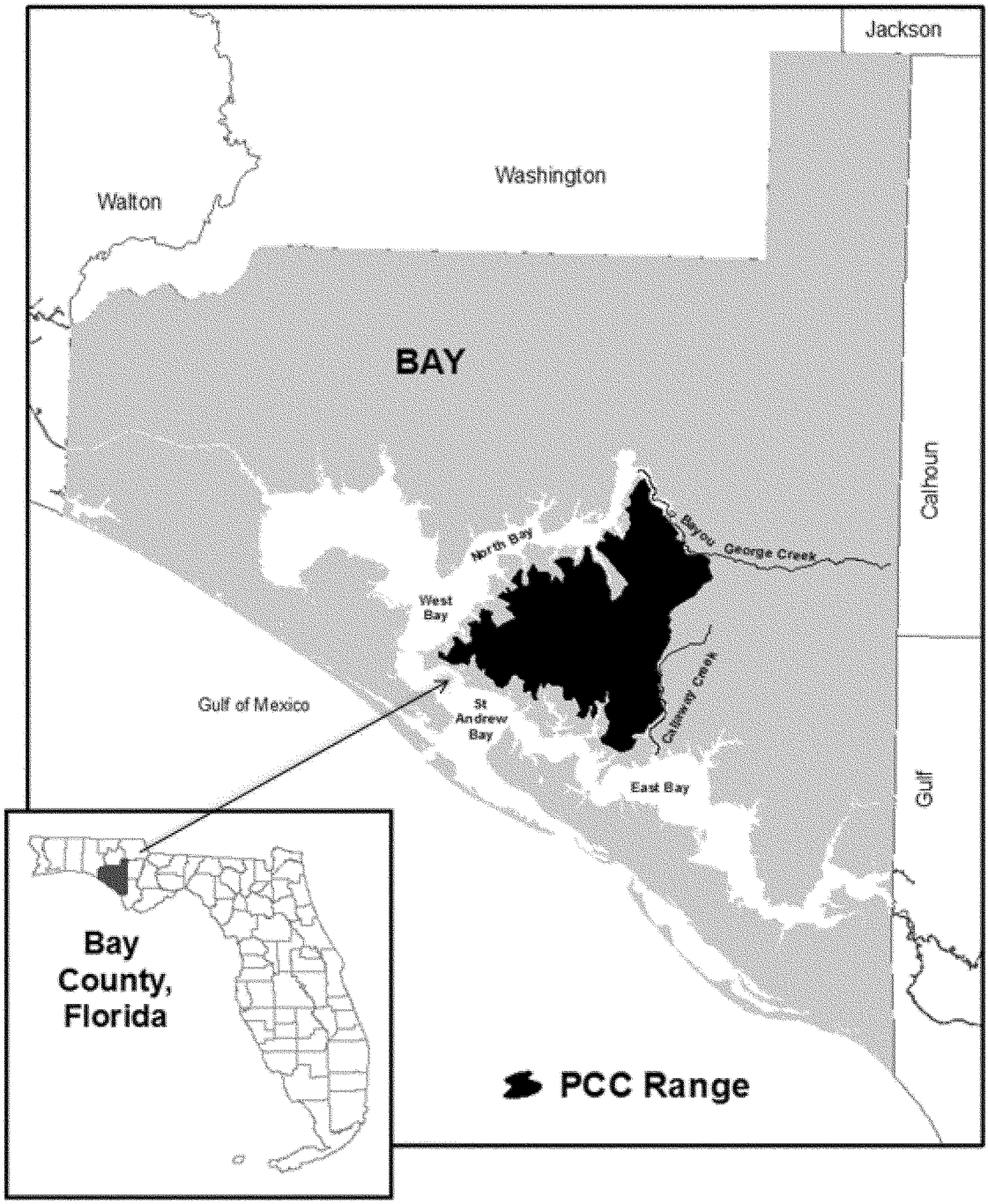


Figure 1. Range of the Panama City crayfish.

Species Needs and Viability

The Panama City crayfish needs freshwater wetlands that support herbaceous vegetation, which is important to the Panama City crayfish for food, shelter, and detritus formation. The species needs core or secondary soils to provide the proper sediment structure for burrow construction and to support the herbaceous vegetation. The Panama City crayfish needs access to groundwater (through burrowing) or surface water to prevent desiccation of individuals and populations. The species needs both adequate water quality and quantity to fulfill its life history.

We describe the Panama City crayfish's viability by characterizing the status of the species in terms of its resiliency (ability of the populations to withstand stochastic events), redundancy (ability of the species to withstand large-scale, catastrophic events), and representation (the ability of the species to adapt to changing environmental conditions). Using various time frames and the current and projected resiliency, redundancy, and representation, we describe the species' level of viability over time. For the Panama City crayfish to maintain viability, its populations or some portion thereof must be resilient. A number of factors influence the resiliency of Panama City crayfish

populations, including the inbreeding coefficient, population isolation, and population abundance. Elements of Panama City crayfish habitat that determine whether Panama City crayfish populations can grow to maximize habitat occupancy influence those factors, thereby increasing the resiliency of populations. These demographic and habitat factors are discussed here; for each factor, we assigned a condition category of high, medium, or low (see Table 1). We evaluated each population and assigned it a high, medium, or low condition category for each factor, as well as an overall condition.

TABLE 1—DEMOGRAPHIC AND HABITAT FACTORS FOR PANAMA CITY CRAYFISH

[Service 2017, p. 64]

Condition category	Demographic factors			Habitat elements		
	Inbreeding coefficient	Population isolation (km)	Population abundance	Freshwater quality & quantity	Herbaceous ground cover	Suitable habitat (acres)
High	>0.400	<0.5	>51	<33% developed and unsuitable.	easements or ROW with >15 acres that is managed.	>800
Moderate	0.200–0.400	0.5–2.0	21–50	33–66% developed and unsuitable.	easements or ROW with ≤15 acres suitable habitat that is managed; or timber lands.	100–800
Low	<0.200	>2	1–20	>66% developed and unsuitable acres.	no managed lands, habitat currently a titi monoculture.	<100

Population Isolation: Least-cost path distance to nearest population in kilometers.
Population Abundance: Based on population sampling counts from all conducted surveys recorded.
Freshwater Quality & Quantity: Percentage of developed and unsuitable acres within the area supporting each population.
Herbaceous Ground Cover: Includes land with and without easements, size of easements, and management activities.
Suitable Habitat: Acres of undeveloped core and secondary soils within the area supporting each population.

Inbreeding coefficient: The Panama City crayfish, once connected through core and secondary soils within a 56 square mile area, is now separated into 13 populations that, when combined, total a significantly smaller area than occupied by the historical, interconnected population. A recent genetic analysis of population differentiation and clustering to assess population structure of the Panama City crayfish quantified each population's inbreeding coefficient numbers (Duncan et al. 2017). An inbreeding coefficient number shows the probability of inheriting two copies of the same allele from an ancestor that occurs on both sides of the pedigree. For Panama City crayfish populations, the differences in inbreeding coefficient numbers likely correspond to patterns of fragmentation from urban development and not necessarily from selective pressures maintaining adaptive differences. Little work has been done on the population genetics of wild crayfish populations. We have no comparison for values in crayfish species of expected inbreeding coefficients (Duncan et al. 2017), and treat this as a relative measure. Thus, we ranked individual populations into three numerically distinct breaks: Low when inbreeding coefficients were less than 0.200, moderate when they ranked between 0.200–0.400, and high when results were greater than 0.400.

Population isolation: To promote genetic connectivity in Panama City crayfish, we must have an understanding of their potential abilities to move between populations. One working hypothesis was that ditches within the range promote movement, especially during flooding events. This idea is supported by observations of some localized movements of Panama City crayfish into previously unoccupied ditches after recent flooding where they were not seen in these new locations during the next sampling event.

Because the landscape occupied by the Panama City crayfish is spatially heterogeneous, it is important to understand how certain landscape features affect the species' ability to move in order to meet requirements for foraging, migration, or other movement-dependent processes (Crooks and Sanjayan 2006 as cited in Duncan et al. 2017). We relied on a landscape ''Least Cost Path'' land cover analysis conducted by Duncan et al. (2017) to assist in determining what may affect genetic connectivity in Panama City crayfish and inform our understanding of population isolation.

Population abundance: The size of an individual population coupled with age and sex classifications can be used as an indicator of resiliency. Within the SSA report, we have summarized the years that surveys of varying levels were completed within each population. The protocol currently used for PCC monitoring typically depends on dip-net sampling when sufficient surface water is present and nondestructive evaluation of crayfish burrows. The protocol can miss specimens in vegetation and does not sample individuals living below ground in burrows, and we currently do not have an estimate of detection probability using this protocol. The protocol is quantitative and results in a catch per standard unit effort estimate of the population. We use population counts to assess the relative population size across the range of the species.

Freshwater quality and quantity: Although crayfish are facultative air breathers, moisture is required to facilitate the respiratory process (Longshaw and Stebbing 2016, p. 327). Burrowing to groundwater or access to surface water are both important habitat features needed to prevent desiccation of individuals and populations. Declines in water quality are known to present a significant threat to other species of crayfish (and presumably to PCC). These declines can range from oxygen-deficient conditions resulting from algal blooms, sewage spills, or localized leaks to pollution originating from roadway runoff or chemical spills (Acosta and Perry 2001). The Panama City crayfish often inhabits ditches and swales close or adjacent to commercial and private properties, which may affect the water quality at these sites. We used a proxy measure of water quality and quantity based on the amount of development surrounding the population. We assumed that greater acreage in developed and unsuitable landcover types (which includes transportation and other development-related types) is correlated with declines in this habitat element. Herbaceous ground cover: Herbaceous vegetation is important to the Panama City crayfish

for food, detritus formation, and cover. Absence of vegetation increases exposure of this small crayfish to predation and reduces availability of food. Suitable habitat: Species sampling efforts and a recent landscape modeling analysis support the theory that the Panama City crayfish almost exclusively relies on core and secondary soils. These soils provide the sediment structure needed for burrow construction to the water table and also support the herbaceous vegetation upon which the species relies for food and cover. Lands supporting the Panama City crayfish must be of sufficient size to sustain a population, but we don't know the minimum size, as many factors influence a Panama City crayfish population, including other habitat conditions. The recent work of Duncan et al. (2017) showed that all remaining populations with >800 acres of suitable habitat supporting them were genetically healthy, and population counts support this as well.

Maintaining representation in the form of genetic or ecological diversity is important to maintain the Panama City crayfish's capacity to adapt to future environmental changes. The 13 remaining populations show relatively high genetic differentiation with inbreeding coefficients ranging from 0.214 to 0.493 and associated acreages of suitable habitat ranging from 5 acres to 5,309 acres.

Redundancy reduces the risk that a large portion of the species' range will be negatively affected by a natural or anthropogenic catastrophic event at a given point in time. Species that have resilient populations spread throughout their historical range are less susceptible to extinction (Carroll et al. 2010; Redford et al. 2011). The Panama City crayfish historically lacked redundancy in that its historical range consisted of one population of interconnected soils. Today, there is a distinct genetic difference between individual patches located in the western range versus individual patches within the eastern range, which likely corresponds to patterns of fragmentation from urban development as well as some natural wetland buffers (creeks, stream bodies) (Duncan et al. 2017).

Summary of Biological Status and Threats

We completed a comprehensive assessment of the biological status of the Panama City crayfish, and prepared a report of the assessment, which provides a thorough account of the species' overall viability. In this section, we summarize the conclusions of that assessment, which can be accessed at Docket No. FWS–R4–ES–2017–0061 on *http://www.regulations.gov.*

Summary of Factors Affecting the Species

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence. We reviewed the potential risk factors (*i.e.,* threats, stressors) that could be affecting the Panama City crayfish now and in the future. In this proposed rule, we will discuss in detail only those factors that could meaningfully impact the status of the species. The primary risk factors (*i.e.,* threats) affecting the status of the Panama City crayfish are habitat loss and degradation, habitat fragmentation, and subpopulation isolation due to development (Factor A from the Act). Additional stressors to the species include collection for bait (Factor B), disease (Factor C), off-road vehicle use (Factor A), and insecticide application (Factor E); however, our analysis shows that while these stressors may be impacting individual Panama City crayfish, they are not having species-wide impacts. For a full description of all identified stressors, refer to chapter 4 of the SSA report (Service 2017).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Development projects and land conversion can result in direct loss of habitat, as well as fragmentation and isolation of populations. The effects of development may also include alterations to water quality and quantity. Historically, the Panama City crayfish inhabited natural and often temporary bodies of shallow fresh water within open pine flatwoods and wet prairie-marsh communities (Hobbs 1942). The Panama City crayfish's natural habitat (wet pine flatwoods) has been lost or degraded through residential, commercial, and industrial development, as well as conversion to intensive pine silviculture and for ranching and farming uses. It is likely that no unaltered natural pine flatwoods remain within the Panama City crayfish's current range.

Most known Panama City crayfish occurrences are in human-altered habitats and are vulnerable to further loss or alteration. Although artificial habitats such as roadside ditches and rights-of-way have allowed the Panama City crayfish to persist in areas from which they would otherwise likely have been extirpated, human activities can alter the hydrology and configuration of these sites, making them unsuitable for long-term Panama City crayfish persistence. For example, roadside ditch maintenance and construction activities have resulted in the destruction of several crayfish sites.

While ditch maintenance activities may have temporary negative impacts on the species, if conducted using conservation management principles, they may provide long-term habitat improvements that support Panama City crayfish presence. For example, the design of the ditch helps determine whether it can support Panama City crayfish. Swales and ditches with herbaceous vegetation and a 3:1 or shallower slope are more likely to support Panama City crayfish than ditches with a steeper slope (FWC 2017, p. 22).

Infrastructure development has impacted, or is anticipated to impact, several crayfish sites (Keppner and Keppner 2001, pp. 13–14, 2004, p. 9). For example, several proposed road construction or expansion projects, such as the widening of Star Avenue and Kern Avenue and the widening and hardening of Tram Road, may impact Panama City crayfish habitat in the future. Infrastructure development can eliminate suitable Panama City crayfish habitat by removing the required herbaceous vegetation and digging up the surrounding soils.

Silvicultural practices such as ditching and bedding, roller chopping, installing fire breaks, and constructing roads can alter the hydrology of Panama City crayfish sites, create physical barriers to crayfish movement, and destroy underground burrows (Hobbs 2001, p. 988; Keppner and Keppner 2001, p. 13, 2004, p. 10; FWC 2006, p. 10). These activities may contribute to the isolation of Panama City crayfish populations. Fire suppression and high tree density on silvicultural sites can reduce herbaceous groundcover necessary for suitable crayfish habitat (Keppner and Keppner 2001, p. 13, 2004, p. 10; FWC 2006, p. 27). Similarly, removal of tree canopy cover, changes in ground cover vegetation, and associated changes in water quality and surface water availability are all possible changes associated with the effects of conversion to farming and ranching practices, such as cattle grazing (*e.g.,* Jansen and Robertson 2001, pp. 71–73). These activities negatively impact the habitat of the Panama City crayfish. Although minimal changes are expected to occur due to farming and ranching practices, conversion from silviculture to grazing use has occurred on lands adjacent the crayfish's range.

Freshwater crayfish may be sensitive to declines in water quality and declines have been identified as a threat to other crayfish species. Water quality declines can range from oxygen-deficient conditions resulting from algal blooms or sewage spills to pollution originating from roadway runoff, pesticide applications, or chemical spills (Acosta and Perry 2001, p. 46). Given the level of development throughout the range of the Panama City crayfish and the occurrences of Panama City crayfish adjacent to private properties, runoff from roads or improper application of chemicals, such as pesticides or fertilizers, may negatively impact water quality and have direct impacts on the species.

The majority of known Panama City crayfish occurrences in the western part of the range are in roadside ditches and swales that are isolated from other Panama City crayfish populations by roads, development, and land use changes. Fragmentation and isolation can increase vulnerability to local extirpation due to adverse genetic, demographic, and environmental events. Further, when Panama City crayfish have been extirpated from an area, lack of habitat connections between sites can prevent Panama City crayfish from recolonizing the newly vacant sites (FWC 2006, p. 10). Recent genetic work indicates the isolation in the western portion of the range has resulted in inbreeding and drift (Duncan et al. 2017, p. 17).

In addition to the effects on habitat described above, many of the activities contributing to habitat loss and degradation can also directly harm or kill Panama City crayfish. Continuous loss of individuals can eventually lead to extirpation of isolated populations. In particular, roadside maintenance, dredging, and infrastructure development in roadside ditches and silvicultural and farming activities, if done without appropriate safeguards, have the potential to kill, harm, or displace Panama City crayfish due to the removal by heavy machinery of soil from crayfish sites. In addition, fill placed on sites in preparation for construction activities can entomb crayfish in their burrows

Off-road vehicle use may impact the Panama City crayfish by crushing, as well as impacting the habitat through rutting of the soil and destruction of vegetation (FWC 2016, p. 11). Off-road vehicle use has been documented in areas within the eastern part of the Panama City crayfish's range along Gulf Power rights-of-way. Gulf Power has blocked access to these rights-of-way with gates, so access to these areas is limited and we do not expect off-road vehicle use is resulting in species-wide impacts.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Crayfish may be recreationally harvested for fish bait. Within the range of the Panama City crayfish, several of the areas where the species occurs are known to be utilized by locals collecting fish bait (FWC 2016, p.11; Keppner and Keppner 2001, 2005). However, although harvesting individual crayfish at these sites has been documented, the actual species collected are unknown. Therefore, while harvesting crayfish may be impacting individual Panama City crayfish, we find that it is not having a species-wide impact.

Florida State Code 68A–9.002 authorizes the Director of the Florida Fish and Wildlife Conservation Commission to issue permits to collect any wildlife species for ''scientific, educational, exhibition, propagation, management or other justifiable purposes.'' Permits have been issued for biologists conducting surveys on the Panama City crayfish; however, the Panama City crayfish is not known to be targeted for significant scientific or educational collections.

Factor C. Disease or Predation

Disease agents and pests identified for freshwater crayfish include viruses, bacteria, rickettsia-like organisms, fungi, protistans, and metazoans (Evans et al. 2002, p. 1). There is no reported information on the presence of disease or parasites in the Panama City crayfish to date. Nothing indicates that predation or competition by native or non-native predators is currently affecting Panama City crayfish at the species level.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The following existing regulatory mechanisms were considered and discussed as they relate to the stressors, under the applicable Factors, affecting the Panama City crayfish: Florida State Code 68A–9.002 (Factor B).

The Panama City crayfish is currently identified as a State Species of Special Concern in Florida (Florida State Code 68A–27.005). Species of Special Concern require individuals to obtain a permit from the FWC Executive Director in order to take, possess, transport, or sell the species.

FWC has developed voluntary draft guidelines for developers to consider when undertaking projects that may impact Panama City crayfish and its habitat (FWC 2016). However, these guidelines are not regulatory in nature. We are not aware of any regulatory mechanisms in place to address the threat of habitat loss, fragmentation, and degradation due to development.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

The Service considered several additional stressors to the Panama City crayfish, including chemical application and sea level rise.

Mosquitocides are used within the range of the Panama City crayfish to treat both larval and adult mosquitoes. The mosquitocides registered for use within the range of the Panama City crayfish do not pose known threats to water quality if applied per label directions (FWC 2016, p. 10). Fertilizers, insecticides, and herbicides may pose a risk to Panama City crayfish if applied inappropriately.

The Panama City crayfish was included in a statewide vulnerability assessment for approximately 1000 species in Florida (Reece et al. 2013, Hocter et al. 2014) using a Standardized Index of Vulnerability and Value Assessment (SIVVA; Reece and Noss 2014). Based on the data used in this assessment, the Panama City crayfish did not meet the vulnerability assessment criteria. The assessment used a 10 meter digital elevation model ''bathtub'' projection that showed 2 meters of sea level rise and overlapped these projections with species' 'element occurrences.' (Reece et al 2013). The assessment focused on those species which had 50% or more of their occurrences intersecting with the sea level rise projection. The Panama City crayfish did not meet this criteria. Overall, little suitable habitat for Panama City crayfish will be affected by sea level rise (Hocter et al. 2014).

Conservation Actions

Several private lands within the Panama City crayfish's range are being managed under conservation easements for the species. These easements largely cover wet pine flatwoods and wet prairie habitats. Other private lands are inaccessible to surveyors, but if they lack significant disturbance and have suitable habitat for the species, they are likely occupied by Panama City crayfish.

Areas in silviculture adjacent to human-altered habitats may serve as refuges for Panama City crayfish, and silvicultural BMPs require operators to minimize impacts to Panama City crayfish. Use of BMPs for agriculture and grazing can also help minimize impacts to aquatic species (*e.g.,* Florida

Department of Agriculture and Consumer Services 2008, p. 1). Gulf Power Company manages rights-of-way along approximately 114 acres of land that is populated by the Panama City crayfish. The Service and FWC have a management agreement that provides recommended BMPs to Gulf Power Company; the management practices through this agreement have proven effective as the crayfish continue to thrive within the easement areas.

Current Condition

The historical range of the Panama City crayfish included a 56-square-mile area in Bay County, Florida. It was likely one contiguous population within open pine flatwoods and prairie-marsh communities providing connectivity across the landscape. Currently, the species is found in 13 genetically distinct populations within the boundaries of its historical range. Within its range, 61 percent (9,180 acres) of habitat with core soils and 46 percent (5,646 acres) of habitat with secondary soils remain undeveloped, and the total amount of available suitable habitat based on soils is 54 percent of the historical habitat available to the species.

The current condition is a qualitative estimate based on an analysis of the three population factors (inbreeding, population isolation, and population sampling/relative abundance) and three habitat elements (water quality/availability, herbaceous ground cover, and suitable habitat). Overall population and habitat condition rankings were determined by combining the three population factors and three habitat elements using the most frequent score for individual factors as the overall score. Of the 13 populations described, the current conditions show 4 (31 percent) populations are estimated to have high resiliency, 5 (38 percent) moderate resiliency, and 4 (31 percent) low resiliency. In the western group of populations, 4 populations have low resiliency, 3 populations have moderate resiliency, and 1 has high resiliency. In the eastern group, 2 populations have moderate resiliency and 3 populations have high resiliency. Generally, genetic variation is low and inbreeding is high across the range, which indicate a high degree of current population isolation. This pattern is generally more pronounced in the sampling locations in the west (heavily urbanized areas).

Future Condition

For the purpose of this assessment, we define viability as the ability of the species to sustain populations in the wild over time. This discussion explains how the stressors associated with habitat loss, fragmentation, and degradation from residential and commercial development will influence resiliency, redundancy, and representation for the Panama City crayfish throughout its current known range using a series of plausible scenarios for 2030, 2050, and 2070. We predicted both future population factors (inbreeding and population isolation) and habitat factors (water quality and quantity, herbaceous ground cover, and suitable habitat) and evaluated these to inform our future conditions.

To predict potential future changes related to urban growth, we used layers from the Southeast Regional Assessment Project (SERAP, from the Biodiversity and Spatial Analysis Center at North Carolina State University; 60m resolution), a modification of the SLEUTH Projected Urban Growth model (Jantz et al. 2010, entire; Terando et al. 2014, entire). SERAP identifies the parameters in global and regional models that are most likely to affect the Southeast region's climate and local landscape dynamics, with the goal of providing decision makers with information about low-probability, high-impact climate extremes through downscaled models and threats analysis. We used these products to map future predicted changes in urbanization in 2030, 2050, and 2070. The uncertainty associated with the SLEUTH model increases in time, as the species' response to the dynamic nature of the variables becomes less predictive. There is a greater confidence in predicting potential development and the species' response to changes in the landscape in the near future rather than the distant future.

To address uncertainty associated with the degree and extent of potential future stressors and their impacts on species' requisites, the 3Rs were assessed using three scenarios: status quo development (*i.e.,* ≥80 percent probability of occurring), moderate development (≥30 percent probability of occurring), and high development (≥0 percent probability of occurring). The scenarios included projecting possible future development using the SERAP model (Jantz et al. 2010, entire; Terando et al. 2014, entire). They also describe the predicted effects of the development on loss and fragmentation of suitable habitat rangewide and on each of 11 known populations, and draw inferences about population health based on the work of Duncan et al. (2017, entire). We excluded two populations (College Point and City of Lynn Haven) from our scenario analysis due to insufficient available data. Please refer to the SSA report (Service 2017) for the full analysis of the future scenarios.

In scenario one, the ''status quo'' scenario, we considered the development most likely to occur. Based on the SERAP model, this was development with a ≥80 percent probability. Under this scenario, Panama City crayfish will lose 1,401 to 3,096 acres of habitat rangewide as developed land increases from 20,221 to 25,040 acres. This loss, fragmentation, and degradation of habitat would reduce the number of resilient populations in high or moderate condition from nine currently to five by 2050. This loss of resiliency comes from both a reduction in habitat elements as well as the effects of isolation and drift on the populations themselves.

Under the ''status quo'' scenario, only one resilient population (the St. Joe population) is predicted to remain in the western group by 2050. This results in a loss of redundancy and representation, as only one resilient population will remain in the western group. In the eastern group, four resilient populations are predicted to persist through 2070.

In scenario two, the ''intermediate development'' scenario, we considered development with a moderate potential to occur. Based on the SERAP model, this was development with a ≥30 percent probability of occurring. In this scenario, the Panama City crayfish will lose 2,252 to 4,854 acres of habitat rangewide as developed land increases from 20,221 to 27,332 acres. This loss, fragmentation, and degradation of habitat is predicted to reduce the number of resilient populations in high or moderate condition from nine currently to four by 2070. This loss of resiliency comes from both a reduction in habitat elements as well as the effects of isolation and drift on the populations themselves.

Under the ''intermediate development'' scenario, only one resilient population (the St. Joe population) is predicted to remain in the western group by 2050. This results in a loss of redundancy and representation, as only one resilient population will remain in the western group. In the eastern group, three resilient populations are predicted to persist through 2070.

In scenario three, ''high development'' or ''worst case'' scenario, we considered the development that is least likely to occur. Based on the SERAP model, this was development with at >0 percent probability of occurring. In this scenario, the Panama City crayfish will lose 3,233 to 6,130 acres of habitat

rangewide as developed land increases from 20,221 to 28,899 acres. This loss, fragmentation, and degradation of habitat is predicted to reduce the number of resilient populations in high or moderate condition from nine currently to three by 2070. This loss of resiliency comes from both a reduction in habitat elements as well as the effects of isolation and drift on the populations themselves.

Under the ''high development'' scenario, all resilient populations in the western group are predicted to be lost by 2050, resulting in a loss of all representation and redundancy in the western group. In the eastern group, three resilient populations are predicted to persist through 2070.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Panama City crayfish. Our analysis of this information indicates that, at the species level, habitat development (Factor A) is the primary factor affecting the Panama City crayfish now and into the future. There may be additional infrastructure projects (*e.g.* roads, ditches, etc.) that affect the hydrology within the range of the Panama City crayfish as a result of forest clearing for permanent rights of way or silviculture. Additionally, the current level of habitat fragmentation (Factor A) further isolates populations, which reduces gene flow and limits the potential for the species to disperse. In addition, we have no evidence that ORV use (Factor A), overutilization (Factor B) or disease (Factor C) is affecting populations of Panama City crayfish.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range.'' We find that an endangered species status is not appropriate for the Panama City crayfish because the species maintains multiple resilient populations across its historical range and the risk is low that the species would not persist in the near term; in other words, the risk of the Panama City crayfish significantly declining in the near term is low given that it has persisted despite historical levels of habitat loss. The current conditions as assessed in the Panama City crayfish SSA report show that only 43 to 54 percent of the original lands historically available to the Panama City crayfish remain potentially available for use by the Panama City crayfish. However, while the species' habitat has been reduced by at least 46 percent, the species currently consists of 13 populations, 9 of which are highly to moderately resilient and found across its historical range. Further, despite changes to the crayfish's natural habitat of wet pine flatwoods, the species currently persists using artificial habitats such as roadside ditches and rights-of-way although these sites may become unsuitable long term due to anthropogenic activities that can alter their hydrology or configuration. Therefore, we conclude that the current risk of extinction of the Panama City crayfish is sufficiently low that it does not meet the definition of an endangered species under the Act.

The Act defines a threatened species as any species that is ''likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that the status of the Panama City crayfish meets the definition of a threatened species. Based on the biology of the species and the threats acting on it, the foreseeable future used in the determination was 20 to 30 years. The generation time for the species is 2 years with a life-span up to 3.5 years; the period of 20–30 years encompasses 10–15 generations, which is more than sufficient time to determine the species' response to the stressors. Although the future scenarios, which were snapshots in time for predicting resiliency, redundancy, and representation extended through 2070, the uncertainty as to the outcomes with regard to the responses to the stressors became so great as to render the scenarios too unreliable beyond 2050 for that time period to be considered the foreseeable future.

Habitat fragmentation and isolation have contributed to the partitioning into 13 populations. While the Panama City crayfish faces a variety of threats, only one threat, habitat loss and degradation, habitat fragmentation, and subpopulation isolation due to urban development, was considered an important factor in our assessment of the future viability of the Panama City crayfish. Based on our future scenarios for urban development, we predict major losses of resiliency, representation, and redundancy for Panama City crayfish in the foreseeable future. Especially problematic is the predicted complete loss of resilience and redundancy from the western populations, which reduces half of the representation of Panama City crayfish. These combined losses under even the most probable status quo scenario make the ability of Panama City crayfish to sustain its populations into the foreseeable future questionable assuming current levels of protection and management.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Panama City crayfish. Habitat loss from development is occurring rangewide and has resulted in the fragmentation of the landscape. The fragmentation of suitable habitat has caused the isolation of existing populations limited to ditches, swales, slash pine plantations, and utility rights-of-ways. At the population level, Panama City crayfish now exists in 13 populations. Currently, four populations are estimated to maintain high resiliency; five are estimated to have moderate resiliency; and four are estimated to have low resiliency, including the two populations that are in the low condition but were excluded from future scenario analysis because of inadequate data.

At the species level, the 13 Panama City crayfish populations are broken down into an eastern group of five populations and a western group of eight populations based on the characteristics of Panama City crayfish and its geographic distribution. Currently, four populations, all in the west, are in low condition, including the two that were excluded from future condition analysis because of inadequate data. These two populations represent 31 percent of the known populations overall and 50 percent of the western group, and, although still in existence, they may not contribute to the future redundancy of Panama City crayfish, because the populations are already experiencing genetic drift and the habitat that supports them is susceptible to future development.

All future scenarios predicted a negative impact on the redundancy of Panama City crayfish. Under the ''status quo'' scenario, 62 percent of populations are in low condition by 2050; this percentage increases to 69 percent under the ''intermediate development'' scenario and to 77 percent under the ''high development'' scenario. The greatest loss of redundancy for Panama City crayfish is

predicted to occur in the western group. In this group, 100 percent of the populations are in low condition by 2050 under the ''high development'' scenario and 88 percent under the other two scenarios. In the eastern group, three populations are predicted to remain strongholds for Panama City crayfish, although they would represent only 60 percent of the remaining eastern populations.

At the species level, we estimate that the Panama City crayfish currently has low to moderate adaptive potential across its range, and all of the future scenarios are predicted to have an impact on the species' representation during the 50-year time horizon. Even though Panama City crayfish has low representation in the western group, with only two of the eight populations not in low condition, these two populations likely will persist because of the protection afforded through conservation easements. The eastern group comprises a much larger area and contains the three populations currently in high condition. However, two of these populations, Highpoint and 231-north, are predicted to be in low condition in the future. This is especially concerning given that the Highpoint population contains unique genetic diversity not found in other populations, although more work is needed to confirm this (Duncan et al. 2017, p. 19).

In short, based on our analysis of the species' current and future conditions, as well as the conservation efforts discussed above, we conclude that the population and habitat factors used to determine the resiliency, representation and redundancy for Panama City crayfish will continue to decline so it is likely to become in danger of extinction throughout its range within the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Panama City crayfish as threatened in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the Panama City crayfish is threatened throughout all of its range, under the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37577, July 1, 2014) (SPR Policy), if a species warrants listing throughout all of its range, no portion of the species' range can be a ''significant'' portion of its range.). While it is the Service's position under the SPR Policy that undertaking no further analysis of ''significant portion of its range'' in this circumstance is consistent with the language of the Act, we recognize that the Policy is currently under judicial review, so we also took the additional step of considering whether there could be any significant portions of the species' range where the species is in danger of extinction. We evaluated whether there is substantial information indicating that there are any portions of the species' range: (1) That may be ''significant,'' and (2) where the species may be in danger of extinction. In practice, a key part of identifying portions appropriate for further analysis is whether the threats are geographically concentrated. The threats affecting the species are throughout its entire range; therefore, there is not a meaningful geographical concentration of threats. As a result, even if we were to undertake a detailed SPR analysis, there would not be any portions of the species' range where the threats are harming the species to a greater degree such that it is in danger of extinction in that portion.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations in 50 CFR 424.12, require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be an endangered or threatened species. Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (a) essential to the conservation of the species and (b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the Act, upon a determination by the Secretary of the Interior that such areas are essential for the conservation of the species.

Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when any of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. The regulations also provide that, in determining whether a designation of critical habitat would not be beneficial to the species, the factors that the Service may consider include, but are not limited to, whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat'' (50 CFR 424.12(a)(1)(ii)).

As discussed above, there is no evidence that collection or vandalism are threats to the species, and there is no indication that identification and mapping of critical habitat is likely to initiate any such threats. Therefore, in the absence of finding that the designation of critical habitat would increase threats to the species, if there are benefits to the species from a critical habitat designation, a finding that designation is prudent is appropriate.

The potential benefits of designation may include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is unoccupied; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or to private entities; and (4) preventing people from causing inadvertent harm to the protected species. Because designation of critical habitat would not likely increase the degree of threat to the species and may provide some measure of benefit, designation of critical habitat is prudent for the Panama City crayfish.

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exists: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking; or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. A careful assessment of the economic impacts that may occur due to a critical habitat designation is ongoing, and we are in the process of working with the States and other partners in acquiring the complex information needed to perform that assessment. Until these efforts are complete, information sufficient to perform a required analysis of the impacts of the designation is lacking, and, therefore, we find designation of critical habitat for this species to be not determinable at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or

threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting (*i.e.,* reclassification from endangered status to threatened status) or delisting (*i.e.,* removal from the List), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks.

Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our Panama City Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their ranges may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Florida would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Panama City crayfish. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Panama City crayfish is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers, and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to threatened wildlife. The prohibitions of section 9(a)(1) of the Act, as applied to threatened wildlife and codified at 50 CFR 17.31, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) threatened wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, for economic hardship, for zoological exhibition, for educational purposes, or for other special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of

the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Activities that the Service believes could potentially harm the Panama City crayfish and result in ''take'' include, but are not limited to:

(1) Unauthorized handling or collecting of the species;

(2) Destruction or alteration of the species' habitat by development;

(3) Actions that would alter the hydrology within suitable soils available for the Panama City crayfish;

(4) Actions that result in permanent loss of habitat within suitable soils once available to the Panama City crayfish;

(5) Application of chemicals, including insecticides and petroleum products in violation of label restrictions, or other actions that pollute the soils and waters that are used by the Panama City crayfish; and

(6) Destruction of herbaceous vegetation directly adjacent to occupied pools that affects the hydrology and removes cover for the crayfish.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Panama City Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, above).

Required Determinations

Clarity of the Rule

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in the SSA report is available on the internet at *http://www.regulations.gov* and upon request from the Panama City Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, above).

Authors

The primary authors of this proposed rule are the staff members of the Service's Unified Listing Team and the Panama City Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, by adding an entry for ''Crayfish, Panama City'' in alphabetical order under CRUSTACEANS to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
CRUSTACEANS				
*	*	*	*	*
Crayfish, Panama City	*Procambarus econfinae*	Wherever found	T	[**Federal Register** citation when published as a final rule].
*	*	*	*	*

* * * * *

Dated: November 21, 2017.

James W. Kurth,

Deputy Director for U.S. Fish and Wildlife Service Exercising the Authority of the Director for U.S. Fish and Wildlife Service.

[FR Doc. 2017–28313 Filed 1–2–18; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 83, No. 2

Wednesday, January 3, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 28, 2017.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by February 2, 2018. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Agricultural Labor Survey.

OMB Control Number: 0535–0109.

Summary of Collection: The 1938 Agricultural Adjustment Act, as amended, requires USDA to compute parity prices of farm products. This computation uses an index of Prices Paid by Farmers which in turn is composed of five indexes, one of which is an index of wage rates. These estimates measure actual agricultural wage rates and the year-to-year changes. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. Agricultural labor statistics are an integral part of National Agricultural Statistics Service (NASS) primary function of collecting, processing, and disseminating current state, regional, and national agricultural statistics. Comprehensive and reliable agricultural labor data are also needed by the Department of Labor in the administration of the ''H–2A'' program (non-immigrants who enter the United States for temporary or seasonal agricultural labor) and for setting ''Adverse Effect Wage Rates.'' The Agricultural Labor Survey is the only timely and reliable source of information on the size of the farm worker population. NASS will collect information using a survey.

Need and Use of the Information: NASS will collect information on wage rate estimates and the year-to-year changes in these rates and how changes in wage rates help measure the changes in costs of production of major farm commodities. NASS will also collect Standard Occupational Classifications data information for field workers, livestock workers, supervisors and other workers to measure the availability of national farm workers. The information is used by farm worker organizations to help set wage rates and negotiate labor contracts as well as determine the need for additional workers and to help ensure federal assistance for farm worker assistance programs supported with government funding.

Description of Respondents: Farms.

Number of Respondents: 15,050.

Frequency of Responses: Reporting: Quarterly; Annually.

Total Burden Hours: 14,499.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–28373 Filed 1–2–18; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Custer Gallatin National Forest; Montana; Revision of the Land Management Plan for the Custer Gallatin National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, is preparing the Custer Gallatin National Forest's revised land management plan (forest plan). The Forest Service will prepare an environmental impact statement (EIS) for its revised forest plan.

This notice briefly describes the proposed action based on the need to change the existing forest plans, the nature of the decision to be made, and information concerning public participation. This notice also describes estimated dates for filing the environmental impact statement, the name and address of the responsible agency officials, and the individuals who can provide additional information. Finally, this notice identifies the applicable planning rule that will be used for completing the plan revision.

The revised Custer Gallatin Forest Plan will replace the existing Custer and Gallatin National Forest plans that were approved by the Regional Forester in 1986 and 1987. The existing forest plans will remain in effect until the revised forest plan takes effect.

In response to this notice we are asking for comments on the proposed action and the Regional Forester's list of species of conservation concern. The full text of the proposed action, maps, and information on public engagement

opportunities can be found at *www.fs.usda.gov/custergallatin* by clicking on ''Forest Plan Revision'' and the link of interest. Information related to the Regional Forester's list of species of conservation concern can be found at *http://bit.ly/NorthernRegion-SCC.* Input gathered during this scoping period, as well as other information, will be used to prepare the draft forest plan and the draft EIS.

DATES: Comments concerning the proposed action provided in this notice will be most useful in development of the draft forest plan and draft environmental impact statement. Comments must be received, in writing, on or before March 5, 2018. The draft EIS is expected autumn of 2018 and the final EIS is expected summer of 2019.

ADDRESSES: Comments may be submitted electronically online at *https://www.fs.usda.gov/project/?project=50185* or by navigating to *www.fs.usda.gov/custergallatin* and clicking on ''Forest Plan Revision—Commenting'' and following on-screen instructions. Written comments concerning this notice should be addressed to Custer Gallatin National Forest, Attn: Forest Plan Revision Team, P.O. Box 130 (10 E Babcock), Bozeman, MT 59771. Comments may also be sent via email to *cgplanrevision@fs.fed.us* with subject line: ''Comment draft plan, CGNF'' or via facsimile to 406–587–6758.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received by visiting the public reading room online at *www.fs.usda.gov/custergallatin* and clicking on ''Forest Plan Revision—Public Reading Room.''

FOR FURTHER INFORMATION CONTACT: Forest Plan Revision Team Leader Virginia Kelly or Forest Plan Revision Public Affairs Specialist Mariah Leuschen-Lonergan by emailing *cgplanrevision@fs.fed.us* or mail at Custer Gallatin National Forest, Attn: Forest Plan Revision Team, P.O. Box 130 (10 E Babcock), Bozeman, MT 59771. Additional information concerning the planning process can be found online at *https://www.fs.usda.gov/custergallatin* by clicking on ''Forest Plan Revision.''

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the Custer Gallatin National Forest plan revision is to set forth guidance for future decision making which provides people and communities with a range of social and economic benefits, promotes sound land stewardship in partnership with communities, and maintains or restores ecological integrity. The plan revision will implement the Forest Service's 2012 Land Management Planning Rule (36 CFR part 219), which requires inclusion of plan components that address multiple uses; social, economic, and ecological sustainability; ecosystem services; and species diversity.

Public involvement, along with science-based evaluations such as the findings from the development of the Assessment of the Custer Gallatin National Forest, have helped identify the need to change the existing forest plans. As described in the Preliminary Need for Change, the need for the plan revision is due to lack of direction for certain resources, stressors and land uses, as well as new policy requirements, since the Custer National Forest and the Gallatin National Forest plans were approved in 1986 and 1987. In addition, the Custer National Forest and the Gallatin National Forest were recently adminstratively combined and there is a need to provide clear and consistent plan direction through one unified forest plan across the administrative unit.

To implement the requirements of the 2012 planning rule, new management direction is needed to:

- Contribute to social and economic sustainability by providing people and communities with a range of social and economic benefits for present and future generations. These benefits include timber production, grazing, recreation, and additional multiple uses.
- Provide for ecological sustainability by addressing ecosystem diversity (including key ecosystem characteristics and their integrity), in light of stressors such as changes in climate.
- Provide for species diversity by maintaining or restoring vegetation and ecosystems, including for threatened and endangered species, species of conservation concern, and species of public interest.
- Provide for multiple uses by addressing suitability of certain areas for particular uses; addressing access and sustainable recreation; providing for the management of existing and anticipated uses, as well as protecting resources.
- Identify and evaluate lands that may be suitable for inclusion in the National Wilderness Preservation System.
- Identify eligible rivers for inclusion in the National Wild and Scenic Rivers System.

Public participation through scoping may identify other issues or concerns that will be considered during the plan revision.

Proposed Action

The Forest Service is preparing the revised forest plan for the Custer Gallatin National Forest. The full proposed action for the revised forest plan includes forestwide and geographic area desired conditions, goals, objectives, standards, guidelines, and the suitability of lands for specific multiple uses. The proposed action includes lands that could be recommended to Congress for inclusion in the National Wilderness Preservation System and the identification of rivers eligible for inclusion in the National Wild and Scenic Rivers System. The proposed action includes a description of the plan area's distinctive roles and contributions within the broader landscape, the identification of priority restoration watersheds, and suitability of national forest lands to support a variety of proposed and possible actions that may occur on the plan area over the life of the plan. The proposed action also identifies a monitoring program. The proposed action and appendices can be found on the Custer Gallatin National Forest Revision website at *www.fs.usda.gov/custergallatin* by clicking on ''Forest Plan Revision.''

Responsible Official

The responsible official who will approve the Record of Decision for the Custer Gallatin National Forest revised forest plan is Mary Erickson, Forest Supervisor for the Custer Gallatin National Forest, P.O. Box 130, (10 E Babcock), Bozeman, MT 59771.

Nature of Decision To Be Made

For the Custer Gallatin National Forest plan revision, the responsible official will decide whether the required plan components (desired conditions, goals, objectives, standards, guidelines, and suitability) are sufficient to promote the ecological integrity and sustainability of the Custer Gallatin National Forest's ecosystems, watersheds, and diverse plant and animal communities. In addition, the responsible official will decide if the plan provides sufficient management guidance to contribute to social and economic sustainability, to provide people and communities with ecosystem services and multiple uses including a range of social, economic, and ecological benefits for the present

and into the future. Standards, guidelines, and other direction related to conservation of at-risk species will be evaluated for the Custer Gallatin National Forest in the EIS.

This proposed action is programmatic in nature and guides future implementation of site-specific projects. Additional National Environmental Policy Act (NEPA) compliance would be required for site-specific projects as part of a two-stage decision making process (40 CFR 1508.23, 42 U.S.C. 4322(2)(C)), 36 CFR 219.7(f)).

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the draft forest plan and draft EIS. We are seeking your input to continue to develop the Custer Gallatin National Forest revised plan.

Community meetings will be held to provide additional information and address questions related to the proposed action. Dates and locations will be posted on the Custer Gallatin Forest plan revision web page at *www.fs.usda.gov/custergallatin* and clicking on ''Public Involvement.'' Any changes to the meeting schedule will be communicated on the same web page.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and as well as proposed solutions. Further instructions for providing comments that will assist the planning team in reviewing comments can be found at *www.fs.usda.gov/custergallatin* by clicking on ''Forest Plan Revision—Commenting.''

Decision Will Be Subject to Objection

Only those individuals and entities who have submitted substantive formal comments related to the Custer Gallatin National Forest plan revision during the opportunities provided for public comment during the planning process will be eligible to file an objection (36 CFR 219.53(a)). The decision to approve the revised forest plan for the Custer Gallatin National Forest will be subject to the objection process identified in 36 CFR part 219 Subpart B (219.50 to 219.62).

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: December 8, 2017.

Chris French,

Associate Deputy Chief, National Forest System.

[FR Doc. 2017–28402 Filed 1–2–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970, C–570–971]

Multilayered Wood Flooring From the People's Republic of China: Continuation of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on multilayered wood flooring from the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Commerce is publishing a notice of continuation of the AD and CVD orders.

DATES: Applicable January 3, 2018.

FOR FURTHER INFORMATION CONTACT: Maliha Khan or Thomas Martin (AD order), Office IV; telephone: 202–482–0895 or 202–482–3936, respectively, or Robert James or John Anwesen (CVD order), Office VIII; telephone: 202–482–0649 or 202–482–0131, respectively; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2011, Commerce published in the **Federal Register** the AD and CVD orders on multilayered wood flooring from the PRC.[1] On November 1, 2016, Commerce published in the **Federal Register** the initiation notice for the first sunset review of the *Orders* on multilayered wood flooring from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On November 16, 2016, Commerce received a timely notice of intent to participate in these reviews from the Coalition for American Hardwood Parity (CAHP), a domestic interested party, within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).[3] As a result of its reviews, Commerce determined that revocation of the *Orders* on multilayered wood flooring from China would likely lead to continuation or recurrence of dumping and countervailable subsidies and notified the ITC of the magnitude of the margins and net countervailable subsidy rates likely to prevail should these *Orders* be revoked.[4] On December 19, 2017, the ITC published its determination that revocation of the *Orders* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(c) of the Act.[5]

Scope of the Orders

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)[6] in combination with a core.[7] The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.,* ''engineered wood flooring'' or ''plywood flooring.'' Regardless of the particular terminology, all products that meet the description

[1] *See Multilayered Wood Flooring from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011) and *Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order,* 76 FR 76692 (December 8, 2011) (collectively, the *Orders*).

[2] *See Initiation of Five-Year (Sunset) Review,* 81 FR 75808 (November 1, 2016).

[3] *See* Letters from CAHP to Commerce, ''Petitioners' Notice of Intent to Participate: Five-Year (''Sunset'') Review: Multilayered Wood Flooring from the People's Republic of China'' (November 16, 2016) for both AD and CVD reviews.

[4] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order,* 82 FR 13092 (March 9, 2017) and *Multilayered Wood Flooring from the People's Republic of China: Final Results of Expedited First Sunset Review of the Countervailing Duty Order,* 82 FR 12555 (March 6, 2017).

[5] *See Investigation Nos. 731–TA–1179 and 701–TA–476 (Review) Multilayered Wood Flooring from China,* 82 FR 242 (December 19, 2017), and USITC Publication 4746 (December 2017), entitled *Multilayered Wood Flooring from China: Investigation Nos. 701–TA–476 and 731–TA–1179 (Review).*

[6] A ''veneer'' is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

[7] Department of Commerce Interpretive Note: Commerce interprets this language to refer to wood flooring products with a minimum of three layers.

set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: Dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back, and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.,* without a finally finished surface to protect the face veneer from wear and tear) or ''prefinished'' (*i.e.,* a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultraviolet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes). The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard (HDF), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.,* circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product. Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise 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 countervailable subsidies 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 these *Orders* on multilayered wood flooring from China. U.S. Customs and Border Protection will continue to collect AD and CVD 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 these *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, Commerce intends to initiate the next five-year review of these *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 section 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. 2017–28202 Filed 1–2–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Adminstration

[A–441–801]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From Switzerland: Amended Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the preliminary determination of sales at less than fair value (LTFV) in the antidumping duty investigation of certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from Switzerland to correct significant ministerial errors alleged by each of the mandatory respondents in this proceeding.

DATES: Applicable January 3, 2018.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office III, and Amanda Brings, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–3927, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 2017, Commerce published in the **Federal Register** the *Preliminary Determination* that cold-drawn mechanical tubing from Switzerland is being, or is likely to be, sold in the United States at LTFV, as provided in section 733 of the Tariff Act of 1930, as amended (Act).[1] On November 22, 2017, and December 7, 2017, Benteler Rothrist AG (Benteler Rothrist) and Mubea Präzisionsstahlrohr AG and Mubea Inc. (collectively, Mubea), respectively, alleged that Commerce made significant ministerial errors in the *Preliminary Determination*.[2]

Period of Investigation

The period of investigation (POI) is April 1, 2016, through March 31, 2017.

Scope of Investigation

The product covered by this investigation is cold-drawn mechanical tubing from Switzerland. Since the publication of the *Preliminary Determination,* Commerce has evaluated relevant comments on the scope of the investigation and issued its Final Scope Determination.[3] For a complete description of the final scope of this investigation, *see* Appendix.

Analysis of Significant Ministerial Error Allegations

Commerce will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination according to 19 CFR 351.351.224(e). A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.''[4] A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in: (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa.[5] As a result of this amended preliminary determination, we have revised the margins applicable to Benteler Rothrist, Mubea and all others.[6]

Commerce reviewed the record with respect to the respondents' claims.[7] Though we determine that Benteler Rothrist's allegation regarding the inclusion of sample sales in the U.S. and third country databases represents a methodological disagreement rather than a clerical error, we agree that all other alleged errors constitute unintentional errors consistent with the definition of ministerial errors in 19 CFR 351.224(f).[8] Pursuant to 19 CFR 351.224(g)(2), these errors are significant because their correction results in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original preliminary determination (*i.e.,* a decrease in the weighted-average dumping margin from 34.15 percent to 23.33 percent for Benteler Rothrist, and from 68.59 percent to 36.48 percent for Mubea, and a decrease in the all-others rate from 36.17 to 24.10 percent).[9] Therefore, we are correcting these errors and amending our preliminary determination accordingly.

Amended Preliminary Determination

As a result of this amended preliminary determination, we have revised the preliminary estimated weighted-average dumping margins as follows:

Exporter/producer	Estimated weighted-average dumping margins (percent)
Benteler Rothrist AG (Benteler Rothrist)	23.33
Mubea Präzisionsstahlrohr AG (MPST)	36.48
All Others	24.10

Amended Cash Deposits and Suspension of Liquidation

The collection of cash deposits and suspension of liquidation will be revised to the rates established in this amended preliminary determination, in accordance with section 733(d) and (f) of the Act and 19 CFR 351.224. Because the corrected margins are lower than the rates issued in the *Preliminary Determination,* the amended cash deposit rates will be effective retroactively to November 22, 2017, the date of publication of the *Preliminary Determination.*

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after publication of the notice of amended preliminary determination in the **Federal Register** in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we notified the International Trade Commission of our amended preliminary determination.

This amended preliminary determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

[1] *See Cold-Drawn Mechanical Tubing from Switzerland: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination, and Extension of Provisional Measures,* 82 FR 55571 (November 22, 2017) (*Preliminary Determination*).

[2] *See* Benteler Rothrist's letter, ''Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Switzerland: Ministerial Error Comments for the Preliminary Determination,'' dated November 22, 2017 (''Benteler Rothrist's Ministerial Error Allegation''); and Mubea's letter, ''Antidumping Investigation of Certain Cold-Drawn Mechanical Tubing from Switzerland: Resubmitted Ministerial Error Comments for the Preliminary Determination,'' December 7, 2017 (Mubea's Ministerial Error Allegation).

[3] *See* Commerce's Memorandum, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Final Determinations,'' dated December 4, 2017.

[4] *See* section 735(e) of the Act.

[5] *See* 19 CFR 351.224(g).

[6] *See* the ''Amended Preliminary Determination'' section below.

[7] *See* the Commerce's memorandum, ''Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Switzerland: Ministerial Error Allegations in the Preliminary Determination,'' dated concurrently with this notice.

[8] *Id.*

[9] *Id. See also* memorandum to the file, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Switzerland: Calculation of the All-Others Rate in the Amended Preliminary Determination,'' dated concurrently with this notice; memorandum to the file, ''Analysis Memorandum for the Amended Preliminary Determination of the Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel (Cold-Drawn Mechanical Tubing) from Switzerland: Benteler Rothrist AG,'' dated concurrently with this memorandum; and memorandum to the file, ''Analysis Memorandum for the Amended Preliminary Determination of the Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel (Cold-Drawn Mechanical Tubing) from Switzerland: Mubea Präzisionsstahlrohr AG (MPST) and Mubea Inc. (collectively, Mubea),'' dated concurrently with this memorandum.

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.

Appendix

Scope of the Investigation

The scope of this investigation covers cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, 304.8 mm or more in length, in actual outside diameters less than 331mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.,* electric resistance welded, continuous welded, etc.) or seamless (*e.g.,* pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device. Other cold-finishing operations that may be used to produce subject merchandise include cold-rolling and cold-sizing the tubing.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

(1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A–512, ASTM A–513 Type 3 (ASME SA513 Type 3), ASTM A–513 Type 4 (ASME SA513 Type 4), ASTM A–513 Type 5 (ASME SA513 Type 5), ASTM A–513 Type 6 (ASME SA513 Type 6), ASTM A–519 (cold-finished);

(2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;

(3) Aerospace Material Specification (AMS) AMS T–6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;

(4) United States Military Standards (MIL) MIL–T–5066 and MIL–T–6736;

(5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:

(a) German Institute for Standardization (DIN) specifications DIN 2391–2, DIN 2393–2, DIN 2394–2);

(b) European Standards (EN) EN 10305–1, EN 10305–2, EN 10305–4, EN 10305–6 and European national variations on those standards (*e.g.,* British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);

(c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and

(6) proprietary standards that are based on one of the above-listed standards.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other specifications not covered by this scope, is also covered by the scope of this investigation when it meets the physical description set forth above.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestructive testing, deburring or chamfering, remains within the scope of this investigation.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of the investigation even if it is also dual or multiple certified to an otherwise excluded specification listed below. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:

- ASTM A–53;
- ASTM A–106;
- ASTM A–179 (ASME SA 179);
- ASTM A–192 (ASME SA 192);
- ASTM A–209 (ASME SA 209);
- ASTM A–210 (ASME SA 210);
- ASTM A–213 (ASME SA 213);
- ASTM A–334 (ASME SA 334);
- ASTM A–423 (ASME SA 423);
- ASTM A–498;
- ASTM A–496 (ASME SA 496);
- ASTM A–199;
- ASTM A–500;
- ASTM A–556;
- ASTM A–565;
- API 5L; and
- API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual- or multiple-certified to any other specification that otherwise would fall within the scope of this investigation.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2017–28405 Filed 1–2–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–858]

Certain Softwood Lumber Products From Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing a countervailing duty order on Certain Softwood Lumber Products (Softwood Lumber) from Canada. Also, Commerce is amending its final countervailing duty determination with respect to Softwood Lumber from Canada, to correct ministerial errors.

DATES: January 3, 2018.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski and Kristen Johnson, AD/CVD Operations, Offices I and III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–1395 and (202) 482–4793, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(a), 705(d), and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on November 8, 2017, Commerce published an affirmative final determination in the countervailing duty investigation of Softwood Lumber from Canada.[1]

[1] *See Certain Softwood Lumber Products From Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances,* 82 FR 51814 (November 8, 2017) (*Final Determination*).

Interested parties submitted timely filed allegations that Commerce made certain ministerial errors in the final determination of Softwood Lumber from Canada. Section 705(e) of the Act and 19 CFR 351.224(f) defines ministerial errors as errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial. We reviewed the allegations and determined that we made certain ministerial errors. *See* ''Amendment to the Final Determination'' section below for further discussion.

On December 26, 2017, the ITC notified Commerce of its final determination pursuant to section 705(b)(1)(A)(i) and section 705(d) of the Act, that an industry in the United States is materially injured by reason of subsidized imports of Softwood Lumber from Canada.[2]

Scope of the Order

The products covered by this order is Softwood Lumber from Canada. For a complete description of the scope of this order, *see* Appendix I.

Amendment to the Final Determination

On November 9, 2017, West Fraser Mills Ltd. and its cross-owned affiliates (collectively, West Fraser) submitted a timely, properly filed allegation that Commerce made certain ministerial errors in the *Final Determination.*[3] On November 13, 2017, Resolute FP Canada Inc. and Resolute FP US Inc. (collectively, Resolute) and Conseil de l'Industrie Forestiere du Quebec (CIFQ) submitted a timely, properly filed allegation that Commerce made certain ministerial errors in the *Final Determination.*[4] On November 17, 2017, the petitioner[5] submitted rebuttal comments to the Resolute and CIFQ allegation.

Commerce reviewed the record and, on December 4, 2017, agreed that the error referenced in West Fraser's allegation constitutes a ministerial error within the meaning of 705(e) of the Act and 19 CFR 351.224(f).[6] Commerce found that it erroneously calculated West Fraser's benefit under the Alberta Tax-Exempt Fuel Program for Marked Fuel, and this error was contrary to our methodological intention.[7] Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Determination* to reflect the correction of the ministerial error described above. However, Commerce did not find a ministerial error with regard to the Resolute and CIFQ allegation,[8] and thus Commerce is not amending the *Final Determination* with regard to that allegation. Based on our correction of the ministerial error in West Fraser's calculation, the subsidy rate for West Fraser decreased from 18.19 percent *ad valorem* to 17.99 percent *ad valorem.*[9] Because the ''all-others'' rate is based, in part, on West Fraser's *ad valorem* subsidy rate, the correction noted above also decreases the ''all-others'' rate determined in the *Final Determination* to 14.19 percent *ad valorem.*[10] All other countervailing duty rates remain unchanged from the *Final Determination.*

Countervailing Duty Order

In accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured by reason of of subsidized imports of Softwood Lumber from Canada.[11] Therefore, in accordance with section 705(c)(2) of the Act, we are issuing this countervailing duty order. Because the ITC determined that imports of Softwood Lumber from Canada are materially injuring a U.S. industry, unliquidated entries of such merchandise from Canada, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

As a result of the ITC's final determination, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties equal to the net countervailable subsidy rates, for all relevant entries of Softwood Lumber from Canada. Countervailing duties will be assessed on unliquidated entries of Softwood Lumber from Canada entered, or withdrawn from warehouse, for consumption on or after April 28, 2017, the date of publication of the *Preliminary Determination,*[12] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Amended Cash Deposits and Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will instruct CBP to reinstitutue suspension of liquidation on all relevant entries of Softwood Lumber from Canada. These instructions suspending liquidation will remain in effect until further notice. Commerce will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the subsidy rates listed below.[13] The all-others rate applies to all producers or exporters not specifically listed, as appropriate.

Company	Subsidy rate (%)
Canfor Corporation and its cross-owned affiliates[14]	13.24
J.D. Irving Limited and its cross-owned affiliates[15]	3.34

[2] *See* Letter from ITC concerning Softwood Lumber from Canada USITC Investigation Nos. 701–TA–566 and 731–TA–1342, USITC Publication 4749 (December 2017) (ITC Letter).

[3] *See* Letter from West Fraser ''Softwood Lumber from Canada: Request for Correction of Ministerial Error in

the Investigation Final Determination Calculations,'' November 9, 2017 (West Fraser Ministerial Error Allegation).

[4] *See* Letter from Resolute and CIFQ ''Softwood Lumber from Canada: Comments Regarding Ministerial Error,'' November 13, 2017 (Resolute Ministerial Error Allegation).

[5] The petitioner is an ad hoc association whose members are: U.S. Lumber Coalition, Inc.; Collum's Lumber Products, L.L.C.; Hankins, Inc.; Potlatch Corporation; Rex Lumber Company; Seneca Sawmill Company; Sierra Pacific Industries; Stimson Lumber Company; Swanson Group; Weyerhaeuser Company; Carpenters Industrial Council; Giustina Land and Timber Company; Sullivan Forestry Consultants, Inc.

[6] *See* Memorandum ''Ministerial Error Allegations Concerning Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances,'' December 4, 2017.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *See* ITC Letter.

[12] *See Certain Softwood Lumber Products From Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 82 FR 19657 (April 28, 2017) (*Preliminary Determination*).

[13] *See* section 706(a)(3) of the Act.

Company	Subsidy rate (%)
Resolute FP Canada Inc. and its cross-owned affiliates [16]	14.70
Tolko Marketing and Sales Ltd. and its cross-owned affiliates [17]	14.85
West Fraser Mills Ltd. and its cross-owned affiliates [18]	17.99
All-Others	14.19

[14] Commerce has found the following companies to be cross-owned with Canfor Corporation: Canadian Forest Products, Ltd., and Canfor Wood Products Marketing, Ltd.

[15] Commerce has found the following companies to be cross-owned with JDIL: Miramichi Timber Holdings Limited, The New Brunswick Railway Company, Rothesay Paper Holdings Ltd., St. George Pulp & Paper Limited, and Irving Paper Limited.

[16] Commerce has found the following companies to be cross-owned with Resolute: Resolute Growth Canada Inc., Resolute Sales Inc., Abitibi-Bowater Canada Inc., Bowater Canadian Ltd., Resolute Forest Products Inc., Produits Forestiers Maurice SEC., and 9192–8515 Quebec Inc.

[17] Commerce has found the following companies to be cross-owned with Tolko: Tolko Industries Ltd., and Meadow Lake OSB Limited Partnership.

[18] Commerce has found the following companies to be cross-owned with West Fraser: West Fraser Timber Co. Ltd., West Fraser Alberta Holdings, Ltd., Blue Ridge Lumber Inc., Manning Forest Products, Ltd., Sunpine Inc., and Sundre Forest Products Inc.

Provisional Measures

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary countervailing duty determination may not remain in effect for more than four months. In the underlying investigation, Commerce published the *Preliminary Determination* on April 28, 2017. Therefore, the four-month period beginning on the date of the publication of the *Preliminary Determination* ended on August 26, 2017. Furthermore, section 707(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 703(d) of the Act and our practice, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to duties, unliquidated entries of Softwood Lumber from Canada made on or after August 26, 2017. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Notification to Interested Parties

This notice constitutes the countervailing duty order with respect to Softwood Lumber from Canada, pursuant to section 706(a) of the Act. Interested parties may find an updated list of CVD orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: December 28, 2017.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I—Scope of the Order

The merchandise covered by this order is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). The scope includes:

- Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.
- Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.
- Coniferous drilled and notched lumber and angle cut lumber.
- Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
- Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Finished products are not covered by the scope of this order. For the purposes of this scope, finished products contain, or are comprised of, subject merchandise and have undergone sufficient processing such that they can no longer be considered intermediate products, and such products can be readily differentiated from merchandise subject to this order at the time of importation. Such differentiation may, for example, be shown through marks of special adaptation as a particular product. The following products are illustrative of the type of merchandise that is considered ''finished,'' for the purpose of this scope: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors.

The following items are excluded from the scope of this order:

- Softwood lumber products certified by the Atlantic Lumber Board as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in Newfoundland and Labrador, Nova Scotia, or Prince Edward Island.
- U.S.-origin lumber shipped to Canada for processing and imported into the United States if the processing occurring in Canada is limited to one or more of the following: (1) Kiln drying; (2) planing to create smooth-to-size board; or (3) sanding.
- Box-spring frame kits if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails must be radius-cut at both ends. The kits must be individually packaged and must contain the exact number of wooden components needed to make a particular box-spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.
- Radius-cut box-spring-frame components, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantially cut so as to completely round one corner.

Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (HTSUS). This chapter of the HTSUS covers ''Wood and articles of wood.'' Softwood lumber products that are subject to this order are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44: 4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; and 4418.99.10.00.

Subject merchandise as described above might be identified on entry documentation as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts. Items so identified might be entered under the following ten-digit HTSUS subheadings in Chapter 44: 4415.20.40.00; 4415.20.80.00; 4418.99.90.05; 4418.99.90.20; 4418.99.90.40; 4418.99.90.95; 4421.99.70.40; and 4421.99.97.80.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[FR Doc. 2017–28483 Filed 1–2–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–857]

Certain Softwood Lumber Products From Canada: Antidumping Duty Order and Partial Amended Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (the ITC), Commerce is issuing an antidumping duty order on certain softwood lumber products (softwood lumber) from Canada.

DATES: January 3, 2018.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey at (202) 482–0193, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on November 8, 2017, Commerce published an affirmative final determination in the less-than-fair-value (LTFV) investigation of softwood lumber from Canada.[1] On December 26, 2017, the ITC notified Commerce of its affirmative determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of softwood lumber from Canada and its determination that critical circumstances do not exist with respect to imports of subject merchandise from certain producers subject to Commerce's affirmative critical circumstances determination.[2]

On November 13, 2017, Canfor Corporation (Canfor), one of the mandatory respondents, alleged that Commerce made ministerial errors with respect to the calculation of Canfor's dumping margin in the final determination.[3] We agree that the alleged errors were made, and are amending Canfor's dumping margin as well as the All-Others rate.[4]

Scope of the Order

The product covered by this order is softwood lumber from Canada. For a complete description of the scope of this order, *see* the Appendix to this notice.

Antidumping Duty Order

In accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of imports of softwood lumber from Canada. The ITC also notified Commerce of its determination that critical circumstances do not exist with respect to imports of softwood lumber from Canada subject to Commerce's critical circumstances finding.[5] Therefore, in accordance with section 735(c)(2) of the Act, Commerce is issuing this antidumping duty order. Because the ITC determined that imports of softwood lumber from Canada are materially injuring a U.S. industry, unliquidated entries of such merchandise from Canada, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of softwood lumber from Canada. Antidumping duties will be assessed on unliquidated entries of softwood lumber from Canada entered, or withdrawn from warehouse, for consumption on or after June 30, 2017, the date of publication of the preliminary determination,[6] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of softwood lumber from Canada. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the cash deposit rates listed below.[7] The relevant all-others rate applies to all producers or exporters not specifically listed, as appropriate.

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of softwood lumber from Canada, Commerce extended the four-month period to six months in each case.[8] In the underlying investigation, Commerce published the preliminary determination on June 30, 2017. Therefore, the extended period, beginning on the date of publication of the preliminary determination, ended on December 26, 2017. Furthermore, section 737(b) of the Act states that the collection of final, estimated cash deposits will begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of softwood lumber from Canada entered, or withdrawn from warehouse, for consumption after December 26, 2017, the date on which the provisional

[1] *See Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 82 FR 51806 (November 8, 2017) (*Final Determination*).

[2] *See* Letter to Gary Taverman, Acting Assistant Secretary of Commerce for Enforcement and Compliance, from Rhonda K. Schmidtlein, Chairman of the U.S. International Trade Commission, regarding certain softwood lumber products from Canada (December 26, 2017) (ITC Letter).

[3] *See* Comments from Canfor Corporation dated November 13, 2017.

[4] *See* Memorandum, ''Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances of Certain Softwood Lumber Products from Canada: Allegations of Ministerial Errors,'' dated December 4, 2017.

[5] *See* ITC Letter.

[6] *See Certain Softwood Lumber Products from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 82 FR 29833 (June 30, 2017) (*Preliminary Determination*).

[7] *See* section 736(a)(3) of the Act.

[8] *See Certain Softwood Lumber Products from Canada: Postponement of Final Determination of Less-Than-Fair-Value Investigation and Extension of Provisional Measures,* 82 FR 41609 (September 1, 2017).

measures expired, until and through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register.** Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register.**

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of subject merchandise from Canada, Commerce will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 2017 (*i.e.,* 90 days prior to the date of publication of the preliminary determination), but before June 30, 2017, (*i.e.,* the date of publication of the preliminary determination).

Estimated Weighted-Average Dumping Margins

The weighted-average antidumping duty margin percentages and cash deposit rates are as follows:

Exporter or producer	Weighted average dumping margin (percent)
Canfor Corporation	7.28
Resolute FP Canada Inc.	3.20
Tolko Industries Ltd. and Tolko Marketing & Services, Ltd.	7.22
West Fraser Mills Ltd.	5.57
All-Others	6.04

This notice constitutes the antidumping duty order with respect to softwood lumber from Canada pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: December 28, 2017.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

Scope of the Order

The merchandise covered by this order is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). The scope includes:

• Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.

• Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.

• Coniferous drilled and notched lumber and angle cut lumber.

• Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.

• Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Finished products are not covered by the scope of this investigation. For the purposes of this scope, finished products contain, or are comprised of, subject merchandise and have undergone sufficient processing such that they can no longer be considered intermediate products, and such products can be readily differentiated from merchandise subject to this investigation at the time of importation. Such differentiation may, for example, be shown through marks of special adaptation as a particular product. The following products are illustrative of the type of merchandise that is considered ''finished'' for the purpose of this scope: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors.

The following items are excluded from the scope of this investigation:

• Softwood lumber products certified by the Atlantic Lumber Board as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in Newfoundland and Labrador, Nova Scotia, or Prince Edward Island.

• U.S.-origin lumber shipped to Canada for processing and imported into the United States if the processing occurring in Canada is limited to one or more of the following: (1) Kiln drying; (2) planing to create smooth-to-size board; or (3) sanding.

• Box-spring frame kits if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails must be radius-cut at both ends. The kits must be individually packaged and must contain the exact number of wooden components needed to make a particular box-spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.

• Radius-cut box-spring-frame components, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantially cut so as to completely round one corner.

Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (HTSUS). This chapter of the HTSUS covers ''Wood and articles of wood.'' Softwood lumber products that are subject to this investigation are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44: 4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; and 4418.99.10.00.

Subject merchandise as described above might be identified on entry documentation as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts. Items so identified might be entered under the following ten-digit HTSUS subheadings in Chapter 44:

4415.20.40.00; 4415.20.80.00; 4418.99.90.05; 4418.99.90.20; 4418.99.90.40; 4418.99.90.95; 4421.99.70.40; and 4421.99.97.80.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2017–28484 Filed 1–2–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–059]

Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China: Notice of Correction to Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Shanah Lee at (202) 482–6386 or Alex Rosen at (202) 482–7814, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On December 11, 2017, the Department of Commerce (Department) published the final affirmative countervailing duty determination on certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing)

from the People's Republic of China (PRC).[1] The *Final Determination* inadvertently referred to a cross-owned affiliate of one of the mandatory respondents, Zhangjiagang Huacheng Import & Export Co., Ltd. (Huacheng I&E), as ''Zhangjiagang Huacheng Industry Pipe Making Corporation.'' The correct name for this cross-owned affiliate is ''Jiangsu Huacheng Industry Pipe Making Corporation.'' [2] We are correcting this error.

This correction to the *Final Determination* is issued and published in accordance with section 705(d) of the Tariff Act of 1930, as amended.

Dated: December 27, 2017.

Gary Taverman,

Deputy Assistance Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–28404 Filed 1–2–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part,* 82 FR 58175 (December 11, 2017) (*Final Determination*).

[2] *See* letter from Huacheng I&E, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from People's Republic of China: Ministerial Error Comments,'' dated December 12, 2017.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–058]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China: Amended Preliminary Affirmative Determination of Sales at Less-Than-Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the preliminary determination of the less-than-fair-value (LTFV) investigation of certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from the People's Republic of China (China) to correct certain significant ministerial errors.

DATES: Applicable January 3, 2018.

FOR FURTHER INFORMATION CONTACT: Keith Haynes or Paul Stolz, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5139 or, (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 2017, Commerce published the *Preliminary Determination.*[1] On November 24, 2017, Commerce disclosed to interested parties its calculations for the *Preliminary Determination.* On November 27, 2017, Commerce extended the period to submit ministerial error comments to December 1, 2017.[2] On December 1, 2017, Zhangjiagang Huacheng Import & Export Co., Ltd. (Huacheng) alleged certain ministerial errors in the *Preliminary Determination.*[3] Commerce did not receive ministerial error allegations from any other interested party.

Period of Investigation

The period of investigation is October 1, 2016, through March 31, 2017.

Scope of the Investigation

This investigation covers cold-drawn mechanical tubing from China. Since the publication of the *Preliminary Determination* and preliminary scope language contained therein, Commerce has evaluated relevant comments and issued its Final Scope Determination Memorandum.[4] For a complete description of the final scope of this investigation, *see* the Appendix to this notice.

Analysis of Significant Ministerial Error Allegation

Commerce will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination according to 19 CFR 351.224(e). A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' [5] A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in: (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the antidumping duty rate calculated in the original (erroneous) preliminary determination; or (2) a difference between an antidumping duty rate of zero (or *de minimis*) and an antidumping duty rate of greater than *de minimis* or vice versa.[6]

Pursuant to 19 CFR 351.224(e) and (g)(1), Commerce is amending the *Preliminary Determination* to reflect the correction of four ministerial errors made in the calculation of the estimated weighted-average dumping margin for Huacheng.[7] These errors are significant ministerial errors within the meaning of 19 CFR 351.224(g) because Huacheng's margin decreases from 61.59 percent to 24.30 percent as a result of correcting these ministerial errors, exceeding the specified threshold, *i.e.,* a change of at least five absolute percentage points in, but not less than 25 percent of, the antidumping duty rate calculated in the original (erroneous) preliminary determination.[8]

Huacheng is the only mandatory respondent for which Commerce calculated a weighted-average dumping margin. For this reason, we assigned Huacheng's calculated rate to the non-examined respondents that preliminarily received a separate rate. As part of this amended preliminary determination, Commerce will accordingly amend the estimated weighted-average dumping margin for each non-examined respondent that preliminarily received a separate rate to 24.30 percent.

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination,* 82 FR 55574 (November 22, 2017) (*Preliminary Determination*).

[2] *See* the Department's memorandum, ''Deadline for Ministerial Error Comments for the Preliminary Determination,'' dated November 27, 2017.

[3] *See* Huacheng's letter, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from People's Republic of China: Ministerial Error Comments,'' dated December 1, 2017 (Hongyi's Ministerial Error Allegation).

[4] *See* the Department's memorandum, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Final Determinations,'' dated December 4, 2017 (Scope Comments Decision Memo).

[5] *See* Section 735(e) of the Tariff Act of 1930, as amended (the ''Act).

[6] *See* 19 CFR 351.224(g).

[7] *See* the Department's memorandum, ''Less-Than-Fair-Value Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Allegation of Ministerial Errors in the Preliminary Determination,'' dated concurrently with this notice for the analysis performed (Ministerial Error Memorandum). The Department is also correcting an additional error made in the calculation of surrogate value ratios.

[8] *See* the Department's memorandum, ''Analysis for the Amended Preliminary Determination of the Less-Than-Fair-Value Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China,'' dated concurrently with this notice.

Amended Cash Deposits and Suspension of Liquidation

The collection of cash deposits and suspension of liquidation will be revised according to the rates calculated in this amended preliminary determination. Because these amended rates result in reduced cash deposits, they will be effective retroactively to November 22, 2017, the date of publication of the *Preliminary Determination,* and parties will be notified of this determination, in accordance with section 733(d) and (f) of the Tariff Act of 1930, as amended (the Act).

Amended Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average antidumping duty margins exist:

Producer	Exporter	Weighted-average margin (percent)	Cash deposit adjusted for subsidy offset (percent)
Jiangsu Hongyi Steel Pipe Co., Ltd., and Changzhou Hongren Precision Pipe Manufacturing Co., Ltd [9].	Jiangsu Hongyi Steel Pipe Co., Ltd	186.89	186.89
Jiangsu Huacheng Industry Pipe Making Corporation, and Zhangjiagang Salem Fine Tubing Co., Ltd [10].	Zhangjiagang Huacheng Import & Export Co., Ltd.	24.30	24.27
Anji Pengda Steel Pipe Co., Ltd	Anji Pengda Steel Pipe Co., Ltd	24.30	24.29
Changshu Fushilai Steel Pipe Co., Ltd	Changshu Fushilai Steel Pipe Co., Ltd.	24.30	24.29
Changshu Special Shaped Steel Tube Co., Ltd	Changshu Special Shaped Steel Tube Co., Ltd.	24.30	24.29
Jiangsu Liwan Precision Tube Manufacturing Co., Ltd	Suzhou Foster International Co., Ltd.	24.30	24.29
Zhangjiagang Precision Tube Manufacturing Co., Ltd (Zhangjiangang Tube).	Suzhou Foster International Co., Ltd.	24.30	24.29
Wuxi Dajin High-Precision Cold-Drawn Steel Tube Co., Ltd	Wuxi Huijin International Trade Co., Ltd.	24.30	24.29
Zhangjiagang Shengdingyuan Pipe-Making Co., Ltd	Zhangjiagang Shengdingyuan Pipe-Making Co., Ltd.	24.30	24.29
Zhejiang Minghe Steel Pipe Co., Ltd	Zhejiang Minghe Steel Pipe Co., Ltd.	24.30	24.29
Zhejiang Dingxin Steel Tube Manufacturing Co., Ltd	Zhejiang Dingxin Steel Tube Manufacturing Co., Ltd.	24.30	24.29
China-Wide Entity		186.89	186.89

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after publication of the notice of amended preliminary determination in the **Federal Register** in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the International Trade Commission of our determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: December 27, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The scope of this investigation covers cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, 304.8 mm or more in length, in actual outside diameters less than 331mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.,* electric resistance welded, continuous welded, etc.) or seamless (*e.g.,* pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device. Other cold-finishing operations that may be used to produce subject merchandise include cold-rolling and cold-sizing the tubing.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

(1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A–512, ASTM A–513 Type 3 (ASME SA513 Type 3), ASTM A–513 Type 4 (ASME SA513 Type 4), ASTM A–513 Type 5 (ASME SA513 Type 5), ASTM A–513 Type 6 (ASME SA513 Type 6), ASTM A–519 (cold-finished);

(2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;

(3) Aerospace Material Specification (AMS) AMS T–6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;

(4) United States Military Standards (MIL) MIL–T–5066 and MIL–T–6736;

(5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:

[9] In addition to the correction of the ministerial errors discussed above, we are correcting in this notice the company names listed in the *Preliminary Determination* to reflect the collapsed determinations for the two mandatory respondents. Specifically, in the *Preliminary Determination,* we inadvertently listed only the company name for the Huacheng and Hongyi respondent in the relevant producer and exporter fields. Herein, we are correcting the company name listed in the *Preliminary Determination* to include all names of the companies comprising the collapsed Hongyi and Huacheng entity, as appropriate.

[10] *Id.*

(a) German Institute for Standardization (DIN) specifications DIN 2391–2, DIN 2393–2, DIN 2394–2);

(b) European Standards (EN) EN 10305–1, EN 10305–2, EN 10305–4, EN 10305–6 and European national variations on those standards (*e.g.,* British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);

(c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and

(6) proprietary standards that are based on one of the above-listed standards.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other specifications not covered by this scope, is also covered by the scope of this investigation when it meets the physical description set forth above.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestructive testing, deburring or chamfering, remains within the scope of this investigation.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of the investigation even if it is also dual or multiple certified to an otherwise excluded specification listed below. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:

- ASTM A–53;
- ASTM A–106;
- ASTM A–179 (ASME SA 179);
- ASTM A–192 (ASME SA 192);
- ASTM A–209 (ASME SA 209);
- ASTM A–210 (ASME SA 210);
- ASTM A–213 (ASME SA 213);
- ASTM A–334 (ASME SA 334);
- ASTM A–423 (ASME SA 423);
- ASTM A–498;
- ASTM A–496 (ASME SA 496);
- ASTM A–199;
- ASTM A–500;
- ASTM A–556;
- ASTM A–565;
- API 5L; and
- API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual- or multiple-certified to any other specification that otherwise would fall within the scope of this investigation.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2017–28403 Filed 1–2–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–854]

Supercalendered Paper From Canada: Preliminary Results of Countervailing Duty Administrative Review and Rescission, in Part; 2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on supercalendered paper (SC paper) from Canada. The period of review (POR) is August 3, 2015, through December 31, 2015. We preliminarily determine that Port Hawkesbury Paper LP (Port Hawkesbury); Resolute FP Canada Inc. and Resolute FP US Inc. (collectively, Resolute); and Irving Paper Limited (Irving) received countervailable subsidies during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable January 3, 2018.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski, Emily Halle, or Aimee Phelan, Office I, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1395, (202) 482–0176, and (202) 482–0697, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2015, Commerce issued a countervailing duty order on *SC paper from Canada.*[1] Several interested parties requested that Commerce conduct an administrative review of the *CVD Order,* and, on February 13, 2017, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the *CVD Order* for four producers/exporters for the POR.[2]

Scope of the Order

The product covered by this order is SC paper. A full description of the scope of the order is contained in the Preliminary Decision Memorandum, which is hereby adopted by this notice.[3]

Methodology

Commerce is conducting this CVD administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum. The list of topics discussed in the Preliminary Decision Memorandum is included as an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

We calculated a CVD rate for each producer/exporter of the subject merchandise for which an

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[1] *See Supercalendered Paper From Canada: Countervailing Duty Order,* 80 FR 76668 (December 10, 2015) (*CVD Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 10457 (February 13, 2017).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Administrative Review of the Countervailing Duty Order on Supercalendered Paper from Canada; 2015,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

administrative review was requested, except as discussed below.

Partial Rescission of Administrative Review

Commerce initiated an administrative review of the *CVD Order* on February 13, 2017 for Catalyst Paper Corporation, Catalyst Pulp and Paper Sales Inc., and Catalyst Paper (USA) Inc. (collectively, Catalyst). On April 24, 2017, we issued the final results of the expedited review of the *CVD Order,* in which we determined a countervailable subsidy rate for Catalyst that is *de minimis.* Therefore, pursuant to 19 CFR 351.214(k)(3)(iv), we excluded Catalyst from the *CVD Order.*[5] On May 17, 2017, Commerce issued a memorandum stating our intention to rescind the administrative review with respect to Catalyst.[6] Therefore, because Catalyst has been excluded from the *CVD Order,* we are rescinding the administrative review with respect to Catalyst.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Port Hawkesbury, Resolute, and Irving. For the POR, we preliminarily determine that the following net subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate (percent)
Port Hawkesbury Paper LP ..	15.65
Resolute FP Canada Inc., and Resolute FP US Inc ...	1.79
Irving Paper Limited	5.13

Disclosure and Public Comment

Commerce will disclose to parties to this proceeding the calculations performed in connection with these preliminary results within five days of publication of this notice.[7] Unless the Department changes the deadlines, interested parties may submit case briefs within seven days after the date on which the last verification report is issued in this proceeding, and rebuttal briefs no later than five days after the deadline for filing case briefs.[8] Rebuttal briefs must be limited to issues raised in the case briefs.[9] Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and, (3) a table of authorities.[10] Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, within 120 days after the date of publication of these preliminary results.

Assessment Rates and Cash Deposit Instructions

Upon completion of the administrative review, pursuant to section 751(a)(1) of the Act, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP 15 days after publication of the final results of this review.

Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above for each company listed on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

As discussed above, Commerce is rescinding the administrative review with respect to Catalyst. As we explained in the *Expedited Review,* Commerce's practice with respect to exclusions of companies from a CVD order is to exclude the subject merchandise both produced and exported by those companies.[11] As a result, we instructed CBP to discontinue the suspension of liquidation and the collection of cash deposits of estimated countervailing duties on all shipments of SC paper produced and exported by Catalyst, entered, or withdrawn, from warehouse for consumption on or after April 24, 2017.[12] In addition, we instructed CBP to liquidate, without regard to countervailing duties, all suspended entries of shipments of SC paper produced and exported by Catalyst, and to refund all cash deposits of estimated countervailing duties collected on all such shipments that were suspended on or after August 3, 2015.[13] Merchandise that Catalyst exports but does not produce, as well as merchandise Catalyst produces but is exported by another company, remain subject to countervailing duty order.[14]

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

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.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Subsidies Valuation
V. Analysis of Programs
VI. Disclosure and Public Comment
VII. Conclusion

[FR Doc. 2017–28198 Filed 1–2–18; 8:45 am]

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[5] *See Supercalendered Paper From Canada: Final Results of Countervailing Duty Expedited Review,* 82 FR 18896 (April 24, 2017) (*Expedited Review*) and accompanying Issues and Decision Memorandum.

[6] See Memorandum, ''Rescission of Catalyst Paper Corporation, Catalyst Pulp and Paper Sales Inc., and Catalyst Paper (USA) Inc.,'' May 17, 2017.

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c)(1)(ii) and (d)(1).

[9] *See* 19 CFR 351.309(d)(2).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See Expedited Review,* 82 FR at 18897 (citing *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order,* 81 FR 48387 (July 25, 2016)).

[12] *See* CBP Message Number 7122301, dated May 2, 2017.

[13] *Id.*

[14] *See Expedited Review,* 82 FR at 18897.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; National Centers for Environmental Information Send2NCEI Web Application

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 5, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *pracomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Donald W. Collins, (301) 713–4853 or *Donald.Collins@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

When creating a Request to Archive oceanographic data or information at the United States (U.S.) National Centers for Environmental Information (NCEI), well-organized and complete metadata describing those data are needed for long term understanding and use of those data. The Send2NCEI web application provides a web-based form for easily collecting required and optional descriptive metadata to describe oceanographic data in a way that supports Executive Order 12906 and structures those metadata to conform to the internationally used ISO 19115 Geospatial Metadata suite of standards. Descriptive metadata informs the suitability of data for use by future data users and should provide critical context about how data were collected, what techniques and measurements were made, and data quality characterizations. Information about the data provider or other individuals is only used by NCEI to contact the data provider with questions about submitted data, about the status of the data in the archival process, and to provide appropriate scientific recognition and attribution for submitted data. Send2NCEI will be used by earth, ocean, and atmospheric scientists and their data managers.

II. Method of Collection

Web-based application.

III. Data

OMB Control Number: 0648–0024.

Form Number(s): NOAA 24–13.

Type of Review: Regular submission (request for extension of a currently approved information collection).

Affected Public: Not for profit institutions; state, local or tribal governments; business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 300.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (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 summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 28, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–28420 Filed 1–2–18; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF EDUCATION

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; 2018–2019 Award Year Deadline Dates

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the 2018–2019 award year deadline dates for the submission of requests and documents from postsecondary institutions for the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs (collectively, the ''campus-based programs''), Catalog of Federal Domestic Assistance (CFDA) numbers 84.038, 84.033, and 84.007.

DATES: The deadline dates for each program are specified in the chart in the *Deadline Dates* section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Gross, Manager, Campus-Based Programs, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Union Center Plaza, Room 64F2, Washington, DC 20202–5453. Telephone: (202) 377–4363 or via email: *stephanie.gross@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their education.

The FWS program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve the students in community service activities.

The FSEOG program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, in its ''Electronic Announcements,'' the Department will continue to provide additional information for the individual deadline dates listed in the table under the *Deadline Dates* section of this notice. You will also find the information on the Information for

Financial Aid Professionals (IFAP) website at: *www.ifap.ed.gov.*

Deadline Dates: The following table provides the 2018–2019 award year deadline dates for the submission of applications, reports, waiver requests, and other documents for the campus-based programs. Institutions must meet the established deadline dates to ensure consideration for funding or waiver, as appropriate.

2018–2019 AWARD YEAR DEADLINE DATES

What does an institution submit?	How is it submitted?	What is the deadline for submission?
1. The Campus-Based Reallocation Form designated for the return of 2017–2018 funds and the request for supplemental FWS funds for the 2018–2019 award year.	The Reallocation Form must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*.	Monday, August 13, 2018.
2. The 2019–2020 FISAP (reporting 2017–2018 expenditure data and requesting funds for 2019–2020).	The FISAP must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*. The FISAP signature page must be signed by the institution's Chief Executive Officer with an original signature and mailed to: FISAP Administrator, U.S. Department of Education, P.O. Box 9003, Niagara Falls, NY 14302. *For overnight delivery mail to:* FISAP Administrator, 2429 Military Road, Suite 200, Niagara Falls, NY 14304.	Monday, October 1, 2018.
3. The Work Colleges Program Report of 2017–2018 award year expenditures.	The Work Colleges Program Report of Expenditures must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*. The signature page must be signed by the institution's Chief Executive Officer with an original signature and sent to the U.S. Department of Education using one of the following methods: *Hand deliver to:* U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, 830 First Street NE, Room 64F2, ATTN: Work Colleges Coordinator, Washington, DC 20002, or *Mail to:* The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	Monday, October 1, 2018.
4. The 2017–2018 Financial Assistance for Students with Intellectual Disabilities Expenditure Report.	The Financial Assistance for Students with Intellectual Disabilities Expenditure Report must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*. The signature page must be signed by the institution's Chief Executive Officer with an original signature and sent to the U.S. Department of Education using one of the following methods: *Hand deliver to:* U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, CTP Program, 830 First Street NE, Room 64F2 Washington, DC 20002, or *Mail to:* The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	Monday, October 1, 2018.
5. The 2019–2020 FISAP Edit Corrections	The FISAP Edit Corrections must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*.	Friday, December 14, 2018.
6. The 2019–2020 Perkins Cash on Hand Update as of October 31, 2018.	The Perkins Cash on Hand Update must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*.	Friday, December 14, 2018.
7. Request for a waiver of the 2019–2020 award year penalty for the underuse of 2017–2018 award year funds..	The request for the waiver of penalty for underuse of funds and the justification must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*.	Monday, February 4, 2019.
8. The Institutional Application and Agreement for Participation in the Work Colleges Program for the 2019–2020 award year.	The Institutional Application and Agreement for Participation in the Work Colleges Program must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*. The signature page must be signed by the institution's Chief Executive Officer with an original signature and sent to the U.S. Department of Education using one of the following methods:	Monday, March 4, 2019.

2018–2019 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	How is it submitted?	What is the deadline for submission?
	Hand deliver to: U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, 830 First Street NE, Room 64F2 ATTN: Work Colleges Coordinator, Washington, DC 20002, or *Mail to:* The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	
9. Request for a waiver of the FWS Community Service Expenditure Requirement for the 2019–2020 award year.	The request for the waiver of FWS Community Service Expenditure Requirement must be submitted electronically through the Common Origination and Disbursement website at *https://cod.ed.gov*.	Monday, April 22, 2019.

Notes:

- The deadline for electronic submissions is 11:59:00 p.m. (Washington, DC time) on the applicable deadline date. Transmissions must be completed and accepted by 11:59:00 p.m. to meet the deadline.
- Paper documents that are sent through the U.S. Postal Service must be postmarked or you must have a mail receipt stamped by the applicable deadline date.
- Paper documents that are delivered by a commercial courier must be received no later than 4:30:00 p.m. (Washington, DC time) on the applicable deadline date.
- The Secretary may consider on a case-by-case basis the effect that a major disaster, as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)), or another unusual circumstance has on an institution in meeting the deadlines.

Proof of Mailing or Hand Delivery of Paper Documents

If you submit paper documents when permitted by mail or by hand delivery (or from a commercial courier), we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A dated shipping label, invoice, or receipt from a commercial courier.

(4) Any other proof of mailing or delivery acceptable to the Secretary.

If you mail your paper documents through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

All institutions are encouraged to use certified or at least first-class mail.

The Department accepts hand deliveries from you or a commercial courier between 8:00:00 a.m. and 4:30:00 p.m., Washington, DC time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in specific ''Electronic Announcements,'' which are posted on the Department's IFAP website (*http://ifap.ed.gov*) at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Aid Handbook, which is also posted on the Department's IFAP website.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Program, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 34 CFR part 84.

(9) Governmentwide Debarment and Suspension (Nonprocurement), 2 CFR part 3485.

(10) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070b *et seq.* and 1087aa *et seq.;* 42 U.S.C. 2751 *et seq.*

Dated: December 28, 2017.

A. Wayne Johnson,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2017–28425 Filed 1–2–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity (NACIQI), Office of Postsecondary Education, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda, time, and location for the February 7–9, 2018 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI), and provides information to members of the public regarding the meeting, including requesting to make oral comments. The notice of this meeting is required under the Federal Advisory Committee Act (FACA) and the Higher Education Act (HEA) of 1965, as amended.

DATES: The NACIQI meeting will be held on February 7, 8, and 9, 2018, each day from 8:30 a.m. to 5:30 p.m.

ADDRESSES: Washington Plaza Hotel, 10 Thomas Circle NW, National Ballroom, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Jennifer Hong, Executive Director/Designated Federal Official, NACIQI, U.S. Department of Education, 400 Maryland Avenue SW, Room 6W250, Washington, DC 20202, telephone: (202) 453–7805, or email: *Jennifer.Hong@ed.gov.*

SUPPLEMENTARY INFORMATION:

NACIQI's Statutory Authority and Function: NACIQI is established under § 114 of the HEA. NACIQI advises the Secretary of Education with respect to:

- The establishment and enforcement of the standards of accrediting agencies or associations under subpart 2, part G, Title IV of the HEA, as amended.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV of the HEA and part C, subchapter I, chapter 34, Title 42, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory function relating to accreditation and institutional eligibility that the Secretary of Education may prescribe by regulation.

Meeting Agenda: Agenda items for the February 2018 meeting are below.

Agencies Applying for Renewal of Recognition

1. Accreditation Commission for Education in Nursing, Scope of Recognition: Accreditation of nursing education programs and schools, both postsecondary and higher degree, which offer a certificate, diploma, or a recognized professional degree including clinical doctorate, masters, baccalaureate, associate, diploma, and practical nursing programs in the United States and its territories, including those offered via distance education.

2. Accreditation Commission for Midwifery Education, Scope of Recognition: The accreditation and preaccreditation of basic certificate, basic graduate nurse-midwifery, direct entry midwifery, and pre-certification nurse-midwifery education programs, including those programs that offer distance education in the United States.

3. American Physical Therapy Association, Commission on Accreditation in Physical Therapy Education, Scope of Recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') in the United States of physical therapist education programs leading to the first professional degree at the master's or doctoral level and physical therapist assistant education programs at the associate degree level and for its accreditation of such programs offered via distance education.

4. Middle States Commission on Higher Education, Scope of Recognition: The accreditation and preaccreditation (''Candidacy Status'') of institutions of higher education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the U.S. Virgin Islands, including distance and correspondence education programs offered at those institutions.

5. Higher Learning Commission, Scope of Recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming, including the tribal institutions and the accreditation of programs offered via distance education and correspondence education within these institutions. This recognition extends to the Institutional Actions Council jointly with the Board of Trustees of the Commission for decisions on cases for continued accreditation or reaffirmation, and continued candidacy, and to the Appeals Body jointly with the Board of Trustees of the Commission for decisions related to initial candidacy or accreditation or reaffirmation of accreditation.

6. New England Association of Schools and Colleges, Commission on Institutions of Higher Education, Scope of Recognition: The accreditation and pre-accreditation (''Candidacy Status'')of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award bachelor's, master's, and/or doctoral degrees and associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings, including the accreditation of programs offered via distance education within these institutions.

7. New York State Board of Regents, and the Commission of Education, Scope of Recognition: The accreditation of those degree-granting institutions of higher education in New York that designate the agency as their sole or primary nationally recognized accrediting agency for purposes of establishing eligibility to participate in HEA programs including accreditation of programs offered via distance education within these institutions.

8. Western Association of Schools and Colleges, Senior Colleges and Universities, Scope of Recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of senior colleges and universities in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands and the Republic of the Marshall Islands, including distance education programs offered at those institutions.

Application for Compliance Report

1. American Board of Funeral Service Education, Committee on Accreditation, Compliance report includes the following: Findings identified in the March 10, 2016 letter from the senior Department official following the December 2015 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm.* That letter identifies the following Criteria as areas of noncompliance: 34 CFR 602.15(a)(6), 602.20(b), and 602.24(f)(2). Scope of recognition: The accreditation of institutions and programs within the United States awarding diplomas, associate degrees and bachelor's degrees in funeral service or mortuary science, including the accreditation of distance learning courses and programs offered by these programs and institutions.

2. Midwifery Education Accreditation Council, Compliance report includes the following: Findings identified in the March 10, 2016 letter from the senior

Department official following the December 2015 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm.* That letter identifies the following Criteria as areas of noncompliance: 34 CFR 602.19(b), 602.20(a), and 602.20(b). Scope of recognition: The accreditation and pre-accreditation throughout the United States of direct-entry midwifery educational institutions and programs conferring degrees and certificates, including the accreditation of such programs offered via distance education.

3. Montessori Accreditation Council for Teacher Education, Compliance report includes the following: Findings identified in the March 10, 2016 letter from the senior Department official following the December 2015 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm.* That letter identifies the following Criteria as areas of noncompliance: 34 CFR 602.17(f), 602.19(b), and 602.20(b). Scope of recognition: The accreditation of Montessori teacher education institutions and programs throughout the United States, including those offered via distance education.

Applications for Renewal of Recognition—State Approval Agency for Nurse Education

North Dakota Board of Nursing.

Compliance Report—State Approval Agency for Nurse Education

New York State Board of Regents, State Education Department, Office of the Professions, Nursing Education Compliance report includes the following: Finding identified in the March 10, 2016 letter from the senior Department official following the December 2015 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm.* That letter identifies the following Criterion as an area of noncompliance: 34 CFR 603.24(d).

Compliance Report—State Agency for the Approval of Public Postsecondary Vocational Education

Oklahoma Board of Career and Technology Education, Compliance report includes the following: Findings identified in the March 10, 2016 letter from the senior Department official following the December 2015 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaff* reports.cfm. That letter identifies the following Criteria as areas of noncompliance: 34 CFR 603.24(a)(1)(ii), 603.24(a)(3)(ii)(A), 603.24(b)(1)(iii), 603.24(b)(1)(iv), 603.24(b)(1)(v), 603.24(b)(1)(vi), 603.24(b)(1)(vii), 603.24(b)(2)(i), 603.24(b)(2)(ii), 603.24(b)(2)(iii), 603.24(d)(1), 603.24(d)(2). Scope of Recognition: The approval of public postsecondary vocational education offered at institutions in the State of Oklahoma that are not under the jurisdiction of the Oklahoma State Regents of Higher Education, including the approval of public postsecondary vocational education offered via distance education.

Panel on Student-Level Data Network

NACIQI will continue its discussion of the availability and accessibility of quality data to inform its review of accrediting agencies and its policy recommendations. NACIQI will hear from a panel of experts regarding key issues to consider toward a federal postsecondary student-level data network.

Subcommittee on Regulatory Reform

The Subcommittee on Regulatory Reform will report out on its activities and on any draft recommendations to the full Committee.

Meeting Discussion Regarding Individual Agencies

In addition to following the HEA, the FACA, implementing regulations, and the NACIQI charter, as well as its customary procedural protocols, NACIQI inquiries will include the questions and topics listed in the pilot plan it adopted at its December 2015 meeting. A document entitled ''June 2016 Pilot Plan'' and available at: *http://sites.ed.gov/naciqi/files/naciqi-dir/2016-spring/pilot-project-march-2016.pdf,* provides further explanation and context framing NACIQI's work. As noted in this document, NACIQI's reviews of accrediting agencies will include consideration of data and information available on the accreditation data dashboards, *https://sites.ed.gov/naciqi/files/2017/09/Institutional-Performance-by-Accreditor-June-2017-Corrected.pdf.* Accrediting agencies that will be reviewed for renewal of recognition will not be on the consent agenda and are advised to come prepared to answer questions related to the following:

- Decision activities of and data gathered by the agency.
  - NACIQI will inquire about the range of accreditation activities of the agency since its prior review for recognition, including discussion about the various favorable, monitoring, and adverse actions taken. Information about the primary standards cited for the monitoring and adverse actions that have been taken will be sought.
  - NACIQI will also inquire about what data the agency routinely gathers about the activities of the institutions it accredits and about how that data is used in their evaluative processes.
- Standards and practices with regard to student achievement.
  - How does the agency address ''success with respect to student achievement'' in the institutions it accredits?
  - Why was this strategy chosen? How is this appropriate in the agency's context?
  - What are the student achievement challenges in the institutions accredited by the agency?
  - What has changed/is likely to change in the standards about student achievement for the institutions accredited by the agency?
  - In what ways have student achievement results been used for monitoring or adverse actions?
- Agency activities in improving program/institutional quality.
  - How does this agency define ''at risk?''
  - What tools does this agency use to evaluate ''at risk'' status?
  - What tools does this agency have to help ''at risk'' institutions improve?
  - What can the agency tell us about how well these tools for improvement have worked?

To the extent NACIQI's questions go to improvement of institutions and programs that are not at risk of falling into noncompliance with agency requirements, the responses will be used to inform NACIQI's general policy recommendations to the Department rather than its recommendations regarding recognition of any individual agency.

The discussions and issues described above are in addition to, rather than substituting for, exploration by Committee members of any topic relevant to recognition.

Submission of requests to make an oral comment regarding a specific accrediting agency or state approval agency under review, or an oral or written statement regarding other issues within the scope of NACIQI's authority: Opportunity to submit a written comment regarding a specific accrediting agency or state approval agency under review was provided by a previous **Federal Register** notice published on July 25, 2017 (82 FR 34511). The comment period for submission of such written comments closed on August 13, 2017. Additional written comments regarding a specific

agency or state approval agency under review will not be accepted at this time. However, members of the public may submit written statements regarding other issues within the scope of NACIQI's authority for consideration by the Committee in the manner described below. No individual in attendance or making oral presentations may distribute written materials at the meeting. Oral comments may not exceed three minutes.

Oral comments about an agency's recognition after review of a compliance report must relate to issues identified in the compliance report and the criteria for recognition cited in the senior Department official's letter that requested the report, or in the Secretary's appeal decision, if any. Oral comments about an agency seeking expansion of scope must be directed to the agency's ability to serve as a recognized accrediting agency with respect to the kinds of institutions or programs requested to be added. Oral comments about the renewal of an agency's recognition based on a review of the agency's petition must relate to its compliance with the Criteria for the Recognition of Accrediting Agencies, or the Criteria and Procedures for Recognition of State Agencies for Approval of Nurse Education, as appropriate, which are available at: http*://www.ed.gov/admins/finaid/accred/index.html.* Written statements and oral comments, besides those regarding a specific accrediting agency under review, must be limited to the scope of NACIQI's authority as outlined under section 114 of the HEA.

There are two methods the public may use to request to make a third-party oral comment of three minutes at the February 7–9, 2018 meeting. To submit a written statement to NACIQI in accordance with the parameters stated above, please follow Method One.

Method One: Submit a request by email to the *ThirdPartyComments@ed.gov* mailbox. Please do not send material directly to NACIQI members. Requests must be received by January 26, 2018, and include the subject line ''Oral Comment Request: (agency name),'' ''Oral Comment Request: (subject)'' or ''Written Statement: (subject).'' The email must include the name(s), title, organization/affiliation, mailing address, email address, telephone number, of the person(s) submitting a written statement or requesting to speak, and a brief summary (not to exceed one page) of the principal points to be made during the oral presentation, if applicable. All individuals submitting a request in accordance with the deadlines and instructions contained in this notice will be afforded an opportunity to speak.

Method Two: Register at the meeting location on February 7, 2018, from 7:30 a.m.–8:30 a.m., to make an oral comment during NACIQI's deliberations. The requestor must provide the subject on which he or she wishes to comment, in addition to his or her name, title, organization/affiliation, mailing address, email address, and telephone number. A total of up to fifteen minutes for each agenda item will be allotted for oral commenters who register on February 7, 2018 by 8:30 a.m. Individuals will be selected on a first-come, first-served basis. If selected, each commenter may not exceed three minutes.

Access to Records of the Meeting: The Department will post the official report of the meeting on the NACIQI website within 90 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at 400 Maryland Avenue SW, Washington, DC, by emailing *aslrecordsmanager@ed.gov* or by calling (202) 453–7110 to schedule an appointment.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys* . At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 1011c.

Kathleen A. Smith,

Senior Advisor to the Assistant Secretary, Delegated Authority of Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2017–28406 Filed 1–2–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Authorities; Innovative Assessment Demonstration Authority

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new authorities for fiscal year (FY) 2018 under the Innovative Assessment Demonstration Authority.

DATES:

Applications Available: January 3, 2018.

Deadline for Notice of Intent to Apply: February 2, 2018.

Deadline for Transmittal of Applications: April 2, 2018.

FOR FURTHER INFORMATION CONTACT: Donald Peasley, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E124, Washington, DC 20202–6132. Telephone: (202) 453–7982 or by email: *Donald.Peasley@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Opportunity Description

Purpose of Program: The Secretary provides State educational agencies (SEAs), including consortia of SEAs, with the authority to establish and operate an innovative assessment system in their public schools under the Innovative Assessment Demonstration Authority in section 1204 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA or the Act). During the initial demonstration period—*i.e.,* the first three years that the Secretary provides innovative assessment demonstration authority—no more than seven SEAs may participate, including those participating in consortia, which may include no more than four SEAs.

Requirements: The following requirements are from 34 CFR 200.105.

An eligible application must include the following:

(a) *Consultation.* Evidence that the SEA or consortium has developed an innovative assessment system in collaboration with—

(1) Experts in the planning, development, implementation, and evaluation of innovative assessment systems, which may include external partners; and

(2) Affected stakeholders in the State, or in each State in the consortium, including—

(i) Those representing the interests of children with disabilities, English learners, and other subgroups of students described in section 1111(c)(2) of the Act;

(ii) Teachers, principals, and other school leaders;

(iii) Local educational agencies (LEAs);

(iv) Representatives of Indian tribes located in the State;

(v) Students and parents, including parents of children described in paragraph (a)(2)(i) of this section; and

(vi) Civil rights organizations.

(b) *Innovative assessment system.* A demonstration that the innovative assessment system does or will—

(1) Meet the requirements of section 1111(b)(2)(B) of the Act, except that an innovative assessment—

(i) Need not be the same assessment administered to all public elementary and secondary school students in the State during the demonstration authority period described in 34 CFR 200.104(b)(2) or extension period described in 34 CFR 200.108 and prior to statewide use consistent with 34 CFR 200.107, if the innovative assessment system will be administered initially to all students in participating schools within a participating LEA, provided that the statewide academic assessments under 34 CFR 200.2(a)(1) and section 1111(b)(2) of the Act are administered to all students in any non-participating LEA or any non-participating school within a participating LEA; and

(ii) Need not be administered annually in each of grades 3–8 and at least once in grades 9–12 in the case of reading/language arts and mathematics assessments, and at least once in grades 3–5, 6–9, and 10–12 in the case of science assessments, so long as the statewide academic assessments under 34 CFR 200.2(a)(1) and section 1111(b)(2) of the Act are administered in any required grade and subject under 34 CFR 200.5(a)(1) in which the SEA does not choose to implement an innovative assessment;

(2)(i) Align with the challenging State academic content standards under section 1111(b)(1) of the Act, including the depth and breadth of such standards, for the grade in which a student is enrolled; and

(ii) May measure a student's academic proficiency and growth using items above or below the student's grade level so long as, for purposes of meeting the requirements for reporting and school accountability under sections 1111(c) and 1111(h) of the Act and paragraphs (b)(3) and (b)(7)–(9) of this section, the State measures each student's academic proficiency based on the challenging State academic standards for the grade in which the student is enrolled;

(3) Express student results or competencies consistent with the challenging State academic achievement standards under section 1111(b)(1) of the Act and identify which students are not making sufficient progress toward, and attaining, grade-level proficiency on such standards;

(4)(i) Generate results, including annual summative determinations as defined in paragraph (b)(7) of this section, that are valid, reliable, and comparable for all students and for each subgroup of students described in 34 CFR 200.2(b)(11)(i)(A)–(I) and sections 1111(b)(2)(B)(xi) and 1111(h)(1)(C)(ii) of the Act, to the results generated by the State academic assessments described in 34 CFR 200.2(a)(1) and section 1111(b)(2) of the Act for such students. Consistent with the SEA's or consortium's evaluation plan under 34 CFR 200.106(e), the SEA must plan to annually determine comparability during each year of its demonstration authority period in one of the following ways:

(A) Administering full assessments from both the innovative and statewide assessment systems to all students enrolled in participating schools, such that at least once in any grade span (*i.e.,* 3–5, 6–8, or 9–12) and subject for which there is an innovative assessment, a statewide assessment in the same subject would also be administered to all such students. As part of this determination, the innovative assessment and statewide assessment need not be administered to an individual student in the same school year.

(B) Administering full assessments from both the innovative and statewide assessment systems to a demographically representative sample of all students and subgroups of students described in section 1111(c)(2) of the Act, from among those students enrolled in participating schools, such that at least once in any grade span (*i.e.,* 3–5, 6–8, or 9–12) and subject for which there is an innovative assessment, a statewide assessment in the same subject would also be administered in the same school year to all students included in the sample.

(C) Including, as a significant portion of the innovative assessment system in each required grade and subject in which both an innovative and statewide assessment are administered, items or performance tasks from the statewide assessment system that, at a minimum, have been previously pilot tested or field tested for use in the statewide assessment system.

(D) Including, as a significant portion of the statewide assessment system in each required grade and subject in which both an innovative and statewide assessment are administered, items or performance tasks from the innovative assessment system that, at a minimum, have been previously pilot tested or field tested for use in the innovative assessment system.

(E) An alternative method for demonstrating comparability that an SEA can demonstrate will provide for an equally rigorous and statistically valid comparison between student performance on the innovative assessment and the statewide assessment, including for each subgroup of students described in 34 CFR 200.2(b)(11)(i)(A)–(I) and sections 1111(b)(2)(B)(xi) and 1111(h)(1)(C)(ii) of the Act; and

(ii) Generate results, including annual summative determinations as defined in paragraph (b)(7) of this section, that are valid, reliable, and comparable, for all students and for each subgroup of students described in 34 CFR 200.2(b)(11)(i)(A)–(I) and sections 1111(b)(2)(B)(xi) and 1111(h)(1)(C)(ii) of the Act, among participating schools and LEAs in the innovative assessment demonstration authority. Consistent with the SEA's or consortium's evaluation plan under 34 CFR 200.106(e), the SEA must plan to annually determine comparability during each year of its demonstration authority period;

(5)(i) Provide for the participation of all students, including children with disabilities and English learners;

(ii) Be accessible to all students by incorporating the principles of universal design for learning, to the extent practicable, consistent with 34 CFR 200.2(b)(2)(ii); and

(iii) Provide appropriate accommodations consistent with 34 CFR 200.6(b) and (f)(1)(i) and section 1111(b)(2)(B)(vii) of the Act;

(6) For purposes of the State accountability system consistent with section 1111(c)(4)(E) of the Act, annually measure in each participating

school progress on the Academic Achievement indicator under section 1111(c)(4)(B) of the Act of at least 95 percent of all students, and 95 percent of students in each subgroup of students described in section 1111(c)(2) of the Act, who are required to take such assessments consistent with paragraph (b)(1)(ii) of this section;

(7) Generate an annual summative determination of achievement, using the annual data from the innovative assessment, for each student in a participating school in the demonstration authority that describes—

(i) The student's mastery of the challenging State academic standards under section 1111(b)(1) of the Act for the grade in which the student is enrolled; or

(ii) In the case of a student with the most significant cognitive disabilities assessed with an alternate assessment aligned with alternate academic achievement standards under section 1111(b)(1)(E) of the Act, the student's mastery of those standards;

(8) Provide disaggregated results by each subgroup of students described in 34 CFR 200.2(b)(11)(i)(A)–(I) and sections 1111(b)(2)(B)(xi) and 1111(h)(1)(C)(ii) of the Act, including timely data for teachers, principals and other school leaders, students, and parents consistent with 34 CFR 200.8 and section 1111(b)(2)(B)(x) and (xii) and section 1111(h) of the Act, and provide results to parents in a manner consistent with paragraph (b)(4)(i) of this section and part 200.2(e); and

(9) Provide an unbiased, rational, and consistent determination of progress toward the State's long-term goals for academic achievement under section 1111(c)(4)(A) of the Act for all students and each subgroup of students described in section 1111(c)(2) of the Act and a comparable measure of student performance on the Academic Achievement indicator under section 1111(c)(4)(B) of the Act for participating schools relative to non-participating schools so that the SEA may validly and reliably aggregate data from the system for purposes of meeting requirements for—

(i) Accountability under sections 1003 and 1111(c) and (d) of the Act, including how the SEA will identify participating and non-participating schools in a consistent manner for comprehensive and targeted support and improvement under section 1111(c)(4)(D) of the Act; and

(ii) Reporting on State and LEA report cards under section 1111(h) of the Act.

(c) *Selection Criteria.* Information that addresses each of the selection criteria under 34 CFR 200.106.

(d) *Assurances.* Assurances that the SEA, or each SEA in a consortium, will—

(1) Continue use of the statewide academic assessments in reading/language arts, mathematics, and science required under 34 CFR 200.2(a)(1) and section 1111(b)(2) of the Act—

(i) In all non-participating schools; and

(ii) In all participating schools for which such assessments will be used in addition to innovative assessments for accountability purposes under section 1111(c) of the Act consistent with paragraph (b)(1)(ii) of this section or for evaluation purposes consistent with 34 CFR 200.106(e) during the demonstration authority period;

(2) Ensure that all students and each subgroup of students described in section 1111(c)(2) of the Act in participating schools are held to the same challenging State academic standards under section 1111(b)(1) of the Act as all other students, except that students with the most significant cognitive disabilities may be assessed with alternate assessments aligned with alternate academic achievement standards consistent with 34 CFR 200.6 and section 1111(b)(1)(E) and (b)(2)(D) of the Act, and receive the instructional support needed to meet such standards;

(3) Report the following annually to the Secretary, at such time and in such manner as the Secretary may reasonably require:

(i) An update on implementation of the innovative assessment demonstration authority, including—

(A) The SEA's progress against its timeline under 34 CFR 200.106(c) and any outcomes or results from its evaluation and continuous improvement process under 34 CFR 200.106(e); and

(B) If the innovative assessment system is not yet implemented statewide consistent with 34 CFR 200.104(a)(2), a description of the SEA's progress in scaling up the system to additional LEAs or schools consistent with its strategies under 34 CFR 200.106(a)(3)(i), including updated assurances from participating LEAs consistent with paragraph (e)(2) of this section.

(ii) The performance of students in participating schools at the State, LEA, and school level, for all students and disaggregated for each subgroup of students described in section 1111(c)(2) of the Act, on the innovative assessment, including academic achievement and participation data required to be reported consistent with section 1111(h) of the Act, except that such data may not reveal any personally identifiable information.

(iii) If the innovative assessment system is not yet implemented statewide, school demographic information, including enrollment and student achievement information, for the subgroups of students described in section 1111(c)(2) of the Act, among participating schools and LEAs and for any schools or LEAs that will participate for the first time in the following year, and a description of how the participation of any additional schools or LEAs in that year contributed to progress toward achieving high-quality and consistent implementation across demographically diverse LEAs in the State consistent with the SEA's benchmarks described in 34 CFR 200.106(a)(3)(iii).

(iv) Feedback from teachers, principals and other school leaders, and other stakeholders consulted under paragraph (a)(2) of this section, including parents and students, from participating schools and LEAs about their satisfaction with the innovative assessment system;

(4) Ensure that each participating LEA informs parents of all students in participating schools about the innovative assessment, including the grades and subjects in which the innovative assessment will be administered, and, consistent with section 1112(e)(2)(B) of the Act, at the beginning of each school year during which an innovative assessment will be implemented. Such information must be—

(i) In an understandable and uniform format;

(ii) To the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and

(iii) Upon request by a parent who is an individual with a disability as defined by the Americans with Disabilities Act, provided in an alternative format accessible to that parent; and

(5) Coordinate with and provide information to, as applicable, the Institute of Education Sciences for purposes of the progress report described in section 1204(c) of the Act and ongoing dissemination of information under section 1204(m) of the Act.

(e) *Initial implementation in a subset of LEAs or schools.* If the innovative assessment system will initially be

administered in a subset of LEAs or schools in a State—

(1) A description of each LEA, and each of its participating schools, that will initially participate, including demographic information and its most recent LEA report card under section 1111(h)(2) of the Act; and

(2) An assurance from each participating LEA, for each year that the LEA is participating, that the LEA will comply with all requirements of this section.

(f) *Application from a consortium of SEAs.* If an application for the innovative assessment demonstration authority is submitted by a consortium of SEAs—

(1) A description of the governance structure of the consortium, including—

(i) The roles and responsibilities of each member SEA, which may include a description of affiliate members, if applicable, and must include a description of financial responsibilities of member SEAs;

(ii) How the member SEAs will manage and, at their discretion, share intellectual property developed by the consortium as a group; and

(iii) How the member SEAs will consider requests from SEAs to join or leave the consortium and ensure that changes in membership do not affect the consortium's ability to implement the innovative assessment demonstration authority consistent with the requirements and selection criteria in this section and 34 CFR 200.106.

(2) While the terms of the association with affiliate members are defined by each consortium, consistent with 34 CFR 200.104(b)(1) and paragraph (f)(1)(i) of this section, for an affiliate member to become a full member of the consortium and to use the consortium's innovative assessment system under the demonstration authority, the consortium must submit a revised application to the Secretary for approval, consistent with the requirements of this section and 34 CFR 200.106 and subject to the limitation under 34 CFR 200.104(d).

Definitions: The following definitions are from 34 CFR 200.104(b).

(1) *Affiliate member of a consortium* means an SEA that is formally associated with a consortium of SEAs that is implementing the innovative assessment demonstration authority, but is not yet a full member of the consortium because it is not proposing to use the consortium's innovative assessment system under the demonstration authority, instead of, or in addition to, its statewide assessment under section 1111(b)(2) of the Act for purposes of accountability and reporting under sections 1111(c) and 1111(h) of the Act.

(2) *Demonstration authority period* refers to the period of time over which an SEA, or consortium of SEAs, is authorized to implement the innovative assessment demonstration authority, which may not exceed five years and does not include the extension or waiver period under 34 CFR 200.108. An SEA must use its innovative assessment system in all participating schools instead of, or in addition to, the statewide assessment under section 1111(b)(2) of the Act for purposes of accountability and reporting under section 1111(c) and 1111(h) of the Act in each year of the demonstration authority period.

(3) *Innovative assessment system* means a system of assessments, which may include any combination of general assessments or alternate assessments aligned with alternate academic achievement standards, in reading/language arts, mathematics, or science administered in at least one required grade under 34 CFR 200.5(a)(1) and section 1111(b)(2)(B)(v) of the Act that—

(i) Produces—

(A) An annual summative determination of each student's mastery of grade-level content standards aligned to the challenging State academic standards under section 1111(b)(1) of the Act; or

(B) In the case of a student with the most significant cognitive disabilities assessed with an alternate assessment aligned with alternate academic achievement standards under section 1111(b)(1)(E) of the Act and aligned with the State's academic content standards for the grade in which the student is enrolled, an annual summative determination relative to such alternate academic achievement standards for each such student; and

(ii) May, in any required grade or subject, include one or more of the following types of assessments:

(A) Cumulative year-end assessments.

(B) Competency-based assessments.

(C) Instructionally embedded assessments.

(D) Interim assessments.

(E) Performance-based assessments.

(F) Another innovative assessment design that meets the requirements under 34 CFR 200.105(b).

(4) *Participating LEA* means a LEA in the State with at least one school participating in the innovative assessment demonstration authority.

(5) *Participating school* means a public school in the State in which the innovative assessment system is administered under the innovative assessment demonstration authority instead of, or in addition to, the statewide assessment under section 1111(b)(2) of the Act and where the results of the school's students on the innovative assessment system are used by its State and LEA for purposes of accountability and reporting under section 1111(c) and 1111(h) of the Act.

Program Authority: Section 1204 of the ESEA (Pub. L. 114–95); 34 CFR 200.104 through 200.108.

II. Award Information

Type of Award: Innovation authority.

Estimated Available Funds: No funds are authorized to be appropriated for the Innovative Assessment Demonstration Authority. However, an SEA may use funds it receives under Grants for State Assessments and Related Activities to implement its innovative assessment system.

Estimated Number of Awards: For the initial demonstration period, no more than seven States, including States that are part of a consortium (which may include no more than four States).

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs (as defined in section 8101(49) of the ESEA) and consortia of SEAs that include no more than four SEAs.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* An application from a consortium of SEAs must designate one SEA as the lead State for project management.

IV. Application and Submission Information

1. *Address to Request Application Package:* Donald Peasley, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E124, Washington, DC 20202–6132. Telephone: (202) 453–7982 or by email: *Donald.Peasley@ed.gov.*

To obtain a copy via the internet, use the following address: *https://www2.ed.gov/admins/lead/account/saa.html#Related_Programs_and_Initiatives.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. a. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must

submit, are in the application package for this program, which can be found at *https://www2.ed.gov/admins/lead/account/saa.html#Related_Programs_and_Initiatives.*

Notice of Intent To Apply: We will be able to develop a more efficient process for reviewing applications if we have a better understanding of the number of applicants that intend to apply for selection under this program. Therefore, we strongly encourage each potential applicant to notify us of the applicant's intent to submit an application. This notification should be brief, and identify the SEA applicant and, if part of a consortium, the SEA that is the fiscal agent for the consortium. Submit this notification by email to *Donald.Peasley@ed.gov* with ''Intent to Apply'' in the email subject line or mail to Donald Peasley, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E124, Washington, DC 20202–6132. Applicants that do not provide this notification may still apply for the authority.

b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Innovative Assessment Demonstration Authority, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended). Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information, please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: January 3, 2018.

Deadline for Notice of Intent to Apply: February 2, 2018.

Deadline for Transmittal of Applications: April 2, 2018.

Applications under this program must be submitted electronically using the Department's application portal at *www.Max.gov.* For directions on how to access and use the application portal, please contact Donald Peasley at *Donald.Peasley@ed.gov.* For information (including dates and times) about how to submit your application electronically, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Other Submission Requirements:*

a. *Electronic Submission of Applications.*

Applications under this program must be submitted electronically using the Department's application portal at *www.Max.gov* by 5:00:00 p.m. EDT on April 2, 2018. For directions on how to access and use the application portal, please contact Donald Peasley at *Donald.Peasley@ed.gov.*

You may access the electronic application for this program at *https://www2.ed.gov/admins/lead/account/saa.html#Related_Programs_and_Initiatives.* You must submit all documents electronically.

- You must upload any narrative sections and all other attachments to your application as files in a read-only, flattened Portable Document Format (PDF), meaning any fillable PDF documents must be saved as flattened non-fillable files. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, flattened PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your application must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, flattened PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.
- We may request that you provide us original signatures on forms at a later date.

b. *Submission of Application in Case of Technical Issues.*

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Max.gov* system, you may email your application to the person listed under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced. We will contact you after we determine whether your application will be accepted.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 200.106. We will award up to 110 points to an application under the selection criteria; the total possible points for addressing each selection criterion are noted in parentheses.

(a) *Project narrative.* (Up to 40 points)

The quality of the SEA's or consortium's plan for implementing the innovative assessment demonstration authority. In determining the quality of the plan, the Secretary considers—

(1) The rationale for developing or selecting the particular innovative assessment system to be implemented under the demonstration authority, including—

(i) The distinct purpose of each assessment that is part of the innovative assessment system and how the system will advance the design and delivery of large-scale, statewide academic assessments in innovative ways; and

(ii) The extent to which the innovative assessment system as a whole will promote high-quality instruction, mastery of challenging State academic standards, and improved student outcomes, including for each subgroup of students described in section 1111(c)(2) of the Act; (5 points if factor (3) is applicable; 10 points if factor (3) is inapplicable)

(2) The plan the SEA or consortium, in consultation with any external partners, if applicable, has to—

(i) Develop and use standardized and calibrated tools, rubrics, methods, or other strategies for scoring innovative assessments throughout the demonstration authority period, consistent with relevant nationally recognized professional and technical

standards, to ensure inter-rater reliability and comparability of innovative assessment results consistent with 34 CFR 200.105(b)(4)(ii), which may include evidence of inter-rater reliability; and

(ii) Train evaluators to use such strategies, if applicable; (25 points if factor (3) is applicable; 30 points if factor (3) is inapplicable) and

(3) If the system will initially be administered in a subset of schools or LEAs in a State—

(i) The strategies the SEA, including each SEA in a consortium, will use to scale the innovative assessment to all schools statewide, with a rationale for selecting those strategies;

(ii) The strength of the SEA's or consortium's criteria that will be used to determine LEAs and schools that will initially participate and when to approve additional LEAs and schools, if applicable, to participate during the requested demonstration authority period; and

(iii) The SEA's plan, including each SEA in a consortium, for how it will ensure that, during the demonstration authority period, the inclusion of additional LEAs and schools continues to reflect high-quality and consistent implementation across demographically diverse LEAs and schools, or contributes to progress toward achieving such implementation across demographically diverse LEAs and schools, including diversity based on enrollment of subgroups of students described in section 1111(c)(2) of the Act and student achievement. The plan must also include annual benchmarks toward achieving high-quality and consistent implementation across participating schools that are, as a group, demographically similar to the State as a whole during the demonstration authority period, using the demographics of initially participating schools as a baseline. (10 points, if applicable)

(b) *Prior experience, capacity, and stakeholder support.* (Up to 15 points)

(1) The extent and depth of prior experience that the SEA, including each SEA in a consortium, and its LEAs have in developing and implementing the components of the innovative assessment system. An SEA may also describe the prior experience of any external partners that will be participating in or supporting its demonstration authority in implementing those components. In evaluating the extent and depth of prior experience, the Secretary considers—

(i) The success and track record of efforts to implement innovative assessments or innovative assessment items aligned to the challenging State academic standards under section 1111(b)(1) of the Act in LEAs planning to participate; and

(ii) The SEA's or LEA's development or use of—

(A) Effective supports and appropriate accommodations consistent with 34 CFR 200.6(b) and (f)(1)(i) and section 1111(b)(2)(B)(vii) of the Act for administering innovative assessments to all students, including English learners and children with disabilities, which must include professional development for school staff on providing such accommodations;

(B) Effective and high-quality supports for school staff to implement innovative assessments and innovative assessment items, including professional development; and

(C) Standardized and calibrated tools, rubrics, methods, or other strategies for scoring innovative assessments, with documented evidence of the validity, reliability, and comparability of annual summative determinations of achievement, consistent with 34 CFR 200.105(b)(4) and (7). (5 points)

(2) The extent and depth of SEA, including each SEA in a consortium, and LEA capacity to implement the innovative assessment system considering the availability of technological infrastructure; State and local laws; dedicated and sufficient staff, expertise, and resources; and other relevant factors. An SEA or consortium may also describe how it plans to enhance its capacity by collaborating with external partners that will be participating in or supporting its demonstration authority. In evaluating the extent and depth of capacity, the Secretary considers—

(i) The SEA's analysis of how capacity influenced the success of prior efforts to develop and implement innovative assessments or innovative assessment items; and

(ii) The strategies the SEA is using, or will use, to mitigate risks, including those identified in its analysis, and support successful implementation of the innovative assessment. (5 points)

(3) The extent and depth of State and local support for the application for demonstration authority in each SEA, including each SEA in a consortium, as demonstrated by signatures from the following:

(i) Superintendents (or equivalent) of LEAs, including participating LEAs in the first year of the demonstration authority period.

(ii) Presidents of local school boards (or equivalent, where applicable), including within participating LEAs in the first year of the demonstration authority.

(iii) Local teacher organizations (including labor organizations, where applicable), including within participating LEAs in the first year of the demonstration authority.

(iv) Other affected stakeholders, such as parent organizations, civil rights organizations, and business organizations. (5 points)

(c) *Timeline and budget.* (Up to 15 points)

The quality of the SEA's or consortium's timeline and budget for implementing the innovative assessment demonstration authority. In determining the quality of the timeline and budget, the Secretary considers—

(1) The extent to which the timeline reasonably demonstrates that each SEA will implement the system statewide by the end of the requested demonstration authority period, including a description of—

(i) The activities to occur in each year of the requested demonstration authority period;

(ii) The parties responsible for each activity; and

(iii) If applicable, how a consortium's member SEAs will implement activities at different paces and how the consortium will implement interdependent activities, so long as each non-affiliate member SEA begins using the innovative assessment in the same school year consistent with 34 CFR part 200.104(b)(2); (5 points) and

(2) The adequacy of the project budget for the duration of the requested demonstration authority period, including Federal, State, local, and non-public sources of funds to support and sustain, as applicable, the activities in the timeline under paragraph (c)(1) of this section, including—

(i) How the budget will be sufficient to meet the expected costs at each phase of the SEA's planned expansion of its innovative assessment system; and

(ii) The degree to which funding in the project budget is contingent upon future appropriations at the State or local level or additional commitments from non-public sources of funds. (10 points)

(d) *Supports for educators, students, and parents.* (Up to 25 points)

The quality of the SEA or consortium's plan to provide supports that can be delivered consistently at scale to educators, students, and parents to enable successful implementation of the innovative assessment system and improve instruction and student outcomes. In determining the quality of supports, the Secretary considers—

(1) The extent to which the SEA or consortium has developed, provided, and will continue to provide training to LEA and school staff, including teachers, principals, and other school leaders, that will familiarize them with the innovative assessment system and develop teacher capacity to implement instruction that is informed by the innovative assessment system and its results; (5 points if factor (4) is applicable; 9 points if factor (4) is inapplicable)

(2) The strategies the SEA or consortium has developed and will use to familiarize students and parents with the innovative assessment system; (5 points if factor (4) is applicable; 8 points if factor (4) is inapplicable)

(3) The strategies the SEA will use to ensure that all students and each subgroup of students under section 1111(c)(2) of the Act in participating schools receive the support, including appropriate accommodations consistent with 34 CFR 200.6(b) and (f)(1)(i) and section 1111(b)(2)(B)(vii) of the Act, needed to meet the challenging State academic standards under section 1111(b)(1) of the Act; (5 points if factor (4) is applicable; 8 points if factor (4) is inapplicable) and

(4) If the system includes assessment items that are locally developed or locally scored, the strategies and safeguards (*e.g.,* test blueprints, item and task specifications, rubrics, scoring tools, documentation of quality control procedures, inter-rater reliability checks, audit plans) the SEA or consortium has developed, or plans to develop, to validly and reliably score such items, including how the strategies engage and support teachers and other staff in designing, developing, implementing, and validly and reliably scoring high-quality assessments; how the safeguards are sufficient to ensure unbiased, objective scoring of assessment items; and how the SEA will use effective professional development to aid in these efforts. (10 points if applicable)

(e) *Evaluation and continuous improvement.* (Up to 15 points)

The quality of the SEA's or consortium's plan to annually evaluate its implementation of innovative assessment demonstration authority. In determining the quality of the evaluation, the Secretary considers—

(1) The strength of the proposed evaluation of the innovative assessment system included in the application, including whether the evaluation will be conducted by an independent, experienced third party, and the likelihood that the evaluation will sufficiently determine the system's validity, reliability, and comparability to the statewide assessment system consistent with the requirements of 34 CFR 200.105(b)(4) and (9); (10 points) and

(2) The SEA's or consortium's plan for continuous improvement of the innovative assessment system, including its process for—

(i) Using data, feedback, evaluation results, and other information from participating LEAs and schools to make changes to improve the quality of the innovative assessment; and

(ii) Evaluating and monitoring implementation of the innovative assessment system in participating LEAs and schools annually. (5 points)

2. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205(c) and 200.207, before approving a project under this authority, the Department may conduct a review of the risks posed by the applicant and impose specific conditions as needed.

VI. Administration Information

1. *Approval Notices:* If your application is approved, we notify your U.S. Representative and U.S. Senators and send you a letter or email approving your project.

If your application is not evaluated or not selected, we notify you.

2. *Programmatic Requirements:* Your application must address the programmatic requirements in section 1204 of the ESEA and 34 CFR 200.104 through 200.108.

3. *Reporting:* (a) If you apply under this program, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements should your application be approved.

(b) You must submit, at the end of each year of your project period, an annual update on program activity according to the requirements of 34 CFR 200.105(d)(3).

4. *Transition to Statewide Use:* Pursuant to 34 CFR 200.107:

(a)(1) After an SEA has scaled its innovative assessment system to operate statewide in all schools and LEAs in the State, the SEA must submit evidence for peer review under section 1111(a)(4) of the Act and 34 CFR 200.2(d) to determine whether the system may be used for purposes of both academic assessments and the State accountability system under sections 1111(b)(2), (c), and (d) and 1003 of the Act.

(2) An SEA may only use the innovative assessment system for the purposes described in paragraph (a)(1) of this section if the Secretary determines that the system is of high quality consistent with paragraph (b) of this section.

(b) Through the peer review process of State assessments and accountability systems under section 1111(a)(4) of the Act and 34 CFR 200.2(d), the Secretary determines that the innovative assessment system is of high quality if—

(1) An innovative assessment developed in any grade or subject under 34 CFR 200.5(a)(1) and section 1111(b)(2)(B)(v) of the Act—

(i) Meets all of the requirements under section 1111(b)(2) of the Act and 34 CFR 200.105(b) and (c);

(ii) Provides coherent and timely information about student achievement based on the challenging State academic standards under section 1111(b)(1) of the Act;

(iii) Includes objective measurements of academic achievement, knowledge, and skills; and

(iv) Is valid, reliable, and consistent with relevant, nationally recognized professional and technical standards;

(2) The SEA provides satisfactory evidence that it has examined the statistical relationship between student performance on the innovative assessment in each subject area and student performance on other measures of success, including the measures used for each relevant grade-span within the remaining indicators (*i.e.,* indicators besides Academic Achievement) in the statewide accountability system under section 1111(c)(4)(B)(ii)–(v) of the Act, and how the inclusion of the innovative assessment in its Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act affects the annual meaningful differentiation of schools under section 1111(c)(4)(C) of the Act;

(3) The SEA has solicited information, consistent with the requirements under 34 CFR 200.105(d)(3)(iv), and taken into account feedback from teachers, principals, other school leaders, parents, and other stakeholders under 34 CFR 200.105(a)(2) about their satisfaction with the innovative assessment system; and

(4) The SEA has demonstrated that the same innovative assessment system was used to measure—

(i) The achievement of all students and each subgroup of students described in section 1111(c)(2) of the Act, and that appropriate accommodations were provided consistent with 34 CFR 200.6(b) and (f)(1)(i) under section 1111(b)(2)(B)(vii) of the Act; and

(ii) For purposes of the State accountability system consistent with section 1111(c)(4)(E) of the Act, progress on the Academic Achievement indicator

under section 1111(c)(4)(B)(i) of the Act of at least 95 percent of all students, and 95 percent of students in each subgroup of students described in section 1111(c)(2) of the Act.

(c) With respect to the evidence submitted to the Secretary to make the determination described in paragraph (b)(2) of this section, the baseline year for any evaluation is the first year that a participating LEA in the State administered the innovative assessment system under the demonstration authority.

(d) In the case of a consortium of SEAs, evidence may be submitted for the consortium as a whole so long as the evidence demonstrates how each member SEA meets each requirement of paragraph (b) of this section applicable to an SEA.

5. *Continuation of Authority:* Pursuant to 34 CFR 200.108:

(1) The Secretary may extend an SEA's demonstration authority period for no more than two years if the SEA submits to the Secretary—

(i) Evidence that its innovative assessment system continues to meet the requirements under 34 CFR 200.105 and the SEA continues to implement the plan described in its application in response to the selection criteria in 34 CFR 200.106 in all participating schools and LEAs;

(ii) A high-quality plan, including input from stakeholders under 34 CFR 200.105(a)(2), for transitioning to statewide use of the innovative assessment system by the end of the extension period; and

(iii) A demonstration that the SEA and all LEAs that are not yet fully implementing the innovative assessment system have sufficient capacity to support use of the system statewide by the end of the extension period.

(2) In the case of a consortium of SEAs, the Secretary may extend the demonstration authority period for the consortium as a whole or for an individual member SEA.

(b) *Withdrawal of demonstration authority.* (1) The Secretary may withdraw the innovative assessment demonstration authority provided to an SEA, including an individual SEA member of a consortium, if at any time during the approved demonstration authority period or extension period, the Secretary requests, and the SEA does not present in a timely manner—

(i) A high-quality plan, including input from stakeholders under 34 CFR 200.105(a)(2), to transition to full statewide use of the innovative assessment system by the end of its approved demonstration authority period or extension period, as applicable; or

(ii) Evidence that—

(A) The innovative assessment system meets all requirements under 34 CFR 200.105, including a demonstration that the innovative assessment system has met the requirements under 34 CFR 200.105(b);

(B) The SEA continues to implement the plan described in its application in response to the selection criteria in 34 CFR 200.106;

(C) The innovative assessment system includes and is used to assess all students attending participating schools in the demonstration authority, consistent with the requirements under section 1111(b)(2) of the Act to provide for participation in State assessments, including among each subgroup of students described in section 1111(c)(2) of the Act, and for appropriate accommodations consistent with 34 CFR 200.6(b) and (f)(1)(i) and section 1111(b)(2)(B)(vii) of the Act;

(D) The innovative assessment system provides an unbiased, rational, and consistent determination of progress toward the State's long-term goals and measurements of interim progress for academic achievement under section 1111(c)(4)(A) of the Act for all students and subgroups of students described in section 1111(c)(2) of the Act and a comparable measure of student performance on the Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act for participating schools relative to non-participating schools; or

(E) The innovative assessment system demonstrates comparability to the statewide assessments under section 1111(b)(2) of the Act in content coverage, difficulty, and quality.

(2)(i) In the case of a consortium of SEAs, the Secretary may withdraw innovative assessment demonstration authority for the consortium as a whole at any time during its demonstration authority period or extension period if the Secretary requests, and no member of the consortium provides, the information under paragraph (b)(1)(i) or (ii) of this section.

(ii) If innovative assessment demonstration authority for one or more SEAs in a consortium is withdrawn, the consortium may continue to implement the authority if it can demonstrate, in an amended application to the Secretary that, as a group, the remaining SEAs continue to meet all requirements and selection criteria in 34 CFR 200.105 and 200.106.

(c) *Waiver authority.* (1) At the end of the extension period, an SEA that is not yet approved consistent with 34 CFR 200.107 to implement its innovative assessment system statewide may request a waiver from the Secretary consistent with section 8401 of the Act to delay the withdrawal of authority under paragraph (b) of this section for the purpose of providing the SEA with the time necessary to receive approval to transition to use of the innovative assessment system statewide under 34 CFR 200.107(b).

(2) The Secretary may grant an SEA a one-year waiver to continue the innovative assessment demonstration authority, if the SEA submits, in its request under paragraph (c)(1) of this section, evidence satisfactory to the Secretary that it—

(i) Has met all of the requirements under paragraph (b)(1) of this section and of 34 CFR 200.105 and 200.106; and

(ii) Has a high-quality plan, including input from stakeholders under 34 CFR 200.105(a)(2), for transition to statewide use of the innovative assessment system, including peer review consistent with 34 CFR 200.107, in a reasonable period of time.

(3) In the case of a consortium of SEAs, the Secretary may grant a one-year waiver consistent with paragraph (c)(1) of this section for the consortium as a whole or for individual member SEAs, as necessary.

(d) *Return to the statewide assessment system.* If the Secretary withdraws innovative assessment demonstration authority consistent with paragraph (b) of this section, or if an SEA voluntarily terminates use of its innovative assessment system prior to the end of its demonstration authority, extension, or waiver period under paragraph (c) of this section, as applicable, the SEA must—

(1) Return to using, in all LEAs and schools in the State, a statewide assessment that meets the requirements of section 1111(b)(2) of the Act; and

(2) Provide timely notice to all participating LEAs and schools of the withdrawal of authority and the SEA's plan for transition back to use of a statewide assessment.

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register**

and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 28, 2017.

Jason Botel,

Principal Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties of Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2017–28424 Filed 1–2–18; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Public Meeting (Summit) Agenda—EAC Summit: The 2018 Federal Election.

DATE & TIME: Wednesday, January 10, 2018, 9:00 a.m.–3:30 p.m.–EDT (Registration Opens at 9:00 a.m.).

PLACE: The National Press Club, Holeman Lounge, 529 14th Street NW, 13th Floor, Washington, DC 20045.

(On Site Contact: 202–897–9285; *bsoder@eac.gov*).

AGENDA: Commissioners will hold a public meeting (summit) to moderate panel discussions on the following topics: (1) Election Security; (2) Voting Accessibility; and (3) Election Data.

Ahead of the 2018 midterm elections, the U.S. Election Assistance Commission (EAC) will host an all-day summit to highlight a spectrum of issues that state and local election officials will face as they work to administer a secure, accessible and efficient 2018 Election. Commissioners and attendees will hear from keynote speakers and expert panelists who will address topics such as election security, voting accessibility, and how to use election data to improve the voter experience.

This event is free and open to the public. Due to limited space, registration is strongly recommended. The summit will be recorded and available at a later date. There is no livestream scheduled.

ATTENDANCE: Attendees should register via *https://www.eac.gov/events/2018/01/10/eac-summit-the-2018-federal-election-accessibility-critical-infrastructure-cybersecurity-emergencycontingency-planning-security/.*

STATUS: This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (301) 563–3961.

Signed:

Bryan Whitener,

Director of National Clearinghouse on Elections, U.S. Election Assistance Commission.

[FR Doc. 2017–28500 Filed 12–29–17; 4:15 pm]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–518–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 290 9th Rev—NITSA with Oldcastle Materials Cement Holdings to be effective 3/1/2018.
Filed Date: 12/22/17.
Accession Number: 20171222–5187.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–519–000.
Applicants: ALLETE Clean Energy, Inc.
Description: § 205(d) Rate Filing: Revisions to market-based rate tariff to be effective 12/23/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5204.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–520–000.
Applicants: Entergy New Orleans, LLC.
Description: Baseline eTariff Filing: Notice of Succession to be effective 12/22/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5205.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–521–000.
Applicants: ALLETE, Inc.
Description: § 205(d) Rate Filing: Revisions to market-based rate tariff to be effective 12/23/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5206.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–522–000.
Applicants: Armenia Mountain Wind, LLC.
Description: § 205(d) Rate Filing: Revisions to market-based rate tariff to be effective 12/23/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5207.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–523–000.
Applicants: Chanarambie Power Partners, LLC.
Description: § 205(d) Rate Filing: Revisions to market-based rate tariff to be effective 12/23/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5211.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–524–000.
Applicants: New York State Reliability Council, L.L.C.
Description: Informational Filing of the Revised Installed Capacity Requirement for the New York Control Area by the New York State Reliability Council, L.L.C.
Filed Date: 12/22/17.
Accession Number: 20171222–5213.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–525–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: ER 304 11th Rev—NITSA with Barretts Minerals to be effective 3/1/2018.
Filed Date: 12/22/17.
Accession Number: 20171222–5212.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–526–000.
Applicants: Lake Benton Power Partners LLC.
Description: § 205(d) Rate Filing: Revisions to market-based rate tariff to be effective 12/23/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5214.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–527–000.
Applicants: Storm Lake Power Partners I LLC.
Description: § 205(d) Rate Filing: Revisions to market-based rate tariff to be effective 12/23/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5215.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–528–000.
Applicants: Storm Lake Power Partners II, LLC.
Description: § 205(d) Rate Filing: Revisions to market-based rate tariff to be effective 12/23/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5216.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–529–000.
Applicants: Condon Wind Power, LLC.

Description: § 205(d) Rate Filing: Revisions to market-based rate tariff to be effective 12/23/2017.

Filed Date: 12/22/17.

Accession Number: 20171222–5217.

Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–530–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 35 5th Rev—NITSA with the Town of Philipsburg MT to be effective 3/1/2018.

Filed Date: 12/22/17.

Accession Number: 20171222–5234.

Comments Due: 5 p.m. ET 1/12/18.

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 22, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28319 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–46–000]

Notice of Institution of Section 206 Proceeding and Refund Effective Date; Allegheny Energy Supply Company, LLC

On December 27, 2017, the Commission issued an order in Docket No. EL18–46–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether Allegheny Energy Supply Company, LLC's Rate Schedule for the provision of Reactive Service by the Buchanan Facility may be unjust and unreasonable. *Allegheny Energy Supply Company, LLC,* 161 FERC 61,298 (2017).

The refund effective date in Docket No. EL18–46–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL18–46–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: December 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28345 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP18–271–000]

Peregrine Oil & Gas II, LLC v. Texas Eastern Transmission, LP; Notice of Amended and Restated Complaint

Take notice that on December 19, 2017, pursuant to sections 5 and 16 of the Natural Gas Act, 15 U.S.C. 717d and 717o, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Peregrine Oil & Gas II, LLC (Complainant), filed an amended and restated complaint to update its original complaint filed on June 1, 2017 against Texas Eastern Transmission, LP (Respondent or Texas Eastern), alleging that Respondent has violated (1) its service obligations under its tariff, section 4 of the NGA, and Commission regulations by failing to exercise due diligence to remedy two recent outages on its FERC-certificated Line 41–A System and to remove the cause of such outages in an adequate manner and with all reasonable dispatch; (2) section 4 of the NGA and Commission regulations by requiring that, as a condition to repairing its Line 41–A System and restoring service thereon, producers pay extra, un-tariffed charges to Texas Eastern, ostensibly to reimburse it for the claimed costs of, among other things, the maintenance work; and (3) section 7 of the NGA by abandoning its Line 41–A System facilities without Commission authorization, all as more fully explained in the amended and restated complaint.

Complainant certifies that a copy of the complaint has been served on the Respondent and the Presiding Administrative Law Judge.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 8, 2018.

Dated: December 22, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28326 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–117–000; CP17–118–000]

Driftwood LNG LLC and Driftwood Pipeline LLC; Notice of Schedule for Environmental Review of the Driftwood LNG Project

On March 31, 2017, Driftwood LNG LLC (Driftwood LNG) filed an application in Docket No. CP17–117–

000 requesting authorization pursuant to Section 3(a) of the Natural Gas Act (NGA) to construct and operate liquefied natural gas (LNG) export facilities. On the same day, Driftwood Pipeline, LLC (Driftwood Pipeline) filed an application in Docket No. CP17–118–000, requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the NGA to construct, operate, and maintain certain natural gas pipeline facilities. The combined projects, collectively referred to as the Driftwood LNG Project, would provide gas and processing to produce up to 26 million tonnes per annum of LNG for export.

On April 11, 2017, the Federal Energy Regulatory Commission (FERC or Commission) issued its Notice of Application for the project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final Environmental Impact Statement (EIS) for the Driftwood LNG Project. This instant notice identifies the FERC staff's planned schedule for completion of the final EIS for the project, which is based on an issuance of the draft EIS in June 2018.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS (October 12, 2018)
90-day Federal Authorization Decision Deadline (January 10, 2019)

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Project Description

Driftwood LNG's proposed facilities would include five LNG liquefaction plants, three LNG storage tanks, and three marine berths capable of accommodating LNG carriers of up to 216,000 cubic meters each. Driftwood LNG's proposed facilities would occupy approximately 720 acres of an 800-acre site on the west bank of the Calcasieu River between river mile markers 22 and 23 in Calcasieu Parish, Louisiana. The Driftwood Pipeline would consist of: About 74 miles of 48-inch-diameter pipeline, 10.6 miles of 42-inch-diameter pipeline, and 11.3 miles of 36-inch-diameter pipeline; one 3.4-mile-long, 30-inch-diameter lateral pipeline collocated with the main pipeline; three compressor stations providing a total of approximately 275,000 horsepower of compression; 15 meter stations; 6 pig launchers and receivers; and 17 mainline valves. These facilities would be located in Calcasieu, Jefferson Davis, Acadia, and Evangeline Parishes, Louisiana.

Background

On June 6, 2016, the Commission staff granted Driftwood LNG's and Driftwood Pipeline's request to use the FERC's Pre-filing environmental review process. On October 3, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Driftwood LNG Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI) in Docket No. PF16–6–000. The NOI was issued during the pre-filing review of the project, and was sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Native American tribes and regional organizations; commentors and other interested parties; and local libraries and newspapers. Major issues raised during scoping include impact on landowners, vegetation and protected species, visual and noise resources, roadway and marine traffic, and safety.

The U.S Coast Guard, U.S. Department of Energy, U.S Department of Transportation, and U.S. Environmental Protection Agency are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–117 or CP17–118), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 22, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28321 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–53–000]

Calpine Corporation and LS Power Associates, L.P. v. ISO New England Inc.; Notice of Complaint

Take notice that on December 21, 2017, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e), 825e, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Calpine Corporation and LS Power Associates, L.P. (Complainants) filed a formal complaint against ISO New England Inc. (ISO–NE or Respondent) alleging that ISO–NE's Transmission, Markets & Services Tariff (Tariff) is unjust and unreasonable because it requires ISO–NE to treat a new resource that has chosen to lock-in its price under the new entry pricing provisions of the Tariff as effectively having submitted offers into subsequent Forward Capacity Auctions priced at zero, even in circumstances where the development of such resource has been delayed so that it is not expected to be available for the relevant Capacity Commitment Period, all as more fully explained in the complaint.

Complainants certify that copies of the complaint were served on the contacts for ISO–NE, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 4, 2018.

Dated: December 22, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28323 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3342–020]

Briar Hydro Associates, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of The Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 3342–020.

c. *Date Filed:* October 27, 2017.

d. *Submitted By:* Briar Hydro Associates, LLC.

e. *Name of Project:* Penacook Lower Falls Hydroelectric Project.

f. *Location:* On the Contoocook River, in Merrimack County, New Hampshire. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. Potential *Applicant Contact:* Andrew J. Locke, Essex Hydro Associates, LLC, 55 Union Street, Boston, MA 02108; (617) 357–0032; or email—*alocke@essexhydro.com.*

i. *FERC Contact:* Jeanne Edwards at (202) 502–6181; or email at *jeanne.edwards@ferc.gov.*

j. Briar Hydro Associates, LLC filed its request to use the Traditional Licensing Process on October 27, 2017. Briar Hydro Associates, LLC provided public notice of its request on November 14, 2017. In a letter dated December 22, 2017, the Director of the Division of Hydropower Licensing approved Briar Hydro Associates, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New Hampshire State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Briar Hydro Associates, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

n. The licensee states its unequivocal intent to submit an application for a new license for Project No. 3342. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 31, 2020.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: December 22, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28324 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14835–001]

Notice of Surrender of Preliminary Permit; Merchant Hydro Developers, LLC

Take notice that Merchant Hydro Developers, LLC, permittee for the proposed Susan Russ Memorial Pumped Storage Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on June 6, 2017, and would have expired on May 31, 2020.[1] The project would have been located near the town of Manhattan in Tioga County, Pennsylvania.

The preliminary permit for Project No. 14835 will remain in effect until the close of business, January 26, 2018. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.[2] New applications for this site may not be submitted until after the permit surrender is effective.

Dated: December 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28346 Filed 1–2–18; 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: EC18–40–000.

Applicants: Public Service Company of Oklahoma, Southwestern Electric Power Company, States Edge Wind I LLC.

Description: Joint Application for Authorization of Transaction Under Section 203 of the Federal Power Act and Requests for Waivers of Filing Requirements, et al. of Public Service Company of Oklahoma, et al.

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[1] 159 FERC 62,245 (2017).

[2] 18 CFR 385.2007(a)(2) (2017).

Filed Date: 12/21/17.
Accession Number: 20171221–5369.
Comments Due: 5 p.m. ET 1/11/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1257–007; ER10–1258–007.
Applicants: Wabash Valley Power Association, Inc., Wabash Valley Energy Marketing, Inc.
Description: Updated Triennial Market Power Analysis in the MISO Balancing Area Authority of Wabash Valley Power Association, Inc., et al.
Filed Date: 12/21/17.
Accession Number: 20171221–5372.
Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: ER10–1513–004; ER16–2290–001.
Applicants: Wolverine Power Supply Cooperative, Inc., Spartan Renewable Energy, Inc.
Description: Market Power Update in the MISO Balancing Area Authority of Wolverine Power Supply Cooperative, Inc., et al.
Filed Date: 12/21/17.
Accession Number: 20171221–5371.
Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: ER12–1946–008; ER10–1333–008; ER13–2387–003; ER15–190–005; ER17–543–002.
Applicants: Duke Energy Beckjord, LLC, Duke Energy Commercial Enterprises, Inc., Duke Energy Renewable Services, LLC, Duke Energy SAM, LLC, Duke Energy Florida, LLC.
Description: Triennial Market Power Analysis for the Central Region of Duke Energy Corporation MBR Sellers.
Filed Date: 12/21/17.
Accession Number: 20171221–5367.
Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: ER17–1192–003.
Applicants: Otter Tail Power Company.
Description: Compliance filing: Compliance Filing of Executed RS 168 East River to be effective 5/15/2017.
Filed Date: 12/21/17.
Accession Number: 20171221–5317.
Comments Due: 5 p.m. ET 1/11/18.

Docket Numbers: ER17–2029–003.
Applicants: Entergy Arkansas, Inc.
Description: Tariff Amendment: EAI–ESI ER17–2029 to be effective 8/1/2017.
Filed Date: 12/21/17.
Accession Number: 20171221–5316.
Comments Due: 5 p.m. ET 1/11/18.

Docket Numbers: ER17–2030–003.
Applicants: Entergy Louisiana, LLC.
Description: Tariff Amendment: ELL–ESI ER17–2030 to be effective 8/1/2017.
Filed Date: 12/21/17.
Accession Number: 20171221–5318.
Comments Due: 5 p.m. ET 1/11/18.

Docket Numbers: ER17–2031–003.
Applicants: Entergy Mississippi, Inc.
Description: Tariff Amendment: EMI–ESI ER17–2031 to be effective 8/1/2017.
Filed Date: 12/21/17.
Accession Number: 20171221–5319.
Comments Due: 5 p.m. ET 1/11/18.

Docket Numbers: ER17–2033–003.
Applicants: Entergy New Orleans, Inc.
Description: Tariff Amendment: ENO–ESI ER17–2033 to be effective 8/1/2017.
Filed Date: 12/21/17.
Accession Number: 20171221–5320.
Comments Due: 5 p.m. ET 1/11/18.

Docket Numbers: ER17–2034–003.
Applicants: Entergy Texas, Inc.
Description: Tariff Amendment: ETI–ESI ER17–2034 to be effective 8/1/2017.
Filed Date: 12/21/17.
Accession Number: 20171221–5321.
Comments Due: 5 p.m. ET 1/11/18.

Docket Numbers: ER18–88–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Response to Deficiency Letter Issued November 22, 2017 in Docket No. ER18–88–000 to be effective 1/16/2018.
Filed Date: 12/22/17.
Accession Number: 20171222–5071.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–171–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 2236R9 Golden Spread Electric Cooperative, Inc. NITSA NOA Motion for Deferral to be effective 12/31/9998.
Filed Date: 12/22/17.
Accession Number: 20171222–5070.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–501–000.
Applicants: Trans Bay Cable LLC.
Description: § 205(d) Rate Filing: Annual TRBAA filing to be effective 1/1/2018.
Filed Date: 12/21/17.
Accession Number: 20171221–5252.
Comments Due: 5 p.m. ET 1/11/18.

Docket Numbers: ER18–502–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2017–12–21_Network Resource Designation Improvement Filing to be effective 3/1/2018.
Filed Date: 12/21/17.
Accession Number: 20171221–5263.
Comments Due: 5 p.m. ET 1/11/18.

Docket Numbers: ER18–503–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Amendment to the Lathrop Irrigation District Engineering Agreement (SA 298) to be effective 12/22/2017.
Filed Date: 12/21/17.
Accession Number: 20171221–5309.
Comments Due: 5 p.m. ET 1/11/18.

Docket Numbers: ER18–504–000.
Applicants: San Diego Gas & Electric Company.
Description: Baseline eTariff Filing: SDGE 138KV SUBSTATION FACILITIES OPERATION AND MAINTENANCE AGREEMENT to be effective 12/22/2017.
Filed Date: 12/21/17.
Accession Number: 20171221–5312.
Comments Due: 5 p.m. ET 1/11/18.

Docket Numbers: ER18–505–000.
Applicants: Emera Maine.
Description: Initial rate filing: Penobscot Energy Recovery Co. LGIA to be effective 3/1/2018.
Filed Date: 12/21/17.
Accession Number: 20171221–5314.
Comments Due: 5 p.m. ET 1/11/18.

Docket Numbers: ER18–506–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original Service Agreement No. 4870; Queue No. AB1–069 (ISA) to be effective 12/4/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5006.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–507–000.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance filing per 12/15/2017 order in Docket No. EL17–84–000 to be effective 12/15/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5062.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–508–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Notice of Cancellation DSA Wildomar Solar Project SA No. 939 to be effective 1/10/2018.
Filed Date: 12/22/17.
Accession Number: 20171222–5076.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–509–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 31 17th Rev—Phillips 66 NITSA to be effective 3/1/2018.
Filed Date: 12/22/17.
Accession Number: 20171222–5094.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–510–000.
Applicants: Bluegrass Generation Company, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation to be effective 12/23/2017.

Filed Date: 12/22/17.
Accession Number: 20171222–5136.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–511–000.
Applicants: DeSoto County Generating Company, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 12/23/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5137.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–512–000.
Applicants: Las Vegas Power Company, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 12/23/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5138.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–513–000.
Applicants: Renaissance Power, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation to be effective 12/23/2017.
Filed Date: 12/22/17.
Accession Number: 20171222–5140.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–514–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to Service Agreement Nos. 4425 and 4410, Queue Nos. Z2–076 and Z2–077 to be effective 2/9/2016.
Filed Date: 12/22/17.
Accession Number: 20171222–5152.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–515–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 32 8th Rev—NITSA re Colstrip Steam Electric Station to be effective 3/1/2018.
Filed Date: 12/22/17.
Accession Number: 20171222–5169.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–516–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 243 13th Rev—NITSA with CHS Inc. to be effective 3/1/2018.
Filed Date: 12/22/17.
Accession Number: 20171222–5174.
Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER18–517–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 245 8th Rev—NITSA with Ash Grove Cement to be effective 3/1/2018.
Filed Date: 12/22/17.
Accession Number: 20171222–5175.
Comments Due: 5 p.m. ET 1/12/18.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM18–8–000.
Applicants: Omaha Public Power District.
Description: Application of Omaha Public Power District to Terminate Mandatory Purchase Obligation Under the Public Utility Regulatory Policies Act of 1978.
Filed Date: 12/21/17.
Accession Number: 20171221–5384.
Comments Due: 5 p.m. ET 1/18/18.

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 22, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28318 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–407–003.
Applicants: National Fuel Gas Supply Corporation.
Description: Compliance filing Compliance Filing (GTC 41—NA15) to be effective 2/1/2018.
Filed Date: 12/21/17.
Accession Number: 20171221–5107.
Comments Due: 5 p.m. ET 1/2/18.

Docket Numbers: RP18–268–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Compliance filing Annual Flowthrough Crediting Mechanism Filing on 12/21/17. to be effective N/A.
Filed Date: 12/21/17.
Accession Number: 20171221–5066.
Comments Due: 5 p.m. ET 1/2/18.

Docket Numbers: RP18–269–000.
Applicants: Empire Pipeline, Inc.
Description: § 4(d) Rate Filing: GT&C 30.6 Force Majeure + Minor Changes (Empire) to be effective 2/1/2018.
Filed Date: 12/21/17.
Accession Number: 20171221–5071.
Comments Due: 5 p.m. ET 1/2/18.

Docket Numbers: RP18–270–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: Neg Rate 2017–12–21 Morgan Stanley to be effective 1/1/2018.
Filed Date: 12/21/17.
Accession Number: 20171221–5108.
Comments Due: 5 p.m. ET 1/2/18.

Docket Numbers: RP18–75–002.
Applicants: Algonquin Gas Transmission Company.
Description: Request for Clarification, or in the Alternative, Rehearing of Algonquin Gas Transmission, LLC under RP18–75.
Filed Date: 12/21/17.
Accession Number: 20171221–5068.
Comments Due: 5 p.m. ET 1/2/18.

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 22, 2017.

Nathaniel J. Davis Sr.,

Deputy Secretary.

[FR Doc. 2017–28320 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–547–000.

Applicants: Decatur Energy Center, LLC.

Description: § 205(d) Rate Filing: MBR Tariff Revisions and Triennial Update to be effective 12/28/2017.

Filed Date: 12/27/17.

Accession Number: 20171227–5063.

Comments Due: 5 p.m. ET 1/17/18.

Docket Numbers: ER18–548–000.

Applicants: CP Energy Marketing (US) Inc.

Description: § 205(d) Rate Filing: MBR Tariff Revisions and Triennial Update to be effective 12/28/2017.

Filed Date: 12/27/17.

Accession Number: 20171227–5064.

Comments Due: 5 p.m. ET 1/17/18.

Docket Numbers: ER18–549–000.

Applicants: CPI USA North Carolina LLC.

Description: § 205(d) Rate Filing: MBR Tariff Revisions and Triennial Update to be effective 12/28/2017.

Filed Date: 12/27/17.

Accession Number: 20171227–5065.

Comments Due: 5 p.m. ET 1/17/18.

Docket Numbers: ER18–550–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: CLGIA and DSA for the Casa Diablo 4 Project, SA Nos. 986–987 to be effective 12/28/2017.

Filed Date: 12/27/17.

Accession Number: 20171227–5090.

Comments Due: 5 p.m. ET 1/17/18.

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 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28344 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

December 27, 2017.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP18–272–000.

Applicants: Ryckman Creek Resources, LLC.

Description: § 4(d) Rate Filing: Adjustments to Non-Conforming Agreements to be effective 12/28/2017.

Filed Date: 12/22/17.

Accession Number: 20171222–5061.

Comments Due: 5 p.m. ET 1/3/18.

Docket Numbers: RP18–273–000.

Applicants: Guardian Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Reservation Rate Crediting & Force Majeure to be effective 2/1/2018.

Filed Date: 12/22/17.

Accession Number: 20171222–5068.

Comments Due: 5 p.m. ET 1/3/18.

Docket Numbers: RP18–274–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Amendment to NRA Shell Energy North America to be effective 1/1/2018.

Filed Date: 12/22/17.

Accession Number: 20171222–5069.

Comments Due: 5 p.m. ET 1/3/18.

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 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28347 Filed 1–2–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–27–000; CP18–28–000]

High Point Gas Gathering, L.L.C., High Point Gas Transmission, LLC; Notice of Joint Application for a Certificate of Public Convenience and Necessity and for a Limited Jurisdiction Certificate

Take notice that on December 12, 2017, High Point Gas Transmission, LLC (HP Transmission) and High Point Gas Gathering, L.L.C. (HP Gathering), both at 2103 CityWest Blvd., Bldg. #4, Houston, TX 77042, filed an abbreviated joint application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations.

In Docket No. CP18–27–000, HP Transmission seeks a certificate of public convenience and necessity authorizing it to:

(i) Lease capacity on the non-jurisdictional facilities of HP Gathering to enable HP Transmission to provide transportation service for its shippers from Main Pass Block 289 Platform and then on to the Main Pass Block 260 Platform where HP Gathering interconnects with Destin Pipeline Company, L.L.C. (Destin); and,

(ii) amend its tariff to:

(a) Allow HP Transmission to obtain interruptible off-system transportation service on other pipelines including interruptible transportation service on Destin;

(b) specify that the transportation service provided by HP Transmission through utilization of the leased capacity on HP Gathering will be firm or interruptible transportation and of the transportation service on Destin will be interruptible service only;

(c) include the initial incremental rates (including fuel, lost and unaccounted-for gas) to be paid by HP Transmission's shippers that utilize the HP Transmission service effected through the capacity leased from HP Gathering and, if desired, the interruptible service subscribed on Destin;

(d) change the price index in its imbalance cash-out mechanism to add the price indices used by Destin to reflect markets that it serves; and

(e) incorporate changes necessary to effectuate the transactions contemplated by this application, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

HP Transmission further requests waivers of certain Commission

regulatory requirements as set forth in the application.

In Docket No. CP18–28–000, HP Gathering seeks a limited jurisdiction certificate to enable HP Gathering to lease 150,000 Dth per day of capacity on the relevant portion of the HP Gathering to HP Transmission while, at the same time, ensuring that the Commission's jurisdiction will be asserted only over the Capacity Lease Agreement and not its non-jurisdictional gathering facilities and services and that all Commission jurisdictional filing and reporting requirements that might otherwise apply to HP Gathering will be waived.

Questions regarding this filing may be directed to Dennis J. Kelly, Senior Counsel of HP Transmission and HP Gathering at (720) 457–6076, 2103 CityWest Blvd., Bldg. #4, Houston, TX 77042.

This filing is available for review at the Commission's Washington, DC offices, or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

There are two ways to become involved in the Commission's review of this Project. First, any person wishing to obtain legal status by becoming a party to the proceeding for this project should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, 385.211 (2016), by the comment date below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission, and will receive copies of all documents filed by the applicant and by all other parties. A party must submit filings made with the Commission by mail, hand delivery, or internet, in accordance with Rule 2001 of the Commission's Rules of Practice and Procedure, id. 385.2001. A copy must be served on every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the ''e-filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying the requested authorizations will be issued.

Comment Date: 5:00 p.m. Eastern Time, January 12, 2018.

Dated: December 22, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28322 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14808–001]

Merchant Hydro Developers, LLC; Notice of Surrender of Preliminary Permit

Take notice that Merchant Hydro Developers, LLC, permittee for the proposed Panther Pumped Storage Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on October 11, 2017, and would have expired on September 30, 2020.[1] The project would have been located near the town of Simpson in Lackawanna and Wayne Counties, Pennsylvania.

The preliminary permit for Project No. 14808 will remain in effect until the close of business, January 26, 2018. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.[2] New applications for this site may not be submitted until after the permit surrender is effective.

Dated: December 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28348 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

[1] 161 FERC 62,026 (2017).

[2] 18 CFR 385.2007(a)(2) (2017).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13102–003]

Birch Power Company; Notice of Technical Meeting

a. *Date and Time of Meeting:* January 8, 2018 at 10:00 a.m. Eastern Standard Time (11:00 a.m. Central Standard Time).

b. *Place:* Telephone conference.

c. *FERC Contact:* Sarah Salazar at *sarah.salazar@ferc.gov,* or (202) 502–6863.

d. *Purpose of Meeting:* Commission Staff is hosting a technical meeting to discuss: (1) Our regulatory (licensing) process; (2) the recommended alternative in the draft environmental assessment issued on June 29, 2017 for the proposed Demopolis Lock and Dam Hydroelectric Project; and (3) comments on the US Fish and Wildlife Service's draft biological opinion for the project.

e. A summary of the meeting will be prepared and filed in the Commission's public file for the project.

g. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please call Sarah Salazar at (202) 502–6863 by January 3, 2018, to RSVP and to receive specific instructions on how to participate.

Dated: December 22, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28325 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2984–037.

Applicants: Merrill Lynch Commodities, Inc.

Description: Notice of Non-Material Change in Status of Merrill Lynch Commodities, Inc.

Filed Date: 12/27/17.
Accession Number: 20171227–5016.
Comments Due: 5 p.m. ET 1/17/18.

Docket Numbers: ER10–3254–003.
Applicants: Cooperative Energy Incorporated (An Electric Membership Corporation).
Description: Updated Market Power Analysis of Cooperative Energy Inc. (An Electric Membership Corporation).
Filed Date: 12/22/17.
Accession Number: 20171222–5299.
Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: ER18–540–000.
Applicants: Westwood Generation, LLC.
Description: Compliance filing: MBRA Tariff to be effective 2/28/2018.
Filed Date: 12/26/17.
Accession Number: 20171226–5080.
Comments Due: 5 p.m. ET 1/16/18.

Docket Numbers: ER18–541–000.
Applicants: Westwood Generation, LLC.
Description: Compliance filing: Reactive Tariff to be effective 2/28/2018.
Filed Date: 12/27/17.
Accession Number: 20171227–5000.
Comments Due: 5 p.m. ET 1/17/18.

Docket Numbers: ER18–542–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 642 5th Rev—NITSA with General Mills Operations LLC to be effective 3/1/2018.
Filed Date: 12/27/17.
Accession Number: 20171227–5019.
Comments Due: 5 p.m. ET 1/17/18.

Docket Numbers: ER18–543–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 760 3rd Rev—NITSA with Beartooth Electric Cooperative to be effective 3/1/2018.
Filed Date: 12/27/17.
Accession Number: 20171227–5020.
Comments Due: 5 p.m. ET 1/17/18.

Docket Numbers: ER18–544–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 666 5th Rev—NITSA with Suiza Dairy Group LLC to be effective 3/1/2018.
Filed Date: 12/27/17.
Accession Number: 20171227–5021.
Comments Due: 5 p.m. ET 1/17/18.

Docket Numbers: ER18–545–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 767 4th Rev—NITSA with Basin Electric Power Cooperative, Inc. to be effective 3/1/2018.
Filed Date: 12/27/17.
Accession Number: 20171227–5030.
Comments Due: 5 p.m. ET 1/17/18.

Docket Numbers: ER18–546–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 792 1st Rev—NITSA with Big Horn County Electric Cooperative, Inc. to be effective 3/1/2018.
Filed Date: 12/27/17.
Accession Number: 20171227–5043.
Comments Due: 5 p.m. ET 1/17/18.

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 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28343 Filed 1–2–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9972–70–OA]

Local Government Advisory Committee (LGAC); Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), the Local Government Advisory Committee (LGAC) is a necessary committee which is in the public interest. Accordingly, LGAC will be renewed for an additional two-year period. The purpose of LGAC is to provide advice and recommendations to EPA's Administrator on ways to improve its partnership with Local Governments and provide more efficient and effective environmental protection.

FOR FURTHER INFORMATION CONTACT: Inquiries may be directed to Frances Eargle, Designated Federal Officer, LGAC, U.S. EPA, (Mail Code 1301A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–3115; email: *eargle.frances@epa.gov.*

Dated: November 6, 2017.

Troy M. Lyons,

Associate Administrator, Office of Congressional and Intergovernmental Relations.

[FR Doc. 2017–28132 Filed 1–2–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL TRADE COMMISSION

[File No. 161 0232]

Potash Corporation of Saskatchewan Inc. and Agrium Inc.; 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 29, 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 Potash Corporation of Saskatchewan Inc. et al., File No. 161–0232'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/potashcorpconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''In the Matter of Potash Corporation of Saskatchewan Inc. et al., File No. 161–0232'' 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: Kristian Rogers (202–326–3210), Bureau

of Competition, 600 Pennsylvania Avenue NW, Washington, DC 20580.

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 27, 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 29, 2018. Write ''In the Matter of Potash Corporation of Saskatchewan Inc. et al., File No. 161–0232'' 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/potashcorpconsent* 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 Potash Corporation of Saskatchewan Inc. et al., File No. 161–0232'' 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 29, 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 Order (''Consent Agreement'') with Potash Corporation of Saskatchewan Inc. (''PotashCorp''), Agrium Inc. (''Agrium''), and Nutrien Ltd. (''Nutrien''). The proposed Consent Agreement is intended to remedy the anticompetitive effects that would otherwise result from the proposed merger of PotashCorp and Agrium. Under the Consent Agreement, the merging parties must divest Agrium's Conda, Idaho facility and related assets to Itafos or another buyer approved by the Commission and must divest Agrium's North Bend, Ohio facility and related assets to Trammo, Inc. (''Trammo'') or another buyer approved by the Commission. The Consent Agreement provides the acquirers with the manufacturing plants and other tangible and intangible assets needed to compete effectively in the markets for the manufacture and sale of superphosphoric acid (''SPA'') and 65%–67% concentration nitric acid.

On September 11, 2016, PotashCorp and Agrium agreed to a merger (the ''Merger'') in which PotashCorp and Agrium shareholders will own 52% and 48% of the combined firm, respectively. The Commission's Complaint alleges that the Merger, 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 markets for (1) SPA in North America and (2) 65%–67% concentration nitric acid in the region near and to the east of PotashCorp's Lima, Ohio and Agrium's North Bend, Ohio nitric acid plants.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become a part of the public record. After 30 days, the Commission will again review the Consent Agreement, along with the comments received, and will decide whether it should withdraw the Consent Agreement, modify it, or make final the Decision and Order.

II. The Parties

PotashCorp, headquartered in Saskatoon, Saskatchewan, Canada, and

Agrium, headquartered in Calgary, Alberta, Canada, are both large producers of crop nutrients, including potash, phosphate, and nitrogen products. PotashCorp and Agrium are two of only three firms in North America that manufacturer SPA, a key input for liquid phosphate fertilizers. PotashCorp and Agrium are also two of a small number of firms that make 65%–67% concentration nitric acid, a nitrogen product sold for industrial uses, in North America, and both PotashCorp and Agrium own nitric acid plants in Ohio.

III. The Relevant Markets

A. Superphosphoric Acid

Phosphate is an essential plant nutrient that farmers apply to crops on a seasonal basis. SPA, a highly concentrated form of phosphoric acid, is used to produce the liquid phosphate fertilizer known as ammonium polyphosphate (''APP''). SPA is purchased by agricultural wholesalers and retailers, who convert it to APP and sell APP to farmers.

The relevant product market does not include dry phosphate fertilizers such as monoammonium phosphate (''MAP'') or diammonium phosphate (''DAP''). Many farmers perceive advantages, including higher crop yield and quality, to using liquid rather than dry phosphate fertilizer, particularly in the early stages of crop development. In addition, liquid phosphates can be applied more directly to the seed than dry phosphates and can easily be combined with other nutrients. Consistent with these perceived advantages, SPA typically garners a premium price over dry phosphates. This premium has at times expanded significantly without prompting customers to shift their purchases substantially from liquid to dry phosphate fertilizers.

The relevant geographic market in which to analyze the effects of the Merger for SPA is no broader than North America. SPA is caustic, requires special handling and equipment, and is perishable outside certain temperature ranges. As a result, importing offshore SPA is logistically challenging and expensive, and imports of SPA are rare and do not constrain the prices of SPA produced in North America.

Currently, three firms—PotashCorp, Agrium, and J.R. Simplot Company (''Simplot'')—manufacture all the SPA produced in North America. PotashCorp has two SPA plants, located in Aurora, North Carolina and White Springs, Florida. Agrium's sole SPA plant is located in Conda, Idaho. Simplot has SPA plants in Rock Springs, Wyoming and Pocatello, Idaho. Absent the proposed remedy, the Merger would result in the merged entity controlling more than 75% of SPA production capacity in North America.

B. 65%–67% Concentration Nitric Acid

Nitric acid is a chemical compound produced through the interaction of ammonia, water, and a catalyzing agent. Nitric acid is used as a feedstock for nitrogen-based fertilizers and explosives and is also sold for a variety of industrial uses, including the production of stainless steel, metal-based specialty chemicals, and water-treatment and cleaning products. Nitric acid is produced at different concentration levels, which reflect the amount of water present together with the pure nitric acid. Both PotashCorp's plant in Lima, Ohio and Agrium's plant in North Bend, Ohio produce nitric acid at 65%–67% concentration, which is the preferred concentration for most industrial uses.

Customers could not quickly or easily switch from 65%–67% concentration nitric acid to other nitric acid concentrations or other chemical products. For most customers, there are no chemical substitutes that are functionally equivalent to nitric acid. Purchasing lower-concentration nitric acid and increasing its concentration is not an economical alternative because customers would need to invest in constructing an evaporation tower, which few if any nitric acid customers have today. Additionally, buying lower-concentration nitric acid requires customers to pay to ship and store more water to receive the same amount of acid. Purchasing 98% concentration nitric acid and diluting it down is also not an economical alternative due to the significant environmental and safety hazards associated with transporting and storing highly concentrated nitric acid. The relevant product market is therefore limited to 65%–67% concentration nitric acid.

The relevant geographic market in which to analyze the effects of the Merger with respect to 65%–67% concentration nitric acid encompasses customer locations near and to the east of PotashCorp's and Agrium's nitric acid plants in Lima, Ohio and North Bend, Ohio, respectively. The relevant geographic market includes customer locations in Ohio, Kentucky, Pennsylvania, Maryland, West Virginia, and New Jersey. These customers are vulnerable to a price increase on nitric acid sold by the merged entity for several reasons. Nitric acid is a corrosive chemical requiring special care in handling and storage. As a result, the costs of transporting nitric acid are high, making the relative locations of suppliers and customers critical to the total delivered costs. Most nitric acid customers rely on truck delivery, which further limits their ability to buy from more remote suppliers. Other sellers of 65%–67% concentration nitric acid are far more distant from customers in the relevant geographic market than North Bend and Lima, and therefore these sellers are not viable alternative sources of supply. Finally, the merging parties have the ability to price discriminate on sales of nitric acid by customer location.

PotashCorp and Agrium are the primary suppliers of 65%–67% concentration nitric acid to customer locations near and to the east of PotashCorp's Lima, Ohio and Agrium's North Bend, Ohio nitric acid plants. Other producers of 65%–67% concentration nitric acid, such as Dyno Nobel, Inc. and LSB Industries Inc., have minimal sales into this region. Absent the proposed remedy, the Merger would result in the merged entity having more than 90% of sales of 65%–67% concentration nitric acid into the relevant geographic market.

IV. Effects of the Acquisition

Absent the proposed remedy, the Merger would pose a significant risk of harm to competition in the relevant markets. The Merger would eliminate head-to-head competition between PotashCorp and Agrium on SPA sales and would enhance the merged firm's ability and incentive to raise market prices by reducing SPA output. The Merger would also increase the likelihood of coordination in a market that is already vulnerable to coordination, given that SPA is a commodity and SPA pricing and output information is often disseminated through customers and industry publications. For sales of 65%–67% concentration nitric acid to customers in the relevant geographic market the Merger would also eliminate the vigorous competition on pricing and service that exists today between PotashCorp and Agrium.

V. Entry

Entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the expected anticompetitive effects of the Merger. New entry into SPA production, even of modest capacity, would likely take years and cost at least $100 million. No entry has occurred into North American SPA production in the past five years, nor is any in progress or anticipated. Although

two new nitric acid facilities have been constructed in recent years, those facilities are outside the relevant geographic market and make nitric acid for their internal use at a lower concentration. Existing suppliers of 65%–67% concentration nitric acid are unlikely to expand their sales footprint enough to defeat a price increase by the merged entity in the relevant geographic market.

VI. The Consent Agreement

The proposed Consent Agreement remedies the competitive concerns raised by the Merger by requiring the merging parties to divest Agrium's Conda, Idaho facility to Itafos and Agrium's North Bend, Ohio facility to Trammo. These divestitures will preserve the competition that currently exists in the relevant markets.

Under the proposed Consent Agreement, Agrium's phosphate operations at Conda, Idaho, as well as related phosphate mines, customer and supplier contracts, and intellectual property, will be sold to Itafos. Itafos is an integrated producer of phosphate-based fertilizers with a phosphate mining and manufacturing operation located in Brazil. Itafos also owns other phosphate mining properties, including a mine in Paris Hills, Idaho, located 35 miles from Conda. Paris Hills is expected to become operational in 2019 and will serve as a source of high-grade phosphate ore for the Conda operations. As a new entrant into the sale of SPA in North America, Itafos is well positioned to preserve the SPA competition that would otherwise be lost through the Merger.

The proposed Consent Agreement further provides that Agrium's nitric acid plant and related operations at North Bend, Ohio, as well as customer and supplier contracts and intellectual property, will be sold to Trammo. Trammo is a global trader, distributor, and transporter of commodity chemicals, including anhydrous ammonia, the primary feedstock for nitric acid production. Trammo owns three ammonia terminals in Illinois as well as specialized refrigerated barges for ammonia distribution. Through its trading and storage activities, Trammo expects to realize efficiencies in the supply of anhydrous ammonia to North Bend. Trammo will be a new entrant in the sale of 65%–67% concentration nitric acid and will replace Agrium's position in the market today.

The merged entity must complete the divestiture within ten days of closing the Merger. If the Commission determines that Itafos or Trammo is not an acceptable acquirer, the Decision and Order requires the parties to unwind the sale and accomplish the divestiture to another Commission-approved acquirer within 120 days of the date the Decision and Order becomes final. If the merging parties fail to carry out the divestiture in the manner prescribed by the Decision and Order, the Commission may appoint a divestiture trustee to accomplish the divestiture.

The Commission will appoint an interim monitor to ensure the merging parties' compliance with the Decision and Order and to keep the Commission informed about the status of the divestiture. The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2017–28336 Filed 1–2–18; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2017–09; Docket No. 2017–0002, Sequence No. 26]

2018 Privately Owned Vehicle (POV) Mileage Reimbursement Rates; 2018 Standard Mileage Rate for Moving Purposes

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of Federal Travel Regulation (FTR) Bulletin 18–03, Calendar Year (CY) 2018 Privately Owned Vehicle (POV) Mileage Reimbursement Rates and Standard Mileage Rate for Moving Purposes (Relocation Allowances).

SUMMARY: GSA is required by statute to set the mileage reimbursement rate for privately owned automobiles (POA) as the single standard mileage rate established by the Internal Revenue Service (IRS). In addition, the IRS mileage rate for medical or moving purposes is used to determine the POA rate when a Government-furnished automobile is authorized. This notice of subject bulletin is the only notification to agencies of revisions to the POV mileage rates for official travel, and relocation, other than the changes posted on GSA's website.

DATES: Applicable: This notice is applicable on January 1, 2018.

Applicability: This notice applies to travel and relocation performed on or after January 1, 2018 through December 31, 2018.

FOR FURTHER INFORMATION CONTACT: For clarification of content, please contact Mr. Cy Greenidge, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–219–2349, or by email at *travelpolicy@gsa.gov.* Please cite Notice of FTR Bulletin 18–03.

SUPPLEMENTARY INFORMATION: GSA posts the POV mileage reimbursement rates, formerly published in 41 CFR Chapter 301, solely on the internet at *https://www.gsa.gov/mileage.* Also, posted on this site is the standard mileage rate for moving purposes. This process, implemented in FTR Amendment 2010–07, 75 FR 72965 (November 29, 2010), FTR Amendment 2007–03, 72 FR 35187 (June 27, 2007), and FTR Amendment 2007–06, 72 FR 70234 (December 11, 2007), ensures more timely updates regarding mileage reimbursement rates by GSA for Federal employees who are on official travel or relocating. Notices published periodically in the **Federal Register**, such as this one, and the changes posted on the GSA website, now constitute the only notification to Federal agencies of revisions to the POV mileage reimbursement rates and the standard mileage reimbursement rate for moving purposes. This Internal Revenue Service (IRS) rate also establishes the standard mileage rate for moving purposes as it pertains to official relocation. Finally, GSA's annual privately owned airplane and motorcycle mileage reimbursement rate reviews have resulted in new CY 2018 rates. GSA conducts independent airplane and motorcycle studies that evaluate various factors, such as the cost of fuel, the depreciation of the original vehicle costs, maintenance and insurance, and/or by applying consumer price index data. FTR Bulletin 18–03 establishes and announces the new CY 2018 POV mileage reimbursement rates for official temporary duty and relocation travel ($0.545 per mile for POA's, $0.18 per mile for POA's when a Government furnished automobile is authorized, $1.21 per mile for privately owned airplanes, $0.515 per mile for privately owned motorcycles, and $0.18 per mile for moving purposes), pursuant to the process discussed above.

Authority: 5 U.S.C. 5707(b).

Dated: December 20, 2017.

Giancarlo Brizzi,

Acting Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2017–28394 Filed 1–2–18; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6075–CN]

RIN 0938–ZB44

Medicare, Medicaid, and Children's Health Insurance Programs; Provider Enrollment Application Fee Amount for Calendar Year 2018; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice; correction.

SUMMARY: This document corrects technical errors in the December 4, 2017 **Federal Register** notice titled ''Provider Enrollment Application Fee Amount for Calendar Year 2018''.

DATES: *Effective Date:* This correction notice takes effect on January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Melissa Singer, (410) 786–0365.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Errors

In FR Doc. 2017–25972, which appeared in the December 4, 2017 **Federal Register** (82 FR 57273) titled ''Medicare, Medicaid, and Children's Health Insurance Programs; Provider Enrollment Application Fee Amount for Calendar Year 2018'', there were several technical and typographical errors that are identified and corrected in the Correction of Errors section of this document.

On page 57274, in our discussion regarding Medicare estimates for calendar year (CY) 2018, we erroneously listed the number of ''newly enrolled institutional providers'' as ''3,800''. Given this error, we are also correcting the errors in several calculations/equations that included the erroneous figure (that is, 3,800). We are also correcting a typographical error.

II. Correction of Errors

In FR Doc. 2017–25972 of December 4, 2017 (82 FR 57273), make the following corrections:

1. On page 57274,

a. Second column, last bulleted paragraph, line 1, the phrase ''3,800 newly enrolling institutional providers'' is corrected to read ''10,700 newly enrolling institutional providers''.

b. Third column—

(1) First bulleted paragraph, line 1, the figure ''7.500'' is corrected to read 7,500''.

(2) Second full paragraph—

(a) Line 1, the phrase ''Using a figure of 11,300 (3,800 newly enrolling'' is corrected to read ''Using a figure of 18,200 (10,700 newly enrolling''.

(b) Line 6, the phrase ''$101,700 (or 11,300 × $9'' is corrected to read ''$163,800 (or 18,200 × $9''.

(3) Fourth full paragraph, line 6, the phrase ''be $371,700 ($270,000 + $101,700)'' is corrected to read ''be $433,800 ($270,000 + $163,800)''.

Dated: December 27, 2017.

Wilma Robinson,

Deputy Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2017–28412 Filed 12–29–17; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Evaluation of the Family Unification Program.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF) is proposing an information collection activity to assess the impact, through rigorous evaluation, of participation in the Family Unification Program (FUP) on child welfare involvement and child maltreatment. The Department of Housing and Urban Development (HUD) funds and administers FUP. Through the program, vouchers are provided to families for whom the lack of adequate housing is a primary factor in (a) the imminent placement of the family's child, or children, in out-of-home care or (b) the delay in the discharge of the child, or children, to the family from out-of-home-care. The program aims to prevent children's placement in out-of-home care, promote family reunification for children placed in out-of-home care, and decrease new reports of abuse and neglect. Vouchers may also be provided to youth transitioning from foster care who do not have adequate housing, although this population is not the focus of this evaluation.

The evaluation will contribute to understanding the effects of FUP on project participants' child welfare involvement. The evaluation will be conducted in approximately ten sites, with random assignment of FUP-eligible families to program and control groups. The evaluation consists of both an impact study and an implementation study. Data collection for the impact study will be exclusively through administrative data. Data collection for the implementation study will be through site visits and collection of program data. Data collection activities will span 3 years.

Implementation study data collection will occur at three points in time: (1) Prior to the implementation (''preliminary''), (2) 6–9 months into the implementation (''first''), and (3) 18–21 months into implementation (''follow-up'') time periods. Semi-structured interviews will be conducted with agency/organization management (preliminary, first) and FUP management (first, follow-up), and focus groups will be conducted with front-line staff (first, follow-up). Program data, including a referral form and questionnaires regarding housing assistance and other services, will be collected through forms completed by frontline staff. FUP management staff will also complete an online randomization tool and a form (''dashboard'') to facilitate monitoring of the evaluation.

This evaluation is part of a larger project to help ACF build the evidence base in child welfare through rigorous evaluation of programs, practices, and policies. It will also contribute to HUD's understanding of how housing can serve as a platform for improving quality of life.

Respondents: Public housing authority staff, public child welfare agency staff, and other service provider staff.

ANNUAL BURDEN ESTIMATES

	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hour per response	Annual burden hours
Guide for Recruitment with PHA and PCWA Administrators	20	7	1	1.00	7
Guide to Develop an Evaluation Plan for PCWA FUP Management	10	4	1	1.00	4
Guide to Develop an Evaluation Plan for PHA FUP Management	10	4	1	1.00	4
Guide for Implementation Study for PCWA Management	10	4	1	1.00	4
Guide for Implementation Study for PHA Management	10	4	1	1.00	4
Guide for Implementation Study for Referral Provider Administrators	4	2	1	1.00	2
Guide for Implementation Study with PCWA FUP Management (First)	10	4	1	1.00	4
Guide for Implementation Study for PHA FUP Management	10	4	1	1.00	4
Guide for Implementation Study Focus Groups with Frontline Workers	320	107	1	1.50	161
Guide for Implementation Study Focus Groups with PHA Frontline Workers	30	10	1	1.50	15
Guide for Implementation Study for PCWA FUP Management (Follow Up)	10	4	1	1.00	4
Guide for Implementation Study for Service Provider Management	8	3	1	1.00	3
Referral Form	200	67	6	0.17	68
Randomization Tool	10	4	106	0.02	8
Housing Assistance Questionnaire	200	67	3	0.09	18
Ongoing Services Questionnaire	200	67	3	0.09	18
Dashboard	20	7	27	0.17	32
Administrative Data List	30	10	2	5.00	100

Estimated Total Annual Burden Hours: 460.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C St SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Mary Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2017–28374 Filed 1–2–18; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Study of We Grow Together: The Q–CCIIT Professional Development System.

OMB No.: New Collection

Description: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) seeks approval to conduct a field test of We Grow Together, a system of professional development supports including web-based resources and exercises to be used by caregivers/teachers, with the help of professional development providers, to improve the quality of infant and toddler care. The study team has developed We Grow Together: The Q–CCIIT Professional Development System based on the research literature to support caregiver-child interactions in care settings serving infants and toddlers. This field test is designed to (1) examine changes associated with use of the We Grow Together system and (2) examine implementation and participant experiences with the We Grow Together system. As a secondary goal, ACF will also further evaluate the properties of the Q–CCIIT observational measure. Ultimately, findings from the field test will provide information about the experiences of professional development providers (PD providers) and caregivers with the We Grow Together system so that ACF can improve the system to make the resources as accessible as possible for infant-toddler caregivers.

Prior to using the We Grow Together system, PD providers will complete a web-based training survey and all participants will complete a web-based background survey. Periodically during the field test, website users will be asked at log-on to respond to a series of web-based questions. After system implementation, participants will complete a web-based feedback survey.

The study team will also collect classroom rosters from caregivers before and after the field test.

Respondents: Early care and education (ECE) setting representatives (*e.g.,* directors or owners), caregivers (in center-based and family child care settings), and professional development providers (*e.g.,* coaches).

ANNUAL BURDEN ESTIMATES

Instrument	Total/annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
ECE setting eligibility screener	745	1	.25	186
Caregiver background survey	300	1	.75	225
PD provider background survey	175	1	.50	88
Caregiver We Grow Together website user data pop-up questions	300	6	.17	306
PD provider We Grow Together website user pop-up questions	175	5	.10	88
Caregiver feedback survey	300	1	1.0	300
PD provider feedback survey	175	1	.75	131
Classroom roster	300	2	.08	48
PD provider training survey	175	1	.17	30

Estimated Total Annual Burden Hours: 1,402.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Mary Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2017–28375 Filed 1–2–18; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–6759]

Establishing Effectiveness for Drugs Intended To Treat Male Hypogonadotropic Hypogonadism Attributed to Non-Structural Disorders; 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 ''Establishing Effectiveness for Drugs Intended to Treat Male Hypogonadotropic Hypogonadism Attributed to Non-Structural Disorders.'' This draft guidance provides key design considerations, including recommendations for patient enrollment criteria and efficacy endpoints, for clinical trials to establish effectiveness for drugs intended to treat male hypogonadotropic hypogonadism associated with obesity and other conditions that do not cause intrinsic damage to the hypothalamus or pituitary gland. This draft guidance is consistent with recommendations FDA received at the December 2014 advisory committee meeting on the appropriate indicated population for testosterone replacement therapy, and the December 2016 advisory committee meeting on hypogonadotropic hypogonadism.

DATES: Submit either electronic or written comments on the draft guidance by March 5, 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–6759 for ''Establishing Effectiveness for Drugs Intended to Treat Male Hypogonadotropic Hypogonadism Attributed to Non-Structural Disorders.'' 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 office between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. 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. 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: Jeannie Roule, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5332, Silver Spring, MD 20993–0002, 301–796–3993.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Establishing Effectiveness for Drugs Intended to Treat Male Hypogonadotropic Hypogonadism Attributed to Non-Structural Disorders.'' This draft guidance is intended to assist sponsors in designing drug development programs to demonstrate effectiveness of drugs intended to treat male hypogonadotropic hypogonadism associated with obesity and other conditions that do not cause intrinsic damage to the hypothalamus or pituitary gland.

Male hypogonadism is characterized by serum testosterone concentrations below the lower limit of the normal range for young, healthy men with associated symptoms (*e.g.,* reduced libido) or signs (*e.g.,* loss of muscle mass with reduced muscle strength). Some men who have had normal puberty and sexual development are subsequently diagnosed with hypogonadotropic hypogonadism associated with obesity or other acquired conditions in the absence of intrinsic damage to the hypothalamus or pituitary. Although these men have serum testosterone concentrations below the lower limit of the normal range for young, healthy men, the associated symptoms often experienced in this population (*e.g.,* low energy, depressed mood) are nonspecific and cannot definitively be attributed to the low testosterone concentrations. In addition, it is unclear whether these testosterone concentrations—in the absence of intrinsic damage to the hypothalamus and pituitary gland—are inappropriately low and whether increasing testosterone concentrations in these men confers clinical benefit.

For these reasons, serum testosterone is not a validated surrogate endpoint for establishing efficacy in these patients, and sponsors would need to show that an increase in serum testosterone translates into improvement in how patients feel, function, or survive.

This draft guidance addresses the following topics in establishing effectiveness of drugs for this population:

• Identification of patients for inclusion in clinical trials and
• Efficacy endpoints.

This draft guidance is consistent with recommendations FDA received at the December 2014 advisory committee meeting on the appropriate indicated population for testosterone replacement therapy, and the December 2016 advisory committee meeting on hypogonadotropic hypogonadism.

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 establishing effectiveness for drugs intended to treat male hypogonadotropic hypogonadism attributed to non-structural disorders. 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. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: December 27, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–28337 Filed 1–2–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct; Correction

AGENCY: Office of the Secretary, HHS.

ACTION: Correction of notice.

SUMMARY: This document corrects an error that appeared in the notice published in the November 27, 2017, **Federal Register** entitled ''Findings of Research Misconduct.''

DATES:

Effective Date: January 3, 2018.

Applicability Date: The correction notice is applicable for the Findings of

Research Misconduct notice published on November 27, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Gorirossi at 240–453–8800.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2017–25549 of November 27, 2017 (82 FR 56042–56043), there was a referencing error involving incorrect citation of a paper in the notice. The error is identified and corrected in the Correction of Errors section below.

II. Correction of Errors

In FR Doc. 2017–25549 of November 27, 2017 (82 FR 56042–56043), make the following corrections:

1. On page 56042, third column, in FR Doc. 2017–25549, last paragraph, lines 16–26, and page 56043, first paragraph, lines 1–5, delete ''Respondent engaged in research misconduct at ESOM and falsified RT–PCR data on Excel spreadsheets in the research record and in a figure generated from the false data included in a manuscript submitted to and withdrawn from *Scientific Reports* (''Immipramine Blue Sensitively and Selectively Targets FLT3–ITD Positive Acute Myeloid Leukemia Cells.'' *Scientific Reports* 7(1):4447, 2017 June 30; doi:10.1038/s41598–017–04796–1. PMID: 28667329. Submitted to *Scientific Reports* [withdrawn]; hereafter referred to as the ''*Scientific Reports* manuscript'')'' and replace with the following text: ''Respondent engaged in research misconduct at ESOM and falsified RT–PCR data on Excel spreadsheets in the research record and in a figure generated from the false data included in an unpublished manuscript submitted to and withdrawn from *Scientific Reports* [withdrawn]; hereafter referred to as the ''*Scientific Reports* manuscript.'' ''

2. On page 56043, first column, in FR Doc. 2017–25549, fourth paragraph (second bullet), lines 6–7, insert ''unpublished'' before ''*Scientific Reports*'' so that the text reads: ''included false data in the unpublished *Scientific Reports* manuscript.''

Dated: December 20, 2017.

Wanda K. Jones,

Interim Director, Office of Research Integrity.

[FR Doc. 2017–28409 Filed 1–2–18; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: January 24, 2018.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building (Natcher Conference Center), Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building (Natcher Conference Center), Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Acting Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive, and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases.

Date: January 24, 2018.

Open: 1:00 p.m. to 3:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building (Natcher Conference Center), Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

Closed: 3:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building (Natcher Conference Center), Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Acting Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Diabetes, Endocrinology and Metabolic Diseases.

Date: January 24, 2018.

Open: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate to review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building (Natcher Conference Center), Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building (Natcher Conference Center), Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Acting Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive, and Kidney Diseases, 6707 Democracy Blvd., Room, 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Digestive Diseases and Nutrition.

Date: January 24, 2018.

Open: 1:00 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building (Natcher Conference Center), Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

*Place:*National Institutes of Health, Natcher Building (Natcher Conference Center), Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Acting Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive, and Kidney Diseases, 6707 Democracy Blvd. Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 28, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28417 Filed 1–2–18; 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; Neuroscience of Aging Review Committee; NIA—N.

Date: February 1–2, 2018.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 28, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28415 Filed 1–2–18; 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 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 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—Topic 60: Computational Software Development to Advance Translational Research for Infectious Diseases.

Date: January 25, 2018.

Time: 12:00 a.m. to 3:00 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: Eleazar Cohen, Ph.D., Scientific Review Officer Scientific Review Program, Division of Extramural Activities, Room 3G62A, National Institute of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5081, *ecohen@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PHS 2018–1: Small Business Innovation Research (SBIR) Program Contract Solicitation (Topic 52) (N01).

Date: January 26, 2018.

Time: 1:00 p.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: Vasundhara Varthakavi, DVM, Ph.D., Scientific Review Officer Scientific Review Program, Division of Extramural Activities, Room 3E70, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5020, *varthakaviv@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; (PHS–2016–1) Small Business Innovation Research (SBIR) ''Topics 37 and 38: ''Phase II Program Contract Solicitation''.

Date: January 26, 2018.

Time: 1:30 p.m. to 3:30 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: Ellen S. Buczko, Ph.D., Scientific Review Officer Scientific Review Program, Division of Extramural Activities, Room # 3F30A National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5028, *ebuczko1@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 26, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28338 Filed 1–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.

Date: January 30, 2018.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Alexandrian, 480 King Street, Alexandria, VA 22314.

Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Nursing and Related Clinical Sciences Study Section.

Date: February 1–2, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Martha L. Hare, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7770, Bethesda, MD 20892, (301) 451–8504, *harem@mail.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology A Study Section.

Date: February 6–7, 2018.

Time: 7:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, Bethesda, MD 20892, (301) 435–2409, *grossmanrs@mail.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry B Study Section.

Date: February 6–7, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–1722, *eissenstatma@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology B Study Section.

Date: February 6–7, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Mehrdad Mohseni, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301–435–0484, *mohsenim@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensorimotor Integration Study Section.

Date: February 6–7, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 28, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28414 Filed 1–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–15–276: Turkey-US Program for Affordable Medical Technologies.

Date: January 23, 2018.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Careen K. Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301)435–3504, *tothct@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: January 31–February 1, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Pathophysiological Basis of Mental Disorders and Addictions Study Section.

Date: January 31–February 1, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Boris P Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 28, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28413 Filed 1–2–18; 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; Mechanisms of Aging.

Date: February 7, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–496–9667, *nijaguna.prasad@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 28, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28416 Filed 1–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF MENTAL HEALTH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: January 29–31, 2018.

Time: January 29, 2018, 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: January 30, 2018, 8:50 a.m. to 4:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, GE 620/630/640, Building 35A Convent Drive, Bethesda, MD 20892.

Time: January 31, 2018, 8:50 a.m. to 5:05 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, GE 620/630/640, Building 35A Convent Drive, Bethesda, MD 20892.

Contact Person: Jennifer E. Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 28, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28418 Filed 1–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Interventions to Prevent and Treat Addictions Study Section.

Date: February 1–2, 2018.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Kimpton Hotel Palomar, 2121 P ST NW, Washington, DC 20037.

Contact Person: Miriam Mintzer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3108, Bethesda, MD 20892, (301) 523–0646, *mintzermz@csr.nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Progression and Metastasis Study Section.

Date: February 5–6, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Spring Hill Suites Downtown/Bayfront, 900 Bayfront Court, San Diego, CA 92101.

Contact Person: Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806, Bethesda, MD 20892, 301–495–1718, *jakobir@mail.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Date: February 5–6, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.

Date: February 5–6, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics B Study Section.

Date: February 5–6, 2018.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard A Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 15–326: Imaging—Science Track Award For Research Transition (I/Start) R03.

Date: February 5, 2018.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 28, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28422 Filed 1–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Advisory Mental Health Council.

Date: January 25, 2018.

Closed: 8:00 a.m. to 8:55 a.m.

Agenda: To review and evaluate the NIMH Division of Intramural Research Programs.

Place: National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Open: 9:00 a.m. to 1:00 p.m.

Agenda: Presentation of the NIMH Director's Report and discussion of NIMH program.

Place: National Institutes of Health, 6001 Executive Blvd., Room C/D/E, Rockville, MD 20852.

Closed: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Contact Person: Jean G. Noronha, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367, *jnoronha@mail.nih.gov*.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 28, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–28419 Filed 1–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2017–0093; FXIA16710900000–156–FF09A30000]

Foreign Endangered Species; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service, have issued permits to conduct activities with endangered and threatened species under the authority of the Endangered Species Act, as amended (ESA). With some exceptions, the ESA prohibits activities involving listed species unless a Federal permit is issued that allows such activity.

ADDRESSES: Information about the applications for the permits listed in this notice is available online at *www.regulations.gov.* See **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Joyce Russell, 703–358–2023.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, have issued permits to conduct certain activities with endangered and threatened species in response to permit applications that we received under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.;* ESA).

After considering the information submitted with each permit application and the public comments received, we issued the requested permits subject to certain conditions set forth in each permit. For each application for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Availability of Documents

The permittees' original permit application materials, along with public comments we received during public comment periods for the applications, are available for review. To locate the application materials and received comments, go to *www.regulations.gov* and search for the appropriate permit number (*e.g.,* 12345C) provided in the following table:

Applicant	Permit No.	Permit issuance date
Pennsylvania State University	11139C	10/19/2017
Paula N. Hansen	055381	10/18/2017
Houston Zoo Inc	19910C	8/29/2017

Applicant	Permit No.	Permit issuance date
Fossil Rim Wildlife Center, Inc	31693C	10/19/2017
Disney's Animal Kingdom	30605C	9/12/2017
Dallas World Aquarium	15974C	10/19/2017
Feld Entertainment, Inc	30596C	10/19/2017
Palfam Ranch Management LLC	64738A	10/12/2017
Amanda Henson	32538C	11/01/2017
Duke Lemur Center	27453C	10/31/17
Palm Beach Zoo and Conservation Society	39618C	11/6/2017

Authority

We issue this notice under the authority of the ESA, as amended (16 U.S.C. 1531 *et seq.*).

Joyce Russell,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2017–28387 Filed 1–2–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2017–N162; FXES11130300000–189–FF03E00000]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to enhance the propagation or survival of endangered or threatened species. Federal law prohibits certain activities with endangered species unless a permit is obtained.

DATES: We must receive any written comments on or before February 2, 2018.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Carlita Payne, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov.*

Requesting Copies of Applications or Public Comments: Copies of applications or public comments concerning any of the applications in this notice may be obtained by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552): Regional Director, Attn: Carlita Payne, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

Submitting Comments: You may submit comments by one of the following methods. Please specify applicant name(s) and application number(s) to which your comments pertain (*e.g.,* TE*XXXXXX*).

- *Email: permitsR3ES@fws.gov.* Please indicate the respective permit number (*e.g.,* Application No. TE*XXXXXX*) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Carlita Payne, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Carlita Payne, (612) 713–5343; *permitsR3ES@fws.gov.*

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to enhance the propagation or survival of endangered or threatened species. Federal law prohibits certain activities with endangered species unless a permit is obtained.

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; ESA), prohibits certain activities with endangered and threatened species unless the activities are specifically authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A permit granted by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) of the ESA for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies and the public to comment on the following applications. Please refer to the permit number when you submit comments. Documents and other information the applicants have submitted with the applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Applications

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE35518B	Jeremy Sheets, Plymouth, IN.	Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*).	Rangewide	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Add new activity—band—to existing authorized activities: Capture, handle, mist-net, radio-tag, release.	Amend, renew.
TE85232B	Zachary Kaiser, Independence, MO.	Add gray bat (*Myotis grisescens*) to existing permitted species: Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*).	Rangewide	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, mist-net, radio-tag, light-tag, band, wing biopsy, collect tissue and hair samples, release, salvage.	Amend.
TE38769A	Sarah Bradley, Salem, MO.	Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*).	Missouri	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, mist-net, harp trap, radio-tag, band, release, enter hibernacula.	Renew.
TE106220	Brianne Walters, Indiana State University Bat Center, Terre Haute, IN.	Add gray bat (*Myotis grisescens*) to existing permitted species: Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*).	Rangewide	Research, conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Add new activities—harp trap, wing biopsy, collect tissue and hair samples, salvage, and enter hibernac-ula—to existing authorized activities: Capture, handle, mist-net, radio-tag, band, release.	Amend, renew.

Public Availability of Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive in response to this notice are available for public inspection, by appointment, during normal business hours at the address listed in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. 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.

Contents of Public Comments

Please make your comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations.

Next Steps

If the Service decides to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

Section 10 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 1, 2017.

Lori H. Nordstrom,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2017–28382 Filed 1–2–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2017–N138]; FXRS12610200000–189–FF02RTTM00]

Application for Right of Way Permit for an Ethane Pipeline and Approved Compatibility Determination; San Bernard National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application for a 30-year right-of-way (ROW) permit under the Migratory Bird Conservation Act from Lavaca Pipeline Company. The applicant wishes to install, own, and operate a natural gas pipeline within an existing ROW easement crossing 203 feet on San Bernard National Wildlife Refuge in Brazoria County, Texas. We request public comment on the permit application.

DATES: We must receive any written comments regarding the permit application on or before February 2, 2018.

ADDRESSES: If you wish to review documents and submit comments, you may request documents by U.S. mail, email, or phone (see below). Documents are also available for public inspection by appointment during normal business hours at the Texas Mid-coast Complex office below (open 8 a.m. to 4:30 p.m.). Send your comments or requests by any one of the following methods.

- *Email: jennifer_sanchez@fws.gov* (use ''Lavaca ROW'' as your message subject line).
- *Fax:* 979–964–4021 (''Lavaca ROW'' subject line).
- *U.S. mail:* Project Leader, Texas Mid-coast Complex, U.S. Fish and Wildlife Service, 2547 County Road 316, Brazoria, TX 77422.
- *In-person drop-off:* You may drop off information during regular business hours, 8 a.m. to 4:30 p.m., at the above office address.

FOR FURTHER INFORMATION CONTACT: Jennifer Sanchez, 979–964–4011 (phone), or *jennifer_sanchez@fws.gov* (email).

SUPPLEMENTARY INFORMATION: There is also an approved compatibility determination available for review. Comments regarding the compatibility determination will be received and filed, but we will not be amending the document.

Applicant's Proposal

Lavaca Pipeline Company has requested to purchase a 30-foot-wide pipeline easement across a 203-foot-long section of the San Bernard National Wildlife Refuge NWR in Brazoria County, Texas. The (ROW) permit would enable the applicant to install, own, and operate a 16-inch-diameter steel pipeline to transport ethane gas. The requested ROW overlies an existing ROW easement, and the pipeline would be laid parallel to an already existing pipeline. The applicant's pipeline would be installed by means of a conventional bore technique under refuge land; therefore, the process would not require trenching on refuge lands. No additional easement boundaries beyond the existing ROW are required. The bore holes will be located 300 feet outside the refuge property line on adjacent private lands.

Background

Lavaca Pipeline Company is constructing a 16-inch-diameter pipeline for the transportation of ethane through Galveston, Brazoria, Matagorda, and Wharton Counties in Southeast Texas. Lavaca Pipeline is making efforts to co-locate the pipeline within existing pipeline ROW corridors. Lavaca Pipeline has requested to cross the San Bernard NWR along an existing ROW. Although a new ROW is being requested, an existing ROW and pipeline are already in place. The existing pipeline ROW is not an exclusive easement; therefore, additional ROWs and pipelines can be installed within the same cleared corridor. The requested permit would allow for the pipeline to cross a narrow (203-foot-wide) strip of refuge that connects two larger parcels and is commonly referred to as the Sulfur Ditch.

Compatibility Determination

In our compatibility determination, which was approved on July 26, 2017, we determined that placing the pipeline across this narrow (203-foot-wide) strip would minimize the impact to other refuge lands. Several options were evaluated, but it was determined that they would have resulted in greater impact than this proposal.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the Migratory Bird Conservation Act (16 U.S.C. 715d).

Dated: November 6, 2017.

Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2017–28385 Filed 1–2–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD08000.18XL1109AF. L12200000.EA0000.LXSSB0280000]

Notice of Temporary Closure on Public Lands for the Annual King of the Hammers Race, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) is giving notice that certain public lands located near Johnson Valley, California, within the Johnson Valley Off-Highway Vehicle Recreation Area, will be temporarily closed to all public use to enhance public safety during Hammerking Productions' annual King of the Hammers desert race authorized under a Special Recreation Permit (SRP). This action is in effect for King of the Hammers, which takes place annually, during a 9-day period.

DATES: This Notice is effective from February 2, 2018, through February 10, 2018. The Hammerking Productions SRP for this event is valid until February 22, 2022.

ADDRESSES: The BLM will post the temporary closure notice and a map of the temporary closure area on the BLM website at: *https://www.blm.gov/california;* and at the following BLM offices: California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553; and Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311. Notice of the 9-day temporary closure period for subsequent races will be published in annual news releases and posted on the BLM website at least 30-days in advance of the event.

FOR FURTHER INFORMATION CONTACT: Beth Ransel, District Manager, California Desert District, telephone: 951–697–5200, email: *bransel@blm.gov;* or Katrina Symons, Barstow Field Manager, telephone: 760–252–6004, email: *ksymons@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact the above individuals during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: The dates for King of the Hammers, the dates of the temporary closure, and a map of the closure area will be posted at the California Desert District Office, the Barstow Field Office, and on the BLM website at the addresses provided above every year at least 30 days prior to the event. The dates are also available upon request.

This temporary closure applies to all public use, including pedestrian use and vehicles. The BLM will also post the temporary closure notice and map of the temporary closure area at the main entry points into the Johnson Valley Off-Highway Vehicle Recreation Area. The annual temporary closure will comply with the management plan for the area, ensuring that when the annual temporary closure period includes a Saturday or Sunday, a minimum of three staging areas within the Johnson Valley Off-Highway Vehicle Recreation Area will remain open to the public on those weekend days.

Exclusive Use: The area will be for exclusive use of King of the Hammers participants, registered spectators for the King of the Hammers, and other authorized users with an authorized SRP valid for activities within the temporary closure area. For the temporary closure area, anyone without a SRP authorizing use within the temporary closure area during the temporary closure period is prohibited from using the area.

Exceptions: Temporary closure restrictions do not apply to medical and rescue personnel in the performance of their official duties; official United

States military and Federal, State, and local law enforcement; Federal, State and local officers and employees in the performance of their official duties; King of the Hammers event officials and race participants; vendors with a valid BLM SRP; and registered event spectators.

Enforcement: Any person who violates the temporary closure order 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 California law.

Authority: 43 CFR 8360.0–7 and 8364.1

Beth Ransel,

California Desert District Manager.

[FR Doc. 2017–28393 Filed 1–2–18; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520]

Notice of Availability of the Western Energy Company's Rosebud Mine Area F Draft Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Office of Surface Mining Reclamation and Enforcement (OSMRE) has prepared a Draft Environmental Impact Statement (EIS) for the Western Energy Company's Rosebud Mine Area F (Project) in southeastern Montana and by this notice is announcing the opening of the comment period. The Montana Department of Environmental Quality (DEQ) is a co-lead on this EIS process.

DATES: To ensure comments will be considered, OSMRE will accept electronic or written comments on or before 45 days from the date that the U.S. Environmental Protection Agency publishes the Notice of Availability for the Draft EIS in the **Federal Register**. OSMRE will publish in the **Federal Register** and/or local newspapers the date, time, and location of the public meeting on the Draft EIS. If you are a disabled individual who needs reasonable accommodation to attend the public meeting, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** after we publish the notice of the specific meeting location and date.

ADDRESSES: The Draft EIS is available for review at: *https://www.wrcc.osmre.gov/initiatives/westernEnergy/documentLibrary.shtm.* Paper and computer compact disk (CD) copies of the Draft EIS are available for review at the OSMRE Western Region Office, 1999 Broadway Street, Suite 3320, Denver, Colorado 80202. In addition, a paper and CD copy of the Draft EIS is available for review at each of the following locations:

- Rosebud County Library, 201 North 9th Avenue, Forsyth, MT 59327. Between the hours of 11:00 a.m. and 7:00 p.m. Monday through Thursday; 11:00 a.m. to 5:00 p.m. Friday; 10:00 a.m. to 1:00 p.m. Saturday (Closed Sunday)
- Montana DEQ Headquarters (Lee Metcalf Building), 1520 East 6th Avenue, Helena, MT 59620. Between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday (Closed Saturday and Sunday)
- BLM Miles City Field Office, 111 Garryowen Road, Miles City, MT 59301. Between the hours of 7:45 a.m. and 4:30 p.m. Monday through Friday (Closed Saturday and Sunday)
- BLM State Office, Billings, MT, 5001 Southgate Drive, Billings, MT 59101. Between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday (Closed Saturday and Sunday)

FOR FURTHER INFORMATION CONTACT: Logan Sholar, OSMRE Project Coordinator; Telephone: 303–293–5036; Address: 1999 Broadway Street, Suite 3320, Denver, Colorado 80202–3050; email: *lsholar@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Project Purpose
II. Background on the Rosebud Mine
III. Background on the Project
IV. Alternative

I. Project Purpose

The purpose of the Project is to consider continued operations at the Rosebud Mine by permitting and developing a new surface mine permit area, known as permit Area F. Western Energy submitted a permit application to DEQ for the proposed 6,746-acre permit Area F (also referred to as the project area) at the Rosebud Mine, which is an existing 25,455-acre surface coal mine annually producing 8.0 to 10.25 million tons of low-sulfur subbituminous coal. If DEQ approves the permit and a Federal mining plan for the Project is approved as proposed, at the current rate of production, the operational life of the Rosebud Mine would be extended by 8 years. Mining operations in the project area, which would commence after all permits and approvals have been secured and a reclamation and performance bond has been posted, would last 19 years. Western Energy estimates that 70.8 million tons of recoverable coal reserves exist in the project area and would be removed during the 19-year operations period. As with other permit areas of the Rosebud Mine, all coal would be combusted locally at the Colstrip and Rosebud Power Plants.

Western Energy is required to obtain a surface coal mine operating permit (pursuant to the Montana Strip and Underground Mine Reclamation Act (MSUMRA), Section 82–4–221 *et seq.,* Montana Code Annotated) and approval of a Federal surface mining plan (30 CFR 746) for proposed permit Area F. OSMRE's purpose for the Project is to review and make a recommendation to the Assistant Secretary for Land and Minerals Management (ASLM) in the form of a Mining Plan Decision Document to approve, disapprove, or approve with conditions, the proposed Federal surface mining plan for the Project. The ASLM will decide whether the mining plan is approved, disapproved, or approved with conditions.

DEQ's purpose for the Project is to review and make a decision on Western Energy's surface mine operating permit application under MSUMRA and to review and make decisions on the following related permits: (1) An application for a new Montana Pollutant Discharge Elimination System (MPDES) permit, and (2) an application to modify Montana Air Quality Permit #1570*07 to include the project area. The Bureau of Land Management (BLM) is a cooperating agency on the Draft EIS.

The Draft EIS evaluates the direct, indirect, and cumulative effects of the Proposed Action and alternatives on the environment.

OSMRE is complying with Section 106 of the National Historic Preservation Act (NHPA Section 106)(16 U.S.C. 470f), as provided in 36 CFR 800.2(d)(3), concurrently with the NEPA process, including public involvement requirements and consultation with the State Historic Preservation Officer and Historic Preservation Officers with Tribal nations. Native American Tribal consultations are ongoing and have been conducted in accordance with

applicable laws, regulations, and U.S. Department of the Interior (DOI) policy. Federal, Tribal, State, and local agencies, along with other stakeholders that may be interested in or affected by the Federal agencies' decisions on the Project, are invited to submit comments on the Draft EIS.

As part of its consideration of the proposed Project's impacts on threatened and endangered species, OSMRE conducted informal consultation as well as streamlined consultation per the final 4(d) rule for the northern long-eared bat with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act (ESA)(16 U.S.C. 1536), and its implementing regulations, as provided in 50 CFR 400. The Section 7 consultation considered direct and indirect impacts from the proposed Project, including mining and related operations in the project area and continued operation of the Colstrip and Rosebud Power Plants.

In addition to compliance with NEPA, NHSA Section 106, and ESA Section 7, all Federal actions will be in compliance with applicable requirements of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1021–1328), the Clean Water Act (33 U.S.C. 1251–1387), the Clean Air Act (42 U.S.C. 7401–7671q), and Executive Orders relating to environmental justice, Tribal consultation, and other applicable laws and regulations.

II. Background on the Rosebud Mine

Coal has been mined at Colstrip, MT for more than 90 years. The Norther Pacific Railway established the city of Colstrip and its associated mine in the 1920s to access coal from the Fort Union Formation. Coal mining began in 1924, providing fuel for the railway's steam locomotive trains. During the initial 34 years of mining, 44 million tons of coal were mined. By 1958, diesel-powered locomotives replaced steam engines and mining ceased in the Colstrip area.

In 1959, the Montana Power Company purchased rights to the Rosebud Mine in the city of Colstrip with plans to build power generation facilities. The Rosebud Mine operation began production in 1968. In 2001, Westmoreland purchased the Rosebud Mine; its subsidiary, Western Energy, continues to operate the mine today. Although the Rosebud Mine has shipped coal by rail as recently as 2010, all coal currently produced by the mine is consumed locally at the Colstrip and Rosebud Power Plants.

III. Background on the Western Energy Proposed Permit Area F

Western Energy proposes to conduct surface coal mining and reclamation operations within the 6,746-acre proposed permit Area F of the Rosebud Mine. The project area would be adjacent to the western boundary of Area C, 12 miles west of Colstrip. Western Energy proposes to conduct surface coal mining operations on an approximately 2,159-acre portion of the project area, with a total disturbance footprint, including soil storage, scoria pits, and haul roads, of approximately 4,260 acres. The project area would, in conjunction with the mining of any reserves remaining with existing permit areas of the Rosebud Mine, supply low-sulfur coal to the Colstrip Power Plant (Unites 3 and 4) at a rate of between 7.7 and 9.95 million tons annually. In addition, coal from the Rosebud Mine with higher sulfur content would be supplied to the Rosebud Power Plant at a rate of approximately 300,000 tons annually.

Approval of the proposed permit Area F is expected to require several other agency actions, including:

- Finding and recommendation by BLM and OSMRE with respect to Western Energy's Resource Recovery and Protection Plan and other requirements of Western Energy's lease. BLM will also submit a recommendation regarding the Federal mining plan;
- Approval by DEQ of Western Energy's Montana Air Quality Permit #1570–07 to allow expansion of the geographic extent of the mine to include the proposed permit Area F; and
- Approval by DEQ of a new MPDES permit.

IV. Alternatives

Alternatives carried forward in the Draft EIS include No Action (Alternative 1), the Proposed Action (Alternative 2), and the Proposed Action Plus Environmental Protection Measures (Alternative 3). Several alternatives were considered but dismissed from further consideration.

Public Comment Procedures: In accordance with the Council on Environmental Quality's regulations for implementing NEPA and DOI's NEPA regulations, OSMRE solicits public comments on the Draft EIS. Comments on the Draft EIS may be submitted in writing or by email. At the top of your letter or in the subject line of your message indicate that the comments are ''Western Energy Area F Draft EIS Comments.''

You are invited to mail your comments on the Draft EIS to: ATTN: Western Energy Area F EIS C/O: Nicole Bauman, ERO Resources Corporation, 1842 Clarkson Street, Denver, CO 80218. You may also submit your comments electronically to *http://svc.mt.ogv/deq/publiccomment* or by email to the following email address: *western-energy-area-f-eis@eroresources.com.* Comments can also be made either in writing or verbally at a public meeting that will be announced at a later date. Be specific in your comments and indicate the chapter, page, paragraph, and sentence that your comment applies to.

All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public review to the extent consistent with applicable law.

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 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. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision.

If you would like to be placed on the mailing list to receive future information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 40 CFR 1506.6, 40 CFR 1506.1

Dated: August 17, 2017.

David Berry,

Regional Director, Western Region.

[FR Doc. 2017–28407 Filed 1–2–18; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1104 (Second Review)]

Polyester Staple Fiber From China; Scheduling of an Expedited Five-Year Review.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of

1930 (''the Act'') to determine whether revocation of the antidumping duty order on polyester staple fiber (PSF) from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: December 5, 2017.

FOR FURTHER INFORMATION CONTACT: Porscha Stiger (202–), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 5, 2017, the Commission determined that the domestic interested party group response to its notice of institution (82 FR 41654, September 1, 2017) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on February 9, 2018, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before February 14, 2018 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by February 14, 2018. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's website at *https://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 27, 2017.

Katherine M. Hiner,

Supervisory Attorney.

[FR Doc. 2017–28339 Filed 1–2–18; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the responses submitted by Auriga Polymers, Inc., DAK Americas, LLC, and Nan Ya Plastics Corporation, America to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–592 and 731–TA–1400 (Preliminary)]

Plastic Decorative Ribbon from China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–592 and 731–TA–1400 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of plastic decorative ribbon from China, provided for in subheadings 3920.10.00, 3920.20.00, 3920.30.00, 3920.43.50, 3920.49.00, 3920.62.00, 3920.69.00, 3921.90.11, 3921.90.15, 3921.90.19, 3921.90.40, 3926.40.00, 3926.90.99, 4601.99.90, 4602.90.00, 5404.90.00, 5609.00.30, 5609.00.40, 9505.10.25, and 9505.90.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by February 12, 2018. The Commission's views must be transmitted to Commerce within five business days thereafter, or by February 20, 2018.

DATES: December 27, 2017.

FOR FURTHER INFORMATION CONTACT: Calvin Chang ((202) 205–3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on December 27, 2017, by Berwick Offray, LLC, Berwick, Pennsylvania.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, January 17, 2018, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *tyrell.burch@usitc.gov* (DO NOT FILE ON EDIS) on or before January 12, 2018. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 22, 2018, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations 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 these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.
Issued: December 27, 2017.

Katherine M. Hiner,

Supervisory Attorney.

[FR Doc. 2017–28340 Filed 1–2–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before February 2, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAView ICR?ref_nbr=201711-1218-005* (this link will only become active on the day following publication of this notice) or

by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street, NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue, NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits information collection. Regulations 29 CFR 1926.50(f) requires an Occupational Safety and Health Act (OSH Act) covered employers engaged in construction to post emergency telephone numbers at the worksite. If the 911 emergency telephone service is not available; 29 CFR 250(a)(2) requires a subject employer to post the maximum safe load limit of a floor located in a storage area inside a building or other structure, unless the floor is on grade. Occupational Safety and Health Act of 1970, section 2(b)(9) and 6(b)(7) authorizes this information collection. *See* 29 U.S.C. 651(b)(9), 655(b)(7).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0093.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 18, 2017 (82 FR 48531).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0093. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits.

OMB Control Number: 1218–0093.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 707,776.

Total Estimated Number of Responses: 766,133.

Total Estimated Annual Time Burden: 181,624 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Seleda Perryman,

Assistant Departmental Clearance Officer.

[FR Doc. 2017–28334 Filed 1–2–18; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Alternative Reporting Methods for Apprenticeship and Training Plans and Top Hat Plans

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Alternative Reporting Methods for Apprenticeship and Training Plans and Top Hat Plans,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before February 2, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201711-1210-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street, NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301,

200 Constitution Avenue, NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Alternative Reporting Methods for Apprenticeship and Training Plans and Top Hat Plans information collection. Section 2520.104–22 provides an exemption to the reporting and provision of Part 1 of Title I of ERISA for employee welfare benefit plans that provide exclusively apprenticeship and training benefits if the plan administrator meets the following requirements: (1) Files a notice with the Secretary that provides the name of the plan, the plan sponsor's Employer Identification Number, the plan administrator's name, and the name and location of an office or person from whom interested individuals can obtain certain info about courses offered by the plan; and (2) take steps reasonably designed to ensure that the information required to be contained in the notice is disclosed to employees of employers contribution to the plan who may be eligible to enroll in any course of study sponsored or establish by the plan; (3) and make the notice available to employees upon request. Under 2520.104–23, the Department provides an alternative method of compliance with the reporting and disclosure of Title I of ERISA for unfunded or insured plan established for a select group of management of highly compensated employees (*i.e.,* top hat plans). In order to satisfy the alternative method of compliance, the plan administrator must file a statement with the Secretary of Labor that includes the name and address of the employer, the employer EIN, a declaration that the employer maintains a plan or plans primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees, and a statement of the number of such plans and the employees covered by each. Employee Retirement Income Security Act of 1974 authorizes this information collection. *See* 29 U.S.C. 1023.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0153.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 22, 2017 (82 FR 23303).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0153. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Alternative Reporting Methods for Apprenticeship and Training Plans and Top Hat Plans.

OMB Control Number: 1210–0153.

Affected Public: Private Sector—businesses or other for-profits and not for profits institutions.

Total Estimated Number of Respondents: 1,872.

Total Estimated Number of Responses: 1,872.

Total Estimated Annual Time Burden: 562 hours.

Total Estimated Annual Other Costs Burden: $457.

Authority: 44 U.S.C. 3507(a)(1)(D).

Seleda Perryman,

Assistant Departmental Clearance Officer.

[FR Doc. 2017–28372 Filed 1–2–18; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Rehabilitation Action Report

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Rehabilitation Action Report,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before February 2, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201709-1240-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any

comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Rehabilitation Action Report information collection. The contractor vocational rehabilitation counselor submits form OWCP–44 during an ongoing vocational rehabilitation. The form gives prompt notification of key events that may require OWCP action in the vocational rehabilitation process. For example, when a disabled worker returns to work, benefits are adjusted quickly to avoid an overpayment. The rehabilitation counselor from information in his or her records completes all items. The Federal Employees' Compensation Act sections 8104(a) and 8111(b) and the Longshore and Harbor Workers' Compensation Act sections 908(g) and 939(c) authorizes this information collection. *See* 5 U.S.C. 8104(a), 8111(b) and 33 U.S.C. 908(g), 939(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0008.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 18, 2017 (82 FR 48533).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0008. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Rehabilitation Action Report.

OMB Control Number: 1240–0008.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 4,066.

Total Estimated Number of Responses: 4,066.

Total Estimated Annual Time Burden: 678 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Seleda Perryman,

Assistant Departmental Clearance Officer.

[FR Doc. 2017–28333 Filed 1–2–18; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (17–092)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments regarding the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 7th Street NW, Washington, DC 20543. Attention: Desk Officer for NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *Lori.Parker-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA's founding legislation, the Space Act of 1958, as amended, directs the agency to expand human knowledge of Earth and space phenomena and to preserve the role of the United States as a leader in aeronautics, space science, and technology. The NASA Office of Education administers the agency's national education activities in support of the Space Act, including the performance measurement and evaluation of educational projects and programs. This generic clearance will allow the NASA Office of Education to continue to test and pilot with subject matter experts, secondary students, higher education students, educators, and interested parties new and existing information collection forms and assessment instruments for the purposes of improvement and establishing validity and reliability characteristics of the forms and instruments. Existing information collections include Undergraduate Internship Impact Surveys (Baseline and Follow-up Instruments), Undergraduate Internship Impact Surveys (Retrospective and Traditional Developed Instruments), STEM Challenges Impact Surveys (Student Baseline and Follow-up Instruments), STEM Challenges Impact Surveys (Educator Retrospective Instruments), One Stop Shopping Initiative (OSSI) Student-level data application, and Office of Education

Performance Measurement (OEPM) Program-level data system. Forms and instruments to be tested include program application forms, customer satisfaction questionnaires, focus group protocols, and project activity survey instruments. Methodological testing will include focus group discussions, pilot surveys to test new individual question items as well as the complete form and instrument. In addition, test-retest and similar protocols will be used to determine reliability characteristics of the forms and instruments. Methodological testing will assure that forms and instruments accurately and consistently collect and measure what they are intended to measure and that data collection items are interpreted precisely and consistently, all towards the goal of accurate Agency reporting while improving the execution of NASA Education project activities.

II. Method of Collection

Electronic, paper, and focus group interviews.

III. Data

Title: Generic Clearance for the NASA Office of Education Performance Measurement and Evaluation (Testing).

OMB Number: 2700–0159.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 10,756.

Estimated Time per Response: Variable.

Estimated Total Annual Burden Hours: 4,487 hours.

Estimated Total Annual Cost: $50,913.23.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2017–28427 Filed 1–2–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (17–093)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments regarding the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 7th Street NW, Washington, DC 20543. Attention: Desk Officer for NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *Lori.Parker-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA's founding legislation, the Space Act of 1958, as amended, directs the agency to expand human knowledge of Earth and space phenomena and to preserve the role of the United States as a leader in aeronautics, space science, and technology. The NASA Office of Education has three primary goals: (1) Strengthen NASA and the Nation's future workforce, (2) attract and retain students in science, technology, engineering and mathematics, or STEM, disciplines, and (3) engage Americans in NASA's mission. This notice informs the public of NASA's intent to review and revise the currently approved information collection for STEM Challenge project activities. The request for emergency renewal pertains to the administration of surveys to youth in support of the agency's STEM challenge activities for youth. The information collection was previously revised to collect the minimum amount of data required to (1) evaluate the activity for improvement opportunities, and (2) collect outcome data to assess the activity model's effectiveness in meeting its intended objectives. The number of youth participating in this information collection were previously reduced to reflect the estimated number of participants who will be engaged in this activity in the future. The cost of the information collection, to participating members of the public, reflects a previous reduction as a result of the changes to the information collection described above.

II. Method of Collection

Electronic.

III. Data

Title: NASA Office of Education STEM Challenges.

OMB Number: 2700–0150.

Type of Review: Emergency 6 month extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 1,620.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 162 hours.

Estimated Total Annual Cost: $1,175.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2017–28428 Filed 1–2–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (17–091)]

Notice of Intent To Grant Partially Exclusive Term License Take Out This Space

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant partially exclusive term license.

SUMMARY: NASA hereby gives notice of its intent to grant a partially-exclusive term license in the United States to practice the invention described and claimed in U.S. Patent 6,760,487 entitled, ''Estimated Spectrum Adaptive Postfilter And The Iterative Prepost Filtering Algorithms'', and in U.S. Patent 9,414,072 entitled ''Improved Performance of the JPEG Estimated Spectrum Adaptive Postfilter (JPEG–ESAP) for Low Bit Rates'' to Human Health Organization (''H2O''), having its principal place of business in Studio City, CA.

DATES: The prospective partially-exclusive term license may be granted unless NASA receives written objections, including evidence and argument no later than January 18, 2018, that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than January 18, 2018 will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Bryan A. Geurts, Goddard Space Flight Center, 8800 Greenbelt Road, M/S 140.1, Greenbelt, MD 20771. Phone (301) 286–7351. Facsimile (301) 286–9502.

FOR FURTHER INFORMATION CONTACT: Enidia Santiago-Arce, Innovative Partnerships Program Office, Goddard Space Flight Center, 8800 Greenbelt Road, M/S 504, Greenbelt, MD 20771. Phone (301) 286–5810.

SUPPLEMENTARY INFORMATION: This notice of intent to grant a partially-exclusive term patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2017–28388 Filed 1–2–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

AGENDA

TIME AND DATE: 9:00 a.m., Tuesday, January 23, 2018.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW, Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED: 5292 Aircraft Accident Report—Uncontained Engine Failure and Subsequent Fire, American Airlines Flight 383, Boeing 767–323, N345AN, Chicago, Illinois, October 28, 2016.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100. The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle McCallister at (202) 314–6305 or by email at *Rochelle.McCallister@ntsb.gov* by Wednesday, January 17, 2018.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Peter Knudson at (202) 314–6100 or by email at *peter.knudson@ntsb.gov.*

Dated: December 29, 2017.

LaSean McCray,

Alternate Federal Register Liaison Officer.

[FR Doc. 2017–28508 Filed 12–29–17; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–4675; NRC–2017–0221]

Department of Health and Human Services, Food and Drug Administration, Winchester Engineering and Analytical Center

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to provide comments, request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a license amendment application from the Department of Health and Human Services, Food and Drug Administration (FDA) for the Winchester Engineering and Analytical Center located in Winchester, MA. The license authorizes the use of radioactive byproduct material for research and development. The licensee is requesting a partial site release for construction of a new 3-story building directly behind the existing main lab building.

DATES: Submit comments by February 2, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date. A request for a hearing or petition for leave to intervene must be filed by March 5, 2018.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0221. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: OWFN–2–A13, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Stephen Hammann, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, 2100 Renaissance Boulevard, Suite 100, King of Prussia, Pennsylvania 19406;

telephone: 610–337–5399; fax number: 610–337–5269; email: *Stephen.Hammann@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0221 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–2017–0221.
- *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 Decommissioning Plan is available in ADAMS under Accession No. ML17215A952.
- *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–2017–0221 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 has received, by letters dated November 25, 2016, (ADAMS Accession No. ML16347A523) and July 21, 2017, (ADAMS Accession Nos. ML17215A952 and ML17215A953) an application to amend Materials License No. 20–08361–01 and a decommissioning plan, respectively. The amendment provides for a partial site release. The decommissioning plan includes the radiological survey and subsequent excavation, decontamination, and proper disposal of licensed radioactive material identified within a designated area of the site. Specifically, the approval of the decommissioning plan would allow FDA to begin remediation activities in the specified area of the Winchester Engineering and Analytical Center to confirm that the specified area would meet the requirements for release for unrestricted use as specified in section 14.02 of title 10 of the *Code of Federal Regulations* (10 CFR). Materials License No. 20–08361–01 currently authorizes use of radioactive material for research and development as defined in 10 CFR 30.4 and 10 CFR 70.4.

An NRC administrative completeness review found the application acceptable for a technical review (ADAMS Accession No. ML17215A953). Prior to approving the proposed action, the NRC will need to make the findings required by the Atomic Energy Act of 1954 as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report and an environmental assessment. The environmental assessment will be the subject of a subsequent notice in the **Federal Register**.

III. Notice and Solicitation of Comments

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Federally-recognized Indian Tribe that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to § 20.1405, which provides for publication in the **Federal Register** and in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site. Comments should be provided within 30 days of the date of this notice.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's 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 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

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 60 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. 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.

Dated at King of Prussia, Pennsylvania, this 17th day of November 2017.

For the Nuclear Regulatory Commission.

Raymond J. Powell,

Chief, Decommissioning, ISFSI, and Reactor Health Physics Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 2017–28331 Filed 1–2–18; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Disabled Dependent Questionnaire, RI 30–10

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a reinstatement with change of an expired information collection request (ICR), Disabled Dependent Questionnaire, RI 30–10.

DATES: Comments are encouraged and will be accepted until February 2, 2018.

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 ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0179) was previously published in the **Federal Register** on May 5, 2017, at 82 FR 21275, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. 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;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Form RI 30–10 is used to collect sufficient information about the medical condition and earning capacity for the Office of Personnel Management to be able to determine whether a disabled adult child is eligible for health benefits coverage and/or survivor annuity payments under the Civil Service Retirement System or the Federal Employees Retirement System.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Disabled Dependent Questionnaire.

OMB Number: 3206–0179.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 2,500.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 2,500 hours.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–28411 Filed 1–2–18; 8:45 am]

BILLING CODE 6325–38–P

POSTAL SERVICE

Product Change—Priority Mail Express 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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 60 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–93, CP2018–135.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28355 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 406 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–101, CP2018–143.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28363 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 411 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–106, CP2018–148.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28368 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 409 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–104, CP2018–146.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28366 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service 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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 32 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–90, CP2018–132.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28352 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service 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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 73 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–96, CP2018–138.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28358 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express 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 required notice:* January 3, 2018.

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 27,

2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 58 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–91, CP2018–133.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28353 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service 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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 72 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–95, CP2018–137.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28357 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express 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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 59 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–92, CP2018–134.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28354 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 412 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–107, CP2018–149.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28369 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 57 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–87, CP2018–129.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28349 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service 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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service Contract 91 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–97, CP2018–139.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28359 Filed 1–2–18; 8:45 am]

BILLING CODE 7710✱P

POSTAL SERVICE

Product Change—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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 405 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–100, CP2018–142.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28362 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 407 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–102, CP2018–144.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28364 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 413 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–108, CP2018–150.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28370 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 403 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–98, CP2018–140.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28360 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 410 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–105, CP2018–147.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28367 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 404 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–99, CP2018–141.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28361 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 59 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–89, CP2018–131.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28351 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 58 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–88, CP2018–130.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28350 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 408 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–103, CP2018–145.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28365 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service 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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 71 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–94, CP2018–136.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28356 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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 required notice:* January 3, 2018.

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 27, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 414 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–109, CP2018–151.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28371 Filed 1–2–18; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the

estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and purpose of information collection: RUIA Claims Notification and Verification System; OMB 3220–0171.

Section 5(b) of the Railroad Unemployment Insurance Act (RUIA), requires that effective January 1, 1990, when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of the claim to the claimant's base year employer(s) to provide them an opportunity to submit information relevant to the claim before making an initial determination. If the RRB determines to pay benefits to the claimant under the RUIA, the RRB shall notify the base-year employer(s).

The purpose of the RUIA Claims Notification and Verification System is to provide two notices, pre-payment Form ID–4K, Prepayment Notice of Employees' Applications and Claims for Benefits Under the Railroad Unemployment Insurance Act, and post-payment Form ID–4E, Notice of RUIA Claim Determination. Prepayment Form ID–4K provides notice to a claimant's base-year employer(s), of each unemployment application and unemployment and sickness claim filed for benefits under the RUIA and provides the employer an opportunity to convey information relevant to the proper adjudication of the claim.

The railroad employer can elect to receive Form ID–4K by one of three options: A computer-generated paper notice, by Electronic Data Interchange (EDI), or online via the RRB's Employer Reporting System (ERS). The railroad employer can respond to the ID–4K notice by telephone, manually by mailing a completed ID–4K back to the RRB, or electronically via EDI or ERS.

Once the RRB determines to pay a claim post-payment Form Letter ID–4E, Notice of RUIA Claim Determination, is used to notify the base-year employer(s). This gives the employer a second opportunity to challenge the claim for benefits.

The ID–4E mainframe-generated paper notice, EDI, and internet versions are transmitted on a daily basis, generally on the same day that the claims are approved for payment. Railroad employers who are mailed Form ID–4E are instructed to write if they want a reconsideration of the RRB's determination to pay. Employers who receive the ID–4E electronically, may file a reconsideration request by completing the ID–4E by either EDI or ERS. Completion is voluntary.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (82 FR 48729 on October 19, 2017) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: RUIA Claims Notification and Verification System.

OMB Control Number: 3220–0171.

Form(s) submitted: ID–4K, ID–4K (INTERNET), ID–4E, ID–4E (INTERNET).

Type of request: Revision of a currently approved collection of information.

Affected public: Private Sector; Businesses or other for-profits.

Abstract: Section 5(b) of the RUIA requires that effective January 1, 1990, when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base-year employer(s) and afford such employer(s) an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the RRB determines to pay benefits to a claimant under the RUIA, the RRB shall provide notice of such determination to the claimant's base year employer.

Changes proposed: The RRB proposes to replace, for the ID–4E and ID–4K, using EDI with the use of secure File Transfer Protocol (FTP), which is the standard network protocol used for transferring files between a railroad employer and the RRB. The RRB proposes no changes to the other versions of the ID–4E or ID–4K.

The burden estimate for the ICR is as follows:

Form number	Annual responses	Time (minutes)	Burden (hours)
ID–4K (Manual)	1,250	2	42
ID–4K (FTP)	16,500	(*)	210
ID–4K (Internet)	64,000	2	2,133
ID–4E (Manual)	50	2	2
ID–4E (Internet)	120	2	4
Total	81,920		2,391

* The burden for the 5 participating employers who transmit FTP responses is calculated at 10 minutes each per day, 251 workdays a year or 210 total hours of burden.

2. Title and purpose of information collection: Request for internet Services, OMB 3220–0198.

The RRB uses a Personal Identification Number (PIN)/Password system that allows RRB customers to conduct business with the agency electronically. As part of the system, the RRB collects information needed to establish a unique PIN/Password that allows customer access to RRB internet-based services. The information collected is matched against records of the railroad employee that are maintained by the RRB. If the information is verified, the request is approved and the RRB mails a Password Request Code (PRC) to the requestor. If the information provided cannot be verified, the requestor is advised to contact the nearest field office of the RRB to resolve the discrepancy. Once a PRC is obtained from the RRB, the requestor can apply for a PIN/Password online. Once the PIN/Password has been established, the requestor has access to RRB internet-based services.

Completion is voluntary, however, the RRB will be unable to provide a PRC or allow a requestor to establish a PIN/Password (thereby denying system access), if the requests are not completed.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (82 FR 48730 on October 19, 2017) required by 44 U.S.C.

3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Request for internet Services.
OMB Control Number: 3220–0198.
Form(s) submitted: N/A.
Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: The Railroad Retirement Board collects information needed to provide customers with the ability to request a Password Request Code and subsequently, to establish an individual PIN/Password, the initial steps in providing the option of conducting transactions with the RRB on a routine basis through the internet.

Changes proposed: The RRB proposes no changes to the PRC screens or the PIN/Password screens.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
Request PRC	14,000	5.0	1,167
Establish Pin/Password	17,500	1.5	200
Total	31,500		1,367

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.*

Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or *Brian.Foster@rrb.gov* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Brian D. Foster,

Clearance Officer.

[FR Doc. 2017–28330 Filed 1–2–18; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, January 4, 2018.

PLACE: Closed Commission Hearing Room 10800.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: December 28, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–28446 Filed 12–29–17; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82267; File No. SR–BOX–2017–16]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Amendment No. 2 to a Proposed Rule Change Amending Consolidated Audit Trail Funding Fees

December 11, 2017.

Correction

In notice document 2017–26990, appearing on pages 59680–59682, in the issue of Friday, December 15, 2017, please note the following correction:

On page 59682 in the third column, in the thirty-eighth line from the top, ''January 5, 2017'' should read ''January 5, 2018''.

[FR Doc. C1–2017–26990 Filed 1–2–18; 8:45 am]

BILLING CODE 1301–00–D

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS FORMS 2, 3A, 3B and 3C

Title: Selective Service System Change of Information, Correction/Change Form, and Registration Status Forms.

Purpose: To insure the accuracy and completeness of the Selective Service System registration data.

Respondents: Registrants are required to report changes or corrections in data submitted on the SSS Form 1.

Frequency: When changes in a registrant's name or address occur.

Burden: A burden of two minutes or less on the individual respondent.

Copies of the above identified forms can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Operations

Directorate, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: December 27, 2017.

Donald M. Benton,

Director.

[FR Doc. 2017–28383 Filed 1–2–18; 8:45 am]

BILLING CODE 8015–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 03/73–0239]

Core Capital Partners II–S, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Core Capital Partners II–S, L.P., 1717 K Street NW, Suite 920, Washington, DC 20006, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Core Capital Partners II–S, L.P. proposes to manage assets it sold to a third-party acquirer and held in a newly formed Special Purpose Vehicle (''SPV'') as the General Partner of SPV.

The financing is brought within the purview of § 107.730(a) and (e) of the Regulations because SPV, an Associate of Core Capital Partners II–S, L.P., owns more than ten percent of the same assets held by Core Capital Partners II–S, LP, and therefore this transaction is considered a financing in which an Associate is used to manage Portfolio Concerns.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Dated: December 13, 2017.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2017–28384 Filed 1–2–18; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2017–0049]

Request for Information on Strategies To Improve Adult Outcomes for Youth Receiving Supplemental Security Income (SSI)

AGENCY: Social Security Administration.

ACTION: Request for information.

SUMMARY: The Social Security Administration (SSA) administers the Supplemental Security Income (SSI) program, which provides means-tested payments to the elderly, blind, and disabled, including children. This request for information (RFI) seeks public input on strategies for improving the adult economic outcomes of youth ages 14 to 25 with disabilities receiving SSI. The input we receive will inform our deliberations about potential policy changes and the design of future demonstration projects for transition-age SSI recipients.

DATES: Comments must be received by February 2, 2018.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2017–0049 so that we may associate your comments with the correct docket.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the ''Search'' function to find docket number SSA–2017–0049. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Katherine Bent, Associate Commissioner for Research, Demonstration, and Employment Support, Office of Retirement and Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–9036, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Purpose

The SSI program provides means-tested payments to the elderly and individuals with disabilities, including children. In 2016, the SSI program provided payments to over 9 million individuals, about 11 percent of whom were transition age, which we define as ages 14–25.[1] While studies have shown that transition-age SSI recipients are at risk of poor economic outcomes—lower earnings and employment—when they become adults, it is not clear what supports could improve these outcomes or who should provide them. Understanding that SSI is only one part of the social safety net of programs intended to support individuals, SSA is interested in playing an appropriate role supporting broader Federal, State, and local efforts to improve the adult outcomes of youth SSI recipients.

This RFI offers interested parties, including States, community-based and other non-profit organizations, philanthropic organizations, researchers, and members of the public, the opportunity to provide information and recommendations on effective approaches for improving adult outcomes for youth receiving SSI. For the purposes of this notice, ''transition age'' and ''youth'' are used interchangeably and refer to individuals ages 14 to 25;[2] ''minors'' or ''children''

[1] *https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2016/sect01.html* (table3); *https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2016/sect04.html* (table19); *https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2016/sect06.html* (table35);

[2] For a discussion of Federal efforts with respect to transition-age individuals, see Federal Partners in Transition Workgroup (2015) ''The 2020 Federal Youth Transition Plan: A Federal Interagency Strategy.'' (available at *http://youth.gov/docs/508_EDITED_RC_FEB26-accessible.pdf*).

is used to refer to individuals under the age of 18.

Background

Youth receiving SSI confront challenges due to poor health, poverty, a lack of information to access the fragmented adult service system, and other barriers.[3] Many youth face a lack of coordinated services, especially as they leave high school and their schools no longer provide youth support. SSA's redetermination of SSI eligibility at age 18 also generally results in 30–40 percent of youth losing SSI eligibility (and the accompanying automatic Medicaid access that most SSI recipients receive) because their condition does not meet the adult standard for disability.[4] The Government Accountability Office (GAO) has noted that these issues contribute to the difficulties many child SSI recipients experience transitioning to adulthood.[5]

Several studies of transition-age SSI recipients suggest significant gaps exist in the awareness and use of services and policies currently available to youth. For example, prior to age 18, less than one quarter of SSI recipients received vocational training.[6] About 40 percent of 16- and 17-year-old SSI recipients work,[7] but only about 3 percent of eligible SSI recipients (of all ages) use the student earned income exclusion, a work incentive that excludes a certain amount of earned income from the SSI calculation.[8]

SSA has recognized the difficult transition to adulthood and that many of these youth return to the SSI program in early adulthood. In the 2000s, SSA conducted the Youth Transition Demonstration (YTD), which provided support, especially employment support, to transition-age SSI recipients. Results from YTD show that employment-focused services can help youth achieve success in the labor market in the short run. Although there were mixed impact estimates, YTD projects that provided higher levels of employment-focused services saw higher impacts on earnings and employment that lasted after the period of service delivery.[9] SSA is also currently evaluating the Promoting Readiness of Minors in SSI (PROMISE) demonstration.[10] PROMISE is a joint effort with the Departments of Education, Labor, and Health and Human Services to help youth as early as age 14 prepare for their transition to adulthood. Qualitative and anecdotal evidence from YTD and PROMISE suggest that many families with children receiving SSI are unprepared for the transition of their children to adulthood.

To address some of these issues, SSA recently began sending a brochure to SSI recipients approaching age 18 with information about the age-18 redetermination, SSA policies to support youth transition, and community resources. This information is also highlighted in a special section of SSA's ''Red Book,'' [11] which is a resource that summarizes SSA's work incentive policies and is used by benefits counselors around the country. SSA has also instructed its Work Incentive Planning and Assistance (WIPA) providers to make a concerted effort to reach out to youth.

SSA has also tasked the National Academies of Sciences, Engineering, and Medicine's Health and Medicine Division with convening a consensus committee to look at improving health outcomes for children with disabilities.[12] The committee will provide findings about programs and services aimed at improving health and functioning outcomes for school-aged children with disabilities. SSA expects to use the report to inform decisions about future research and policies. The final report is due in Fiscal Year 2018.

GAO Findings About SSI Transition

Despite these efforts, a recent GAO audit recommended additional efforts to encourage employment for transition-age SSI recipients.[13] For example, GAO recommended that SSA work with the Department of Education to explore options to connect SSI youth to vocational rehabilitation (VR) services. SSA currently does not have the authority to refer SSI recipients to specific VR agencies. The Ticket to Work and Work Incentives Improvement Act of 1999 [14] removed this authority to provide a level playing field for employment networks, who are eligible for payments for successfully assisting Social Security Disability Insurance (SSDI) beneficiaries and SSI recipients return to work. When SSA implemented the Ticket program, it chose not to include children because they ''generally are in school, still pursuing completion of their formal elementary and secondary education'' and the Ticket program ''could interfere with their pursuit of an education, completion of which many believe should be the primary focus and goal for school-age youth.'' [15] As a result, SSA can neither refer minors to VR agencies, nor include those under the age of 18 in the Ticket program.

Other Agency Efforts

While SSA has an interest in improving adult outcomes for SSI youth, other Federal, State, and local governments and private and nonprofit entities often have larger—and more direct—roles in the general youth transition process. The Federal Partners in Transition (FPT) workgroup, for example, which is composed of representatives from SSA and the Departments of Labor, Health and Human Services, and Education, is a

[3] Students with Disabilities: Better Federal Coordination Could Lessen Challenges in the Transition from High School. (available at *http://www.gao.gov/products/GAO-12-594*). Youth With Autism: Federal Agencies Should Take Additional Action to Support Transition-Age Youth. (available at *https://www.gao.gov/products/GAO-17-352*).

[4] Annual Report on Medical Continuing Disability Reviews. (available at *https://www.ssa.gov/legislation/FY%202014%20CDR%20Report.pdf*).

[5] Students with Disabilities: Better Federal Coordination Could Lessen Challenges in the Transition from High School. (available at *http://www.gao.gov/products/GAO-12-594*). Youth With Autism: Federal Agencies Should Take Additional Action to Support Transition-Age Youth. (available at *https://www.gao.gov/products/GAO-17-352*). Supplemental Security Income: SSA Could Strengthen Its Efforts to Encourage Employment for Transition-Age Youth. (available at *http://www.gao.gov/products/GAO-17-485*).

[6] David C. Wittenburg and Pamela J. Loprest (2007) *Early Transition Experiences of Transition-Age Child SSI Recipients: New Evidence From the National Survey of Children and Families.* Journal of Disability Policy Studies 18(3): 176–187. (available at *http://journals.sagepub.com/doi/abs/10.1177/10442073070180030601*).

[7] Jeffrey Hemmeter, Jacqueline Kauff, and David Wittenburg (2009) *Changing Circumstances: Experiences of child SSI recipients before and after their age-18 redetermination for adult benefits.* Journal of Vocational Rehabilitation 30(3): 201–221. (available at *http://content.iospress.com/articles/journal-of-vocational-rehabilitation/jvr00462*).

[8] Mary Kemp (2010) *Recipients of Supplemental Security Income and the Student Earned Income Exclusion.* Social Security Bulletin 70(2): 31–61. (available at *https://www.ssa.gov/policy/docs/ssb/v70n2/v70n2p31.html*).

[9] Thomas Fraker, Arif Mamun, and Lori Timmins (2015) *Three-Year Impacts of Services and Work Incentives on Youth with Disabilities* (available at *https://www.mathematica-;mpr.com/our-publications-and-findings/publications/threeyear-impacts-of-services-and-work-incentives-on-youth-with-disabilities*).

[10] Thomas Fraker, Erik Carter, Todd Honeycutt, Jacqueline Kauff, Gina Livermore, and Arif Mamun (2014) *Promoting Readiness of Minors in SSI (PROMISE) Evaluation Design Report* (available at *https://www.ssa.gov/disabilityresearch/documents/PROMISE_Eval20%20Design%20Report_Final.pdf*).

[11] *https://www.ssa.gov/%redbook/.*

[12] *http://nationalacademies.org/%hmd/Activities/SelectPops/ImprovingHealthOutcomesforChildrenwithDisabilities.aspx.*

[13] Supplemental Security Income: SSA Could Strengthen Its Efforts to Encourage Employment for Transition-Age Youth. (available at *http://www.gao.gov/products/GAO-17-485*).

[14] Sec. 101(b), Public Law 106–170, 113 Stat. 1860.

[15] 66 FR 67369, Dec. 28, 2001.

voluntary partnership designed to help coordinate Federal efforts around transition.[16] In 2015, FPT published a document highlighting the goals of the partner agencies with respect to improving the outcomes for youth with disabilities.[17] SSA continues to work with our partners in this area.

The passage of the Workforce Innovation and Opportunity Act (WIOA)[18] in 2014 has affected many of SSA's partners in this area. WIOA included significant requirements for serving youth. In particular, WIOA expanded the services that State VR agencies provide youth and the eligibility requirements for services. Additionally, State VR agencies must spend at least 15 percent of their Federal VR funds on pre-employment transition services for youths with disabilities transitioning from school to post-secondary education or employment.[19] The required services include job exploration counseling, work-based learning experiences, post-secondary educational opportunity counseling, workplace readiness training, and self-advocacy instruction.[20] Additionally, at least 75 percent of WIOA youth funding to State workforce agencies, which oversee state employment and workforce programs such as unemployment insurance, must be spent on out-of-school youth.[21]

In 2016, the Department of Education awarded grants to five State agencies under the Disability Innovation Fund-Transition Work-Based Learning Model Demonstrations project to support the requirements of WIOA. These grants will help the States ''identify and demonstrate practices, which are supported by evidence, in providing work-based learning experiences in integrated settings under the vocational rehabilitation (VR) program, in collaboration with State educational agencies (SEAs), local educational agencies (LEAs), and other key partners within the local community, to improve post-school outcomes for students with disabilities.'' [22] In addition, these models will be rigorously evaluated to explore their effectiveness and build the evidence base on effective work-based learning supports.

Request for Information

Through this notice, we are soliciting feedback from interested parties on potential policy changes and demonstration projects related to improving the transition of youths receiving SSI from childhood into adulthood. Responses to this request will inform our decisions about future policy changes targeting this population, whether to pursue a new demonstration project, and how to design such a project. This notice is to gather information for our internal planning purposes only and should not be construed as a solicitation or as an obligation on our part or on the part of any participating Federal agencies.

We ask respondents to address the following questions, where possible, considering the context discussed in this document. You do not need to address every question and should focus on those that relate to your expertise or perspectives. To the extent possible, please clearly indicate which question(s) you address in your response.

Questions:

1. What specific programs or practices have shown promise at the Federal, State, or local level in improving the adult economic outcomes of youth with disabilities receiving SSI?

2. Given the requirement of VR agencies to serve transition-age individuals, the availability of Individualized Education Programs (IEP) and Section 504 plans in school settings, and the availability of services and supports elsewhere available to youths, what should SSA's role be in assisting the transition of youths to adulthood?

3. How might SSA better support other agencies' youth transition-related activities?

a. What SSA policies interact with other agencies' services and supports?

b. Do SSA's and other agencies' policies need to be modified (technically or administratively) to improve utilization of these services and supports? How?

4. Are there aspects of SSA's publications, mailings, and online information that SSA can improve to better support successful transitions to adulthood of youths receiving SSI?

5. How can SSA improve its existing work incentive policies, such as the Student Earned Income Exclusion (SEIE) and Impairment-Related Work Expenses (IRWE), to better support and increase SSI youth engagement in work? Are there alternative models that SSA should consider to replace existing work incentives?

6. How can SSA enhance and better target its existing service infrastructure including its Work Incentive Planning and Assistance (WIPA) program and Plan to Achieve Self Support (PASS), to increase SSI youth engagement in work and work activities?

7. What lessons from SSA's youth demonstration projects, in particular the Youth Transition Demonstration (YTD) and the Promoting Readiness of Minors in SSI (PROMISE) project, should SSA apply to new policies and demonstrations? What partners were not included in those demonstrations that should have been? Why?

8. If SSA were to conduct a new demonstration project related to youth, which populations should SSA consider targeting, if any? How can SSA identify these populations? How many individuals enter these populations per year?

9. Are there entities (for example, State VR agencies, medical practices, local education and training agencies, etc.) we could look to as exemplars based on current practices for serving youth with disabilities? What evidence exists to suggest these sites are effectively providing services that would lead to the increased self-sufficiency of youths with disabilities?

10. In the absence of legislation renewing SSA's ability to refer Social Security Disability Insurance (SSDI) beneficiaries and SSI recipients directly to VR, how can SSA help connect youth to VR services?

11. Should SSA expand the Ticket to Work (Ticket) program to include children or create a separate program for children with a similar mission (*i.e.,* reimbursing service providers whose services result in increased employment and reduced need on cash benefits)?

a. What services should such a program provide over and above the services youth with disabilities receiving SSI are already eligible for?

b. What types of service providers should be allowed to participate in a youth Ticket program? Should such a program include all types of existing employment network providers or should it be limited organizations with existing providers that serve the broader youth population?

c. Is there a lower age limit the Ticket program (either the current program or a new child-specific program) should include that is consistent with other common Federal, State, and local policies that promote self-sufficiency?

d. Since most children are in school, what outcomes or milestones should a

[16] Federal Partners in Transition Workgroup (2015) ''The 2020 Federal Youth Transition Plan: A Federal Interagency Strategy'' (available at *http://youth.gov/docs/508_EDITED_RC_FEB26-accessible.pdf.*)

[17] *Id.*

[18] Secs. 411–424, Public Law 113–128, 128 Stat. 1425.

[19] 29 U.S.C. 730(d), 733.

[20] 29 U.S.C. 733(b).

[21] 29 U.S.C. 3164(a)(4).

[22] *https://rsa.ed.gov/programs.cfm?pc=twblmd&sub=awards.*

program that included payments for child outcomes be tied to?

e. How effective are such incentive payments to service providers likely to be when serving youth? Are there alternatives to current incentive payment structures that SSA should consider (*e.g.,* a payment structure based on state-wide youth employment or youth SSI participation metrics)?

f. How should the age-18 redetermination and the fact that over one-third of age-18 redeterminations result in the cessation of benefits because they do not have a condition that meets the adult standard for disability factor into such a program?

g. Are there specific populations among SSI youth, such as youth in foster care, that such a program should consider for allowable services, providers, and expenditures?

h. Would such a program be duplicative of the services provided by State VR agencies, which are already required to support the transition of youth with disabilities? Why or why not?

12. Since the implementation of WIOA, are there specific examples of effective services that are funded through the PROMISE grants but not funded through State VR agencies or other Federal and State funding sources?

Guidance for Submitting Documents

We ask that each respondent include the name and address of his or her institution or affiliation, if any, and the name, title, mailing and email addresses, and telephone number of a contact person for his or her institution or affiliation, if any.

Rights to Materials Submitted

You should not provide any material you consider confidential or proprietary in response to this notice.

Dated: December 26, 2017.

Nancy A. Berryhill,

Acting Commissioner of Social Security.

[FR Doc. 2017–28397 Filed 1–2–18; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 10238]

Advisory Committee on International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Solicitation of expressions of interest from members of the public wishing to serve as representative members of the Department of State's Advisory Committee on International Postal and Delivery Services (IPoDS).

This notice announces that applications are now being accepted from members of the public who wish to join the IPoDS Committee, which was established in accordance with the provisions of 39 U.S.C. 407(b)(3) and the Federal Advisory Committee Act, 5 U.S.C. Appendix.

Under the terms of its authorizing statute and its charter, the members of the IPoDS Committee represent mailers, private sector delivery companies, stakeholders in international delivery services or others who are directly affected by international postal operations. (The Committee also includes Federal members from several U.S. Government agencies including the Postal Regulatory Commission and the United States Postal Service.) Members are appointed by the Assistant Secretary of State for International Organization Affairs. The Committee provides advice to the Department of State with respect to U.S. foreign policy related to international postal services and other international delivery services and U.S. policy toward the Universal Postal Union and other international postal and delivery organizations. Representative members of the Committee serve on a voluntary basis and without compensation.

In order to be appointed to the Committee, interested individuals must represent identifiable groups or entities that are users or providers of international postal or delivery services or others directly affected by international postal operations. There is no specified form for applications. New prospective Committee members should submit a letter expressing their interest in serving that explicitly identifies the group or entity they represent. They should also include a clear statement of the connection of that group or entity to the use or provision of international postal or delivery services. Letters should also describe the prospective member's relevant qualifications and experience and may be accompanied by supporting documentation, such as a biographic statement or resume. Confirmation from the group or entity represented that the prospective member is authorized to represent that group or entity on the Committee must be submitted. Inclusion of an email address and/or telephone number in each applicant's submission will speed communications.

Letters of interest should be no more than four pages in length and should be addressed to Joseph P. Murphy, the IPoDS Committee's designated federal officer. Prospective Committee members may submit scanned copies of their letters electronically to Mr. Murphy by email to *murphyjp@state.gov* and/or by U.S. Mail to IO/STA, L409 (SA1); Department of State; 2401 E Street NW, Washington, DC 20037. The deadline for receipt of applications is 12 January 2018.

FOR FURTHER INFORMATION CONTACT: Please contact Ms. Shereece Robinson of the Office of Specialized and Technical Agencies (IO/STA), Bureau of International Organization Affairs, U.S. Department of State, at tel. (202) 663–2649, by email at *RobinsonSA2@state.gov*.

Joseph P. Murphy,

Designated Federal Officer, Advisory Committee on International Postal And Delivery Services, Office of Specialized and Technical Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 2017–28408 Filed 1–2–18; 8:45 am]

BILLING CODE 4710–19–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on February 1, 2018, in Harrisburg, Pennsylvania. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. Such projects are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for March 8, 2018, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects. The deadline for the submission of written comments is February 12, 2018.

DATES: The public hearing will convene on February 1, 2018, at 2:30 p.m. The public hearing will end at 5:00 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments is February 12, 2018.

ADDRESSES: The public hearing will be conducted at the Pennsylvania State Capitol, Room 8E–B, East Wing, Commonwealth Avenue, Harrisburg, PA.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel,

telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436. Information concerning the applications for these projects is available at the SRBC Water Application and Approval Viewer at *http://mdw.srbc.net/waav*. Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/pubinfo/docs/2009-02_Access_to_Records_Policy_20140115.pdf*.

SUPPLEMENTARY INFORMATION: The public hearing will cover the following projects:

Projects Scheduled for Action

1. Project Sponsor and Facility: Brymac, Inc. dba Mountain View Country Club (Pond ¾), Harris Township, Centre County, Pa. Application for surface water withdrawal of up to 0.240 mgd (peak day).

2. Project Sponsor and Facility: Cabot Oil & Gas Corporation (East Branch Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 1.000 mgd (peak day).

3. Project Sponsor and Facility: Dillsburg Area Authority, Franklin Township, York County, Pa. Modification to increase groundwater withdrawal by an additional 0.099 mgd (30-day average), for a total groundwater withdrawal of up to 0.200 mgd (30-day average) from Well 3 (Docket No. 20081207).

4. Project Sponsor and Facility: Lycoming Engines, a Division of Avco Corporation, City of Williamsport, Lycoming County, Pa. Application for renewal of groundwater withdrawal of up to 0.980 mgd (30-day average) for groundwater remediation system (Docket No. 19880203).

5. Project Sponsor: Mayapple Real Estate Holdings. Project Facility: Mayapple Golf Links, South Middleton Township, Cumberland County, Pa. Application for consumptive use of up to 0.200 mgd (peak day).

6. Project Sponsor: Mayapple Real Estate Holdings. Project Facility: Mayapple Golf Links, South Middleton Township, Cumberland County, Pa. Application for groundwater withdrawal of up to 0.099 mgd (30-day average) from Well 1.

7. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Fall Brook), Ward Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20140313).

8. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Fellows Creek), Ward Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (Docket No. 20140314).

9. Project Sponsor and Facility: Seneca Resources Corporation (Arnot No. 5 Mine Discharge), Bloss Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20140311).

10. Project Sponsor and Facility: SWEPI LP (Susquehanna River), Sheshequin Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.850 mgd (peak day) (Docket No. 20140312).

11. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 2.500 mgd (peak day) (Docket No. 20140302).

12. Project Sponsor and Facility: XTO Energy Inc. (Little Muncy Creek), Moreland Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.249 mgd (peak day) (Docket No. 20140315).

Opportunity To Appear and Comment

Interested parties may appear at the hearing to offer comments to the Commission on any project listed above. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Guidelines for the public hearing will be posted on the Commission's website, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any project listed above may also be mailed to Mr. Jason Oyler, General Counsel, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *www.srbc.net/pubinfo/publicparticipation.htm*. Comments mailed or electronically submitted must be received by the Commission on or before February 12, 2018, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: December 28, 2017.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2017–28426 Filed 1–2–18; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0062; Notice 2]

Final Decision That Certain Canadian-Certified Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Final decision.

SUMMARY: This document announces a final decision by NHTSA that certain vehicles that do not comply with all applicable Federal motor vehicle safety standards (FMVSS), but that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards (CMVSS), are nevertheless eligible for importation into the United States. The vehicles in question either (1) are substantially similar to vehicles that were certified by their manufacturers as complying with the U.S. safety standards and are capable of being readily altered to conform to those standards, or (2) have safety features that comply with, or are capable of being altered to comply with, all U.S. safety standards.

DATE: This decision is applicable on January 3, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Thurgood, Office of Vehicle Safety Compliance, NHTSA, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–0712.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided, either pursuant to a petition from the manufacturer or registered importer or on its own initiative, (1) that the nonconforming motor vehicle is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with all applicable FMVSS, and (2) that the nonconforming motor vehicle is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S. certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if

NHTSA decides that its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Tentative Decision

On October 24, 2017, NHTSA published a notice in the **Federal Register** announcing that it had made a tentative decision that certain motor vehicles that are certified by their original manufacturer as complying with all applicable CMVSS are eligible for importation into the United States (82 FR 49260). The notice identified these vehicles as:

(a) All passenger cars manufactured on or after September 1, 2017, and before May 1, 2018, that as originally manufactured, comply with FMVSS Nos. 138, 201, 206, 208, 213, 214, 225, and insofar as it is applicable, with FMVSS No. 226;

(b) All passenger cars manufactured on or after May 1, 2018, and before September 1, 2022, that as originally manufactured, comply with FMVSS Nos. 111, 138, 201, 206, 208, 213, 214, 225, and insofar as it is applicable, with FMVSS No. 226;

(c) All multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2017, and before May 1, 2018, that as originally manufactured, comply with FMVSS Nos. 138, 201, 206, 208, 213, and 214, and insofar as they are applicable, with FMVSS Nos. 222, 225, and, 226;

(d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after May 1, 2018, and before September 1, 2022, that as originally manufactured, comply with FMVSS Nos. 111, 138, 201, 206, 208, 213, and 214, and insofar as they are applicable, with FMVSS Nos. 222, 225, and 226; and

(e) All multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) manufactured on or after August 1, 2019, and before September 1, 2022, that as originally manufactured, comply with FMVSS No. 136 insofar as it is applicable.

The reader is referred to the October 24 notice for a full discussion of the factors leading to the tentative decision. The notice included tables that summarize the current state of harmonization between the CMVSS and the FMVSS. For the convenience of the reader, those tables are set out below. Table 1 is a list of all FMVSS that are harmonized to the CMVSS, or for which the differences are such that compliance with the U.S. standard can be readily achieved. Table 2 is a list of all FMVSS that are not harmonized.

TABLE 1—HARMONIZED STANDARDS

U.S. standard (FMVSS)	Canadian equivalent (CMVSS)
102—Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect.	CMVSS 102—Transmission Control Functions.
103—Windshield Defrosting and Defogging Systems	CMVSS 103—Windshield Defrost and Defog.
104—Windshield Wiping and Washing Systems	CMVSS 104—Windshield Wiping and Wash.
105—Hydraulic and Electric Brake Systems	CMVSS 105—Hydraulic and Electric Brakes; TSD 105.
106—Brake Hoses	CMVSS 106—Brake Hoses; TSD 106.
108—Lamps, Reflective Devices and Associated Equipment	CMVSS 108—Lighting Systems and Retroreflective Devices; TSD 108.
110—Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 kg (10,000) lb) or Less.	CMVSS 110—Tire Selection and Rims; TSD 110.
113—Hood Latch Systems	CMVSS 113—Hood Latch System.
114—Theft Protection and Rollaway Prevention	CMVSS 114—Locking and Immobilization; TSD 114.
116—Motor Vehicle Brake Fluids	CMVSS 116—Hydraulic Brake Fluids; TSD 116.
118—Power-Operated Window, Partition, and Roof Panel Systems	CMVSS 118—Power-operated Windows; TSD 118.
120—Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 pounds).	CMVSS 120—Tire Selection and Rims for Vehicles Other Than Passenger Cars; TSD 120.
121—Air Brake Systems	CMVSS 121—Air Brakes for Trucks; TSD 121.
122—Motorcycle Brake Systems	CMVSS 122—Motorcycle Brake Systems; TSD 122.
123—Motorcycle Controls and Displays	CMVSS 123—Motorcycle Control & Displays; TSD 123.
124—Accelerator Control Systems	CMVSS 124—Accelerator Control Systems; TSD 124.
126—Electronic Stability Control Systems	CMVSS 126—Electronic Stability Control; TSD 126.
131—School Bus Pedestrian Safety Devices	CMVSS 131—School Bus Pedestrian Safety Devices; TSD 131.
135—Light Vehicle Brake Systems	CMVSS 135—Light Vehicle Brake Systems; TSD 135.
202—Head Restraints; Applicable unless a vehicle is certified to § 571.202a.	CMVSS 202—Head Restraints; TSD 202.
202a—Head Restraints	CMVSS 202—Head Restraints; TSD 202.
203—Impact protection for the driver from the steering control system	CMVSS 203—Driver Impact Protection.
204—Steering control rearward displacement	CMVSS 204—Steering Column Rearward Displacement.
205—Glazing materials	CMVSS 205—Glazing Materials.
205a—Glazing materials before September 1, 2006 and glazing materials used in vehicles manufactured before November 1, 2006.	CMVSS 205—Glazing Materials.
207—Seating systems	CMVSS 207—Anchorage of Seats.
210—Seat belt assembly anchorages	CMVSS 210—Seat Belt Assembly Anchorages.
212—Windshield mounting	CMVSS 212—Windshield Mounting.
216—Roof crush resistance; Applicable unless a vehicle is certified to § 571.216a.	CMVSS 216—Roof Intrusion Protection; TSD 216.
216a—Roof crush resistance; Upgraded standard	CMVSS 216—Roof Intrusion Protection; TSD 216.
217—Bus emergency exits and window retention and release	CMVSS 217—Bus Window Retention and Emergency Exits.
219—Windshield zone intrusion	CMVSS 219—Windshield Zone Intrusion.
220—School bus rollover protection	CMVSS 220—Rollover Protection; TSD 220.
221—School bus body joint strength	CMVSS 221—School Bus Body Joint Strength.
224—Rear impact protection	CMVSS 223—Rear Impact Guards.
301—Fuel system integrity	CMVSS 301—Fuel System Integrity; TSD 301.

TABLE 1—HARMONIZED STANDARDS—Continued

U.S. standard (FMVSS)	Canadian equivalent (CMVSS)
302—Flammability of interior materials	CMVSS 302—Flammability; TSD 302.
303—Fuel system integrity of compressed natural gas vehicles	CMVSS 301.2—CNG Fuel System Integrity.
304—Compressed natural gas fuel container integrity	CMVSS 301.2—CNG Fuel System Integrity.
305—Electric-powered vehicles: electrolyte spillage and electrical shock protection.	CMVSS 305—Electrolyte Spillage and Electrical Shock Protection; TSD 305.
401—Internal trunk release	CMVSS 401—Interior Trunk Release; TSD 401.
500—Low-speed vehicles	CMVSS 500—Low-speed Vehicles; TSD 500.

TABLE 2—STANDARDS THAT HAVE NOT BEEN HARMONIZED

[X denotes "applicable"]

U.S. standard (FMVSS)	Canadian standard (CMVSS)	Passenger cars	Multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 Kg (10,000 Lb) or less
FMVSS 101—Controls and Displays	CMVSS 101—Controls and Displays	X	X
FMVSS 111—Rear Visibility	CMVSS 111—Mirrors	X	X
FMVSS 136—Electronic Stability Control Systems for Heavy Vehicles.			Trucks/buses with GVWR greater than 11,793 Kg (26,000 lb) only
FMVSS 138—Tire Pressure Monitoring Systems.		X	X
FMVSS 201—Occupant Protection in Interior Impact.	CMVSS 201—Occupant Protection	X	X
FMVSS 206—Door locks and door retention components.	CMVSS 206—Door Locks and Door Retention Components.	X	X
FMVSS 208—Occupant Crash Protection	CMVSS 208—Occupant Restraint Frontal Impact.	X	X
FMVSS 213—Child Restraint Systems	CMVSS 213.4—Built-in Child Restraint Systems.	X	X
FMVSS 214—Side Impact Protection	CMVSS 214—Side Door Strength	X	X
FMVSS 222—School Bus Passenger Seating And Crash Protection.	CMVSS 222—School Bus Passenger Seating and Crash Protection.		School buses only
FMVSS 225—Child restraint anchorage systems.		X	X
FMVSS 226—Ejection Mitigation		X	X

In accordance with 49 U.S.C. 30141(b), the October 24 notice solicited public comments on the tentative decision. No pertinent comments were submitted in response to the notice. Accordingly, NHTSA is adopting the tentative decision as a final decision.

Final Decision

In consideration of the foregoing, NHTSA hereby decides that—

(a) All passenger cars manufactured on or after September 1, 2017, and before May 1, 2018, that as originally manufactured, comply with FMVSS Nos. 138, 201, 206, 208, 213, 214, 225, and insofar as it is applicable with FMVSS No. 226;

(b) All passenger cars manufactured on or after May 1, 2018, and before September 1, 2022, that as originally manufactured, comply with FMVSS Nos. 111, 138, 201, 206, 208, 213, 214, 225, and insofar as it is applicable, with FMVSS No. 226;

(c) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2017, and before May 1, 2018, that as originally manufactured, comply with FMVSS Nos. 138, 201, 206, 208, 213, and 214, and insofar as they are applicable, with FMVSS Nos. 222, 225, and, 226;

(d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after May 1, 2018, and before September 1, 2022, that as originally manufactured, comply with FMVSS Nos. 111, 138, 201, 206, 208, 213, and 214, and insofar as they are applicable, with FMVSS Nos. 222, 225, and 226; and

(e) All multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) manufactured on or after August 1, 2019, and before September 1, 2022, that as originally manufactured, comply with FMVSS No. 136 insofar as it is applicable; that are certified by their original manufacturer as complying with all applicable CMVSS, are eligible for importation into the United States on the basis that either:

1. They are substantially similar to vehicles of the same make, model, and model year originally manufactured for importation into and sale in the United States, or originally manufactured in the United States for sale therein, and certified as complying with all applicable FMVSS, and are capable of being readily altered to conform to all applicable FMVSS, or

2. They have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

Vehicle Eligibility Number

In order to import a vehicle made admissible under any final decision, the importer must indicate to U.S. Customs and Border Protection that the vehicle has been determined eligible for importation. This is done by indicating the eligibility number, published under that final decision, on DOT declaration form HS–7. Vehicle Eligibility Number VSA–80 is currently assigned to Canadian-certified passenger cars, Vehicle Eligibility Number VSA–81 is currently assigned to Canadian-certified

multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less, and Vehicle Eligibility Number VSA–82 is currently assigned to Canadian-certified multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb). All passenger cars admissible under this decision will be assigned Vehicle Eligibility Number VSA–80, all multipurpose passenger vehicles, trucks, and buses with a GVWR of less than 4,536 kg (10,000 lb) admissible under this decision will be assigned Vehicle Eligibility Number VSA–81, and all multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) admissible under this decision will be assigned Vehicle Eligibility Number VSA–82.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.8; delegation of authority at 49 CFR 1.95.

Heidi R. King,

Deputy Administrator.

[FR Doc. 2017–28391 Filed 1–2–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

VA Prevention of Fraud, Waste, and Abuse Advisory Committee, Amended Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the VA Prevention of Fraud, Waste, and Abuse Advisory Committee will meet January 18, 2018 at 301 7th St. SW, Conferenece Room 2720, Washington, DC 20024, from 8:00 a.m. until 5:00 p.m. (EST). All sessions are open to the public.

The purpose of the Committee is to advise the Secretary, through the Assistant Secretary for Management and Chief Financial Officers, on matters relating to improving and enhancing VA's efforts to identify, prevent, and mitigate fraud, waste, and abuse across VA in order to improve the integrity of VA's payments and the efficiency of its programs and activities.

The agenda will include detailed discussions of VA's community care programs, legislative changes proposed for community care, operational changes proposed for community care, OIG findings in the community care, and a working group report.

The meeting will include time reserved for public comments in the afternoon. A sign-up sheet for 5-minute comments will be available at the meeting. Individuals who wish to address the Committee may submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Tamika Barrier via email at *Tamika.Barrier@va.gov.*

Because the meeting will take place in a Federal building, visitors will be required to present photo identification. Any person attending should allow an additional 30 minutes before the beginning to allow for this security process. For interested parties who cannot attend in person, there is a toll-free telephone number (800) 767–1750; access code 03905#.

Note: *The telephone line will be muted until the Committee Chairman opens the floor for public comment.* Any member of the public seeking additional information should contact Tamika Barrier, Designated Federal Officer, at (757) 254–8630.

Dated: December 28, 2017.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–28377 Filed 1–2–18; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 83 Wednesday,

No. 2 January 3, 2018

Part II

Environmental Protection Agency

40 CFR Part 260, 262, et al.

Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 262, 263, 264, 265, and 271

[EPA–HQ–OLEM–2016–0177; FRL–9965–27–OLEM]

RIN 2050–AG80

Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is establishing by this regulation the methodology the Agency will use to determine and revise the user fees applicable to the electronic and paper manifests to be submitted to the national electronic manifest system (e-Manifest system) that EPA is developing under the Hazardous Waste Electronic Manifest Establishment Act. After the e-Manifest system's implementation date, certain users of the hazardous waste manifest will be required to pay a prescribed fee for each electronic and paper manifest they use and submit to the national system so that EPA can recover the costs of developing and operating the national e-Manifest system. This final rule also announces the date when EPA expects the system to be operational and available to users. EPA will begin accepting manifest submissions and collecting the corresponding manifest submission fees on this date.

In addition, this action announces final decisions and regulations relating to several non-fee related matters that were included in the proposed rule. This includes modifying the existing regulations to: allow changes to the transporters designated on a manifest while the shipment is en route; describe how data corrections may be made to existing manifest records in the system; and amend the previous e-Manifest regulation (the One Year Rule) to allow the use, in certain instances, of a mixed paper and electronic manifest to track a hazardous waste shipment.

DATES: This final rule is effective on June 30, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2016–0177. All documents in this docket are listed in the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the EPA Docket Center Reading Room. Please see *https://www.epa.gov/dockets/epa-docket-center-reading-room* or call (202) 566–1744 for more information on the Docket Center Reading Room.

FOR FURTHER INFORMATION CONTACT: Richard LaShier, Office of Resource Conservation and Recovery, (703) 308–8796, *lashier.rich@epa.gov,* or Bryan Groce, Office of Resource Conservation and Recovery, (703) 308–8750, *groce.bryan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This rule affects those entities required to use the hazardous waste manifest, a regulated universe that includes approximately 80,000 federally regulated entities, and an equal or greater number of entities handling state-only regulated wastes in at least 45 industries and is expected to result in a net cost savings for them amounting to $66 million per year, when discounted at 7% and annualized over 6 years. Further information on the economic effects of this action can be found in section IV of this preamble. These industries are involved in generating, transporting, and receiving several million tons annually of wastes that are hazardous under Subtitle C of the Resource Conservation and Recovery Act (RCRA), or, are regulated by states and also are subject to tracking with the RCRA hazardous waste manifest. EPA estimates that these entities currently use between three and five million hazardous waste manifests (EPA Form 8700–22) and continuation sheets (EPA Form 8700–22A) to track RCRA hazardous and state-only regulated wastes from generation sites to off-site receiving facilities. The affected entities include hazardous waste generators, hazardous waste transporters, and owners or operators of treatment, storage, and disposal facilities (TSDFs), as well as the corresponding entities that handle state-only regulated wastes subject to tracking with the RCRA manifest.

However, the user fee obligations that are the primary focus of this final rule will mostly affect a subset of these regulated entities, particularly, the several hundred commercial RCRA TSDFs and the corresponding receiving facilities for state-only regulated wastes under RCRA manifests. As explained in section III.A. of this preamble, this final rule focuses the payment and collection of e-Manifest related user fees on these several hundred commercial TSDFs and state-only waste receiving facilities because EPA concludes that this is the most effective and efficient means for collecting user fees via the e-Manifest system. The final rule action includes a tentative fee schedule for the initial two years of system operations, based on the most current projections of program costs available to the Agency at the time of development of this final rule action. EPA will update the tentative fee schedule with a final fee schedule for the initial two years of system operations when we obtain more complete program cost data, and we will publish the final fee schedule to the e-Manifest program's website 90 days prior to the system launch. The affected entities and categories include, but are not necessarily limited to:

NAICS description	NAICS code	Examples of potentially affected entities
Transportation and Warehousing	48–49	Transportation of hazardous waste.
Waste Management and Remediation Services	562	Facilities that manage hazardous waste.

This table provides a guide for readers regarding the entities that will be regulated by this action. The table lists the types of entities that EPA is aware to be involved in the activities affected by the RCRA manifest and regulated by this action. Other types of entities not listed in this table also could be regulated by this final rule. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in title 40 of the CFR parts 260, 262, 263, 264, and 265. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

The Agency is publishing its final rule action announcing requirements that establish the methodology and process that EPA will use to determine and revise the e-Manifest user fees that EPA has determined to be necessary to recover the costs of developing and operating the national e-Manifest system. These include the costs of processing data from both electronic and paper manifests that will be submitted to the national e-Manifest system after the system's implementation date. The Agency also is announcing final decisions on several non-fee related proposals that affect the use of the manifest and manifest data quality, including changes to designated transporters during transportation, a process for manifest data corrections, and the circumstances under which EPA will allow a ''hybrid'' or mixed paper/electronic manifest to be used to track a specific shipment.

C. What is the Agency's authority for taking this action?

The authority to issue this rule is found in sections 1002, 2002(a), 3001–3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901, 6906 *et. seq.,* 6912, 6921–6925, 6937, and 6938, and as further amended by the Hazardous Waste Electronic Manifest Establishment Act, Public Law 112–195, section 6939g.

D. Effective Date

This final rule will be effective on June 30, 2018, the date on which EPA plans to launch and begin the operation of the e-Manifest system. This is the date when EPA will implement all e-Manifest Act regulations, including the requirements of this final rule, and the requirements of the One Year Rule that EPA issued on February 7, 2014. This final rule is being published with an accelerated effective date to coincide with the launch of the e-Manifest system on June 30, 2018. On that date, EPA will begin collecting fees to recover the costs of developing and operating the system.

Under 40 CFR 3.2(a)(2), electronic reporting of documents required under title 40 of the Code of Federal Regulations (CFR) may occur after EPA has first published a document in the **Federal Register** announcing that EPA is prepared to receive, in electronic form, documents required or permitted by the identified part or subpart of title 40. By this final rule action, EPA is announcing that it is prepared to receive electronic hazardous waste manifests, as well as certain paper manifest copies that continue in use after the e-Manifest system's implementation date, through the national e-Manifest system. The electronic manifests will be accepted by e-Manifest as the electronic document substitutes for the paper manifest and continuation sheet forms (EPA Forms 8700–22 and 8700–22A) that are described in 40 CFR part 262, subpart B (hazardous waste generators), 40 CFR part 263, subpart B (hazardous waste transporters), and subpart E of 40 CFR parts 264 and 265 (owners and operators of hazardous waste treatment, storage, and disposal facilities). The implementation and compliance date on which EPA plans to begin receiving these electronic manifest and related paper manifest copies is June 30, 2018. This is the date that EPA expects to begin e-Manifest system operations, and begin both the collection of manifests and the collection of user fees for manifest submissions required under this final rule. EPA is also clarifying that the June 30, 2018, implementation date for e-Manifest is limited to the collection of domestic hazardous waste manifests and domestic shipments of state-only regulated waste subject under state law to the RCRA manifest. EPA will not begin the collection of export manifests described in subpart H of 40 CFR part 262 on the June 30, 2018, e-Manifest system implementation date. EPA will announce the implementation and compliance date for the electronic submission of export manifests in a separate notice to be issued in the future, when EPA is ready to collect those documents electronically and assess the appropriate fee for their processing. Until that occurs, export manifests should continue to be completed as paper documents.

II. Background

EPA published a detailed background discussion providing context for the e-Manifest User Fee rulemaking in the proposed rulemaking action. *See* 81 FR 49072 at 49074–76 (July 26, 2016). EPA incorporates that detailed background discussion into this document for purposes of this final rule, and refers readers to that proposed rulemaking rather than reprinting all of it in this final rule document. For this action, EPA will summarize key points from the earlier background discussion:

- In 2012, Congress enacted the Hazardous Waste Electronic Manifest Establishment Act (e-Manifest Act). The e-Manifest Act required EPA to establish a national electronic manifest system, the development of which would be initially funded by annual appropriations, and ultimately funded by user fees, which would both offset the system's development costs, as well as the costs of operating, maintaining, and upgrading the system.
- The e-Manifest Act further required EPA to develop implementing regulations for electronic manifesting within one year of enactment, and to establish a nine-member System Advisory Board to make recommendations to EPA on the performance of the system.
- Section 2(c) of the e-Manifest Act conferred broad discretion to EPA to impose on users of the system ''such reasonable service fees as the Administrator determines to be necessary'' to pay all system related costs, including the costs of processing data from any paper manifests that continue to be used after the system implementation date, as the e-Manifest Act allows users the option to continue to use paper manifests. This is the principal source of statutory authority for this action and its user fee methodology.
- Section 2(d) of the e-Manifest Act authorized the establishment of a special System Fund in the U.S. Treasury for the deposit of e-Manifest user fees. Funds deposited in the System Fund may be spent by EPA for system related costs to the extent provided in annual appropriations acts, but such funds can only be spent on e-Manifest related costs.
- EPA issued its first implementing regulation on electronic manifesting on February 7, 2014 (79 FR 7518–7563). This regulation, referred to as the ''One Year Rule'' because of the e-Manifest Act's mandate to publish the regulation within one year of enactment, established the legal and policy framework for the use of electronic manifests, and prescribed the conditions under which electronic manifests are the full legal equivalent of paper manifest forms for all RCRA purposes. The One Year Rule also codified key scope and consistency provisions included in the e-Manifest Act. The One Year Rule did not address e-Manifest user fees, instead deferring regulatory action on user fees until this separate e-Manifest User Fee rulemaking.
- EPA relied extensively on two Federal guidance documents on user fee design to develop its e-Manifest User Fee methodology: (1) OMB Circular A–25, a memorandum to Executive Departments and agencies addressing ''user charges,'' and (2) user fee design guidance found in the United States Government Accountability Office

(GAO) Report No. GAO–08–386SP, *Federal User Fees, A Design Guide,* (May 2008).

• The OMB Circular A–25 guidance was relied upon substantially for the following principles used in formulating the final rule user fee methodology: (1) The imposition of user fees on those recipients of the special benefits from federal activities, but not recipients of incidental benefits; (2) the requirement that user fees should accomplish full cost recovery; (3) the explanation of the various types of direct and indirect costs that can be recovered by user fees; (4) the general policy that user fees be instituted through the promulgation of regulations; and (5) the policy that user fees be reviewed biennially, to provide assurance that fees are adjusted to reflect changes in program costs.

• The GAO Federal User Fees Design guide also was heavily relied upon in developing the rationale for this final rule user fee methodology, particularly with respect to: (1) Collecting fees so as to strike an appropriate balance between ensuring compliance with fees and minimizing administrative costs; (2) the manner of reviewing and updating user fees so they remain aligned with actual program costs and activities, and are adjusted for changes in program costs; and (3) balancing several key outcomes involved in fee design, including: the economic efficiency of the program's user fees; the equity of the fee system in ensuring that beneficiaries pay their fair share while not disregarding their ability to pay; the adequacy of resulting revenues to pay all known program costs and to keep pace with inflation and other changes to program cost; and the administrative burden of the fees, including the balancing of the fee compliance costs with the costs of their collection and enforcement.

III. Detailed Discussion of the Final Rule

A. Which users of manifests and manifest data will be charged user fees?

1. Background

In addressing this issue in the proposed rulemaking, EPA acknowledged that there were two distinct classes of users who might become involved with the e-Manifest system. First, there are the regulated community members, *e.g.,* the hazardous waste generators, transporters, and receiving facilities (*e.g.,* RCRA TSDFs) who are required to use the manifest in connection with tracking a hazardous waste shipment in which they are involved and are named as one of the handlers on the manifest. Second, there are the data consumers, *e.g.,* members of the public or state and local governments that might wish to access e-Manifest in order to obtain information about wastes and shipments of interest to them in their capacity as a data consumer, but not as a member of the regulated community. Since the beginning of the planning for e-Manifest, EPA has indicated that it considered public access and transparency important functions of an e-Manifest system. EPA has planned to develop a public facing module in e-Manifest to provide such data access, with certain restrictions on that access. However, the interest in public access to data is a secondary interest, and it is clear that the regulatory community users are the primary community of interest served by e-Manifest, and that they obtain the primary services and benefits from the system.

In the notice of proposed rulemaking, EPA proposed that the primary beneficiaries of e-Manifest—the regulatory community users within the definition of ''user'' in the e-Manifest Act—would at a threshold level be the community of users potentially subject to user fee obligations. Thus, for this initial level of fee eligibility, EPA proposed to limit the imposition of user fees to the members of the regulatory community that must use the RCRA manifest, as a matter of regulatory compliance under federal or state law, for tracking the off-site shipments of hazardous waste or state-only regulated waste between generation sites and the facilities where such wastes are received for management. EPA did not propose to impose fees on the community of data consumers, *i.e.,* members of the general public, accessing the system only to obtain data about wastes and waste shipments of interest to them. In the proposed rule, we explained that excluding the public from user fee payments was consistent with OMB Circular A–25 policy to not charge incidental beneficiaries of a service a user fee. We also explained that this proposal was motivated by the desire to avoid the large administrative burden of establishing payment accounts for all those members of the public who might access the system, and of processing payments for such a large and potentially diverse community. EPA believes that the costs of providing data access to the public would be fairly modest relative to the cost of servicing the regulatory community. The funding result under the proposed rule would thus have the costs of providing the public with access to data funded as an incremental increase in the fees charged to the regulated users.

As a second proposal on the scope of fee obligations, EPA proposed to further restrict the payment of e-Manifest fees to the approximately 400 RCRA receiving facilities (TSDFs) that receive waste from off-site, as well as the corresponding receiving facilities of state-only regulated wastes tracked under RCRA manifests under state law. EPA explained in the notice of proposed rulemaking (NPR), that it considered the submission of the final, signed manifest to the e-Manifest system by the receiving facility designated on the manifest to be the primary ''billable event'' in the e-Manifest system that would give rise to a user fee obligation. The effect of this second aspect of the proposal would be to limit fee obligations and payments to the receiving facilities on manifests, and to generally exclude the other regulatory community ''users'' from fee payment obligations. This aspect of the proposed rule was premised on the goal of simplifying the fee system, and avoiding the potentially large administrative burden of establishing payment accounts and collecting fee payments from 100,000 or more generators or other regulated users. It was assumed that the receiving facilities assessed these fees could choose to pass these fees through to the generator customers as a part of their service agreement, thus balancing the equities and burdens of the fee system without EPA's further intervention.

2. Comment Analysis

On the issue of public access and its funding, we received numerous comments from state agencies supporting the exclusion of states and the general public from the requirement to pay fees, and supporting the imposition of e-Manifest fees on the regulated users of the system. However, there were several comments from hazardous waste TSDFs and their trade organizations objecting to the proposed rule's approach to funding public access through an incremental increase in these facilities' fees. These TSDF commenters argued that the e-Manifest Act's definition of ''user'' was intended to limit system access to the regulated community and not afford access to the public. The TSDF commenters suggested that EPA should be responsible for funding public access through another means or another EPA appropriation, perhaps treating public access requests through the Freedom of Information Act or FOIA. As a final matter, several of these TSDF commenters also questioned EPA's assumption that the cost of public access would be modest.

On the issue of the proposed ''billable event,'' all commenters supported the proposal limiting fee obligations to the receiving facilities designated on the manifest, and classifying the submission of the final copy of the manifest signed by the receiving facility as the primary billable event in the system. The states, generators, and receiving facilities that commented on the proposed rule all supported EPA's rationale that the balancing of administrative efficiency and simplifying the fee payment system justified limiting the fee obligations to the manifest's receiving facilities. To make their support of this proposal clearer, several of these commenters suggested that EPA remove from the existing part 262 (generator) and part 263 (transporter) regulations all vestiges of regulatory language from the first e-Manifest rule suggesting EPA might impose user fees on generators and transporters. Several commenters also suggested that EPA should be consistent in drafting the final rule, and avoid using the terms TSDF, receiving facility, and designated facility interchangeably in the regulatory language, as these terms do not have the same scope of coverage.

Finally, in connection with the proposed rule's discussion of the public access issue and the proposed rule's focus on receiving facilities for the rule's fee obligations, EPA received several additional comments raising significant issues for the Agency to consider.

A RCRA receiving facility and the Department of Defense submitted comments raising the concern that unfettered public access to e-Manifest might enable data mining from the system by those with malevolent intent. These comments raised a concern that those conducting data mining for illicit purposes could discern information about particular wastes involving chemicals of concern, or about the sites managing them, or patterns in the movement of wastes that could be weaponized or otherwise vulnerable if diverted. One commenter suggested there should be a homeland security basis for excluding public access to such information, and identified the homeland security list of chemicals of interest in 6 CFR part 27, appendix A, as a resource that might be helpful in excluding hazardous waste and manifest data potentially posing a Homeland Security risk. The Department of Defense also raised a concern that generator site information and the aggregate waste information gleaned from e-Manifest could in some instances constitute classified information.

In addition, EPA received several helpful comments that pointed out some weaknesses or challenges that will arise from the proposed rule approach and its focus on the final manifest submissions by receiving facilities as the billable event that will trigger fee obligations. As one example of such a challenge, several industry and state agency commenters noted that there may be significant numbers of receiving facilities, particularly those facilities receiving state-only regulated wastes, which lack RCRA permits and lack EPA Identification Numbers. Examples cited in the comments were facilities managing industrial wastes, used oil, wastes regulated as special wastes by the states, or conditionally exempt small quantity generator (CESQG) [1] wastes regulated more stringently by states and subject to manifests under state law. If EPA is intending to track the billable manifests from receiving facilities by keying on the EPA Identification Number of the receiving facility, EPA will need to issue unique identification numbers to these facilities or otherwise address how these receiving facilities and their manifests will be tracked uniquely and billed for services in e-Manifest.

Other helpful comments received in response to the proposed billable event were several industry and state agency comments noting that there were two other types of waste shipment transactions with manifests that did not lend themselves to the proposed approach of billing the receiving facility for the manifest. The two transaction types cited as posing particular challenges were: (1) Rejected wastes returned under manifests to generators, as the ''receiving facility'' for such return shipments are generators and not the conventional permitted facilities (*e.g.,* RCRA TSDFs); and (2) hazardous wastes exported from the U.S., as the manifests for exported hazardous wastes are not received by a domestic receiving facility, but are instead received by foreign consignees that are beyond the jurisdiction of the U.S. to compel a final manifest submission and fee payment. These commenters questioned how EPA would address these transactions in the final rule.

3. Final Rule Decisions

a. How will public access to data be funded?

In this final rule, EPA is sustaining the proposed rule's position that public access is an incidental benefit of the system, and that the regulatory community users obtain the primary and major benefits of e-Manifest services. Since members of the public are at best incidental beneficiaries, EPA has decided not to charge members of the public a fee for access to manifest data from the public facing module of e-Manifest. This decision is consistent with the policy announced in OMB Circular A–25, which generally excludes incidental beneficiaries of services from service charges, and instead requires the primary beneficiaries to cover these costs. Therefore, as we proposed in the July 2016 NPR, the regulatory community users—the primary beneficiaries of e-Manifest—will fund the costs of public access through an incremental increase in their user fees. EPA concludes that this policy best effectuates the program's transparency goal with respect to manifest data, and avoids discouraging the public's access by the imposition of a fee on such access. EPA remains convinced that the incremental increase in users' fees to fund public access will be modest. This further focuses cost recovery and collections on the several hundred receiving facilities, thereby avoiding the complexity and administrative burden of attempting fee collections from members of the public.

b. Which regulatory community users will pay fees?

Second, for this final rule, EPA has decided to sustain the proposed rule's approach of focusing the fee payment obligations of the regulatory community users on only the receiving facilities named on manifests. The final rule therefore refines the user fee obligation by excluding generators, transporters, and entities other than receiving facilities designated on manifests from the rule's user fee requirements. The commenters on the proposed rule expressed unanimous support for this proposal, and EPA concludes that it is much more practical and efficient administratively to focus fee collections and payments in the system on the several hundred hazardous waste and state-only regulated waste receiving facilities, and to define the ''billable event'' giving rise to a fee obligation in the system as the submission of the final manifest copy signed by these receiving facilities.

EPA is further clarifying that with respect to the continued use of paper manifests, the preferred means of submission to the system by receiving facilities is a data file (*e.g.,* JAVA Script Object Notation (JSON) file) presenting the data from these paper manifests. Such data file submissions will eliminate much of the manual

[1] Conditionally exempt small quantity generators are now known as Very Small Quantity Generators.

processing of these manifests, including opening and sorting mail, and the very labor intensive process of manually keying data from paper manifests into the data system. Receiving facilities may submit their data files from completed, ink signed paper manifests either individually or as a batch submission. Whether submitted individually or in a batch upload, the receiving facility must also submit an image file of each manifest that is included in the data file upload. At the time of submission of the individual or batch file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge and belief, the data and images submitted are accurate and complete, and that the facility acknowledges that it is obligated to pay the appropriate per manifest fee for all the manifests included in the submission. These data file upload requirements are spelled out in §§ 264.1311(c) and 265.1311(c) in this final rule.

c. How will the rule address homeland security risks?

The Agency acknowledges the several public comments raising the concern that unfettered public access to manifest data might enable those with malevolent intent to obtain data from e-Manifest that might pose a homeland security risk. EPA believes that the homeland security risk posed by public access to e-Manifest is minimal for the majority of manifested hazardous waste shipments, because few hazardous wastes are likely to be found in forms and circumstances that would make them attractive to terrorists, and because public access to data through e-Manifest will in all cases be delayed for a period of 90 days after receipt of hazardous wastes at the receiving facility designated on the manifest. However, commenters indicated that the 90-day delay in public access might not mitigate all such security risks, since even with delayed access to manifest data, a terrorist with system access could perhaps discern shipment patterns for particular chemical wastes of concern and the generators and facilities handling them. Thus, commenters suggested that EPA take a more proactive position to guard against homeland security risks posed by data disclosures from e-Manifest. In particular, as a means to identify RCRA hazardous waste shipments that might pose a security risk, the commenters suggested that EPA utilize the Department of Homeland Security's (DHS's) Chemicals of Interest, a screening tool for chemical security risks that DHS has published in appendix A to its 6 CFR part 27 regulations pertaining to the security of the nation's chemical facilities.

EPA consulted with the DHS to determine if the information that will be publicly accessible from e-Manifest poses a significant chemical security risk, and if so, the action the Agency should take to mitigate that risk. DHS concluded that there was a plausible chemical security risk posed by unrestricted public access to data in e-Manifest, and the agencies collaborated on a strategy to mitigate that risk.

EPA believes that the appendix A Chemicals of Interest list and screening tool can be applied to the hazardous wastes and facilities covered by DHS's chemical security regulations to aid EPA in identifying a solution to the security concerns raised by commenters. Rather than duplicating the efforts of DHS in this area, or perhaps developing a conflicting approach, EPA is relying upon the expertise of DHS, the DHS chemical security regulations, and the DHS Chemicals of Interest (COI) appendix to flag those manifested waste shipments and the data that should be withheld from public disclosure by e-Manifest to avoid the release of information that could plausibly be used to harm the homeland.

First, it is significant that DHS has previously determined that the security risks addressed in its 6 CFR part 27 regulations are only potentially presented by a narrow subset of RCRA solid and hazardous wastes. In promulgating the appendix A COI list in November 2007, DHS determined that most RCRA solid and hazardous wastes would not be found in forms or circumstances that would make them attractive to terrorists, with the result that most RCRA wastes are excluded from the COI screening process for chemical security risks. See 72 FR 65397 at 65398 (November 20, 2007). However, DHS concluded that a subset of RCRA hazardous wastes—the so-called ''P-List'' and ''U-List'' wastes consisting of the discarded commercial chemical products and related wastes identified in 40 CFR 261.33—should be subject to screening as COI for chemical security risks. DHS concluded that only these P-List and U-List wastes are covered by the 6 CFR part 27 screening process for COI, because the discarded commercial chemical products, off-specification species, and other such wastes were likely to be just as attractive to terrorists as the chemical products themselves. Id. Thus, our consideration of homeland security risks potentially posed by public access to manifest data should, in the first instance, be limited to a consideration of those manifests for the P-List and U-List wastes with chemical names that also appear on the list of COI in the appendix A to the DHS's 6 CFR part 27 regulation.

Under the DHS chemical security regulations, the COI appendix is used as an initial screening tool for identifying high risk chemical facilities. The COI appendix identifies for each listed chemical substance a Screening Threshold Quantity (STQ) and minimum concentration that apply to each of several modes of vulnerability (release, theft, sabotage) and the related security issues (toxic, flammable, or explosive releases; theft enabling use of chemical weapons or weapons of mass effect; sabotage, etc.). The purpose of the COI list and the STQs published for the relevant security issues is to screen for those chemicals that if released, stolen, diverted, and/or contaminated, have the potential to create significant human life and/or health consequences.

Moreover, the presence of a COI at a facility at quantities exceeding the STQ is not itself a trigger for whether that facility is a ''high risk'' or ''covered facility'' within the meaning of the part 27 DHS chemical security regulations. Rather, the presence of a COI chemical at or above the STQ is the threshold for determining when a facility must be evaluated further by DHS for the chemical security risks at that facility. Exceeding an STQ triggers the requirement for the facility to submit to DHS a Top-Screen document. Only after DHS has gathered additional information through the Top Screen will DHS make a determination whether the facility handling that COI chemical is a ''high risk'' facility and must comply with the substantive requirements of the part 27 regulations. These requirements include the preparation and submission to DHS of a Security Vulnerability Assessment and a Site Security Plan.

While EPA would ideally have the information available to withhold from public disclosure the manifest associated only with ''high risk'' facilities, the Agency is not in a position to determine whether particular facilities associated with P-List and U-List wastes that are COI are high risk for chemical security issues. However, in order to be protective respecting any plausible chemical security risk at facilities with manifested hazardous wastes, the Agency will apply the COI list screening tool broadly to prevent access to information on chemical wastes by those who might have an intent to harm the homeland.

Therefore, in this final rule, EPA is clarifying that the e-Manifest system will withhold from public access

specific data from those manifests related to chemical facilities that handle P-List and U-List wastes that are also included on the appendix A COI list. For manifests that include such chemical wastes, the e-Manifest system will withhold from disclosure to the public-facing module of e-Manifest the following data items: The chemical waste name and specific P- or U-List waste code, the quantity of such wastes included in the shipment, and the date of the shipment. The shipping description for these chemical wastes will instead bear the generic information ''P-List or U-List waste'' in the public facing e-Manifest system. After consultation with DHS, the two agencies have concluded that these measures will be effective to prevent a terrorist from obtaining information on which facilities might possess or manage hazardous wastes that are COI at quantities of concern, as well as prevent such a person from ascertaining information about shipment dates and patterns of shipments involving these chemical wastes of interest.

While the withholding of this limited data from a limited subset of manifests may appear at odds with the Agency's transparency goals for e-Manifest, EPA believes that the mitigation strategy described here represents a reasonable accommodation with homeland security interests, and is a prudent response to the concerns raised by commenters and DHS officials.

d. How will the rule address state regulated facilities lacking EPA Identification Numbers?

EPA acknowledges the comments identifying the problem posed by tracking and collecting payments from state regulated receiving facilities that currently lack EPA identification numbers. The e-Manifest system will be programmed to track manifest activity and bill facilities for their activities with reference to the identification number of the receiving facility listed on each manifest. Therefore, prior to or at the time of system implementation, EPA will need to identify a means by which such facilities can obtain unique identifiers that they can list on their manifests in the EPA identification number field.

As part of the e-Manifest system development, EPA is including a so-called ''non-handler IDs'' initiative aimed at ensuring that each site has its own unique ID to use with its electronic manifests. Further, this initiative is aimed at ensuring that each receiving facility entered in e-Manifest will have a unique identity for tracking and billing purposes. Sites that are listed in Item 8 of manifests as designated or receiving facilities must obtain a handler ID from their state or EPA and be listed in the RCRAInfo data system. These efforts will require considerable outreach and cooperation between EPA, the states regulating these facilities, and the receiving facilities to maximize the inclusion of these sites in the system and ensure the proper billing of their shipments.

e. How will the rule address out-of-state shipments of non-RCRA wastes?

The e-Manifest Act extends the scope of the e-Manifest program to wastes subject to manifest tracking under federal RCRA or under state law. Some state programs regulate more wastes than EPA regulates federally under its Subtitle C regulations, and these additional non-RCRA wastes are often referred to as state-only regulated wastes or as ''broader in scope'' wastes to indicate the more extensive coverage of the state programs. These state-only regulated, non-RCRA wastes can present manifest implementation and tracking challenges when shipments involving these wastes cross state lines. While any non-RCRA waste subject to a manifest under state law in the destination state should be accompanied by a manifest in the destination state and thus would be required by this final rule to be submitted by the receiving facility to the e-Manifest system, the compliance situation is not as straightforward for other out-of-state shipment scenarios. In particular, the manifest requirements may be less clear for waste shipments that originate in a state with more extensive or ''broader in scope'' coverage and that are then shipped out-of-state to a destination facility in a state where the waste is not regulated as hazardous and does not require a manifest under the law of the destination state. Prior to e-Manifest, EPA was not significantly involved in the collection of manifests, and the question of supplying manifest copies to states was governed exclusively by state law. EPA is aware from discussions with state regulators that it was at times problematic for the origination states to collect manifest copies from out-of-state receiving facilities, and that it was often difficult to ensure compliance with copy return requirements from facilities beyond the territorial jurisdiction of the origination state.

Under the e-Manifest Act, however, any such jurisdictional barrier has been eliminated by the Congress. In section 2(h) of the Act, Congress prescribed a self-implementing provision that speaks directly to the obligation of receiving facilities to close out and return manifests to the e-Manifest system, if the waste being shipped for management is subject to a manifest in either the origination state or the destination state. This provision of the Act provides that if either state's law requires that the waste is tracked through a hazardous waste manifest, then the designated facility, regardless of location, shall complete the facility portion of the manifest, sign and date (*i.e.* complete the facility certification), and submit the manifest to the system.

Thus, under the Act, for shipments that cross state lines, a designated or receiving facility that receives waste shipments accompanied by a manifest, and that manifest is required for the tracking the waste shipment by either the law of the origination or destination state, then the receiving facility must attend to that manifest, must close it out by completing the facility portion and signing and dating the facility certification on the manifest, and must submit the signed, final copy of that manifest to the e-Manifest system for processing. These requirements apply to receiving facilities under federal law even if the law of the destination state would not require a manifest for the wastes involved, and would not require the facility to take any action with respect to the manifest required by the origination state. States that desire the return copies of these manifests can therefore rely upon this federal provision that ensures consistency in the tracking of these shipments to their completion, and they will not be as dependent on attempts to extend their state laws in an extraterritorial fashion to out-of-state entities. Receiving facilities can know that their supplying one final copy to the e-Manifest system will satisfy any and all requirements for return copies to tracking states, wherever they may be situated.

While the provisions of section 2(h) of the e-Manifest Act are self-implementing, EPA is including an explanation of this statutory provision in this final rule so that regulated entities will receive ample notice of its requirements. EPA is including this summary of section 2(h) under this preamble topic, because the effect of this statutory provision is to classify the out-of-state waste shipments subject to manifest tracking in either the origination state or destination state as a mandatory type of manifest submission to e-Manifest, and thus another type of ''billable event'' within the meaning of this final rule. In other words, receiving facilities subject to this statutory provision affecting interstate waste shipments must submit the final manifest copies to e-Manifest, and pay

the fee required by this final rule, based upon the type of submission.

The Agency is codifying the exact terms of section 2(h) of the Act at 40 CFR 260.4. EPA has chosen to codify the statutory provision in the general applicability subpart of part 260, because we expect that many of the state-regulated facilities that will be affected by the copy submission requirement of section 2(h) are not RCRA-permitted TSDFs, and thus it would not be appropriate to include the codified text of section 2(h) of the Act in the part 264 or part 265 regulations that prescribe the unit location and management standards for RCRA TSDFs. Part 260 is reserved for regulatory provisions of general applicability, so EPA has chosen to codify the manifest copy return requirement affecting interstate waste shipments at new § 260.4.

f. How will the rule address hazardous waste exports and return shipments of rejected hazardous wastes?

The commenters who identified these two atypical shipment types raised valid points that the proposed rule approach of billing the receiving facilities upon submission of the final signed manifest did not lend itself well to the processing of hazardous waste export manifests and manifests for rejected hazardous wastes that are being shipped as returns to the generators of those wastes.

With respect to hazardous waste export shipments, EPA is not including the tracking of export manifests described in subpart H of 40 CFR part 262 in the initial phase of e-Manifest system implementation. As EPA is not accepting the submission of export manifests to the system at this time, the Agency also is not requiring the payment of a fee in connection with export manifests. EPA's system planning and development efforts to date have been focused on the domestic manifest, as the domestic shipments are the dominant use case for the hazardous waste manifest.[2] Moreover, EPA has not yet determined who in the export shipment chain of custody (*i.e.,* primary exporter vs. transporter moving waste from U.S. or other entity) is best suited for making the submission of the export manifest to the system and paying the requisite processing fee; nor have we provided notice-and-comment opportunities for the exporters or other handlers involved with these shipments. Therefore, these determinations on export manifest submissions and the payment of e-Manifest fees for export manifests must await a future rulemaking connected with the planning for the next phase of e-Manifest implementation. EPA plans to consult the Advisory Board on future e-Manifest system enhancements and expansions, and the future inclusion of export manifests is a topic that the Advisory Board can help us address in our regular meetings with the Board. Until then, current arrangements for handling export manifests and tracking information on exports in other Agency tracking systems will continue.

With respect to rejected hazardous waste shipments, EPA has addressed commenters' concerns in this final rule. With rejections, there are generally two possible outcomes: (1) The rejected wastes are re-shipped under a manifest that forwards the rejected wastes from the rejecting facility to an alternate receiving facility (typically, another RCRA TSDF) for management, or (2) the rejected wastes are re-shipped under a manifest from the rejecting facility as a return shipment back to the original generator of the waste.

The first outcome discussed previously—the forwarding of rejected wastes to an alternate facility—is not unlike the conventional manifested shipment of a waste to a permitted facility for management. The key difference is that the rejected waste shipment originates with the rejecting facility rather than the generator. Otherwise, forwarded rejections are tracked through off-site transportation to another receiving facility (typically another permitted TSDF), which completes the tracking of the shipment by signing the manifest to certify to the receipt of the wastes at the designated facility. Since forwarding rejected wastes to an alternate facility is tracked on the manifest like conventional waste shipments to a receiving facility, EPA can treat them like conventional shipments insofar as the submission of the final copy to the system and the payment of the fee. Therefore, for rejected wastes that are forwarded to an alternate facility for management, the alternate facility that signs the manifest to certify the receipt of wastes must submit that final, signed copy to the system and pay the applicable per manifest fee for that submission.

The unique circumstances surrounding the tracking of return shipments requires a different treatment in this final rule. For return shipments to generators, the rejecting facility is typically listed as the generator on the return manifest, while the original generator of the waste receiving its waste as a return is shown as the designated or receiving facility. EPA's billable event approach of charging the receiving facility of conventional shipments is premised on efficiency and avoiding the inclusion of hazardous waste generators in the e-Manifest payments system. It would conflict with this policy objective if the return shipments were then to implicate generators in the fee payment system, because they appear to be the receivers of return shipments. Therefore, in the final rule, EPA is announcing a different outcome applicable only to the return shipment scenario. For return shipments to generators, the rejecting facility is responsible for the payment of the fee for the return manifest, and the billable event for this fee obligation is the rejecting facility's submission of the original manifest signed by the facility to indicate the rejection and the submission of a copy of the return shipment manifest that will accompany the return shipment to the generator. Each rejection resulting in a return shipment must therefore include the submission by the rejecting facility of the original manifest signed by the rejecting facility and a copy of the return shipment manifest. Thus, the rejecting facility is paying the fee for the processing of the return manifest when it submits the return manifest, as the return manifest and its processing fee will not be collected by the system from the generator.[3] By handling return shipments in this manner, the fee payments required in the system can be confined to the intended class of conventional, permitted receiving facilities. While it may seem irregular to charge the rejecting facility the e-Manifest fee for return shipments of rejected wastes, a chargeback by the facility to its generator customer is an option to balance the equities of the resulting fees. EPA concludes that this decision allocates the fees for rejected wastes most fairly, as the rejecting facility is charged the fee only in the exceptional circumstances of return shipments to a generator, while the alternate receiving facility will pay the fees for the more conventional scenario of wastes being re-shipped and forwarded to another receiving facility for management. Therefore, §§ 264.1311(a)(3) and 265.1311(a)(3) of the final rule will include among the manifest transactions that are subject to

[2] EPA estimates that there are 3 to 5 million domestic manifests produced each year for tracking waste shipments within the U.S., whereas the export trade produces only about 23,000 manifests annually.

[3] EPA notes that in those cases of a facility partially rejecting wastes on the original manifest, with a return of rejected wastes to a generator, the rejecting facility will be charged both the processing fee for the original manifests for processing data on the wastes received, as well as the fee for the return manifest to the generator.

fees the submission by receiving facilities of manifests indicating a rejected waste and a return shipment to the generator of that waste.

g. What other changes are being made in response to comments?

EPA accepts the comments asking for the removal of all vestiges in the existing regulations that suggest EPA could impose e-Manifest fees on generators under part 262 regulations or on transporters under part 263 regulations. These provisions were added during the promulgation of the One Year Rule, which codified quite generally the authority conferred under the e-Manifest Act to impose reasonable fees on all classes of manifest ''users,'' a term which included hazardous waste generators, transporters, and owners or operators of facilities receiving wastes under manifests for management. Thus, EPA included in the One Year Rule provisions in parts 260, 262, 263, 264/265, and 271 so that the codified authority to impose user fees could reach all the possible users of the manifest. In the proposed User Fee Rule, 81 FR 49071, July 26, 2016, EPA stated that if the proposed rule's approach to charging only receiving facilities user fees were to be adopted in the final rule, EPA intended to eliminate from parts 262 and 263 those provisions that would appear to extend user fee authority to generators and transporters. (81 FR 49072 at 49078). Based on the supportive comments in the docket, and the Agency's continued belief that restricting fee collections to receiving facilities is sound policy, EPA is finalizing this policy and thus removing all references in parts 262 and 263 to user fee obligations for generators and transporters of hazardous waste. The result is the removal from the regulations of existing §§ 262.24(g) and 263.20(a)(8) addressing the imposition of user fees on generators and transporters, respectively.

EPA also is accepting the comment noting that EPA had used the terms TSDF, designated facility, and receiving facility interchangeably in the proposed rulemaking, even though those terms do not have the same scope of coverage. The term TSDF connotes a facility having a RCRA treatment, storage, or disposal permit (or interim status), a class of facilities that is narrower than the scope intended by the e-Manifest Act. The commenter is correct in pointing out that the e-Manifest Act intends broader coverage than RCRA TSDFs, since it is clear that many receiving facilities of state-only regulated wastes lack RCRA permits, and yet are facilities that could receive manifested wastes under state law and thus be included in the coverage of the e-Manifest Act and the e-Manifest system. The commenter also is correct that EPA should rely on a term that expresses the intended scope of the e-Manifest Act, and use that term consistently in the final rule. In response, EPA is clarifying in this final rule that ''receiving facility'' is the term with the proper breadth that will capture all facilities regulated by the final User Fee Rule. The final rule will therefore focus on receiving facilities, and not TSDF or designated facility, as both of the latter terms are defined by current federal regulations more narrowly to include only the RCRA permitted facilities. The term receiving facility is sufficiently broad to include every type of federally regulated or state regulated facility that could receive a hazardous or state-only regulated waste covered by the e-Manifest Act.

Consistent with the broad scope of coverage intended by the e-Manifest Act, the Agency is adding new authority in 40 CFR 260.5 to cover the receiving facilities of state-only regulated wastes that are not RCRA TSDFs. Under the final rule's § 260.5, facilities receiving state-only regulated wastes must comply with the requirements of § 264.71 on use of the manifest, the requirements of § 264.72 on manifest discrepancies, and the requirements of subpart FF of part 264 addressing the fee determination methodology, fee payment methods, fee dispute procedures, and other fee requirements. EPA is subjecting the state-only regulated waste receiving facilities to these requirements under § 260.5 so as to clarify the applicability of e-Manifest Act requirements to these state regulated facilities that are not RCRA TSDFs subject to part 264 or part 265.

EPA is also revising the manifest printing specification by adding a § 262.21(f)(8) that will require all printed manifests and continuation sheets to bear a prominent notice to these facilities in the bottom margin of the designated facility copy. This notice will refer the facilities to the manifest instructions that explain their requirements to complete and sign all manifests so received, to submit these manifests to the e-Manifest system, and to pay to EPA the appropriate fee for the processing of these manifests.

B. What other transactions will be subject to user fees?

1. Background

In the discussion earlier on the billable event in e-Manifest, EPA clarified that the primary transaction in e-Manifest that will give rise to a user fee obligation is the submission by the receiving facility of the final copy of the manifest signed by the receiving facility to certify to the receipt of the wastes or to any discrepancies related to the shipment.[4] However, in the proposed rule, EPA proposed several additional types of manifest-related transactions that might warrant a fee, and solicited comment on others that might warrant a fee because of the complexity of some transactions (*e.g.,* rejections, split loads, consolidations), or to deter activities that might incur large labor costs, such as a paper manifest premium or a charge for help desk encounters. EPA explained in the proposed rule that the several complex transactions did not warrant any premium fees, because these transactions—rejected waste shipments, consolidated shipments, or split shipments—tend to require additional manifests to be completed and submitted, so the fees related to the additional manifests would be collected as a matter of course without any premium fees. For help desk encounters, EPA concluded that a per encounter fee would discourage users from seeking assistance, and that it was more appropriate to aggregate help desk costs and recover these as operations and maintenance costs of the system to be shared by all manifests.

In footnote 16 at 81 FR 49088 July 26, 2016, proposed rulemaking, EPA stated that it intended to impose a per page transactional fee for manifest continuation sheets. EPA believed the per page continuation sheet fee was justified, as these continuation sheets were separate forms styled similarly to manifest forms, and with many of the same data elements. Particularly when submitted as paper forms for processing, these continuation sheets could require the same sorts of manual processing steps and quality assurance/quality control measures as paper forms. Therefore, EPA stated in the proposed rule footnote that each page of a continuation sheet would generate the same fee as an individual manifest form.

Also, in the preamble section of the proposed rule addressing possible fee premiums, EPA proposed a distinct transactional fee for sorting and returning certain types of extraneous documents that handlers might submit to the paper processing center with their manifests, and for correction submissions sent to the system by receiving facilities to enter corrections

[4] As noted in section III.A.3.e in this preamble, another billable transaction for receiving facilities is the submission of a manifest showing in Item 18a a return shipment to a generator, where a fee is charged for the return manifest.

in the data-base of existing manifest records. See 81 FR 49072 at 49088, July 26, 2016. EPA proposed the extraneous document fee, because EPA had learned from several state agency partners that such extraneous documents were frequently encountered by states with tracking programs, and their sorting and return, if required, would incur considerable manual processing steps and resulting labor costs. It was believed that a premium fee charged for extraneous documents might deter these submissions and recover their related costs to the system.

EPA proposed the corrections submission fee, because the proposed corrections process included in the proposed rulemaking action would require a certified submission by TSDFs to effectuate a change to previously entered manifest records. The proposed rule included a fairly structured submission requirement that would have required the receiving facility submitter to identify the data elements being corrected, to list both the data item as previously entered and as corrected, and then to certify that the data as corrected are complete and accurate. Such submissions would result in system-related costs being incurred, and it was believed that a corrections fee might induce facilities to improve the data quality of their initial submissions so as to avoid the costs of later correction submissions.

2. Comment Analysis

EPA received many comments in response to the proposal regarding which transactions might warrant additional fees. Numerous industry and state commenters agreed that continuation sheets should not be charged a separate or per page fee. These commenters contend that most continuation sheets simply add additional waste streams or an additional transporter to the original manifest. Since continuation sheets carry the same tracking number as the original manifest to which they are appended, the commenters believed that only one fee should be charged for the original manifest and any continuation sheets attached to it.

EPA received many comments from industry and state commenters contesting the proposed fee for sorting and returning stray or extraneous documents. Nearly all of these comments suggested that EPA should not be spending time and resources sorting extraneous documents and attempting to return them to senders, but should simply discard them. Commenters suggested that discarding the stray documents with no additional effort expended on them would not necessitate a separate fee. Several such commenters did question what the term ''extraneous'' meant in connection with non-manifest documents submitted to the system. For example, commenters asked if polychlorinated biphenyl (PCB) continuation sheets and land disposal restriction (LDR) certifications would be treated as extraneous, even though other EPA regulations may require them to be attached to manifest forms.

Commenters generally agreed with EPA's assessment that help desk encounters should not be charged separate per encounter fees. These commenters agreed with EPA's statement in the proposed rulemaking that the help desk costs should be aggregated and shared by all manifests as operations and maintenance costs. Similarly, commenters agreed with EPA's assessment that a premium fee for paper manifest use was not warranted at this time, as the differential fee approach in the proposed rule would already assess higher fees for paper manifest submissions, because of their higher processing and labor costs. Commenters said that the differential fee proposal already created the appropriate incentives against the continued use of paper manifests without an additional premium fee.

Many industry commenters and several state agency commenters submitted comments objecting to the proposed data correction fee, although a few commenters stated they would support a corrections fee focused on paper manifest submissions only. The commenters objecting to the proposed corrections fee, particularly RCRA TSDFs and their trade associations, argued that a separate fee levied on correction submissions would deter corrections being made, and would result in disincentives for data quality in the system. These commenters suggested that the system should encourage, not discourage, data corrections from the user community.

3. Final Rule Decisions

EPA accepts the numerous comments objecting to a separate transactional fee for manifest continuation sheets. EPA is persuaded that most continuation sheets add minimal additional data to a manifest, typically several additional waste streams or an additional transporter, and that processing these additional data items will not incur significant costs to the system. Also, as these continuation sheets will be tracked by the same manifest tracking number displayed on the original manifest, it will not be practical to track and invoice users separately for continuation sheets. Any marginal costs that result in the aggregate from the processing of continuation sheets will be added to the system's operating and maintenance costs. Thus, the policy of charging a per sheet fee for continuation sheets, as suggested in the proposed rulemaking, 81 FR 49072 at 49088, footnote 16, July 26, 2016, will not be adopted in the final rule.

EPA also accepts the numerous comments criticizing the proposal to charge a separate transactional fee for sorting and returning extraneous documents submitted to the system's processing center with paper forms. Commenters all expressed alarm that EPA would spend time and resources sorting and returning extraneous documents, and EPA accepts the commenters' reasoning that the proper outcome should be to simply discard, and not return, any such stray or extraneous items that are not in fact manifest related. Thus, under the final rule, there will be no fee assessed for processing extraneous documents, and any nominal costs from sorting and discarding these documents will be added to the system's operating and maintenance costs. Thus, in this final rule, EPA is not finalizing proposed § 264.1311(b)(1) or § 265.1311(b)(1), which would have assessed fees for the processing of extraneous documents submitted with paper manifests to EPA's paper processing center.

In relation to this issue, EPA will treat all documents that are not manifest related, *i.e.,* a hazardous waste manifest form or a manifest continuation sheet, as extraneous and discard them under this rule's policy. PCB continuation sheets will be considered manifest related, as they are required to be attached to PCB manifests under federal law and contain specific details related to tracking specific PCB waste items that are being shipped off-site. However, EPA is not planning to process LDR certifications at the e-Manifest processing center, and any plans to process LDR-related documents in e-Manifest will await a later phase of system implementation. Such LDR certifications are currently intended to be delivered to the RCRA receiving facility the first time LDR-restricted wastes are shipped to a particular facility for management. Therefore, these LDR certifications should remain at these facilities and be kept among these facilities' records, and not submitted with manifests to the e-Manifest system. Until such time as EPA decides to process LDR-related documents in e-Manifest, EPA will discard any LDR certifications that are received by the system under this rule's

policy of discarding extraneous documents.

EPA also is accepting the comments objecting to the proposed rule's fee for data correction submissions. EPA is persuaded that a fee for such corrections might have the unintended effect of discouraging corrections and data quality. Moreover, as the great majority of correction submissions will be made electronically, their processing should entail nominal system costs, which EPA can include among the system's operation and maintenance costs to be shared by all manifests. Therefore, the final rule action does not finalize proposed §§ 264.1311(b)(2) and 265.1311(b)(2), which would have assessed fees for manifest data correction submissions by facilities. Other changes to the proposed data corrections process are discussed in section III.F of this preamble.

Finally, the Agency acknowledges the general support in the comments for EPA's proposed rule rationale for not charging any additional transaction based fee for help desk encounters nor charging an additional premium fee for the use of paper manifests. EPA concluded in the proposed rule that the cost of help desk support should be aggregated and funded as an operating and maintenance costs shared by all manifests. EPA further explained that the proposed differential fee approach (see section III.C of this preamble) already included appropriate fee disincentives to discourage paper manifest use, without a premium fee being necessary or appropriate at this time. As commenters agreed with both of these proposals, and EPA believes both are backed by sound policy, EPA is affirming in this final rule that no transactional fee will be charged for help desk encounters. In addition, no premium fee (beyond the higher differential fee under the rule's fee formula) will be charged for the continued use of paper manifests.

C. What formula and methodology will be used to determine user fees?

1. Background

In the July 26, 2016, notice of proposed rulemaking, EPA proposed what it described as a ''differential fee formula.'' The proposed formula differentiated among the several types of electronic and paper-based manifests that would be submitted to the system for processing. The most significant feature distinguishing the processing of these different manifest types under the proposed fee formula was the marginal labor cost of processing the data from these manifests into the system. EPA developed an economic model to project the marginal labor costs for processing the several manifest types allowed to be submitted to the system. Paper manifests mailed to the system for sorting and manual data key entry would entail the greatest marginal labor costs to process. Paper manifests submitted as image files (*e.g.,* Adobe Portable Document (PDF) files) would have marginally lower costs than mailed forms, but would still require manual data key entry steps. Paper manifests submitted as data files (*e.g.,* JSON file with an image file attachment) would require even less manual effort to process. The lowest cost manifests to process would be the fully electronic manifests that originate in the system and are transmitted electronically with no manual intervention at all. The result of the proposed differential fee formula is thus a continuum of manifest fees, with fully electronic manifests involving the lowest costs and fees, with somewhat higher fees for paper manifests submitted as JSON or data files, with moderately higher costs for the paper manifests submitted as image files, and with the highest fees imposed on paper manifests mailed to the system.

The key purpose of the fee formula is to determine the per-manifest fee to be charged manifest users. In simplest terms, the formula allocates all the system-related costs over all the manifests in use to arrive at a per manifest fee. In the July 26, 2016, proposal, EPA explained the nature of the several system-related cost categories that would be included in fee determinations with the proposed formula. See 81 FR 49072 at 49079. The major cost categories identified in the proposal were System Setup Costs, Operations and Maintenance Costs, and Indirect costs.

The proposed rulemaking discussion of the differential fee formula broke down the system-related costs into two key sub-categories, System Procurement Costs and EPA Program Costs. These sub-categories are helpful to distinguish the information technology (IT) system acquisition and contracting costs from the other EPA Program Costs that the Agency would incur in planning, developing, operating, and managing the e-Manifest program, including the program's IT system and regulatory components. The EPA Program costs extend as well to the costs of conducting outreach, as well as establishing and operating the e-Manifest Advisory Board.

In the fee formula methodology proposed by the Agency, the System Setup Costs are simply the System Procurement Costs and EPA Program Costs incurred by EPA *before* the e-Manifest system's operational date, whereas the Operations and Maintenance Costs consist of the System Procurement Costs and EPA Program Costs incurred *after* the operational date of the system. Because the e-Manifest Act requires that EPA reduce the user fees upon the recovery of all the system development costs, the proposed rule methodology would accomplish this by simply dropping the System Development Costs from the formula after five years, as EPA proposed an amortization period of five years for the recovery of the system development costs. 81 FR 49079, July 6, 2016. However, it is possible that the cost recovery period could extend beyond the five years, should, for example EPA find that actual O&M costs exceed estimates. EPA will closely track the actual progress in the recovery of system start-up costs, and will notify users accordingly when the reduced fees will take effect.

In developing the proposed rulemaking, EPA considered three distinct fee models or options, which were discussed in detail in the proposed rule preamble. See 81 FR 49081–49083, July 26, 2016. All three options focused on the marginal labor cost of processing each manifest as the primary cost item contributing to the calculated fee, and to this marginal cost was added the result of dividing the System Setup and Operations and Maintenance by the numbers of manifests, with allowance also for amortizing the System Setup Costs over five years. The three fee models or options varied by how extensively the models tracked costs and manifest numbers by manifest type, and by how rigorously the models attempted to allocate the substantial paper manifest processing costs to only the paper manifests, rather than sharing these costs equally with the electronic manifests. Thus, the Agency considered a very simple ''Average Cost Fee Option'' that shared all costs equally among all manifests, paper or electronic, to arrive at an average marginal labor cost and the same average fee for all manifest types. A second or intermediate option was discussed as the Marginal Cost Differentiated Fee Option, which focused on the marginal labor cost of processing each manifest type (fully electronic, paper by mail, paper by image file, or paper by JSON file) as the key contributing cost item, but which allocated all other system setup and non-labor operating costs equally across all manifests. The third and most detailed option was the Highly

Differentiated Fee Option, which also focused on the marginal labor cost of processing each manifest by type, but was more particular in tracking operation and maintenance costs and manifest numbers by their type, and in allocating the non-labor costs of operating the paper manifest processing center to only the paper manifests rather than having all manifest types share in these costs.

In the July 26, 2016, proposed rulemaking, EPA proposed a combination of the second, Marginal Cost Differentiated Fee option and the third option, the Highly Differentiated Fee option. See 81 FR at 49083. Under the proposed fee model, EPA would initially implement the second, Marginal Cost Differentiated Fee Option, but would shift to the third or Highly Differentiated Fee Option if the Agency were to find that electronic manifest usage had not reached the programmatic goal of 75% after four years. EPA rationalized the proposal on the basis that it represented a useful compromise between promoting electronic manifest use, while also recognizing that there likely would be a transition from paper manifest use, to JSON data uploads from facility's paper manifests, and finally to fully electronic manifests and submissions. The intermediate step in the transition—receiving facility uploads of JSON data files generated from their paper manifests—would produce benefits and cost savings for industry and the Agency's national data system. Thus, EPA believed that the combination of the two fee models, with the pivot to the more aggressive fee model if necessary after a four-year period, would facilitate this transition and not have the potentially undesirable effect of penalizing paper manifest usage initially. EPA had previously espoused the 75% usage rate goal in our economic analyses for e-Manifest to project program savings and benefits, and we believe that the 75% adoption rate within four years for electronic manifests is a useful benchmark for measuring the success of the program and for incentivizing the transition to electronic manifests through this User Fee rule.

2. Comment Analysis

There was general agreement among both industry and state commenters in support of the proposed rule's differential fee formula and its approach keyed to the marginal labor cost of processing the various manifest types into the national data system. The majority of these commenters indicated that the proposed formula was well explained, and that it provided a generally sound justification for the variability of fees among the different manifest types, that is, fully electronic manifests, and paper manifest submissions delivered by mail, by image file upload, and by JSON data file upload. These commenters also were satisfied that the proposed formula and the explanation in the proposal of the formula's cost categories and their sources were adequate to explain how the fees would be determined. Only one industry commenter expressed a dissenting view, and suggested that EPA had not substantiated the cost factors and resulting fees. This commenter expressed alarm at the level of fees published in the preamble's table showing the illustrative fees under the proposed formula, while another commenter criticized the table of illustrative fees for the range of possible fees it presented, and suggested that EPA should have been able to pin down the costs and resulting fees more closely by now.

In addition, there was general support in the industry and state comments for the proposed rule including the fee pivot feature, so that fees for paper manifests would become more aggressive if electronic manifest usage goals were not met. However, commenters representing several large RCRA TSDFs, and their trade association, objected to the final rule codifying the 75% electronic usage goal in four years as the trigger for the pivot to the more aggressive fee formula. In the view of these commenters, the 75% in four years electronic usage goal was arbitrary and should not be locked into a regulation. Rather, these commenters would prefer that EPA refer the matter of when and under what conditions to raise fees to the e-Manifest Advisory Board for its recommendation.

Few comments were received on the proposed five-year amortization period for the recovery of system development costs and their payback to the Treasury. One state agency commenter expressed support for the five-year amortization period as reasonable, but emphasized that amortized costs that accumulate in the System Fund must not be treated as a surplus, as the e-Manifest Act places limits on surplus accumulations in the System Fund. Another state commenter suggested the amortization period should be set at six years, for consistency with the Fee Rule's general reliance on a two-year cycle for publishing and revising fees.

3. Final Rule Decisions

For this final rule, EPA is sustaining its proposed approach to the differential fee formula. The final rule provides that EPA will initially implement the Marginal Cost Differentiated Fee model, and then shift to the Highly Differentiated Fee model, if electronic manifest usage has not reached a 75% adoption rate after four years of system implementation. However, EPA will evaluate the circumstances of the electronic manifest adoption rate as we reach the four-year anniversary date for the e-Manifest system. At that time, EPA will publish a document indicating whether the 75% adoption rate has been realized and any facts or circumstances that might explain why the goal was met or not met. At the time EPA publishes this action, the Agency will either state that the fee pivot will go into effect on a date determined by EPA under the conditions of the final rule's fee pivot provisions, or, EPA will determine then to refer the matter of the adoption rate and fee impacts to the Advisory Board and seek the Board's recommendations on the issue. In this manner, EPA can still implement the more aggressive fee formula pivot under the terms of this final rule, rather than having to wait on the Advisory Board's advice and possibly another rulemaking. EPA believes that the more aggressive or Highly Differentiated Fee formula is an appropriate means of ensuring that paper manifests ultimately bear their full costs, and this is an important principle of user fee design. EPA only proposed the intermediate fee model to facilitate a transition to electronic manifests, and the Agency concludes that four years is a reasonable period of time to promote such a transition. Rather than an arbitrary pivot condition, the inclusion of the 75% adoption rate condition with the four-year transition period actually moderates the transition period condition. EPA could have required the pivot to the more aggressive formula with certainty after four years, without regard to the electronic usage rate. As moderated by the usage rate condition, if the 75% adoption rate is realized, the transition to the more aggressive fees after four years is in effect canceled and the intermediate model's fees would remain in effect. In addition, EPA notes that the fee increases resulting under the more aggressive fee formula are not prohibitive, *e.g.,* about $2 more for a mailed paper submission and only a few cents difference per manifest for a JSON data upload from a paper form. EPA is not persuaded by comments suggesting that the proposed rule's fee pivot is unreasonable or arbitrary under the proposed conditions. Indeed, were the conditions not codified in the final rule, the decision to increase the paper

manifest fees even moderately would involve the substantial delay of referring the issue to the Advisory Board, waiting on their report, and then having to initiate new notice and comment rulemaking to implement the change. The decision to raise fees under particular conditions is a decision that only the Agency, not an Advisory Board, can make. Therefore, EPA is issuing the final rule to include a transition to the Highly Differentiated Fee model after four years, if electronic manifest usage has not reached 75% by that time. However, we will decide at that time through a separate action whether the fee model pivot will go into effect by the terms of the final rule, or if we find there are extenuating circumstances such that it would be helpful first to seek the advice of the Board. In either case, EPA will announce its decision to either allow the fee pivot to go into effect, or to consult on the matter with the Advisory Board.

EPA also is finalizing the rule with the proposed five-year amortization period for the recovery of system development costs. EPA received one comment supporting the proposed period as reasonable, and only one other comment suggesting the amortization period be extended to six years to align better with the proposal's two-year fee revision cycles. For the final rule, EPA is retaining the proposed five-year amortization period, and concludes that five years reasonably balances the Government's desire to promptly recover the system's development monies, while moderating the effect of the development costs insofar as keeping the resulting user fees at reasonable levels. By concluding the amortization period after the fifth year, the fee revision schedule that EPA publishes for the two-year cycle covering the fifth and sixth years will more palpably show the users the effect of the recovery of start-up costs in reducing the scheduled fees for the sixth year relative to the fifth year.

D. What indirect costs are considered by EPA in user fee determinations?

In the 81 FR 49072, July 26, 2016, proposed rulemaking, EPA explained that the e-Manifest system related costs fall into three main categories: (1) System Setup costs, (2) Operations and Maintenance costs, and (3) Indirect costs. The nature and source of System Setup costs and the Operations and Maintenance costs are explained above in the discussion of the Fee Formula and how these costs are factored into the determination of fees. However, indirect costs also are factored into the Fee Formula calculation of user fees, and EPA believes this third major category of system-related costs merits more explanation.

Indirect costs are the intramural and extramural costs that are incurred by EPA in operating the system, but that are not captured in the EPA Program cost and marginal labor cost sub-categories that EPA tracks as direct costs in determining overall costs and resulting fees. The indirect costs are part of full cost recovery, because of their necessary supporting or enabling nature in executing the program. (81 FR 49072 at 49080, July 26, 2016). Indirect costs typically include such items as physical overhead, maintenance, utilities, and rents on land, buildings, or equipment. In e-Manifest, these indirect costs also include the cost of participation by administrative EPA offices outside of the Office of Resource Conservation and Recovery (ORCR), the lead office at EPA for implementing the e-Manifest program, and the participation of upper management level personnel from the EPA offices that provide support to all aspects of the e-Manifest program. *Id.*

Indirect costs tend to be disparate and more difficult to track closely than other cost categories, because they are typically incurred as part of the normal flow of work involving many offices across the Agency, and cannot be attributed directly to the particular activities they support. Also, the level of participation by different offices, and the level of indirect costs incurred by them, changes over the course of the program's implementation. Thus, as we explained in the proposed rule, indirect costs require a different method of tracking and accounting than the other categories of e-Manifest costs. *Id.*

EPA accounts for indirect costs in its user fee determinations by developing an indirect cost rate, and factoring that rate times the base fees determined from the direct cost categories in the fee formula. Typically, agency-wide indirect cost rates are determined for EPA user fee programs by EPA's Office of the Controller, using an indirect cost methodology that this office has developed to meet the Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Standards and Concepts. EPA's Office of the Controller annually publishes an indirect cost rate for each of the Regional Offices and for each of the Assistant Administrator-level offices within EPA Headquarters. Thus, there is an Interagency Agreement (IA) indirect cost rate issued each fiscal year for the Office of Land and Emergency Management (OLEM). The Fiscal Year 2015 IA indirect cost rate for OLEM, which we discussed in the proposed rulemaking preamble and used for purposes of the proposed rule's table of illustrative e-Manifest fees at 81 FR 49085 of the proposed rule, was 19.74%. *Id.* at 81 FR 49080, footnote 11.

In the 81 FR 49072, July 26, 2016, proposed rulemaking, EPA stated that it intended to develop a customized indirect cost rate that we believed would capture the indirect costs of the e-Manifest program at a greater level of specificity than the IA indirect cost rate for OLEM. EPA received no public comments on the issue of indirect costs. Nor did the Agency receive any comments on its statements in the proposal regarding its intent to develop a new custom indirect cost rate for e-Manifest.

EPA is announcing in this final rule the custom indirect cost rate for e-Manifest, which was based on EPA's existing indirect cost methodology, and taking into account with more particularity other appropriate indirect costs attributable to the ORCR program office that were not captured by the previously used IA rate alone.

Using the new custom indirect cost rate methodology for e-Manifest, the indirect cost rate for e-Manifest in fiscal year 2018 is 33.22%.[5] This indirect cost rate for e-Manifest will be calculated and reissued each fiscal year. Thus, when the Fee Formula is run to determine e-Manifest user fees, the applicable indirect cost rate will be factored times the base fees calculated from the direct cost categories in the fee formula to arrive at the total user fees.

E. What process and factors will be used to revise e-Manifest fees?

1. Background

In the 81 FR 49072, July 26, 2016, proposed rulemaking, EPA proposed both a process and several fee adjusters that the Agency was considering to address the so-called ''fee trajectory'' concern. Fee trajectory provides a means to ensure that the program's user fees remain aligned with any changes to program costs. Changes to program costs could arise, for example, from increased labor costs for EPA's internal staffing or for its contractors, from increases in the

[5] The custom indirect cost rate includes those indirect costs incurred by EPA in operating and managing the e-Manifest program. This custom rate also includes EPA Headquarters general and administrative expenses, including OLEM's Immediate Office and the ORCR's administrative office, which are not captured as part of the EPA Program costs that EPA tracks as direct costs in determining the program's overall costs and resulting fees. All costs are captured in the Agency's financial system.

costs of licensing software or other system components, as well as from inflation. In addition, since the calculation of e-Manifest fees is highly dependent on accurate information about program costs and the numbers of manifests in use, the e-Manifest user fees need to be reevaluated regularly to ensure that the fees are based on the most recent cost and manifest usage data.

To address fee trajectory, EPA proposed a fee revision process under which the fee formula would be re-run with the latest program cost and manifest usage numbers at two-year intervals. EPA based this proposal on the perceived advantages of providing more stability to users under a two-year fee schedule, as well as the advantage to EPA of avoiding the administrative burden of constantly updating and publishing fee revisions annually. Moreover, we believed that a two-year fee refresh cycle was consistent with OMB's Circular A–25 user fee guidance, which requires agencies of the executive branch to conduct biennial reviews of its user fees, including any adjustments to the fees charged. See 81 FR 49072 at 49086, July 26, 2016.

In addition, since EPA would retain the formula and merely refresh the fee schedules to reflect the most recent program cost and manifest numbers, the refresh and publication of the revised fee schedules under the proposal would be conducted informally. That is, EPA would not conduct notice-and-comment rulemaking with each fee schedule revision cycle, but would instead publish the revised fee schedule to users through the e-Manifest program's website, and publish the fee schedules in this manner 90 days prior to the effective date of the new fee schedule.

To enable a more durable fee methodology and avoid the need for frequent regulatory amendments, EPA included several fee adjusters in the proposed rule. The point of these adjusters was to keep the calculated fees current with any anticipated program cost changes, and avoid having to revise the formula and methodology by new regulations. If the fee formula with the proposed adjusters could keep the e-Manifest fees aligned with program cost changes, then EPA could retain the fee formula over an extended period of time, simply by refreshing the fees at two-year intervals with the latest budget and manifest numbers, and applying the regulation's adjusters. This is what EPA intended by a durable fee methodology.

EPA proposed several such adjusters. First, we proposed an inflation adjustment factor predicated on the Consumer Price Index, for all items not seasonally adjusted, or CPI–U. EPA believed the CPI–U was a sufficiently representative inflationary index, and we proposed to use that index to adjust e-Manifest fees between the first year and second year of each two-year fee revision cycle.

Second, EPA proposed a revenue recapture adjuster to deal with revenue losses that might result to the program from imprecise estimates of manifest numbers used to determine fees in the fee formula. The fees calculated under the fee formula, and therefore the revenue to be collected from e-Manifest user fees, are highly sensitive to the numbers of manifests actually in use each year. Over time, as EPA obtains data from the system showing precisely how many manifests are submitted to the national system, the program should be less vulnerable to losses from imprecise estimates. But particularly in the initial years of implementation, when our fee formula will work off of estimates of manifest usage developed from economic analyses rather than actual experience, imprecise estimates of manifest numbers are an area of revenue vulnerability. Therefore, EPA included the revenue recapture adjuster so that we could compare our estimated manifest usage numbers for each fee cycle with the numbers actually submitted, and then recapture the revenues lost from inaccuracies in the subsequent fee cycle. In this manner, the fee methodology would become self-correcting for any such revenue losses.

Third, EPA proposed a third adjuster that we referred to as the uncollectable fee adjuster. Like the above revenue recapture adjuster, this proposed adjuster also sought to recover revenue losses from the previous two-year cycle. This adjuster, however, was focused on revenue losses that arose from fees that proved to be uncollectable after being billed to facilities. Thus, the effect of this proposed adjuster was to track how much revenue the program lost from unpaid and uncollectable fees billed to facilities, and then recover those revenues in the next fee cycle by increasing user fees sufficiently to recoup those losses. All the proposed adjusters were aimed at accomplishing full cost recovery, and providing a means for the fee system to be durable and self-correcting, where possible.

2. Comment Analysis

The majority of industry and state agency commenters supported the proposal to refresh fee schedules at two-year intervals, with informal publication of the revised fees to the program's website 90 days in advance of their effective date. Several commenters objected to certain aspects of the proposed informal fee revision process. An industry trade association objected to the 90-day lead time for new fee schedules as too short, and suggested a 180-day lead time was more appropriate, especially if there were large (>10%) fee increases. Two industry commenters objected to EPA making any fee changes without conducting a rulemaking, while a state agency commenter asserted that new fee schedules should be developed annually.

Other commenters requested clarification of points raised in the proposal. One comment asked the Agency to clarify if it was the intent of the proposed rule that fees would be identical for both years of a fee cycle, or, would they change between years. Another commenter requested clarification about the effective date of fee revisions, and whether a fee would be charged based on the date of initiation of a manifest, or on the date of receipt at the receiving facility.

For the proposed fee adjusters, there was general agreement among both industry and state agency commenters in support of the inflation adjuster based on the CPI–U as the measure of the inflationary impact. However, a minority of commenters stated that an inflation adjuster did not seem necessary, if user fees were to be refreshed as frequently as every two years. There also was support expressed by several commenters for the proposed adjuster to recover losses from imprecise manifest usage estimates. There were strong and general objections expressed by both industry and state agency commenters to the proposed uncollectable manifest fee adjuster. Nearly all these commenters expressed the view that it was unfair to charge responsible users who were paying their fees on time additional amounts to compensate for non-paying users. However, one generator did submit a comment in support of the uncollectable fee adjuster.

3. Final Rule Decisions

For the final rule, EPA is affirming the proposed fee revision process to be conducted at two-year cycles by refreshing the fee formula with the most recent e-Manifest program cost numbers and manifest usage numbers. We also affirm that the process will be conducted informally rather than through notice-and-comment rulemaking, as long as the Agency is using the same fee setting methodology promulgated in this rule. Thus, the final rule will provide that the new fee schedules developed every two years

from re-running the fee formula will be published to users via the e-Manifest program's website, at least 90 days prior to their effective date. While the Agency appreciates that an annual fee revision process would be even more responsive to program cost and manifest number changes than the final rule's two-year cycle, the Agency is persuaded that any such advantage is overwhelmed by the additional administrative burden to EPA in conducting a nearly constant, annual fee refresh process. Also, we believe there are advantages to users in having access to a stable fee schedule of two years' duration, rather than having to anticipate and react to a more frequent fee revision process.

In finalizing the rule with this informal fee revision process, EPA rejects the comments suggesting that all fee revisions require a new rulemaking. While we acknowledge that OMB Circular A–25 requires agencies to promulgate user fees by regulation, EPA concludes that this requirement is met by developing this Fee Rule announcing our durable fee methodology through the regulatory process. By developing our durable fee methodology through rulemaking, EPA is providing the user community with notice and opportunity to comment on the information and process EPA will rely on in setting e-Manifest user fees, including those factors that will be used to adjust fees to align them with changes in program costs. EPA is aware that other fee programs follow similar processes in determining and revising their fees. EPA believes the durable fee methodology and informal fee refresh process announced in this rule meets all applicable legal requirements and OMB Circular A–25 policy. Otherwise, the result would be a prohibitively burdensome administrative process were EPA to constantly develop regulations for every fee revision. In addition, while EPA understands the desire to have more lead time to understand and budget for user fee revisions, EPA concludes that a 90-day lead time should be workable, as it will enable EPA to base the new fees on the latest cost and manifest usage trends, while still affording users reasonable time to plan for the revised fees. Also, by refreshing the fees at two year intervals, it would seem unlikely that fee changes will be so significant between cycles that facilities will need six months or more to prepare for their implementation.

Based on the public comments and the necessity of full cost recovery and stable revenues, EPA is finalizing the rule to include the inflation adjuster based on the CPI–U, and the revenue recovery adjuster for revenue losses from imprecise manifest usage estimates. The inflation adjuster will operate to adjust fees between the first and second year of a fee cycle, so it is likely that fees will not be identical for both years of a cycle, but differ somewhat to reflect the inflation adjustment. The revenue recovery adjuster for imprecise manifest numbers will operate between fee cycles, to adjust fees in the new cycle to account for revenue losses during the previous cycle. Since the billable event for e-Manifest fees is the submission of the final manifest by the receiving facility, the fee charged will be determined based on the date of submission by the receiving facility, and not the date of initiation by a generator.

Finally, EPA is not including the proposed uncollectable manifest fee adjuster in §§ 264.1313(c) and 265.1313(c) of the final rule. While such an adjuster might help to stabilize program revenues in the event of significant non-payment incidents, EPA is persuaded by comments objecting to the fairness of charging responsible users for the revenue losses occasioned by delinquent payers. In addition, EPA believes that non-payment episodes will be infrequent, and should be resolved or moderated through the dispute process provided in the rule, or through the deterrent effect of the rule's sanctions for non-payment.

F. What process will be used for manifest data corrections?

1. Background

In the 81 FR 49072, July 26, 2016, proposed rulemaking, EPA proposed a process by which receiving facilities only could submit a certified corrections submission electronically in order to make corrections in the data system to existing manifest records. (81 FR 49072 at 49098). The facilities could make these corrections by accessing the web-based e-Manifest application directly, or, by uploading a correction submission (*e.g.,* a JSON file) affecting one or a batch of manifest records. Every correction submission by a facility would require a Cross-Media Electronic Reporting Rule (CROMERR)-compliant signature certifying that the data as corrected are true, accurate and complete. *Id.* The proposed rule's correction submission would clearly identify the Manifest Tracking Number of the affected manifest(s), the items on the manifest being altered, and set out both the data previously entered and the data as corrected. *Id.*

The proposed data correction provisions also included a fairly detailed process by which corrections would be initiated and reviewed by interested persons, *i.e.,* other handlers included on the affected manifest, and state regulators. Critical to this proposed process was the requirement that all data corrections were to be completed within 90 days of receipt of the manifested wastes, so that the corrections process would be completed by the date that manifest data could be disclosed by the system to the public under existing regulations. The proposed rule discussed one process under which the data correction was initiated by the receiving facility and another process under which another interested person (other waste handler or state) initiated a correction by providing the facility with notice of a data error. In either case, the proposed rule provided comment windows for interested persons to respond to the facility's data correction, and the correction process had to be completed by the facility no later than 90 days post-receipt for the waste shipment. *Id.* at 49099. Finally, EPA proposed that a fee would be collected for all data correction submissions from receiving facilities. *Id.*

2. Comment Analysis

EPA received a variety of comments both supporting and objecting to the proposed data corrections process. A trade association of large receiving facilities and several members of the industry supported the major features of the proposed corrections process, including the proposal that only receiving facilities could submit data changes to the system, and the proposed requirement to submit all corrections electronically. These industry members also supported the batch certification process whereby one electronic signature would suffice to certify to a batch of data record changes.

Among members of the waste industry, there were several comments that dissented to the proposal that only receiving facilities could enter data changes in the system. The dissenting commenters questioned why generators, transporters, or state agency representatives could not also make these changes, and one objected to the idea that the proposed rule seemed to portray receiving facilities as owners of manifest data, when generators should be playing this role. Other industry commenters and a state agency observed that not all facilities would be able to submit their corrections electronically, and that the rule should provide appropriate exceptions.

EPA received many comments from industry and state agencies objecting to

the proposed 90-day window for making data corrections. These commenters provided examples of several situations where errors and the need for corrections would not become apparent until after the 90-day window had passed, such as errors discovered after containers placed in storage were opened, during an audit, or while preparing an annual or biennial report. All these commenters urged EPA to reconsider this 90-day window, and allow data corrections to occur at any time they are needed.

Many industry commenters also objected to the proposed fee for data correction submissions. Theses commenters asserted that a fee charged for corrections would operate as a disincentive to correcting data errors, and denigrate data quality in the system.

The remaining comments on this topic were concerned with the clarity of the proposed corrections process, and they suggested several ideas for clarifying and improving the process. Within these comments were suggestions that the final rule:

- Clarify the interested parties who can participate in the corrections process,
- Clarify how receiving facilities will notify off-line generators of errors, discrepancies, or proposed corrections, and how off-line generators will notify facilities of data errors,
- Clarify how generators will be alerted to proposed corrections and how they will be able to validate or dispute such corrections,
- Clarify which states will receive notices of proposed corrections,
- Clarify the data validation rules and standards that will be followed for paper manifests, and the expectations for QA/QC and resource implications for states, and
- Clarify how the original and corrected versions of the manifest will be retained in the system.

In addition, at the initial e-Manifest Advisory Board meeting conducted on January 10–12, 2017, Advisory Board members discussed the proposed rule's corrections process and offered suggestions to EPA representatives. Several Board members suggested there should not be detailed regulatory provisions or a prescriptive process for data corrections. Instead, the Advisory Board members suggested a minimal role for a regulation, and an open process by which any waste handler named on a manifest could at any time make a data correction. All interested parties should be made aware of another's proposed data change, and the last change made in the system would stand until corrected.

3. Final Rule Decisions

For the final rule, EPA is accepting the many comments that objected to the 90-day post-receipt window for making corrections, as well as the numerous comments objecting to the collection of a fee for correction submissions. EPA is persuaded by the comments that both of these proposals could have the deleterious effect of discouraging data quality.[6] Further, EPA agrees that all interested persons (*e.g.,* waste handlers named on manifests) should have the ability to submit a data correction, whenever a data error in an existing record becomes apparent.

EPA also is accepting the suggestion of e-Manifest Advisory Board members that the e-Manifest data corrections process should be an open process governed by minimal regulatory provisions, and without regulatory limits on who, when, or how many changes are made to manifest data records. Therefore, the final rule provisions on data corrections are much simpler than the proposed approach, and specify only that any interested person (*e.g.,* waste handler named on the manifest) may make a data correction submission at any time. Data correction submissions must be made electronically, with electronic notice to other interested persons shown on the manifest. The correction submission may relate to an individual record or to an identified batch of records, and must be accompanied by a CROMERR-compliant certification that to the person's knowledge and belief, the data as corrected will cause the affected data records to be true, accurate, and complete.

EPA emphasizes that under the final rule, the initiation of data corrections is not limited to receiving facilities, so the proposed rule approach under which only receiving facilities could submit corrections (at their own initiative or in response to a notice of error from an interested party) is not being finalized in the regulation. Instead, the final rule will simply state that any interested person (*e.g.,* waste handler shown on a manifest) may submit a data correction submission at any time, by submitting a single record or batch correction electronically to the system; by making the required CROMERR-compliant certification to that person's knowledge and belief, the data records as corrected are true, accurate, and complete; and by giving electronic notice to the other interested persons shown on the manifest. Consistent with the proposed rule, the correction submission must indicate the record being corrected by its Manifest Tracking Number, must identify the Item Number of the manifest data fields affected by the correction, and for each data field corrected, must show the previously entered data and the data as corrected. The final rule corrections process is therefore an open and cumulative process under which any interested person may submit a correction affecting the data from the original manifest record, or affecting the data from previous corrections submitted by others. There is no limit to the number of corrections that may be entered, and the last submitted correction is presumed valid and accurate unless corrected by a subsequent data correction.

Those persons making data corrections must provide electronic notice of the changes to other interested persons shown on the manifest. The notice to interested persons must be provided by email or by another system-generated electronic notice.

With respect to data corrections from off-line generators, and notices of corrections to these off-line generators, all generators must provide an email address where they may be contacted, so that they may participate in the data corrections process and receive correction related notices. While a generator may receive notices of data corrections by email, a generator must have system access credentials and must enter electronically any data corrections relating to electronic or paper manifests in the system, and must provide the required certification of any data corrections so entered.

Finally, EPA is clarifying that it is not the intent of the data corrections process to produce amended or revised manifests, but rather to produce changes only to the data records from manifests that reside in the national data system. The role of the manifest is to serve as a tracking document during the transportation of off-site shipments of hazardous waste and state only regulated wastes. The function of the manifest is complete at the time the receiving facility signs the manifest to indicate the receipt of the waste (or a discrepancy), and the signed copy showing the data at the time of receipt is distributed to the other interested persons. The data from completed,

[6] EPA notes that the proposed 90-day window on submitting data corrections was premised in part on the desire to produce final, corrected manifest data in the system prior to the data becoming publicly available by virtue of the One Year Rule's policy that manifest data shall be made publicly available 90 days after receipt of a shipment at the receiving facility. The result of the decision, in this final rule, to remove the proposed 90-day corrections window is that in some instances, the data disclosed to the public after 90 days may not be final data and may be subject to subsequent corrections.

original manifests become the first representation of the manifest data records in the data system, but these data records are subject to revision through the final rule's corrections process, as well as through the discrepancy reporting process. The resulting data corrections will be made only to the data records in the national data repository, but will not result in the original, completed manifests being revised and redistributed. The system will retain the final manifest copy signed by the receiving facility as the copy of record of the completed manifest, and all subsequent corrections will be entered in the data system records, with an auditable trail of the corrections made and who made them retained in the system.

G. How does the final rule address fee sanctions?

1. Background

EPA proposed several tiers of fee sanctions in the User Fee proposed rule that would be included in the e-Manifest fee program to induce manifest users to pay their fee obligations promptly. EPA explained in the proposal that these sanctions are necessary because the e-Manifest fee program would become vulnerable to revenue instability if significant numbers of invoiced payments were not paid promptly. Such instability would quickly put at risk the Agency's ability to operate the e-Manifest system on a self-sustaining basis and to meet its financial obligations in running the national system. For the purpose of ensuring timely payment of e-Manifest user fees, EPA proposed sanctions that would increase in their severity based on the degree and duration of the delinquency. See 81 FR 49072 at 49094, July 26, 2016.

Specifically, EPA proposed a first tier sanction based on a financial penalty under 31 U.S.C. 3717(a)(1), a provision of the federal claims collection statutes that imposes an interest charge at the Current Value of Funds Rate or CVFR on those persons who are delinquent in paying claims owed to the federal government. EPA considers a fee payment to be delinquent and subject to this interest charge if payment is not received by the due date specified on an invoice, which for e-Manifest fees, would be 30 days from the date of the invoice. Thus, for e-Manifest users, payments received later than 30 days from the date of the invoice would be subject to this initial interest charge measured at the currently prescribed CVFR rate.

If the first tier interest charge at the CVFR rate were not effective in causing a delinquent fee payer to make the outstanding payment, then the proposed rule's fee sanctions would assess a second tier 6% financial penalty charge for e-Manifest user fee debts that are more than 90 days past due, that is, user fee debts that are not paid by the date 120 days from the date of the invoice. Like the initial interest charge at the CVFR rate, this additional 6% financial penalty also is based on the federal claims collection statutes. 31 U.S.C. 3717(e).

As a third tier of proposed fee payment sanctions, EPA proposed that receiving facilities would become eligible for inclusion in a list of delinquent fee payors when the period of their delinquency extended to 120 days or greater. Finally, the proposal also explained that if any manifests remained incomplete because of owed fees, then the receiving facility could be in violation for failure to fully complete a manifest per proposed § 264.1315(d) and/or § 265.1315(d), and EPA could enforce this violation under RCRA section 3008.

In addition to these several proposed sanctions, EPA requested comment on additional sanctions (*i.e.,* denial of manifest services and the withdrawal or suspension of authority to operate (*i.e.,* RCRA ID numbers or permits). See 81 FR at 49094, July 26, 2016. EPA's intention was to develop a credible mix of available sanctions that could be scaled to the degree of the offense caused by the delinquency or non-payment, with the expectation that this framework would minimize or avoid delinquent payments.

2. Comment Analysis

Industry and state comments on the proposed rule generally supported the financial sanctions, as well as the civil enforcement sanction for ''egregious'' cases, but several industry stakeholders expressed concern with the proposed definition of ''incomplete'' manifests. These commenters stated that the proposed definition could be construed to negatively impact generators, who are more generally responsible for completing RCRA manifests. Other commenters showed little support for the publicity sanction or denial of services as a sanction. These commenters indicated that a publicity sanction would not likely be effective in influencing payment behavior and would be unprecedented in existing EPA fee programs. Other comments opposing the denial of services sanction indicated such a sanction would be too severe, as it would tend to penalize generators too much in their efforts to obtain waste services, and would likely cause a backlog of manifests in the EPA data system. Another commenter suggested that denial of services to facilities and their customers could cause constrictions in waste management and perhaps cause frustrated generators to mismanage their wastes.

3. Final Rule Decisions

After careful consideration, EPA is accepting the numerous comments that generally supported the tiered sanction approach and that provided particular support for the proposed financial sanctions under the federal claims collection statutes and the availability of RCRA civil enforcement orders to enforce non-payment of fees. Thus, EPA is finalizing these proposed sanctions at 40 CFR 264.1315 and 265.1315 with slight modification in the rule. Specifically, the final rule adopts the proposed sanctions detailed in paragraphs (a) and (b) at §§ 264.1315 and 265.1315 for financial interest and penalty charges without change. EPA, however, is persuaded by the adverse comments to the proposed publicity or delinquent payors list sanction and therefore is not adopting this proposed sanction in the final rule.

EPA also accepts the commenters' opposition to the ''incomplete manifest'' terminology in proposed paragraph (d) of §§ 264.1315 and 265.1315. EPA intended to define a regulatory violation applicable only to the receiving facilities that have not ''completed'' their manifest transactions by submitting their manifests to the system and paying fees for the manifest services they have obtained from the system. The proposed violation was not intended to cause confusion relating to what is meant by the requirement for generators to initiate and complete manifests to track their off-site waste shipments. EPA, therefore, has amended the proposed ''incomplete manifest'' terminology in the rule to keep manifest completion distinct from the financial context intended in the proposed rule. To avoid any confusion with the concept of manifest completion, EPA is denoting a manifest for which fees remain unpaid by the receiving facility as an ''unperfected'' manifest. The final rule amends the proposed paragraph (d) at §§ 264.1315 and 265.1315 by assigning it as new paragraph (c) and clarifying that a manifest is not fully perfected until it is both submitted to the system and all fees for those manifests have been paid by the receiving facility submitting it. Thus, the RCRA civil enforcement sanction

included in this final rule would apply only to the receiving facilities that are involved with unperfected manifests by not submitting them to the system or by not paying the applicable fee for their processing. This civil enforcement sanction would have no applicability to the activities of generators in their use of the manifest. The designation of a manifest as ''unperfected'' for purposes of payment by a receiving facility in no way impacts the validity of a manifest supplied by a generator for tracking its waste during its transportation off-site to a facility.

Finally, EPA also accepts the numerous commenters that objected to the additional sanctions (*i.e.,* denial of manifest services and the withdrawal or suspension of authority to operate) discussed in the proposal. Therefore, EPA is not promulgating these sanctions as part of this rule. EPA concludes that the several financial and civil enforcement sanctions adopted in the final rule create a credible mix of available sanctions that increase in their severity based on the degree and duration of the delinquency.

H. How does the final rule address user fee disputes?

1. Background

In the User Fee proposed rule, EPA acknowledged that over the course of invoicing users for their fee obligations, errors may occasionally be made and thus may give rise to disputes concerning the amount of a user fee payment that is due in response to an invoice. EPA explained in the proposed rule that the Agency is not proposing a formal dispute resolution process governed by explicit and detailed regulatory provisions and processes. Rather, EPA intends to address e-Manifest fee disputes through a more informal process that EPA concludes will be sufficient and less burdensome than a formal process, while scaled more appropriately to the nature of such disputes. EPA requested comment on an informal fee dispute process under which users who believe their invoice is in error (statement incorrect on numbers or types of manifests billed, or a mathematical or other error) could first seek resolution via the system's billing representatives by making a claim identifying the nature and amount of the error. If not satisfied by the handling of their claim at this initial level, the claimant could appeal to the Office Director (OD) of EPA's Office of Resource Conservation and Recovery (ORCR), whose decision on the claim would be final and not subject to further Agency review. See 81 FR 49093, July 26, 2016.

2. Comment Analysis

Industry commenters generally supported the proposed informal process, but one industry commenter had reservations about the fairness of the proposed appeals process. This commenter suggested that the ORCR OD would not be as unbiased as an independent third party and suggested that the OD's decision be subject to the Alternative Dispute Resolution program administered by the EPA's Office of General Counsel. See 65 FR 81858, December 27, 2000. Another commenter underscored the need for EPA to establish accessible customer support for timely resolutions. One state commenter, however, opposed the proposed informal process, and suggested that EPA should instead adopt a formal dispute resolution process that affords due process and creates perhaps a stronger record for fee dispute decisions.

3. Final Rule Decisions

After analyzing the comments to the proposed informal process, EPA is promulgating the proposed informal process in the final rule. EPA acknowledges the industry commenter's apprehension about the fairness of the appeal process under the informal process, but the Agency does not accept the industry comment favoring an appeal of the OD's decision to an independent third party decision maker under an Alternative Dispute Resolution (ADR) process. EPA opposes this suggestion for a couple of reasons. Although the ADR process offers conciliation, facilitation, arbitration, mediation, fact-finding, mini-trials, and other services to claimants, EPA's December 2000 **Federal Register** publication announcing the ADR processes at EPA (65 FR 81858) suggests that ADR was intended for matters far more substantial and potentially controversial (*e.g.,* adjudications, rulemaking, policy development, administrative and civil enforcement actions, permit issuance, contract award protests, workplace grievances, and litigious matters where a more substantial fact-finding and record development are necessary) than for the fairly simple fee disputes we anticipate in e-Manifest. Second, EPA understands that the use of the Agency's ADR process would be very time consuming and involve much greater costs than an informal process. The Agency believes the informal process scales well to the relative simplicity expected of fee disputes, and will result in more timely and less burdensome resolution of e-Manifest program fee disputes. EPA intends to respond to billing disputes within ten days of receipt of a claim under the informal dispute process. Finally, the Agency also concludes that the ORCR Office Director is sufficiently unbiased on such fee dispute matters to afford fairness to these informal proceedings.

EPA also rejects the state agency comment recommending that EPA establish a formal dispute process. EPA concludes that the adjudicatory processes typically associated with formal dispute resolution are not well matched with the simplistic nature of the e-Manifest fee disputes. In addition, evidentiary proceedings typically are the most time consuming and resource intensive processes that could be selected.

As stated in the proposed rule and adopted under this action, EPA will post on the e-Manifest website a phone number and an email address where users may contact the system's billing representatives with any questions they may have about the accuracy of a monthly user fee invoice. Whether a fee dispute claim is asserted over the phone, or by email, EPA expects the facility to provide sufficient information to support its claim that an invoice is in error. At a minimum, EPA expects that fee dispute claimants will provide the following information to the system's billing representatives:

- The claimant's name, the facility where the claimant is employed, the EPA Identification Number of the affected facility, the date and/or other information to identify the particular invoice that is the subject of the dispute, and a phone number or email address where the claimant can be contacted;
- Sufficient supporting information or calculations to identify the nature and amount of the fee dispute, including:

—Whether the error results from the types of manifests submitted being inaccurately described in the invoice,
—Whether the error results from the number of manifests submitted being inaccurately described in the invoice,
—Whether the error results from a mathematical error made in calculating the amount of the invoice, or
—Other information described by the claimant that explains why the invoiced amount is in error and what the fee amount invoiced should be if corrected.

EPA's system billing representatives will endeavor to respond to all such billing disputes within ten days of

receipt of a claim. In their response, the system's billing representative will indicate whether the claim is accepted or rejected, and if accepted, the response will indicate the amount of any fee adjustment that will be refunded or credited to the facility. If the claimant is not satisfied with the response of the EPA system's billing representative, the claimant may appeal its claim within ten days to the Office Director for the Office of Resource Conservation and Recovery.

EPA further emphasizes that the assertion of a fee dispute claim through this informal process does not excuse the requirement to make timely electronic payments of the invoiced fee amounts. Fee adjustments will be handled as refunds or credits of amounts paid, and the existence of a claim does not justify withholding payment of invoiced fees.

Finally, EPA is clarifying that once a claim has been addressed by the Agency under this informal dispute resolution and appeal process, the resolution that is reached after appeal to the Office Director concludes the matter and is non-reviewable by any other Agency official or in any other Agency proceeding.

I. Conforming Changes to the Paper Manifest Printing Specifications

In March 2005, EPA announced the Manifest Registry system that described procedural mechanisms and offered federal printing specifications at § 262.21(f) to ensure that printers approved by EPA used unique tracking numbers on each manifest, and to reduce the possibility of printing many variations of manifest forms. As part of the printing specifications, EPA also required approved printers to indicate on the bottom, right margin of the form the distribution scheme so that the form would be distributed as follows:

Page 1 (top copy): ''Designated facility to consignment state'' (if required);
Page 2: ''Designated facility to generator state'' (if required);
Page 3: ''Designated facility to generator'';
Page 4: ''Designated facility copy'';
Page 5: ''Transporter copy''; and
Page 6 (bottom copy): ''Generator's initial copy.''

However, the e-Manifest regulations and the plans to begin e-Manifest system operations on June 30, 2018, have necessitated a conforming change to the current manifest copy distribution scheme. Currently, the manifest form printing specification requires that the top copy (Page 1) of the six-copy set of forms be sent by the designated facility to the consignment or destination state, if required by that state. However, on February 7, 2014, EPA announced in its e-Manifest ''One Year Rule'' that when the e-Manifest system becomes operational, designated facilities must send the top copy (Page 1) of the six-copy paper form to the e-Manifest system for purposes of data entry and processing. See 79 FR 7518 at 7548. EPA is codifying in this final rule the regulatory decision EPA announced (but did not codify) in the February 7, 2014 issuance of the One Year Rule.

Since the states with manifest collection and tracking programs have continued to collect manifest copies during the planning and development of e-Manifest, EPA chose to defer the collection of the top copy by e-Manifest until the e-Manifest system was ready for operations. With the announcement in the final rule that e-Manifest system operations will commence on June 30, 2018, it is necessary to implement with this final rule action this change to the copy submission requirement, as well as the conforming change to the printing specifications for manifest printers.

Therefore, the final rule modifies the printing specification requirements at § 262.21(f)(5) and (f)(6)(i) to align with the new manifest submission requirement for receiving facilities announced in the One Year Rule. Thus, by June 30, 2018, approved printers must make available to users a printed five-copy form that indicates that the top copy of the manifest must be submitted by designated or receiving facilities to EPA's e-Manifest system. Manifest users must begin using the new 5-copy manifest form with this revised copy distribution notation on June 30, 2018. Specifically, the copies of the form must be distributed as follows:

Page 1 (top copy): ''Designated facility to EPA's e-Manifest system'';
Page 2: ''Designated facility to generator'';
Page 3: ''Designated facility copy'';
Page 4: ''Transporter copy''; and,
Page 5 (bottom copy): ''Generator's initial copy.''

This change to the manifest form printing specification will bring the manifest forms that will be used on or after June 30, 2018, into alignment with the paper manifest submission requirements that will be in effect on that date. Beginning on June 30, 2018, the top copy of any paper manifests that continue in use must be sent to the e-Manifest system, rather than being sent by the receiving facility directly to the consignment or destination state. In addition, the new five-copy form eliminates the copy, previously denoted as ''Page 2: Designated facility to generator state,'' since the submission of the top copy to the system by the receiving facility will itself enable both destination states and generator states to receive their copies from the system. This is the copy that EPA will use for data entry purposes. As the central hub for manifest collection, EPA will share these data with interested states, but receiving facility copies will not be sent directly to either consignment or generator states on or after June 30, 2018. Therefore, one copy of the current six-copy form set is being eliminated in the final rule, and the new manifest printing specifications will require only a five-copy form to be printed and used beginning on June 30, 2018.[7]

EPA emphasizes that the requirement that receiving facility copies of paper manifests be submitted to the e-Manifest system rather than directly to states is promulgated under the authority of the e-Manifest Act. As such, the requirement for facilities to submit manifest copies to e-Manifest in lieu of direct submission of these copies to the states must be implemented consistently in all states starting on the system launch date of June 30, 2018. As the Agency explained in the One Year Rule, requirements under state law that are less stringent than or inconsistent with requirements issued by EPA under the e-Manifest Act are superseded by the e-Manifest Act requirements when these requirements become effective on the system launch date. See 79 FR 7554, February 7, 2014. This principle is also codified in this final rule in 40 CFR 271.3(b)(4), which explains the superseding effect of e-Manifest Act requirements on less stringent or inconsistent requirements contained in state law and authorized programs. Finally, in § 271.12(i), addressing manifest program requirements that must be included in authorized state programs, EPA is adding a new paragraph (i)(2) that will require state manifest programs to include a specific requirement for owners or operators of hazardous waste management facilities to submit a signed copy of the manifest to EPA's e-Manifest system in lieu of sending a copy directly to origination or destination states.

The final rule also revises the printing specification at § 262.21(f)(7) to comport with the aforementioned changes to the manifest form and continuation sheet. The uniform manifest instructions for completing the generator's copy, the transporter's copy, and the designated facility's copy of the manifest and continuation sheet must now appear on

[7] The changes to copy distribution requirements in the final rule affect the receiving facility copies. The e-Manifest system will not collect generator copies of paper manifests, and states that still wish to collect paper copies directly from generators may continue to do so under state law.

the back of copies five, four, and three, respectively.

J. Requirement That Facilities Submit Paper Manifest Data Digitally

1. Background

In the User Fee proposed rule, EPA did not propose but requested comment on an approach under which receiving facilities would be prohibited from submitting paper manifests by mail to EPA. Instead, receiving facilities would be expected to submit manifest-related data to EPA by electronic means only, that is, by uploading image files to EPA, or by uploading a data file (*e.g.,* JSON file) of manifest data accompanied by an image file. Although EPA explicitly stated in the e-Manifest Final rule that the e-Manifest Act and the regulations adopted by the final rule allow manifest users to continue to use paper in the field to track their waste shipments, EPA explained in the User Fee proposed rule that the Agency was considering restricting receiving facilities to digital submission of their paper manifests for a couple of reasons.

First, EPA acknowledged in the proposed rulemaking (81 FR 49074, July 26, 2016) that the proposed differential fee approach should itself discourage facilities from submitting large numbers of manifests by mail but conceded that it would be difficult for the Agency to project with confidence how many paper manifests will be mailed to the Agency in the initial years of e-Manifest operations. Consequently, the processing of mailed forms could involve significant personnel and contractor costs for opening and screening mail, for data key entry, document archiving, and for QA activities related to resolving data quality issues. Second, EPA believes paper processing costs could dominate the O&M costs in the early years of operation, and if mail submissions occur in unexpectedly large numbers, EPA may need to increase fees or consume more of its annual spending authority than anticipated to process mailed manifests. For these reasons, EPA requested specific comments on the merits of an approach that would restrict receiving facilities to submitting their paper manifest data to the Agency by digital methods only, and not by mailing hard copies to the EPA system.

2. Comment Analysis

Industry commenters to the User Fee Proposal generally supported limiting receiving facilities' paper submissions of paper manifest related data to digital format only (*i.e.,* scanned images or data file with scanned image uploads) and not by mailing paper hardcopies to EPA. However, several commenters who supported the digital submission restriction suggested EPA impose a several-year transition period before instituting the paper submission ban. Other commenters supporting the paper submission ban suggested EPA provide an exception to the ban should unforeseen circumstances, such as unanticipated burdens, data security issues, access issues for responders, and compliance issues when the system is down or data are lost, occur.

Some state commenters presented mixed comments on the merits of a mailed paper submission ban. One state commenter supported the paper copy submission ban, noting that paper infrastructure costs are great, and the ban would help to reduce uncertainty in fee formula's marginal cost calculations. Another state commenter opposed an outright ban and argued that there could be substantial burden and cost for some facilities to change platforms. The commenter suggested that especially for those facilities not owned by nationwide companies, the costs to them of converting to digital only submissions could be prohibitive in the initial years. The commenter suggested EPA implement a phase-out deadline of several years for the mailed paper copy submissions. Finally, one state commenter objected to the ban of postal mail submissions and argued that EPA has overestimated the sophistication of some industry members, especially those receiving facilities that are not RCRA permitted facilities.

3. Final Rule Decision on Facility Submissions of Paper Manifests

After careful consideration of the comments to the User Fee Proposed Rule, EPA has decided not to implement an outright paper submission ban. Instead, EPA will initially allow both digital and mailed manifest submissions from receiving facilities to the system, but will schedule a phase-out of paper mail submissions after three years of system operations. EPA made this determination for a few reasons. First, while EPA acknowledges its decision could result in the Agency receiving more paper forms in the initial years of operation, EPA is persuaded by a few commenters' arguments that an out-right ban on day one of system launch may cause financial hardship to certain facilities that currently do not have the technological capacity to digitally submit paper manifest related data to EPA. Second, EPA concludes that a phase-out approach on a paper submission ban best accommodates the uncertainty over how many and what types of facilities might be burdened by the paper submission ban. EPA has consulted primarily with a trade association (the Environmental Technology Council) that is comprised of larger receiving facilities, so at this time the Agency does not know whether mid-size or smaller receiving facilities would be similarly inclined to submit data files and scanned images of manifests to EPA and avoid mailing paper forms to EPA for processing. EPA, however, believes a phase-out scheduled after three years of system operations provides fairness and flexibility to those facilities that need time to adjust to electronic manifests and acquire and develop digital capability.

Finally, this approach is consistent with the e-Manifest Act's terms allowing the continued use of paper and authorizing EPA to issue requirements to facilitate transition to electronic manifests. Thus, the adoption of phase-out approach scheduled after three years in the final rule best accommodates the Agency's objective of minimizing mailed paper submissions with our legal authority that allows the continued use of paper manifests while requiring EPA to issue regulations to facilitate the transition to electronic manifests.

EPA notes that the aforementioned phase-out of manifest hardcopies applies only to the backend of the manifest workflow (*i.e.,* manifest submissions to the EPA system). Hazardous waste generators who currently initiate their waste shipments using the paper manifest and continuation sheet (EPA Forms 8700–22 and 8700–22A, respectively) and want the flexibility to continue to use those forms once the e-Manifest system becomes available for use, will for now be afforded the flexibility to continue to use the manifest form and continuation sheet once the phase-out period begins.[8] If a receiving facility's customer prefers to use the paper manifest and continuation sheet after the phase-out period, then the receiving facility will be expected to transfer the manifest data from those paper hardcopies to digital format prior to submitting that data to the EPA system.

[8] In section IV of this preamble, however, EPA signals that it is the Agency's goal to curtail as far as possible the use of paper manifests and migrate to a fully electronic manifest within five years of the start of system implementation. EPA will collect information from the system on manifest usage, monitor this information, and consult with the e-Manifest Advisory Board in several years on how best to accomplish this goal.

K. How does final rule address user fee payment methods?

1. Background

The User Fee proposal included two distinct options for comment: (1) A monthly invoicing option, and (2) an advance, fixed payment option. EPA proposed the monthly invoicing option as its preferred option. Under this option, the Agency would bill each receiving facility monthly for its actual manifest activity engaged in during the previous month. The receiving facilities would receive an electronic invoice displaying their manifest activity during the prior month, and each facility would be directed to Treasury's *Pay.gov* website to submit their electronic payments. Once directed to *Pay.gov*, the payor could make their payment using one of the electronic payment methods supported by *Pay.gov*. These methods include credit cards, debit cards, and Automated Clearing House (ACH) debits from commercial bank accounts. EPA met with the Environmental Technology Council and its RCRA TSDF members prior to publication of the proposed rule, and learned that this trade association and its members preferred the monthly invoice option to the advance fixed payment option.

In the July 26, 2016, proposed rulemaking, EPA requested public comment on the advance, fixed payment option. With this option, EPA explained that receiving facility users would make a monthly fixed amount payment on the first of each month. The monthly payment amount would be determined using an estimate of expected manifest usage for the year, based on manifest usage during the prior year. The prior year's manifest use numbers would be totaled by manifest type and divided by 12 to arrive at the estimates of monthly manifest usage. The monthly manifest fee would be calculated by applying the fee schedule amounts to the monthly manifest usage estimates. Once so determined, the monthly fee amount to be paid to EPA would remain fixed for the entire year, and this fixed amount would be debited from the receiving facility's commercial bank account by an Automated Clearing House (ACH) debit on the first of each month. The fixed payment feature was included so that this payment option would be consistent with the standards of *Pay.gov* for recurring periodic payments.

EPA explained in the proposed rulemaking that the Agency believes advance payment is advantageous, from an administrative perspective, because such payments would allow for the collection of fees in advance of manifest services, which is administratively efficient on the front-end of the collection process. Such an approach also could provide a more stable revenue stream to cover system costs throughout the year, because of the nearly automatic, scheduled nature of the payments. This feature of the advanced payment option also could generate revenue more promptly for the initial year of system operations. However, the receiving facilities that the Agency consulted expressed some skepticism about this payment option, as an estimated payment would not be as accurate as payments invoiced from actual usage. These facility representatives advised that there can be significant variability from year-to-year in manifest usage, so the estimated payments collected through the advance payment approach may diverge significantly from the payments that would be owed based on actual usage.

To address this issue, EPA explained in the proposed rule that it would send one invoice to receiving facilities at the end of each year to reconcile the amounts paid based on manifest use estimates with the actual amounts owed as calculated from actual manifest usage data. Thus, this option would involve a reduced volume of invoicing compared to monthly invoicing, with resulting lower administrative costs to the Agency. Moreover, the revenue stability risk posed by the two-month lag inherent in monthly invoicing would be ameliorated by this alternative, with its automatic payments each month. Stakeholders stated that there would likely be resistance to automatic, estimated payments, unless EPA identified clear incentives for this option.

More recently, EPA convened the e-Manifest Advisory Board in January 2017 and sought guidance on how to address comments received on the advance, fixed payment approaches detailed in the proposed rule. During the Advisory Board meeting, the EPA stated that the Agency anticipates that the e-Manifest system will be operational in June 2018, assuming that the Agency receives adequate funding in fiscal years 2017 and 2018. At that time, EPA will transition to a fee collection system, and the majority of appropriated funds for e-Manifest in fiscal year 2018 will be used for operating and maintaining a paper processing center and IT help desk. While EPA expects to recover these costs through fees, EPA acknowledged at the Advisory Board meeting that a cash flow issue could arise as the system transitions from the developmental to fully operational stage and underscored that the advance monthly invoicing option could mitigate the potential cash flow problems during the initial years of system launch if the funds appropriated for operations were inadequate.

2. Comment Analysis

Comments received on the proposal and recommendations presented by the E-Manifest System Advisory Board in January 2017 generally supported the monthly invoicing option, while most comments opposed the advance payment approach. Industry and several state commenters generally supported the monthly invoicing and indicated that paying for actual usage on a monthly basis was the more precise option, and was more consistent with common commercial practice. Industry commenters argued further that it would be difficult to develop accurate manifest use projections needed for an advance option and stated pre-paying in advance could result in substantial under or over payments requiring later reconciliation, which could adversely impact system financial stability. One state commenter affirmed this sentiment and questioned how EPA would prevent advance payers from greatly underestimating usage for the year, and then owing huge balances at the end of the year. One industry commenter suggested the monthly invoicing is the most logical approach and will work well with the TSDF's process of invoicing their customers (manifest generators) for the associated manifest fees following acceptance of the waste shipments. Although most commenters supported monthly invoicing, a few stated 30 days is insufficient to pay invoices and suggested 45 or 60 days is a more realistic time frame. Finally, one commenter suggested EPA utilize the advance payment approach as a sanction for those who are chronically late with their fee payments.

While most commenters supported monthly invoicing, a few commenters supported advance, fixed payments. One state commenter supported the advance payment option because it is the least burdensome to the Agency to administer and most stable for the system. This commenter, however, suggested EPA create capacity to invoice a small number of smaller TSDFs or the non-permitted state-regulated facilities. Another commenter suggested that EPA retain advance payments as an option, because it could gain greater participation after TSDFs have a few years of experience with the e-Manifest system.

3. Final Rule Decisions

EPA is persuaded by the comments supporting the monthly invoice

proposal and the recommendation of the e-Manifest Advisory Board to promulgate the proposed payment method whereby e-Manifest user fees will be paid by facilities in response to a monthly invoice that summarizes manifest activity for the prior month. EPA, however, does not accept the suggested preference to allow TSDFs up to 60 days to pay invoices. The monthly invoicing option by its nature introduces a lag of perhaps two months between the time manifest services are used and the time when payments are received. This delay is unavoidable, as the invoice would be sent after a month of usage has occurred, and the TSDF would then be expected to make their payment on the invoice's due date of 30 days post-receipt of the invoice. Extending the proposed time frame from 30 days to 60 days would further increase the lag time from two to three months. EPA is concerned the additional lag time could further undermine EPA's ability to pay promptly its system related expenses, and exacerbate the revenue instability risks posed during the initial year of operations. Therefore, e-Manifest fees must be paid by facilities by 30 days from receipt of an invoice, and payments not paid by this date will be treated as delinquent by the Agency.

Specifically, the rule promulgates the monthly invoice approach per the proposed regulation at 40 CFR 264.1314(c) and 265.1314(c). Receiving facilities will be required to pay all fees owed in response to an electronic invoice or bill within 30 days of the date of the invoice or bill. E-Manifest fees will be paid on-line via credit card or electronic fund transfer. To submit a payment on-line, facilities will visit *www.pay.gov,* and follow the instructions posted to the e-Manifest program's website on how to make e-Manifest electronic fee payments.

Automatic debits to your business account may be blocked by the bank. This security feature is called an ACH Debit Block, ACH Positive Pay, or ACH Fraud Prevention Filters. ACH Debit Block works by having an allowed list of ACH Company IDs. The list enables allowable automatic debits. If the ACH Company ID accompanying a request for an automatic debit is not on the allowed list, the payment is rejected. It is returned with an ACH Return Reason Code of R29—Corporate Customer Advises Not Authorized. You must contact your bank to add the U.S. EPA to your list for allowed debit payments.

L. Transporter Changes on the Manifest While En Route to the Designated Facility

1. Background

The User Fee proposed rule proposed to modify the current regulations regarding transporter changes to shipment routing information on the manifest during transportation. The Agency proposed on July 26, 2016, to amend paragraphs (a) and (b) of 40 CFR 263.21 so that changes to shipment routing on the manifest can be made: (1) To address an emergency; or (2) to accommodate transportation convenience or safety, *e.g.,* to allow more efficient transport from a transfer facility or enable the substitution of a transporter that is the sub-contractor of the designated transporter. In addition, the proposal indicated that a change in transporter designation on the manifest could be effectuated by: (1) A consultation with the generator and generator approval of the change; or (2) a contractual provision authorizing the transporter to make such a change on behalf of the generator. See 81 FR 49072 at 49104.

EPA explained in the proposed rule that the aforementioned modifications to the regulation were needed for a several reasons. First, the amendments to the regulation are necessary to align them more closely with the current industry practice of allowing transporter changes to shipment routing on the manifest, as the transporters and brokers often have more expertise than some generators in arranging the logistics and routing of hazardous waste shipments. The proposed rule also recognized that many hazardous waste generators, particularly small quantity generators, are willing to delegate the responsibility of arranging waste shipments to their brokers and transporters. Current manifest regulations limit waste shipment delivery options to only the facilities or transporters designated on the generator's manifest, unless an emergency condition prevents delivery to the designated facility or the next transporter. Thus, under existing regulations, any changes to the routing plan, including changes to transporters designated on the manifest, require generator consultation and approval.

Second, industry stakeholders have argued for years against the Agency's notion that the generator should bear the sole responsibility for designating the routing of its waste on the manifest and must be consulted explicitly on any proposed changes to named transporters during transportation. Industry transporters contend that transporter changes to the initial routing of hazardous waste shipments are often necessary to accommodate transportation convenience or safety (*e.g.,* to allow more efficient transport from a transfer facility or enable the substitution of a transporter that is the sub-contractor of the designated transporter). Further, industry stakeholders have stated that a limited agency authority granted to transporters in the service contracts with their generator customers should allow them to act ''on behalf of'' and change the routing for the generator without specific consultation with the generator on each change (81 FR 49096, July 26, 2016).

Finally, EPA consulted with our authorized states on this issue, and the Agency has concluded that the states generally have not actively pursued enforcement actions against transporters who have made these types of transporter changes to the manifest under the existing regulation. Amending the regulation as proposed would make the language of the transporter regulations consistent with industry practices.

2. Comment Analysis

Comments received to the User Fee proposed rule generally supported the proposed changes to paragraphs (a) and (b) of 40 CFR 263.21, but a few raised questions about the details of implementation. One industry commenter supported the proposed changes, but suggested EPA clarify what statement needs to be entered on the manifest to ''describe the contractual authorization'' given a transporter to act as generator's agent. Another industry commenter in support of the proposal, suggested that EPA allot space, other than Item 14, on the manifest so that the contract information can be recorded.

State commenters generally supported the proposal, but raised questions about the details of implementation. One state commenter suggested that EPA add a definition of ''agency authority'' and require legible changes. Another state commenter inquired how an inspector will know which generators have such contracts, and asked if the generator or transporter will be responsible for keeping the records of such contracts. The commenter also asked whether the contract authorization details would be recorded in Item 14 or in a separate data element on the manifest form.

A few commenters, however, did not support the proposed changes for various reasons. One commenter argued that re-routing is already a common industry practice that does not require rule change for support. Other commenters opposed listing contract

arrangements on the manifest and argued that the receipt of manifest copies displaying the routing changes was adequate. One commenter representing the generator sector opposed the proposal and raised concern that the proposal may affect the generator's liability or responsibility for compliance with the generator requirements of RCRA Subtitle C.

3. Final Rule Decision

After careful consideration of all comments on this issue, EPA is promulgating in the final rule the proposed changes to paragraphs (a) and (b) of 40 CFR 263.21 virtually unchanged. Specifically, EPA is promulgating proposed paragraph (a) and proposed § 263.21(b)(1), (2), and (4) without change. EPA, however, is promulgating the proposed § 263.21(b)(3) in the final rule with slight modification. EPA accepts the commenter's suggestion that the Agency clarify the statement needed to be recorded in Item 14 of the manifest to characterize the contract authority given to a transporter to act as a generator's agent. Therefore, EPA is modifying the proposed § 263.21(b)(3)(ii) so that transporters or brokers who intend to oversee and control the routing of the shipments on behalf of the generator must enter the following statement in Item 14 of the manifest: ''*Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf.*''

In addition, EPA concludes that this standard statement should meet state concerns and enforcement needs. The statement provides explicit direction to generators who have granted agency authority to transporters to maintain a copy of the contract. Second, the statement adequately articulates the limited agency authority granted to the transporter service company by the generator. Thus, the states could pursue enforcement actions against generators for failure to produce the contract upon request as well as enforce actions against transporter service companies for failure to comply with the statement recorded in Item 14.

The Agency acknowledges one commenter's assertion that Item 14 is overused, but does not accept the suggestion for recording the contract details in a separate line item on the manifest. The Agency believes the contract authority language detailed in new § 263.21(b)(3)(ii) is brief and should not inhibit the generator's ability to legibly record other manifest information about the shipment in the restricted space. However, EPA acknowledges that the commenters' suggestion is worthy of further consideration for e-Manifest and may pursue such a separate data field within the electronic system as it continues its development of the e-Manifest system.

The Agency disagrees with the commenter that the aforementioned changes to 40 CFR part 263 do not require a rule change for support. The adoption of these regulatory changes in this final rule is a shift in EPA's longstanding policy that the generator must control the routing of his or her hazardous waste shipment, and that changes to routing must occur with generator consultation and approval, and are appropriate in cases of emergencies. The adoption of the 1980 final manifest regulation and the prior policy were based on prominent pre-RCRA incidents in which transporters and brokers had diverted hazardous waste shipments to unauthorized sites involving ''roadside'' or ''midnight'' dumping. Thus, previous policy underscored the intention of the 1980 regulation that the generator should bear primary responsibility for designating the routing of its waste on the manifest and for ensuring delivery of its waste to proper waste management facilities. The new regulatory policy extends the process for effecting changes beyond consultations to include an agency contract to make these changes on behalf of the generator. The new policy also extends the conditions permitting such changes beyond emergencies to include transporter convenience and safety. EPA concludes that a regulatory change is necessary to avoid any confusion about what transporter changes are permissible, under what circumstances they are permissible, and how these changes should be effected. The rule change should also protect industry members from any enforcement actions that could result from regulators enforcing the stricter policy of generator control suggested by the current regulation. The adoption of the final rule will help to maintain a consistent national policy on the manifest, particularly as the Agency continues its efforts to establish the e-Manifest system. Industry practice, regulatory policy, and state enforcement policies will now be better aligned, and EPA can develop technical requirements for the e-Manifest system that are consistent with this policy.

The adoption of the amendments to 40 CFR 263.21 recognize two distinct classes of transporters involved in changes to shipment routing on the manifest. First, § 263.21(b)(2) applies to those transporters that lack contractual (agency) authority to act on behalf of the generator in making any transporter substitutions or additions. For such transporters, this final rule will continue the existing requirement to consult with the generator and obtain the generator's explicit approval of the proposed changes in the shipment's routing. The final rule authorizes changes in circumstances of an emergency, as well as for purposes of transporter efficiency, convenience, and safety.

Second, § 263.21(b)(3) applies to those transporters that have contractual authority to act as the agent of the generator with respect to adding or substituting other transporters while hazardous waste is in transport. The transporter making such changes must record the aforementioned statement regarding its contractual authorization in Item 14 of each manifest for which such a change is made. In addition, § 263.21(b)(4) clarifies that any such grant of authority by a generator to a transporter to act on the generator's behalf in making changes to transporter designations does not affect the generator's liability or responsibility for compliance with the generator requirements of RCRA Subtitle C. The final rule provides that transporters acting under agency authority on behalf of the generator may add or substitute another transporter in circumstances of an emergency, as well as for purposes of transporter efficiency, convenience, and safety.

Finally, the existing provisions of § 263.21(a)(1), (2), and (4), addressing the conditions and process by which a generator must, under an emergency situation, be consulted on and approve any change to the designated facility, the alternate designated facility, or the place outside the United States designated by the generator for delivery of export shipments, are not altered by the adopted regulatory changes.

The Agency notes that the revisions adopted in this final rule only authorize limited agency authority to the transporter service company to make changes to the designated transporters on the manifest, on behalf of the generator, while the generator's shipment is en route to the designated receiving facility. They do not authorize any broader agency authority to a transporter to act ''on behalf of'' generators with respect to other generator responsibilities. For example, a transporter cannot assume broad agency authority to substitute a different designated facility or alternate facility, or, for exports, the receiving facility outside the U.S. designated by the generator, without consulting the generator. Nor could a transporter

assume the responsibility to maintain a generator's manifest records and submit Exception Reports or resolve discrepancies on behalf of the generator. These are control and oversight functions that must remain with the generator.

In addition, as explained in the proposed rulemaking (81 FR 49096, July 26, 2016), this regulatory change with respect to manifest changes during transport does not grant transporters (acting as agents for generators) the authority to correct the waste description data (*e.g.,* quantities, types, shipping names, waste codes) entered on the manifest. If such changes are necessary, then the transporter must consult with the generator and revise the manifest according to the generator's instructions.

Finally, the amendments do not affect EPA's adoption of the Department of Transportation's Hazardous Materials rules and policies in the March 2005 Manifest Revisions rule pertaining to ''offerors'' and pre-transportation functions for hazardous waste shipments. The offeror authority does not apply to activities that occur during transport. Therefore, a generator's transport contractor can act on behalf of the generator in its capacity as offeror for pre-transport functions, and under this action, the generator's transport contractor could modify the manifest on behalf of the generator during transportation, but only to modify the transporter designations pursuant to authority granted by the generator in its contract for this purpose.

M. Mixed Paper and Electronic Manifest Transactions

1. Background

In EPA's One Year Rule, the Agency determined not to allow mixed paper and electronic manifest transactions. This decision was codified in 40 CFR 262.24(c), which addresses restrictions on the use of electronic manifests. See 79 FR 7518 at 7549 (February 7, 2014). The final regulation at § 262.24(c) states that a hazardous waste generator may prepare an electronic manifest for tracking waste shipments ''only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system.'' In the User Fee Proposed Rule, EPA raised the specific issue of allowing mixed paper and electronic manifests in the limited circumstances of completing and signing the generator's initial copy of the manifest. EPA explained in the proposed Fee Rule that a policy banning all mixed manifests, without exception, could be too restrictive and might rule out needed implementation flexibility at generator sites where a phase-in of electronic manifesting could be particularly helpful. 81 FR 49072 at 49099.

Therefore, EPA proposed for public comment an approach at § 262.24(c)(1) that would relax the mixed (also referred to as hybrid) manifest ban in limited circumstances. EPA proposed to allow generators to choose to complete and sign a paper manifest in the conventional manner, to obtain the ink signature of the initial transporter at the time the transporter acknowledges its receipt of the hazardous wastes for transportation off-site, and to retain this ink-signed paper copy among its records as the initial generator copy of the manifest. For the generator, the manifest would operate exactly as the current paper system. However, the initial transporter and subsequent handlers would execute the same manifest electronically, presumably on portable devices, and all handlers subsequent to the generator would sign the electronic manifest with their electronic signatures. The final copy signed electronically by the receiving facility would be submitted to the system and retained as the copy of record of the shipment, while the initial generator copy would remain as a paper copy at the generator site.

2. Comment Analysis

Industry comments from the Environmental Technology Council (ETC) and its waste receiving facility members generally supported the proposed hybrid option, noting that there would be significant challenges for both generators and transporters in adopting electronic manifesting. The ETC and members supported the flexibility in the proposed hybrid, and suggested that the proposed mixed manifest approach could be part of the solution to the larger implementation challenge of integrating all waste handlers into e-Manifest. The comments further suggested that the hybrid might help to avoid a situation where EPA might ''flip a switch'' and attempt to implement e-Manifest for all waste handlers all at once.

Emphasizing the need for a broader solution, the ETC and its members responded to the proposal with comments advocating a more comprehensive phased implementation of the electronic manifest system, involving three phases. Under Phase I, the paper manifest process would continue as under current rules, but receiving facilities would convert their paper manifest data to CROMERR certified electronic data files for upload to EPA's national data system. Under Phase II, EPA would place its emphasis on preparing generators for e-Manifest implementation, conducting outreach on generator administrative requirements, and enabling generators with system access to receive their final signed manifest copies electronically through the system. Finally, in Phase III, EPA would adopt full implementation of electronic manifests by generators, transporters, and receiving facilities. The ETC comments suggested that this phased approach could progress in an orderly manner, with about six months between the several phases. Commenters supporting this phased approach further suggested that the collection of full user fees be deferred until Phase III. These commenters suggested that EPA only impose a ''nominal fee'' in Phase II, measured only by the costs of EPA receiving the uploaded data, thereby reducing any ''sticker shock'' that would be faced by users when initially confronted with the new system's user fees.

One industry commenter expressed frustration with the lack of real progress in developing e-Manifest, and suggested that the effort should end with the Phase I approach described earlier, or, wait for the Department of Transportation to proceed with electronic shipping papers for Phase II. Another, commenter remarked that it was not clear how the hybrid manifest option would affect EPA's stated goal in the fee pivot discussion of reaching 75% electronic manifest usage in four years. The commenter asked whether the ''hybrid'' manifests would count toward EPA's 75% electronic use goal that determines if the fees will pivot.

Other industry and state commenters objected to EPA's hybrid or mixed manifest proposal, stating that it possibly would produce severed manifests with conflicting paper and electronic versions that would remain disconnected in the system. Several commenters noted as well that the hybrid proposal was incomplete in not describing fully how waste receipt confirmations, exception reporting, and other downstream processes will be conducted if only the generator has the paper form. These commenters argued that regulations hold the generator responsible for what is on the manifest, but if the receiving facility later changes the electronic version, the generator may not be made aware. These commenters questioned how generators could remain liable for manifest data that ultimately appears on an electronic version that they may not see.

More recently, EPA convened the first e-Manifest Advisory Board meeting in January 2017. At this meeting, EPA presented on the proposed hybrid option and the aforementioned phased implementation approach presented in industry comments. The Advisory Board members generally supported a phased approach that would initially continue the paper manifest process through the transportation and delivery of hazardous waste shipments, and then allow the receiving facilities to upload electronically the certified data from their paper manifests to the system. However, in response to suggestions from generator members of the Board, this discussion concluded with the suggestion that the receiving facility should also upload a scanned image of the final, signed paper manifest to the EPA system with the data file.

3. Final Rule Decisions

After careful consideration of the comments received on the proposed rule, EPA has elected to promulgate in the final rule the mixed manifest proposal announced in the proposed rule. Therefore, this action modifies § 262.24 by adding paragraph (c)(1) as proposed. Under this regulation as amended, generators who wish to initially track their shipments by paper will complete and sign a paper manifest in the conventional manner and obtain the ink signature of the initial transporter at the time the transporter acknowledges its receipt of the hazardous wastes for transportation off-site. Generators will retain this ink-signed paper copy among their records as the initial generator copy of the manifest. The initial transporter and subsequent handlers will complete the remainder of the manifest copies electronically. The final copy signed electronically by the receiving facility will be submitted to the system and retained as the copy of record of the shipment, and distributed to waste handlers and interested states via the system. The initial generator copy will remain as a paper copy (or stored image) at the generator site, and will be available there for inspection.

EPA also sees substantial merit in the receiving facilities' several comments urging EPA to implement e-Manifest under a phased approach. Some confusion has arisen surrounding the hybrid manifest concept, as it has been used to describe both the mixed manifest regulatory change that EPA proposed in the July 26, 2016 proposed rule, as well as to describe the industry's recommended phased system approach. However, while the hybrid and phased approaches are complementary, and both involve some combination of paper and electronic processing, they do differ in important respects.

The mixed manifest approach finalized by EPA in the rule is by its nature an electronic manifest, with a narrow exception allowing the generator only to sign and retain a paper copy.[9] However, this manifest will originate in the e-Manifest system as an electronic manifest, it will be assigned a unique manifest tracking number by the system; all subsequent tracking of the waste shipment and all manifest signatures executed during its transportation and delivery will be conducted electronically through the system. The creation of a paper manifest copy from the system generated manifest is merely an accommodation to the generator, while all other aspects of the transaction and shipment tracking are through an electronic manifest. Thus, manifests prepared and executed in this manner will be regarded and processed as electronic manifests, and will be subject to the fees for electronic manifests. To further clarify the status of these hybrid or mixed manifests as electronic manifests, the final rule also provides that the §§ 264.1310 and 265.1310 definitions of electronic manifest submissions include the mixed or hybrid manifests authorized in the final rule at § 262.24(c)(1).

The industry recommended phased approach, particularly during phases I and II, is not per se an electronic manifest. A closer evaluation of the phased approach discloses that during at least the first and second phases, it is expected that the paper manifest will continue to be used during the actual tracking of the waste shipment through its transportation and until delivery of the waste to the receiving facility. Because the tracking of waste transportation and delivery to the facility is conducted with paper manifests, and all manifest signatures are collected as conventional ink or by hand signatures, these are by their nature paper manifest transactions, rather than electronic manifests. However, there is an electronic transaction conducted in the e-Manifest system by the receiving facility post-receipt, and this consists of the upload of the manifest data derived from the received paper manifests to the e-Manifest system for processing. This latter, electronic transaction is executed as an electronic data file and image file upload to the system, with a CROMERR compliant certification by the facility owner or operator. As this is a transfer of data from paper manifests, not electronic manifests, the manifests processed in this manner would be charged the scheduled fee for paper manifests submitted as a data file with an image file attachment.

EPA agrees that there are advantages to the phased approach to implementation suggested in the industry comments. First, EPA agrees that the suggested Phase I is a useful way to commence e-Manifest operations, as it will enable EPA to establish for the first time a national data-base system containing all manifest data from all sources, and allow the collection of fee revenues (based on paper manifest processing fees) so as to fund the system's development and operating costs in a self-sustaining manner. This system also will be available on Day 1 for fully electronic manifesting by those able to do so.

Second, the Agency also agrees that industry's suggested Phase II, involving significant generator outreach and the electronic transmittal of final manifest copies to participating generators, has considerable merit to it. In fact, the regulations EPA developed in the One Year Rule already support the industry phased approach. In the One Year Rule, the Agency provided that paper manifests could continue to be used in waste tracking, and that receiving facilities could submit the data from such paper manifests to the system as a data file in JSON or similar data exchange language, with the inclusion of the paper manifest image file.[10] Thus, all the regulatory authority needed to support Phases I and II of industry's phased approach was promulgated by EPA previously in the One Year Rule, and the final rule clarifies the fee that will be assessed for these transactions. EPA also emphasizes that to support this effort, it is currently conducting outreach to encourage user/stakeholder engagement and participation to enhance e-Manifest participation once the system becomes available for use. As

[9] The initial transporter would sign this copy by hand as well, enabling the generator to retain its initial copy signed by the transporter to acknowledge receipt of the waste. The initial transporter also would sign this manifest electronically in the system, and all subsequent tracking and signatures would be conducted electronically through e-Manifest.

[10] While the discussion by Advisory Board Members in January 2017 recommended that an image file be included as an additional element in the phased implementation approach, EPA notes that the inclusion of the image file was already required by EPA regulation as a necessary component of a data file upload from paper manifest records. The image file upload, however, is not a part of the mixed electronic/paper manifest process, as the receiving facility submission is an electronic manifest that will be processed without any manual image uploads.

part of this effort, EPA's intention is to offer open forums prior to system launch that promote the opportunity for stakeholders to participate in user testing and to continue Advisory Board meetings during the progression of the e-Manifest system launch.

Nevertheless, there are aspects of the commenters' phased approach that concern EPA. While there is considerable detail on the objectives for suggested Phases I and II, which continue the use of paper manifests, the comments provide little detail on how the regulated community would move from Phases I and II to a fully electronic manifest in Phase III, and how that would be accomplished in six months. Without more detail, the industry's phased approach appears to lack incentives for facilities and other handlers to adopt fully electronic manifesting and finally transition to the desired paperless manifest. Therefore, while we believe the commenters' phased approach presents a useful starting point for setting up and operating an initial fee-worthy e-Manifest system and data-base, we will need to explore carefully with stakeholders what additional steps and phases will be necessary to establish a credible path to a widely adopted electronic manifest.

EPA is finalizing the mixed manifest regulation with this action, because we believe it could be a useful component in the phased strategy suggested by the industry commenters. The mixed manifest or hybrid manifest enables an electronic manifest to be initiated in the system and executed electronically through the transportation and delivery phases of a waste shipment, allowing only the generator to retain a paper copy signed with conventional ink signatures. EPA developed this regulation on account of perceived challenges for generators to participate in a fully electronic workflow, so the mixed manifest could permit more of these waste shipments to originate and conclude electronically, by accommodating the generator with a paper copy for its files only. Admittedly, the hybrid approach will only become useful as part of the phased implementation strategy when there are receiving facilities working in concert with transporters (their own or independent) that are willing to install portable devices on their transport vehicles and take the electronic manifest out into the field to the generators. These are important links that must be put in place for electronic manifesting to achieve widespread adoption, and it will be a focus of our discussions in the near term with the user community and the e-Manifest Advisory Board.

EPA is not persuaded by comments suggesting EPA retain the mixed manifest ban announced in the One Year Rule. EPA acknowledges that the mixed manifest approach promulgated in the final rule may present some of the same difficulties that caused EPA to reject a mixed manifest approach in the One Year Rule. In particular, there is in fact some complexity that arises from allowing a paper copy to remain at the generator site, severed from the electronic version that continues in play with subsequent handlers. The severed nature of the manifest presents issues for generators in monitoring the progress of their shipments, and it results in the generator copy being available for inspection only at the generator's site, and not through the system. This problem is amplified if the electronic version undergoes editing and markup while the shipment continues to the receiving facility. However, given the substantial challenges faced at generator sites in the initial implementation of e-Manifest, EPA continues to believe there could be merit to this hybrid option, as it will enable many of the desired efficiencies and burden reductions of electronic manifesting to occur beyond the generator site. Any drawbacks posed by the presence of mixed manifests should be surpassed by the advantages and efficiencies of executing and transmitting more manifests electronically, particularly as an interim solution prior to the adoption and widespread use of fully electronic manifests by generators.

While the severed manifest issues are not insignificant, there are workarounds available. EPA expects that all generators will be afforded access to the e-Manifest system, whether or not they choose to participate in executing manifests electronically. Generators will soon be able to obtain access credentials and will then be able to view the final copies of manifests that will be distributed by the system. So, any changes made to mixed electronic manifests by subsequent handlers should be apparent to the generator when they view the final manifest copy from the system. Generators viewing their final manifest copies distributed by the system will thus be able to participate in the corrections process, respond to discrepancies, and note any exceptions, as they would if receiving a paper manifest through the mail. EPA does not believe it is placing great demands on generators insofar as expecting them to obtain access credentials and monitor their manifest activity in the system. While this will initially involve generators having to compare their initial paper manifest copies with a later delivered electronic file accessed in the system, any complexity in this result should only persist during the time that the user community is transitioning from paper to electronic manifesting. Electronic based transactions are becoming the norm in all walks of life, and the manifest user community must be prepared for the transition to electronic tracking of hazardous waste shipments with e-Manifest.

With respect to other comments submitted on the phased implementation of e-Manifest, EPA cannot accept the commenters' suggestion to only accept a nominal fee initially through Phase II, and defer full payment of manifest transactional fees until Phase III. As explained in Section III.C of this preamble, the final fee methodology and fee schedule prescribed in this rule must cover all system related costs for all of EPA's activities related to developing and operating e-Manifest, including costs to process paper manifests that continue in use. Our differential fee methodology is based on workload models that project the labor and other costs of processing each type of manifest. The fees also include a component to recover our system development costs, which the fee methodology is amortizing over a five-year period. Any effort at manipulating the fees to defer their full impact until later phases would only mean that the fees would be enhanced later to recover any deferred revenues, which would possibly cause the fees to seem excessive to some users when so adjusted. In addition, this suggestion would likely further aggravate revenue stability issues for EPA during the initial years of operation, when ensuring a stable revenue stream may be most essential.

EPA rejects the industry commenter's suggestion that e-Manifest efforts conclude with the Phase I solution (paper manifests with only a data upload from the receiving facility), or that our implementation efforts on e-Manifest await progress by DOT on its electronic shipping paper initiative. The Congress has mandated in the e-Manifest Act that EPA develop a national tracking system for hazardous waste shipments, and that we coordinate with DOT on this effort. While EPA is very interested in the progress of DOT's electronic shipping paper pilots, that effort is not conceived at this time as a national system approach such as that mandated for e-Manifest, so there are only so many

synergies that can be exploited between these efforts. The Agency will continue to consult with DOT as we develop and implement the e-Manifest system.

Finally, concluding the e-Manifest effort with the industry suggested Phase I system is not an acceptable outcome to the Agency. Phase I as the end point would essentially leave the paper manifest system in place indefinitely. The e-Manifest Act mandate for an electronic manifest system was not motivated solely by the desire to develop a national data-base of waste shipment data. The Act also contemplated that the national e-Manifest system would produce paperwork burden reductions by migrating to a paperless manifest. The significant cost and burden reductions identified with the e-Manifest project will only be realized when paper manifests are minimized and ultimately eliminated.

While the Agency appreciates the suggestion of industry commenters that the execution of their suggested phased approach can be accomplished in a little more than a year's time, we believe that the migration to widespread use of electronic manifests will likely take several years to accomplish. In short, the phased approach presented by commenters is commendable, but EPA would be very concerned if progress on electronic manifesting were to stall at Phase I or Phase II, and paper manifesting with a back-office data upload from facilities was the end product of the effort. Progress toward the fully electronic manifest must be maintained and monitored.

Therefore, EPA is announcing that it intends to monitor the progress toward electronic manifest adoption and report this progress annually to stakeholders and to the e-Manifest Advisory Board. In section III.J. of this preamble, EPA signaled that beginning June 30, 2021, it will not accept mailed paper manifests from facilities for processing in e-Manifest. It is further EPA's intent that the use of paper manifests, and the submission of data from paper manifests, whether by image files or data file uploads, be curtailed by June 30, 2023, that is, after five years of system implementation.

After three years of system implementation, EPA will collect information from the system on the trends reported on paper and electronic manifest usage, and present this information to the e-Manifest Advisory Board. We will examine these data closely to determine if mailed paper manifest submissions have been eliminated; if we are on track to meet the 75% electronic manifest usage goal by year four (which affects this rule's possible fee pivot); and if we are seeing meaningful progress toward the widespread adoption of electronic manifesting. If the Agency should find that meaningful progress is lacking, we will seek the Board's advice on what combination of incentives or restrictions (*e.g.,* a regulatory ban of paper manifest use after 2023), or other measures should be implemented to accomplish the program's goal of realizing all the efficiencies and benefits of an electronic manifest system. We will also examine the trends in relation to the use of the hybrid or mixed manifest approach by generators, and seek the advice of the Advisory Board on whether it is aiding or hindering the adoption of electronic manifesting, and whether it should perhaps be phased out as well.

N. Removal of Part 262 Appendix From the Code of Federal Regulations

Since the adoption of the Uniform Manifest in 1984, EPA has published the Uniform Manifest (EPA Form 8700–22), the Manifest Continuation Sheet (EPA Form 8700–22A), and the corresponding instructions for completing each of these forms in a distinct appendix published at the end of 40 CFR part 262. This means that any change to the forms required costly and time-consuming rulemaking. This practice has continued for more than 30 years, despite the fact that the Agency must also comply with the regulations implementing the Paperwork Reduction Act (PRA) at 5 CFR part 1320. Specifically, pursuant to the PRA, the Agency must receive approval from the Office of Management and Budget (OMB) for any substantive or material change it seeks to make to the two forms (OMB control number 2050–0039). As part of these requirements, among other things, the Agency must include as part of its request for OMB clearance, evidence that it informed and provided reasonable notice to the public of changes it seeks to make to the forms as well as an estimate of the burden resulting from the changes, provided the public with an opportunity to comment on the changes, and an explanation of how the Agency addressed those comments. In fact, even if the Agency does not seek to make any changes to the forms, it must seek approval from OMB for continued use of the forms every three years.

While the codification of these forms and their instructions in an appendix to part 262 may have been a useful means of publishing the details of the manifest forms and their use to the regulated community in the 1980's when there was no internet, EPA believes that this codification no longer serves that purpose. This conclusion follows from the impending availability of these forms and their instructions on the Agency's internet domain. Codification of these forms in part 262 is also duplicative with the management of the manifest's information collection requirements under the PRA. The manifest and continuation sheet forms displayed in the current appendix only display one sample copy of the multi-copy manifest and continuation sheet forms. These codified versions are sample displays only and cannot be used in commerce at all, and users who need a manifest must obtain them from the registered printers EPA has approved to distribute valid manifests commercially. With the implementation of e-Manifest, EPA has designated an internet domain—*www.epa.gov/e-Manifest*—where it will publish and make available to users the currently required manifest forms and instructions, serving the same purpose as the codification in the appendix in the CFR. EPA will be able to publish, make available to the public, and maintain the manifest forms and instructions much more efficiently and effectively through this means on the internet domain than by continuing to codify them in an appendix in the CFR. Moreover, the internet domain also provides a convenient location at which EPA can inform the public of any changes it seeks to make to the forms and provide the public with instructions on how they can submit comments. Any issues that the public might have concerning the paperwork compliance burdens posed by the manifest forms and their instructions can continue to be addressed in the Information Collection Request (ICR) process set out in the PRA.

EPA did not propose the removal of the manifest forms and instructions from the part 262 appendix as part of the July 26, 2016 proposed user fee rule. The proposed user fee rule was focused fundamentally on the user fee methodology and policy and several pending non-fee issues related to the use of manifests. As the final rule was being developed, EPA recognized the need to make several minor, conforming changes to the manifest forms and instructions to implement several of the new requirements under the e-Manifest Act. The development of these conforming changes to the forms and instructions accentuated for EPA the need to move away from the archaic practice of continuing to publish the forms and instruction in the CFR rather than publishing them to the public more

effectively on the program's internet domain. In addition, as EPA shifts its attention in the future to integrating the manifest with the reporting of waste receipts for the RCRA biennial report, there will be many advantages to EPA and the public in having the integration of these two collections addressed through the PRA process rather than a separate rulemaking focused only on the manifest forms in the CFR appendix.

The Agency is including this action in this final rule, without notice and comment, pursuant to section 553(b)(3)(A) of the Administrative Procedure Act (APA). Section 553(b)(3)(A) of the APA exempts notice and comment proceedings for ''interpretive rule, general statements of policy, or rules of agency organization, procedure, or practice.'' The decision to publish the manifest forms and instructions though EPA's internet domain, and to address public comments on form changes and their burden through the PRA processes rather than through a separate rulemaking on the part 262 appendix, is primarily a matter of how EPA organizes its forms and their procedures and practices. Moreover, the PRA provides another adequate process by which the public can be informed of manifest form changes and provide comment on them. For emphasis, we note that no other form required for RCRA Subtitle C compliance purposes (*e.g.,* the Site ID Form, the biennial report's waste generation or waste receipt forms) are codified in the CFR. Removing the manifest forms and instructions from the part 262 appendix will enable EPA to organize, manage, and maintain the manifest forms in the same sensible and efficient manner as the other Subtitle C form requirements.

Therefore, EPA is including in this final rule two minor regulatory amendments to effectuate this action. First, EPA is amending § 262.20(a)(1) to remove the current language that specifies that generators must prepare manifests ''according to the instructions included in the appendix to this part.'' The language in quotations above will be removed, and the language that remains will simply require the generators to prepare a manifest, and will continue to cite the EPA Forms 8700–22 and 8700–22A that identify the hazardous waste manifest and continuation sheet, as well as the OMB control number 2050–0039 by which OMB manages the information collection requirements for the manifest forms. Second, EPA is including an amendment to part 262 to remove the current manifest forms-related appendix from part 262.

IV. The Projected Economic Impacts of the Electronic Manifest

A. Introduction

EPA estimated the costs and benefits of the final rule in a Regulatory Impact Analysis (RIA), which is available in the docket for this action. The RIA estimates costs and costs savings attributable to electronic manifests. Cost savings are presented against estimated baseline costs of the existing RCRA hazardous waste paper manifest system. The RIA also qualitatively describes un-monetized benefits of electronic manifests.

B. Count of RCRA Hazardous Waste Manifests

The RIA estimates paper manifest system baseline costs and electronic manifest costs savings at the per-manifest level. Per-manifest costs and cost savings are then scaled up to arrive at national estimates of paper manifest costs and electronic manifest cost savings. Because costs and cost savings are estimated at the per-manifest level, the count of manifests used drives costs and cost savings estimates in the RIA analysis.

Because all RCRA manifests will be processed centrally by EPA, the RIA estimated the entire scope of manifest usage. While the federal RCRA manifest (EPA forms 8700–22 and 8700–22A) has been the sole manifest accompanying shipments of hazardous waste since the 2005 Uniform Hazardous Waste Manifest form rule, the manifest has two applications. The first is to accompany shipments of hazardous wastes listed in the federal RCRA regulations. The second is to accompany shipments of state-only regulated wastes listed in various state RCRA regulations. A total count of manifests which include both federal and state applications was estimated in the RIA. EPA estimated an average annual count of hazardous waste manifests used by extrapolating from data on the generation of hazardous waste, data on the number of shippers of hazardous waste, and by making assumptions about the likely shipping frequency of hazardous and state-only regulated wastes. EPA corroborated this estimate through consultations with companies that print and sell copies of the hazardous waste manifest. The average annual count of hazardous waste manifests used is estimated to be 3.2 million

C. Baseline Cost of the Paper Manifest System

EPA estimated baseline costs for all aspects of the existing paper manifest system which will be affected by electronic manifests. EPA estimated six categories of costs accruing to: Industrial users of paper manifests, state governments that collect paper manifests, and EPA. The six categories of costs are:

- Paper manifest costs accruing to industry for federal manifests,
- Paper manifest costs accruing to industry for state manifests,
- EPA burden to process paper manifests,
- State government burden to process paper manifests,
- Industry burden to comply with hazardous waste Biennial Report requirements, and
- State government burden to comply with hazardous waste Biennial Report requirements.

In total, discounting at 7% over six years, the annualized baseline costs of the paper manifest system are estimated to be $238 million.

D. Costs Savings and Other Benefits of Electronic Manifests

EPA estimated both monetized cost savings and other, non-monetized, benefits of electronic manifests. Cost savings are the difference between the pre-rule cost of manifesting and the post-rule cost of manifesting. They are estimated to accrue to both industrial and state government users of electronic manifests. Over the six-year period of analysis modeled in the RIA, the annualized post-rule costs of manifesting were estimated to be $172 million when discounting at 7%. Since the pre-rule cost of manifesting is estimated to be $238 million, annualized cost savings from electronic manifests are estimated to be $66 million.

EPA expects that electronic manifests will enhance many stakeholders' ability to track and extract data on waste shipments by storing and distributing these data in a central, accessible location. EPA has identified six stakeholder groups that may benefit from better access to manifest shipping data:

- Members of industry that use the manifest for tracking waste shipments should know the status of their shipments faster than under the current paper based system. They should also benefit from the increased legibility of electronic manifest records compared to current paper manifests.
- Federal and state government RCRA enforcement officials, who use manifest data in the course of their investigations of RCRA compliance should benefit from the centralized storage of manifest data and the greater accessibility of these data under e-Manifest.

• Emergency responders should benefit from increased access to data on the generation, shipment, and storage of hazardous wastes in the event that a spill or other accident involving hazardous waste occurs.

• Research institutions from academia to industry may find novel uses for manifest data.

• Communities near RCRA facilities will have better information on the generation, shipment, treatment, storage, and disposal of hazardous waste near their communities.

EPA has not attempted to quantify the value of this benefit.

SUMMARY OF ESTIMATED COSTS AND COST SAVINGS

[Annualized and discounted at 7% over six years]

Pre-rule costs ($ million)	Post-rule costs ($ million)	Cost savings ($ million)
238	172	66

V. State Implementation

A. Applicability of Rules in Authorized States—General Principles

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state. Following authorization, EPA retains enforcement authority under section 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to the enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA) and of the Hazardous Waste Electronic Manifest Establishment Act, a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to administer the program and issue RCRA permits. When new, more stringent federal requirements were promulgated, a state with final RCRA authorization was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, with the adoption of RCRA section 3006(g), which was added by HSWA, new requirements and prohibitions imposed under the HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by section 3006(g) to implement HSWA-based requirements and prohibitions in authorized states until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states are authorized to do so.

The e-Manifest Act contains similar authority to HSWA with respect to federal and state implementation responsibilities in RCRA authorized states. Section 2(g)(3) of the e-Manifest Act, entitled Administration, provides that EPA shall carry out regulations promulgated under the Act in each state unless the state program is fully authorized to carry out such regulations in lieu of EPA. Also, section 2(g)(2) of the Act provides that any regulation promulgated by EPA under the e-Manifest Act shall take effect in each state (under federal authority) on the same effective date that EPA specifies in its promulgating regulation. The result is that regulations promulgated by EPA under the e-Manifest Act, like HSWA-based regulations, are implemented and enforced by EPA until the states are authorized to carry them out.

Authorized states generally are required to modify their programs when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements. However, as EPA explained previously when adopting manifest form revisions to fully standardize the RCRA manifest, the hazardous waste manifest is treated differently. Rather, EPA requires strict consistency in the manifest requirements, so that any EPA changes to federal manifest requirements that are authorizable to states must be implemented consistently in the states, regardless whether the change might be considered more stringent or broader in scope than existing requirements. See 70 FR 10776 at 10810 (March 4, 2005). This is so, whether the manifest program change is based on base RCRA or on e-Manifest Act authority.

B. Legal Authority for This Rule's Regulatory Changes and Implications

Only one of the authorizable [11] regulatory changes included in this final rule is based on the so-called base RCRA or 1976 RCRA statutory authority.[12] This regulatory provision is the § 263.21(b) regulation addressing en route changes to transporters. This is not a user fee related provision, but a more general change in the requirements governing the use of the hazardous waste manifest by hazardous waste transporters. Because this provision is promulgated under RCRA base program authority, this regulatory change will not become effective in authorized states until the regulatory change is adopted under state law and EPA authorizes the state program modification. States must adopt this regulatory change in their authorized programs to maintain manifest program consistency. In unauthorized states, this regulation will become effective on the effective date of this final rule, which is June 30, 2018.

Most of the remaining regulatory changes promulgated in this final rule are issued under the authority of the e-Manifest Act. These provisions will be implemented and enforced by EPA in all states consistently on the effective date of this final rule. States must adopt the authorizable e-Manifest Act-based provisions of this final rule in order to enforce them under state law, and to maintain manifest program consistency. However, EPA will continue to implement and enforce these provisions until such time as the state modifies its authorized program to adopt these provisions and receives authorization from EPA for the program modification.

C. Authorizable e-Manifest Act Provisions

The authorizable provisions promulgated under e-Manifest Act authority are set out in the following table listing the regulatory section of 40 CFR that is affected and the subject of the regulation. These particular provisions listed below can be administered and enforced by states after they are authorized for these provisions.

[11] EPA uses the term authorizable to distinguish those provisions of the final rule that can be administered and enforced by a state as a part of its authorized RCRA program from those provisions, such as determining and collecting e-Manifest user fees, that can be administered and enforced only by EPA.

[12] The final rule's changes to the manifest form printing specifications at § 262.21(f)(5) through (7) are also issued under base RCRA authority. However, as the manifest printing specifications are not authorizable, the changes to the printing specification will be effective federally on the final rule's effective date, and are not affected by state program modifications.

Regulation	Subject
§ 260.4	Copy submission requirements for interstate shipments.
§ 260.5	Applicability of e-Manifest system and fees to facilities receiving state-only regulated wastes.
§ 262.24(c)(1)	Use of mixed paper/electronic manifests.
§ 262.24(h)	Generators and post-receipt data corrections.
§ 263.20(a)(9)	Transporters and post-receipt data corrections.
§ 264.71(a)(2)(v), § 265.71(a)(2)(v)	Receiving facilities' required paper manifest submissions to system.
§ 264.71(j), § 265.71(j)	Imposition of user fees on receiving facilities for their manifest submissions.
§ 264.71(l), § 265.71(l)	Receiving facilities and post-receipt data corrections.

D. Provisions of the Final Rule That Are Not Authorizable

There are some provisions in this final rule that can be administered and enforced only by EPA, and not by authorized states. The first group of non-authorizable requirements included in this final rule are § 262.21(f)(5), (6), and (7). These provisions together announce the revised printing specification for the five-copy paper manifest and continuation sheet paper forms, the revised copy distribution requirements to be printed on each copy of the form, and the revised specification for printing the appropriate manifest instructions on the back of the form copies. These printing specifications apply to registered manifest printers and are administered solely by EPA. State programs are not required to take any action respecting these regulatory changes to the printing specifications, and they will take effect in all states on the effective date of this final rule.

The second group of non-authorizable requirements in this final rule consists of the fee methodology and related fee implementation provisions set forth in subpart FF of 40 CFR parts 264 and 265. These requirements include definitions relevant to the program's fee calculations (§ 264.1311, § 265.1311), the user fee calculation methodology (§ 264.1312, § 265.1312), the user fee revisions and publication process (§ 264.1313, § 265.1313), how to make user fee payments (§ 264.1314, § 265.1314), sanctions for delinquent payments (§ 264.1315, § 265.1315), and the informal fee dispute process (§ 264.1316, § 265.1316). These user fee provisions in subpart FF are promulgated under the authority of the e-Manifest Act, and will be implemented and enforced by EPA on the effective date of this final rule and perpetually thereafter. The user fee provisions of subpart FF describe the methods and processes that EPA alone will use in setting fees to recover its program costs, and in administering and enforcing the user fee requirements. Therefore, states cannot be authorized to implement or enforce any of the subpart FF provisions.

Although states cannot receive authorization to administer or enforce the federal government's e-Manifest program user fees, authorized state programs must still include the content of or references to the subpart FF requirements. This is necessary to ensure that members of their regulated communities will be on notice of their responsibilities to pay user fees to the EPA e-Manifest system when they utilize the system. Authorized state programs must either adopt or reference appropriately the user fee requirements of this final rule.[13] However, when a state adopts the user fee provisions of this rule, the state must not replace federal or EPA references with state references or terms that would suggest the collection or implementation of these user fees by the state. Alternatively, an authorized state may reference the subpart FF fee provisions appropriately by simply adopting state law counterparts to §§ 264.71(j) and 265.71(j) that include all the detailed citations to the subpart FF provisions as set out in the §§ 264.71(j) and 265.71(j) provisions of this final rule.

E. Non-Fee Related Provisions of the Final Rule

In addition to the § 263.21(b) provision discussed above addressing transporter changes en route, two other non-fee related provisions are included in this final rule that the states will be required to adopt as components of their authorized programs. These provisions include: (1) The amendments to §§ 264.71(l) and 265.71(l), addressing post-receipt manifest data corrections in the e-Manifest data system; and (2) the amendment at § 262.24(c)(1), allowing a mixed paper and electronic manifest to be used by certain generators. Each of these non-fee related amendments must be adopted by authorized state programs to maintain consistency with the federal RCRA program. Moreover, because all three of these provisions address the use of the RCRA hazardous waste manifest or the national e-Manifest system to be established under the e-Manifest Act, these provisions must be adopted uniformly and fully consistently with the promulgated federal requirements. Because these provisions are based on e-Manifest Act authority, they will be implemented and enforced by EPA in all states on the effective date of this final rule, and will be implemented by EPA until the states obtain RCRA authorization for these program modifications.

This final rule also includes two conforming changes to 40 CFR 271.12, addressing the requirements for hazardous waste management facilities that must be included in authorized state programs to maintain consistency with the federal program. The first change at § 271.12(k) clarifies that authorized state programs must include requirements for hazardous waste management facilities and facilities receiving state regulated wastes under manifests to pay user fees to EPA to recover all costs related to the development and operation of an electronic hazardous waste manifest system (e-Manifest system). The second such change at § 271.12(i)(2) clarifies that authorized programs must include a requirement that designated or receiving facilities submit a signed copy of each paper manifest (or the data from paper manifests) to the EPA's e-Manifest system, in lieu of sending signed copies directly to either the origination or destination states. The latter modification is necessary to effectuate the intent of Congress that under the e-Manifest Act, the e-Manifest system will operate as a national, one-stop reporting hub for manifests and data. When e-Manifest is operational, EPA expects that the states with such tracking

[13] EPA believes it is important that states adopt or reference EPA's subpart FF user fee provisions in their state programs, so that all receiving facilities in the states are on notice of their obligations to submit their final manifest copies to the system and to pay user fees to EPA for the processing of their manifests. EPA has added § 260.5 to provide federal notice of these e-Manifest Act responsibilities to the facilities that receive state-only regulated wastes that are tracked with a RCRA manifest per state law. However, the adoption by the states of appropriate state program revisions alerting such facilities that receive state-only regulated wastes to these e-Manifest Act requirements should greatly enhance the notice afforded these receiving facilities and their rate of compliance.

programs will obtain their manifest copies and data from e-Manifest, rather than requiring regulated entities to mail their manifests to these states.[14]

Also, several of these states with manifest tracking programs assess their own fees to offset the costs of administering their state manifest tracking programs, or they may assess waste generation or management fees to support state programs, based on manifest data in their state tracking systems. It is likely that many of these state manifest tracking programs and related fees may continue to operate for the foreseeable future. EPA emphasizes that the federal user fees that are the subject of this regulation are solely to offset EPA's costs in developing and operating the e-Manifest system. It is not the purpose of this regulation to suspend, reduce, or otherwise impact the existing state fees that support states' manifest tracking programs or the fees levied by state programs on waste generation or management. EPA is not now in a position to predict what, if any, impact this federal user fee regulation may have on any such state fee collection programs.

VI. Estimated Fee Schedule for Initial Operation Period

EPA has developed an illustrative estimate of the program's initial user fees based on the best system use, system cost, and program budget projections available at the time of this rule's publication. These estimates are for user fees in the first year of system operation. They are driven by assumptions about the magnitude and distribution of manifest types that the system will receive. These assumptions are explained in detail in Chapter 5 of the RIA that accompanies this rulemaking. These fees also incorporate estimates of costs of setting up and hosting the system, and the costs of running the paper processing center. At the time of this rule's publication EPA does not have a final budget for the program in Fiscal Year 2018, nor does EPA have all the contracts in place for setting up and hosting the system, and for running the paper processing center. For this reason, the following table of fee estimates should be interpreted as rough approximations of the final fees. EPA will publish a final two-year schedule of user fees on the e-Manifest website, at *www.epa.gov/e-Manifest,* when more information about the e-Manifest budget and contracts awards becomes available.

The fee estimates presented in the following table are per-manifest fees for each manifest submission type. They are derived from the proposed rule's Option 2, Marginal Cost Differentiated Fee methodology, which in this final rule, EPA will rely on for setting fee levels for at least the initial four years of program implementation.

YEAR 1 MARGINAL COST MANIFEST FEES BY MANIFEST TYPE

[2017$]

Manifest submission type		Year 1 fee
Paper Manifest Types	Mailed Paper	$20.00
	Image Uploads	13.00
	Data File Uploads	7.00
Electronic Manifests (includes hybrid)	Electronic	4.00

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it may raise novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket for this action. The EPA prepared a regulatory impact analysis of the potential costs and benefits associated with this action, which is available in the docket.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 0801.22. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This implementation of e-Manifest and this Fee Rule will impose new information collection requirements on the regulated community, although we expect that the net effect will be to significantly reduce the paperwork burden relative to the paper manifest system. Although the primary effect of the e-Manifest implementation will be to replace current paper-based information requirements with electronic-based requirements to submit or retain the same shipment information, there could be minor additions or changes to the information collection requirements, such as information that may be provided to establish user accounts and fee payment accounts, information submitted for identity management, as well as waste profile or other information that may be useful for the creation and submission of electronic manifests. Additionally, EPA did not update the information collection burden associated with the regulatory changes to the manifest system announced in the ''One Year Rule.'' While EPA acknowledged that the adoption of e-Manifest will change the manner in which information will be collected and transmitted, the system was not currently available and consequently the ''One Year Rule'' did

[14] One exception we note is that EPA will not collect in e-Manifest generator or transporter copies of any paper manifests that continue in use after e-Manifest is operational. States that wish to continue to obtain these paper generator or transporter copies will need to continue to require their direct submission to the states.

not change the information collected by the hazardous waste manifest, nor the scope of the wastes that are now subject to manifesting. EPA indicated that it would update the information collection burden estimates in this user fee rule, which are as follows:

Respondents/affected entities: Private waste handlers.

Respondent's obligation to respond: Mandatory (RCRA 3002(a)(5)).

Estimated number of respondents: 203,927.

Frequency of response: Monthly (for paper copies), On occasion.

Total estimated burden: 2,608,292 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $128,661,312, includes $38,784,093 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Analysis (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant adverse-economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule.

The small entities directly regulated by this final rule include entities that receive shipments of hazardous waste across various industries, including, but not limited to, NAICS 562211 Hazardous Waste Treatment and Disposal; NAICS 562920 Materials Recovery Facilities; NAICS 331410 Nonferrous Metal (except Aluminum) Smelting and Refining; NAICS 331492 Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum); NAICS 523910 Miscellaneous Intermediation; and NAICS 562219 Other Nonhazardous Waste Treatment and Disposal. The RIA considers as potentially small any firm within the affected universe that cannot be positively identified as not small according to SBA's size standards.

The Regulatory Impact Analysis (RIA) conducted for this rulemaking found that the e-Manifest rule would reduce the compliance burden associated with manifesting shipments of hazardous waste. The RIA estimates that in the initial six years after the e-Manifest system is operational, annualized savings from manifest related burden reduction would equal approximately $66 million per year when discounted at 7%. The RIA estimates that these savings would accrue to firms of all sizes, including 70 potentially small firms, that adopt electronic manifests as well as to firms that adopt one of the two paper manifest submission options other than postal mail submissions. The RIA concludes the e-Manifest rule will not have a significant adverse economic impact on a substantial number of small entities.

As a precaution, the RIA also estimates the impacts of the e-Manifest rule under the unlikely hypothetical scenario in which small firms do not adopt e-Manifest but instead continue to submit paper manifests via postal mail. As a consequence, these firms might not realize any savings from the e-Manifest rule but could instead face increasing costs from e-Manifest fees. The small entities examined in this worst case analysis consist of 70 potentially small firms located within the relevant industries. Potential costs for these firms are estimated by multiplying the cost of a paper manifest submission fee by the number of manifests a firm is estimated to submit within a year. The number of manifests a firm is estimated to submit is based on the amount of hazardous waste they receive. For each firm, the cost of fees is then compared to estimated revenues. Even under these unlikely and highly conservative assumptions, the RIA finds that the rule will not have a significant adverse economic impact on a substantial number of small entities, which the RIA considers as revenue impacts of greater than 1% per year for 20% or more of small entities. The RIA, in particular Section 7.2, describes in greater depth how EPA assembled a universe of small entities, how EPA estimated the hypothetical impacts of the e-Manifest rule under these conservative assumptions, and the criteria EPA used in this instance to determine significant adverse economic impacts on a substantial number of small entities. The RIA is available in the docket for this rulemaking.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not impose any new requirements on tribal officials nor will it impose substantial direct compliance costs on them. This action will not create a mandate for tribal governments, *i.e.,* there are no authorized tribal programs that will require revision and reauthorization on account of the e-Manifest system and regulatory program requirements. Nor do we believe that the e-Manifest system and this Fee Rule will impose any enforceable duties on these entities. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action requires the payment of user fees from certain members of the hazardous waste management industry for their use of an electronic manifest

system, which will not have a significant effect on the supply, distribution or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA concludes that this action does not have potential disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), because it does not affect what facilities, materials, or activities are subject to RCRA. Thus, this action does not affect the level of protection provided to human health or the environment. When implemented, the e-Manifest system could improve access for minority, low-income or indigenous populations and communities to information on waste movements to, from, or through neighborhoods where these populations live and work. Thus, the system could only have beneficial effects on such populations and communities.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 260

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Fees.

40 CFR Part 265

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements, Fees.

40 CFR Part 271

Environmental protection, Administrative practice and procedure Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

Dated: December 20, 2017.

E. Scott Pruitt,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR parts 260, 262, 263, 264 and 265, and 271 as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, 6939g, and 6974.

■ 2. Add §§ 260.4 and 260.5 to subpart A to read as follows:

§ 260.4 Manifest copy submission requirements for certain interstate waste shipments.

(a) In any case in which the state in which waste is generated, or the state in which waste will be transported to a designated facility, requires that the waste be regulated as a hazardous waste or otherwise be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the state in which the facility is located:

(1) Complete the facility portion of the applicable manifest;

(2) Sign and date the facility certification;

(3) Submit to the e-Manifest system a final copy of the manifest for data processing purposes; and

(4) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of part 264 of this chapter.

§ 260.5 Applicability of electronic manifest system and user fee requirements to facilities receiving state-only regulated waste shipments.

(a) For purposes of this section, ''state-only regulated waste'' means:

(1) A non-RCRA waste that a state regulates more broadly under its state regulatory program, or

(2) A RCRA hazardous waste that is federally exempt from manifest requirements, but not exempt from manifest requirements under state law.

(b) In any case in which a state requires a RCRA manifest to be used under state law to track the shipment and transportation of a state-only regulated waste to a receiving facility, the facility receiving such a waste shipment for management shall:

(1) Comply with the provisions of §§ 264.71 (use of the manifest) and 264.72 (manifest discrepancies) of this chapter; and

(2) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of part 264 of this chapter.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 3. The authority citation for part 262 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, 6938 and 6939g.

■ 4. Section 262.20 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 262.20 General requirements.

(a)(1) A generator that transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, or disposal facility that offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050–0039) on EPA Form 8700–22, and, if necessary, EPA Form 8700–22A.

(2) The revised manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.27, 262.32, 262.34, 262.54, and 262.60, shall not apply until September 5, 2006. The manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.32, 262.34, 262.54, and 262.60, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

* * * * *

■ 5. Section 262.21 is amended by revising paragraphs (f)(5) and (6) and (f)(7) and adding paragraph (f)(8) to read as follows:

§ 262.21 Manifest tracking numbers, manifest printing, and obtaining manifests.

* * * * *

(f) * * *

(5) The manifest and continuation sheet must be printed as five-copy forms. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all five copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:

(i) Page 1 (top copy): ''Designated facility to EPA's e-Manifest system'';

(ii) Page 2: ''Designated facility to generator'';

(iii) Page 3: ''Designated facility copy'';

(iv) Page 4: ''Transporter copy''; and

(v) Page 5 (bottom copy): ''Generator's initial copy.''

(7) The instructions for the manifest form (EPA Form 8700–22) and the manifest continuation sheet (EPA Form 8700–22A) shall be printed in accordance with the content that is currently approved under OMB Control Number 2050–0039 and published to the e-Manifest program's website. The instructions must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

(i) Manifest Form 8700–22.

(A) The ''Instructions for Generators'' on Copy 5;

(B) The ''Instructions for International Shipment Block'' and ''Instructions for Transporters'' on Copy 4; and

(C) The ''Instructions for Treatment, Storage, and Disposal Facilities'' on Copy 3.

(ii) Manifest Form 8700–22A.

(A) The ''Instructions for Generators'' on Copy 5;

(B) The ''Instructions for Transporters'' on Copy 4; and

(C) The ''Instructions for Treatment, Storage, and Disposal Facilities'' on Copy 3.

(8) The designated facility copy of each manifest and continuation sheet must include in the bottom margin the following warning in prominent font: ''If you received this manifest, you have responsibilities under the e-Manifest Act. See instructions on reverse side.''

* * * * *

■ 6. Section 262.24 is amended by:

■ a. Revising paragraphs (c) and (e);

■ b. Removing and reserving paragraph (g); and

■ c. Adding paragraph (h).

The revision and addition read as follows:

§ 262.24 Use of the electronic manifest.

* * * * *

(c) *Restriction on use of electronic manifests.* A generator may use an electronic manifest for the tracking of waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the use of the electronic manifest, except that:

(1) A generator may sign by hand and retain a paper copy of the manifest signed by hand by the initial transporter, in lieu of executing the generator copy electronically, thereby enabling the transporter and subsequent waste handlers to execute the remainder of the manifest copies electronically.

(2) [Reserved]

* * * * *

(e) *Special procedures when electronic manifest is unavailable.* If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700–22 and 8700–22A) in accordance with the manifest instructions, and use these paper forms from this point forward in accordance with the requirements of § 262.23.

* * * * *

(h) *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) named on the manifest. Generators may participate electronically in the post-receipt data corrections process by following the process described in § 264.71(l) of this chapter, which applies to corrections made to either paper or electronic manifest records.

Appendix to Part 262 [Removed]

■ 7. Remove the appendix to part 262.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 8. The authority citation for part 263 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, 6938, and 6939g.

■ 9. Section 263.20 is amended by removing and reserving paragraph (a)(8) and adding paragraph (a)(9) to read as follows:

§ 263.20 The manifest system.

* * * * *

(a) * * *

(9) *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) named on the manifest. Transporters may participate electronically in the post-receipt data corrections process by following the process described in § 264.71(l) of this chapter, which applies to corrections made to either paper or electronic manifest records.

* * * * *

■ 10. Section 263.21 is revised to read as follows:

§ 263.21 Compliance with the manifest.

(a) Except as provided in paragraph (b) of this section, the transporter must deliver the entire quantity of hazardous waste which he or she has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter; or

(4) The place outside the United States designated by the generator.

(b)(1) *Emergency condition.* If the hazardous waste cannot be delivered in accordance with paragraph (a)(1), (2), or (4) of this section because of an emergency condition other than rejection of the waste by the designated facility or alternate designated facility, then the transporter must contact the generator for further instructions and must revise the manifest according to the generator's instructions.

(2) *Transporters without agency authority.* If the hazardous waste is not delivered to the next designated transporter in accordance with paragraph (a)(3) of this section, and the current transporter is without contractual authorization from the generator to act as the generator's agent with respect to transporter additions or substitutions, then the current transporter must contact the generator for further instructions prior to making any revisions to the transporter designations on the manifest. The current transporter may thereafter make such revisions if:

(i) The hazardous waste is not delivered in accordance with paragraph (a)(3) of this section because of an emergency condition; or

(ii) The current transporter proposes to change the transporter(s) designated on the manifest by the generator, or to add a new transporter during transportation, to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety; and

(iii) The generator authorizes the revision.

(3) *Transporters with agency authority.* If the hazardous waste is not delivered to the next designated transporter in accordance with paragraph (a)(3) of this section, and the current transporter has authorization from the generator to act as the generator's agent, then the current transporter may change the transporter(s) designated on the manifest, or add a new transporter, during transportation without the generator's prior, explicit approval, provided that:

(i) The current transporter is authorized by a contractual provision that provides explicit agency authority for the transporter to make such transporter changes on behalf of the generator;

(ii) The transporter enters in Item 14 of each manifest for which such a change is made, the following statement of its agency authority: ''Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf;'' and

(iii) The change in designated transporters is necessary to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety.

(4) *Generator liability.* The grant by a generator of authority to a transporter to act as the agent of the generator with respect to changes to transporter designations under paragraph (b)(3) of this section does not affect the generator's liability or responsibility for complying with any applicable requirement under this chapter, or grant any additional authority to the transporter to act on behalf of the generator.

(c) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(1) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with § 263.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in 40 CFR 264.72(e)(1) through (6) or (f)(1) through (6) or 40 CFR 265.72(e)(1) through (6) or (f)(1) through (6).

(2) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with § 263.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 40 CFR 264.72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 11. The authority citation for part 264 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6939g.

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 12. Section 264.71 is amended by revising paragraphs (a)(2) and (j) and adding paragraph (l) to read as follows:

§ 264.71 Use of manifest system.

(a) * * *

(2) If the facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or his agent must:

(i) Sign and date each copy of the manifest;

(ii) Note any discrepancies (as defined in § 264.72(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy (Page 2) of the manifest to the generator;

(v) Paper manifest submission requirements are:

(A) *Options for compliance on June 30, 2018.* Beginning on June 30, 2018, send the top copy (Page 1) of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(B) *Options for compliance on June 30, 2021.* Beginning on June 30, 2021, the requirement to submit the top copy (Page 1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

* * * * *

(j) *Imposition of user fee for manifest submissions.* (1) As prescribed in § 264.1311, and determined in § 264.1312, an owner or operator who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in § 264.1313.

(2) An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of § 264.1314, subject to the informal fee dispute resolution process of § 264.1316, and subject to the sanctions for delinquent payments under § 264.1315.

* * * * *

(l) *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) shown on the manifest.

(1) Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The item number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each item number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete:

(i) The certification statement must be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in paragraph (l)(3) of this section, and with notice of the corrections to other interested persons shown on the manifest.

■ 13. Section 264.1086 is amended by revising paragraphs (c)(4)(i) and (d)(4)(i) to read as follows:

§ 264.1086 Standards: Containers.

* * * * *

(c) * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (*i.e.,* does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (*i.e.,* the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 40 CFR 264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

* * * * *

(d) * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (*i.e.,* does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (*i.e.,* the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 40 CFR 264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

* * * * *

■ 14. Subpart FF, consisting of §§ 264.1300 through 264.1316, is added to part 264 to read as follows:

Subpart FF—Fees for the Electronic Hazardous Waste Manifest Program

Sec.
264.1300 Applicability.
264.1310 Definitions applicable to this subpart.
264.1311 Manifest transactions subject to fees.
264.1312 User fee calculation methodology.
264.1313 User fee revisions.
264.1314 How to make user fee payments.
264.1315 Sanctions for delinquent payments.
264.1316 Informal fee dispute resolution.

Subpart FF—Fees for the Electronic Hazardous Waste Manifest Program

§ 264.1300 Applicability.

(a) This subpart prescribes:

(1) The methodology by which EPA will determine the user fees which owners or operators of facilities must pay for activities and manifest related services provided by EPA through the development and operation of the electronic hazardous waste manifest system (e-Manifest system); and

(2) The process by which EPA will revise e-Manifest system fees and provide notice of the fee schedule revisions to owners or operators of facilities.

(b) The fees determined under this subpart apply to owners or operators of facilities whose activities receiving, rejecting, or managing federally- or state-regulated hazardous wastes or other materials bring them within the definition of ''user of the electronic manifest system'' under § 260.10 of this chapter.

§ 264.1310 Definitions applicable to this subpart.

The following definitions apply to this subpart:

Consumer price index means the consumer price index for all U.S. cities using the ''U.S. city average'' area, ''all items'' and ''not seasonally adjusted'' numbers calculated by the Bureau of Labor Statistics in the Department of Labor.

Cross Media Electronic Reporting Rule (CROMERR) costs are the sub-category of operations and maintenance costs that are expended by EPA in

implementing electronic signature, user registration, identity proofing, and copy of record solutions that meet EPA's electronic reporting regulations as set forth in the CROMERR as codified at 40 CFR part 3.

Electronic manifest submissions means manifests that are initiated electronically using the electronic format supported by the e-Manifest system, and that are signed electronically and submitted electronically to the e-Manifest system by facility owners or operators to indicate the receipt or rejection of the wastes identified on the electronic manifest. Electronic manifest submissions include the hybrid or mixed paper/electronic manifests authorized under § 262.24(c)(1).

EPA program costs mean the Agency's intramural and non-information technology extramural costs expended in the design, development and operations of the e-Manifest system, as well as in regulatory development activities supporting e-Manifest, in conducting its capital planning, project management, oversight and outreach activities related to e-Manifest, in conducting economic analyses supporting e-Manifest, and in establishing the System Advisory Board to advise EPA on the system. Depending on the date on which EPA program costs are incurred, these costs may be further classified as either system setup costs or operations and maintenance costs.

Help desk costs mean the costs incurred by EPA or its contractors to operate the e-Manifest Help Desk, which EPA will establish to provide e-Manifest system users with technical assistance and related support activities.

Indirect costs mean costs not captured as marginal costs, system setup costs, or operations and maintenance costs, but that are necessary to capture because of their enabling and supporting nature, and to ensure full cost recovery. Indirect costs include, but are not limited to, such cost items as physical overhead, maintenance, utilities, and rents on land, buildings, or equipment. Indirect costs also include the EPA costs incurred from the participation of EPA offices and upper management personnel outside of the lead program office responsible for implementing the e-Manifest program.

Manifest submission type means the type of manifest submitted to the e-Manifest system for processing, and includes electronic manifest submissions and paper manifest submissions.

Marginal labor costs mean the human labor costs incurred by staff operating the paper manifest processing center in conducting data key entry, QA, scanning, copying, and other manual or clerical functions necessary to process the data from paper manifest submissions into the e-Manifest system's data repository.

Operations and maintenance costs mean all system related costs incurred by EPA or its contractors after the activation of the e-Manifest system. Operations and maintenance costs include the costs of operating the electronic manifest information technology system and data repository, CROMERR costs, help desk costs, EPA program costs incurred after e-Manifest system activation, and the costs of operating the paper manifest processing center, other than the paper processing center's marginal labor costs.

Paper manifest submissions mean submissions to the paper processing center of the e-Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700–22, or a paper Continuation Sheet, EPA Form 8700–22A. Such submissions may be made by mailing the paper manifests or continuation sheets, by submitting image files from paper manifests or continuation sheets in accordance with § 264.1311(b), or by submitting both an image file and data file in accordance with the procedures of § 264.1311(c).

System setup costs mean all system related costs, intramural or extramural, incurred by EPA prior to the activation of the e-Manifest system. Components of system setup costs include the procurement costs from procuring the development and testing of the e-Manifest system, and the EPA program costs incurred prior to e-Manifest system activation.

§ 264.1311 Manifest transactions subject to fees.

(a) *Per manifest fee.* Fees shall be assessed on a per manifest basis for the following manifest submission transactions:

(1) The submission of each electronic manifest that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving facilities, with the fee assessed at the applicable rate for electronic manifest submissions;

(2) The submission of each paper manifest submission to the paper processing center signed by owners or operators of receiving facilities, with the fee assessed according to whether the manifest is submitted to the system by mail, by the upload of an image file, or by the upload of a data file representation of the paper manifest; and

(3) The submission of copies of return shipment manifests by facilities that are rejecting hazardous wastes and returning hazardous wastes under return manifests to the original generator. This fee is assessed for the processing of the return shipment manifest(s), and is assessed at the applicable rate determined by the method of submission. The submission shall also include a copy of the original signed manifest showing the rejection of the wastes.

(b) *Image file uploads from paper manifests.* Receiving facilities may submit image file uploads of completed, ink-signed manifests in lieu of submitting mailed paper forms to the e-Manifest system. Such image file upload submissions may be made for individual manifests received by a facility or as a batch upload of image files from multiple paper manifests received at the facility:

(1) The image file upload must be made in an image file format approved by EPA and supported by the e-Manifest system; and

(2) At the time of submission of an image file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge or belief, the submitted image files are accurate and complete representations of the facility's received manifests, and that the facility acknowledges that it is obligated to pay the applicable per manifest fee for each manifest included in the submission.

(c) *Data file uploads from paper manifests.* Receiving facilities may submit data file representations of completed, ink-signed manifests in lieu of submitting mailed paper forms or image files to the e-Manifest system. Such data file submissions from paper manifests may be made for individual manifests received by a facility or as a batch upload of data files from multiple paper manifests received at the facility.

(1) The data file upload must be made in a data file format approved by EPA and supported by the e-Manifest system;

(2) The receiving facility must also submit an image file of each manifest that is included in the individual or batch data file upload; and

(3) At the time of submission of the data file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge or belief, the data and images submitted are accurate and complete representations of the facility's received manifests, and that the facility acknowledges that it is obligated to pay

the applicable per manifest fee for each manifest included in the submission.

§ 264.1312 User fee calculation methodology.

(a) The fee calculation formula or methodology that EPA will use initially to determine per manifest fees is as follows:

$$Fee_i = \left(\frac{System\ Setup\ Cost}{Years\ \times N_t}\right) + \left(Marginal\ Cost_i + \frac{O\&M\ Cost}{N_t}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M\ Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManfiest\ System\ Related\ Services$$

Where Fee_i represents the per manifest fee for each manifest submission type ''i'' and N_t refers to the total number of manifests completed in a year.

(b)(1) If after four years of system operations, electronic manifest usage does not equal or exceed 75% of total manifest usage, EPA may transition to the following formula or methodology to determine per manifest fees:

$$Fee_i = \left(\frac{System\ Setup\ Cost}{Years\ \times\ N_t}\right) + \left(Marginal\ Cost_i + \frac{O\&M_i\ Cost}{N_i}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M_{fully\ electronic} Cost = Electronic\ System\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManfiest\ System\ Related\ Services$$

$$O\&M_{all\ other} Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManfiest\ System\ Related\ Services$$

Where N_i refers to the total number of one of the four manifest submission types ''*i*'' completed in a year and $O\&M_i$ *Cost* refers to the differential O&M Cost for each manifest submission type ''*i.*''

(2) At the completion of four years of system operations, EPA shall publish a notice:

(i) Stating the date upon which the fee formula set forth in paragraph (b)(1) of this section shall become effective; or

(ii) Stating that the fee formula in paragraph (b)(1) of this section shall not go into effect under this section, and that the circumstances of electronic manifest adoption and the appropriate fee response shall be referred to the System Advisory Board for the Board's advice.

§ 264.1313 User fee revisions.

(a) *Revision schedule.* (1) EPA will revise the fee schedules for e-Manifest submissions and related activities at two-year intervals, by utilizing the applicable fee calculation formula prescribed in § 264.1312 and the most recent program cost and manifest usage numbers.

(2) The fee schedules will be published to users through the e-Manifest program website by July 1 of each odd numbered calendar year, and will cover the two fiscal years beginning on October 1 of that year and ending on September 30 of the next odd numbered calendar year.

(b) *Inflation adjuster.* The second year of each two-year fee schedule shall be adjusted for inflation by using the following adjustment formula:

$$Fee_{i_{Year2}} = Fee_{i_{Year1}} \times (CPI_{Year2-2}/CPI_{Year2-1})$$

Where:

$Fee_{i_{Year2}}$ is the Fee for each type of manifest submission ''*i*'' in Year 2 of the fee cycle;

$Fee_{i_{Year1}}$ is the Fee for each type of manifest submission ''*i*'' in Year 1 of the fee cycle; and

$CPI_{Year2-2}/CPI_{Year2-1}$ is the ratio of the CPI published for the year two years prior to Year 2 to the CPI for the year one year prior to Year 2 of the cycle.

(c) *Revenue recovery adjusters.* The fee schedules published at two-year intervals under this section shall include an adjustment to recapture revenue lost in the previous two-year fee cycle on account of imprecise estimates of manifest usage. This adjustment shall be calculated using the following adjustment formula to calculate a revenue recapture amount which will be added to O&M Costs in the fee calculation formula of § 264.1312:

$$Revenue\ Recapture_i = (N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est} \times Fee_{i(Ave)}$$

Where:

$Revenue\ Recapture_i$ is the amount of fee revenue recaptured for each type of manifest submission ''*i;*''

$(N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est}$ is the difference between actual manifest numbers submitted to the system for each manifest type during the previous 2-year cycle, and the numbers estimated when we developed the previous cycle's fee schedule; and

$Fee_{i(Ave)}$ is the average fee charged per manifest type over the previous two-year cycle.

§ 264.1314 How to make user fee payments.

(a) All fees required by this subpart shall be paid by the owners or operators of the receiving facility in response to an electronic invoice or bill identifying manifest-related services provided to the user during the previous month and identifying the fees owed for the enumerated services.

(b) All fees required by this subpart shall be paid to EPA by the facility electronically in U.S. dollars, using one of the electronic payment methods supported by the Department of the Treasury's *Pay.gov* online electronic payment service, or any applicable additional online electronic payment service offered by the Department of Treasury.

(c) All fees for which payments are owed in response to an electronic invoice or bill must be paid within 30 days of the date of the invoice or bill.

§ 264.1315 Sanctions for delinquent payments.

(a) *Interest.* In accordance with 31 U.S.C. 3717(a)(1), delinquent e-Manifest user fee accounts shall be charged a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts (Current Value of Funds Rate or CVFR) for the 12-month period ending September 30th of each year, rounded to the nearest whole percent.

(1) E-Manifest user fee accounts are delinquent if the accounts remain unpaid after the due date specified in the invoice or other notice of the fee amount owed.

(2) Due dates for invoiced or electronically billed fee amounts shall be 30 days from the date of the electronic invoice or bill.

(b) *Financial penalty.* In accordance with 31 U.S.C. 3717(e), e-Manifest user fee accounts that are more than 90 days past due (*i.e.,* not paid by date 120 days from date of invoice) shall be charged an additional penalty of 6% per year assessed on any part of the debt that is past due for more than 90 days, plus any applicable handling charges.

(c) *Compliance with manifest perfection requirement.* A manifest is fully perfected when:

(1) The manifest has been submitted by the owner or operator of a receiving facility to the e-Manifest system, as either an electronic submission or a paper manifest submission; and

(2) All user fees arising from the submission of the manifest have been fully paid.

§ 264.1316 Informal fee dispute resolution.

(a) Users of e-Manifest services that believe their invoice or charges to be in error must present their claims for fee dispute resolution informally using the process described in this section.

(b) Users asserting a billing dispute claim must first contact the system's billing representatives by phone or email at the phone number or email address provided for this purpose on the e-Manifest program's website or other customer services directory.

(1) The fee dispute claimant must provide the system's billing representatives with information identifying the claimant and the invoice(s) that are affected by the dispute, including:

(i) The claimant's name, and the facility at which the claimant is employed;

(ii) The EPA Identification Number of the affected facility;

(iii) The date, invoice number, or other information to identify the particular invoice(s) that is the subject of the dispute; and

(iv) A phone number or email address where the claimant can be contacted.

(2) The fee dispute claimant must provide the system's billing representatives with sufficient supporting information to identify the nature and amount of the fee dispute, including:

(i) If the alleged error results from the types of manifests submitted being inaccurately described in the invoice, the correct description of the manifest types that should have been billed;

(ii) If the alleged error results from the number of manifests submitted being inaccurately described in the invoice, the correct description of the number of manifests that should have been billed;

(iii) If the alleged error results from a mathematical error made in calculating the amount of the invoice, the correct fee calculations showing the corrected fee amounts; and

(iv) Any other information from the claimant that explains why the invoiced amount is in error and what the fee amount invoiced should be if corrected.

(3) EPA's system billing representatives must respond to billing dispute claims made under this section within ten days of receipt of a claim. In response to a claim, the system's billing representative will:

(i) State whether the claim is accepted or rejected, and if accepted, the response will indicate the amount of any fee adjustment that will be refunded or credited to the facility; and

(ii) If a claim is rejected, then the response shall provide a brief statement of the reasons for the rejection of the claim and advise the claimant of their right to appeal the claim to the Office Director for the Office of Resource Conservation and Recovery.

(c) Fee dispute claimants that are not satisfied by the response to their claim from the system's billing representatives may appeal their claim and initial decision to the Office Director for the Office of Resource Conservation and Recovery.

(1) Any appeal from the initial decision of the system's billing representatives must be taken within 10 days of the initial decision of the system's billing representatives under paragraph (b) of this section.

(2) The claimant shall provide the Office Director with the claim materials submitted to the system's billing representatives, the response provided by the system's billing representatives to the claim, and a brief written statement by the claimant explaining the nature and amount of the billing error, explaining why the claimant believes the decision by the system's billing representatives is in error, and why the claimant is entitled to the relief requested on its appeal.

(3) The Office Director shall review the record presented to him or her on an appeal under this paragraph (c), and shall determine whether the claimant is entitled to relief from the invoice alleged to be in error, and if so, shall state the amount of the recalculated invoice and the amount of the invoice to be adjusted.

(4) The decision of the Office Director on any appeal brought under this section is final and non-reviewable.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 15. The authority citation for part 265 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, 6937, and 6939g.

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 16. Section 265.71 is amended by revising paragraphs (a)(2) and (j) and adding paragraph (l) to read as follows:

§ 265.71 Use of manifest system.

(a) * * *

(2) If the facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or his agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in § 265.72(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy (Page 2) of the manifest to the generator;

(v) Paper manifest submission requirements are:

(A) *Options for compliance on June 30, 2018.* Beginning on June 30, 2018, send the top copy (Page 1) of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(B) *Options for compliance on June 30, 2021.* Beginning on June 30, 2021, the requirement to submit the top copy (Page1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and (vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

* * * * *

(j) *Imposition of user fee for electronic manifest use.* (1) As prescribed in § 265.1311, and determined in § 265.1312, an owner or operator who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in § 265.1313.

(2) An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of § 265.1314, subject to the informal fee dispute resolution process of § 265.1316, and subject to the sanctions for delinquent payments under § 265.1315.

* * * * *

(l) *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) shown on the manifest.

(1) Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The Item Number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each Item Number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete.

(i) The certification statement must be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as as specified in paragraph (l)(3) of this section, and with notice of the corrections to other interested persons shown on the manifest.

■ 17. Section 265.1087 is amended by revising paragraphs (c)(4)(i) and (d)(4)(i) to read as follows:

§ 265.1087 Standards: Containers.

(c) * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (*i.e.,* does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (*i.e.,* the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 40 CFR 265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

* * * * *

(d) * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (*i.e.,* does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the

container is accepted at the facility (*i.e.,* the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at § 265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

* * * * *

■ 18. Subpart FF, consisting of §§ 265.1310 through 265.1316, is added to part 265 to read as follows:

Subpart FF—Fees for the Electronic Hazardous Waste Manifest Program

Sec.
265.1300 Applicability.
265.1310 Definitions applicable to this subpart.
265.1311 Manifest transactions subject to fees.
265.1312 User fee calculation methodology.
265.1313 User fee revisions.
265.1314 How to make user fee payments.
265.1315 Sanctions for delinquent payments.
265.1316 Informal fee dispute resolution.

Subpart FF—Fees for the Electronic Hazardous Waste Manifest Program

§ 265.1300 Applicability.

(a) This subpart prescribes:

(1) The methodology by which EPA will determine the user fees which owners or operators of facilities must pay for activities and manifest related services provided by EPA through the development and operation of the electronic hazardous waste manifest system (e-Manifest system); and

(2) The process by which EPA will revise e-Manifest system fees and provide notice of the fee schedule revisions to owners or operators of facilities.

(b) The fees determined under this subpart apply to owners or operators of facilities whose activities receiving, rejecting, or managing federally- or state-regulated wastes or other materials bring them within the definition of ''user of the electronic manifest system'' under § 260.10 of this chapter.

§ 265.1310 Definitions applicable to this subpart.

The following definitions apply to this subpart:

Consumer price index means the consumer price index for all U.S. cities using the ''U.S. city average'' area, ''all items'' and ''not seasonally adjusted'' numbers calculated by the Bureau of Labor Statistics in the Department of Labor.

CROMERR costs are the sub-category of operations and maintenance costs that are expended by EPA in implementing electronic signature, user registration, identity proofing, and copy of record solutions that meet EPA's electronic reporting regulations as set forth in the Cross Media Electronic Reporting Rule (CROMERR) as codified at 40 CFR part 3.

Electronic manifest submissions means manifests that are initiated electronically using the electronic format supported by the e-Manifest system, and that are signed electronically and submitted electronically to the e-Manifest system by facility owners or operators to indicate the receipt or rejection of the wastes identified on the electronic manifest. Electronic manifest submissions include the hybrid or mixed paper/electronic manifests authorized under § 262.24(c)(1) of this chapter.

EPA program costs mean the Agency's intramural and non-information technology extramural costs expended in the design, development and operations of the e-Manifest system, as well as in regulatory development activities supporting e-Manifest, in conducting its capital planning, project management, oversight and outreach activities related to e-Manifest, in conducting economic analyses supporting e-Manifest, and in establishing the System Advisory Board to advise EPA on the system. Depending on the date on which EPA program costs are incurred, these costs may be further classified as either system setup costs or operations and maintenance costs.

Help desk costs mean the costs incurred by EPA or its contractors to operate the e-Manifest Help Desk, which EPA will establish to provide e-Manifest system users with technical assistance and related support activities.

Indirect costs mean costs not captured as marginal costs, system setup costs, or operations and maintenance costs, but that are necessary to capture because of their enabling and supporting nature, and to ensure full cost recovery. Indirect costs include, but are not limited to, such cost items as physical overhead, maintenance, utilities, and rents on land, buildings, or equipment. Indirect costs also include the EPA costs incurred from the participation of EPA offices and upper management personnel outside of the lead program office responsible for implementing the e-Manifest program.

Manifest submission type means the type of manifest submitted to the e-Manifest system for processing, and includes electronic manifest submissions and paper manifest submissions.

Marginal labor costs mean the human labor costs incurred by staff operating the paper manifest processing center in conducting data key entry, QA, scanning, copying, and other manual or clerical functions necessary to process the data from paper manifest submissions into the e-Manifest system's data repository.

Operations and maintenance costs mean all system related costs incurred by EPA or its contractors after the activation of the e-Manifest system. Operations and maintenance costs include the costs of operating the electronic manifest information technology system and data repository, CROMERR costs, help desk costs, EPA program costs incurred after e-Manifest system activation, and the costs of operating the paper manifest processing center, other than the paper processing center's marginal labor costs.

Paper manifest submissions mean submissions to the paper processing center of the e-Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700–22, or a paper Continuation Sheet, EPA Form 8700–22A. Such submissions may be made by mailing the paper manifests or continuation sheets, by submitting image files from paper manifests or continuation sheets in accordance with § 265.1311(b), or by submitting both an image file and data file in accordance with the procedures of § 265.1311(c).

System setup costs mean all system related costs, intramural or extramural, incurred by EPA prior to the activation of the e-Manifest system. Components of system setup costs include the procurement costs from procuring the development and testing of the e-Manifest system, and the EPA program costs incurred prior to e-Manifest system activation.

§ 265.1311 Manifest transactions subject to fees.

(a) *Per manifest fee.* Fees shall be assessed on a per manifest basis for the following manifest submission transactions:

(1) The submission of each electronic manifest that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving facilities, with the fee assessed at the applicable rate for electronic manifest submissions;

(2) The submission of each paper manifest submission to the paper processing center signed by owners or

operators of receiving facilities, with the fee assessed according to whether the manifest is submitted to the system by mail, by the upload of an image file, or by the upload of a data file representation of the paper manifest; and

(3) The submission of copies of return shipment manifests by facilities that are rejecting hazardous wastes and returning hazardous wastes under return manifests to the original generator. This fee is assessed for the processing of the return shipment manifest(s), and is assessed at the applicable rate determined by the method of submission. The submission shall also include a copy of the original signed manifest showing the rejection of the wastes.

(b) *Image file uploads from paper manifests.* Receiving facilities may submit image file uploads of completed, ink-signed manifests in lieu of submitting mailed paper forms to the e-Manifest system. Such image file upload submissions may be made for individual manifests received by a facility or as a batch upload of image files from multiple paper manifests received at the facility.

(1) The image file upload must be made in an image file format approved by EPA and supported by the e-Manifest system; and

(2) At the time of submission of an image file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge or belief, the submitted image files are accurate and complete representations of the facility's received manifests, and that the facility acknowledges that it is obligated to pay the applicable per manifest fee for each manifest included in the submission.

(c) *Data file uploads from paper manifests.* Receiving facilities may submit data file representations of completed, ink-signed manifests in lieu of submitting mailed paper forms or image files to the e-Manifest system. Such data file submissions from paper manifests may be made for individual manifests received by a facility or as a batch upload of data files from multiple paper manifests received at the facility.

(1) The data file upload must be made in a data file format approved by EPA and supported by the e-Manifest system;

(2) The receiving facility must also submit an image file of each manifest that is included in the individual or batch data file upload; and

(3) At the time of submission of the data file upload, a responsible representative of the receiving facility must make a CROMERR compliant certification that to the representative's knowledge or belief, the data and images submitted are accurate and complete representations of the facility's received manifests, and that the facility acknowledges that it is obligated to pay the applicable per manifest fee for each manifest included in the submission.

§ 265.1312 User fee calculation methodology.

(a) The fee calculation formula or methodology that EPA will use initially to determine per manifest fees is as follows:

$$Fee_i = \left(\frac{System\ Setup\ Cost}{Years\ \times N_t}\right) + \left(Marginal\ Cost_i + \frac{O\&M\ Cost}{N_t}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M\ Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManfiest\ System\ Related\ Services$$

Where Fee_i represents the per manifest fee for each manifest submission type ''i'' and N_t refers to the total number of manifests completed in a year.

(b)(1) If after four years of system operations, electronic manifest usage does not equal or exceed 75% of total manifest usage, EPA may transition to the following formula or methodology to determine per manifest fees:

$$Fee_i = \left(\frac{System\ Setup\ Cost}{Years\ \times\ N_t}\right) + \left(Marginal\ Cost_i + \frac{O\&M_i\ Cost}{N_i}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M_{fully\ electronic} Cost = Electronic\ System\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManfiest\ System\ Related\ Services$$

$$O\&M_{all\ other} Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManfiest\ System\ Related\ Services$$

Where N_i refers to the total number of one of the four manifest submission types ''*i*'' completed in a year and *O&M*$_i$ *Cost* refers to the differential O&M Cost for each manifest submission type ''*i*.''

(2) At the completion of four years of system operations, EPA shall publish a notice:

(i) Stating the date upon which the fee formula set forth in paragraph (b)(1) of this section shall become effective; or

(ii) Stating that the fee formula in paragraph (b)(1) of this section shall not go into effect under this section, and that the circumstances of electronic manifest adoption and the appropriate fee response shall be referred to the System Advisory Board for the Board's advice.

§ 265.1313 User fee revisions.

(a) *Revision schedule.* (1) EPA will revise the fee schedules for e-Manifest submissions and related activities at two-year intervals, by utilizing the applicable fee calculation formula prescribed in § 265.1312 and the most recent program cost and manifest usage numbers.

(2) The fee schedules will be published to users through the e-Manifest program website by July 1 of each odd numbered calendar year, and will cover the next two fiscal years beginning on October 1 of that year and ending on September 30 of the next odd numbered year.

(b) *Inflation adjuster.* The second year of each two-year fee schedule shall be adjusted for inflation by using the following adjustment formula:

$$\text{Fee}i_{\text{Year 2}} = \text{Fee}i_{\text{Year1}} \times (\text{CPI}_{\text{Year2–2}}/\text{CPI}_{\text{Year2–1}})$$

Where:

$\text{Fee}i_{\text{Year2}}$ is the Fee for each type of manifest submission ''*i*'' in Year 2 of the fee cycle;

$\text{Fee}i_{\text{Year1}}$ is the Fee for each type of manifest submission ''*i*'' in Year 1 of the fee cycle; and

$\text{CPI}_{\text{Year2–2}}/\text{CPI}_{\text{Year2–1}}$ is the ratio of the CPI published for the year two years prior to Year 2 to the CPI for the year one year prior to Year 2 of the cycle.

(c) *Revenue recovery adjusters.* The fee schedules published at two-year intervals under this section shall include an adjustment to recapture revenue lost in the previous two-year fee cycle on account of imprecise estimates of manifest usage. This adjustment shall be calculated using the following adjustment formula to calculate a revenue recapture amount which will be added to O&M Costs in the fee calculation formula of § 265.1312:

$$\text{Revenue Recapture}_i = [(N_{i\text{Year1}} + N_{i\text{Year2}})_{\text{Actual}} - (N_{i\text{Year1}} + N_{i\text{Year2}})_{\text{Est}}] \times \text{Fee}_{i(\text{Ave})}$$

Where:

$\text{Revenue Recapture}_i$ is the amount of fee revenue recaptured for each type of manifest submission ''*i*;''

$(N_{i\text{Year1}} + N_{i\text{Year2}})_{\text{Actual}} - (N_{i\text{Year1}} + N_{i\text{Year2}})_{\text{Est}}$ is the difference between actual manifest numbers submitted to the system for each manifest type during the previous 2-year cycle, and the numbers estimated when we developed the previous cycle's fee schedule; and

$\text{Fee}_{i(\text{Ave})}$ is the average fee charged per manifest type over the previous two-year cycle.

§ 265.1314 How to make user fee payments.

(a) All fees required by this subpart shall be paid by the owners or operators of the receiving facility in response to an electronic invoice or bill identifying manifest-related services provided to the user during the previous month and identifying the fees owed for the enumerated services.

(b) All fees required by this subpart shall be paid to EPA by the facility electronically in U.S. dollars, using one of the electronic payment methods supported by the Department of the Treasury's *Pay.gov* online electronic payment service, or any applicable additional online electronic payment service offered by the Department of Treasury.

(c) All fees for which payments are owed in response to an electronic invoice or bill must be paid within 30 days of the date of the invoice or bill.

§ 265.1315 Sanctions for delinquent payments.

(a) *Interest.* In accordance with 31 U.S.C. 3717(a)(1), delinquent e-Manifest user fee accounts shall be charged a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts (Current Value of Funds Rate or CVFR) for the 12-month period ending September 30th of each year, rounded to the nearest whole percent.

(1) E-Manifest user fee accounts are delinquent if the accounts remain unpaid after the due date specified in the invoice or other notice of the fee amount owed.

(2) Due dates for invoiced or electronically billed fee amounts shall be 30 days from the date of the electronic invoice or bill.

(b) *Financial penalty.* In accordance with 31 U.S.C. 3717(e), e-Manifest user fee accounts that are more than 90 days past due (*i.e.,* not paid by date 120 days from date of invoice) shall be charged an additional penalty of 6% per year assessed on any part of the debt that is past due for more than 90 days, plus any applicable processing and handling charges.

(c) *Compliance with manifest perfection requirement.* A manifest is fully perfected when:

(1) The manifest has been submitted by the owner or operator of a receiving facility to the e-Manifest system, as either an electronic submission or a paper manifest submission; and

(2) All user fees arising from the submission of the manifest have been fully paid.

§ 265.1316 Informal fee dispute resolution.

(a) Users of e-Manifest services that believe their invoice or charges to be in error must present their claims for fee dispute resolution informally using the process described in this section.

(b) Users asserting a billing dispute claim must first contact the system's billing representatives by phone or email at the phone number or email address provided for this purpose on the e-Manifest program's website or other customer services directory.

(1) The fee dispute claimant must provide the system's billing representatives with information identifying the claimant and the invoice(s) that are affected by the dispute, including:

(i) The claimant's name, and the facility at which the claimant is employed;

(ii) The EPA Identification Number of the affected facility;

(iii) The date, invoice number, or other information to identify the particular invoice(s) that is the subject of the dispute; and

(iv) A phone number or email address where the claimant can be contacted.

(2) The fee dispute claimant must provide the system's billing representatives with sufficient supporting information to identify the nature and amount of the fee dispute, including:

(i) If the alleged error results from the types of manifests submitted being inaccurately described in the invoice, the correct description of the manifest types that should have been billed;

(ii) If the alleged error results from the number of manifests submitted being inaccurately described in the invoice, the correct description of the number of manifests that should have been billed;

(iii) If the alleged error results from a mathematical error made in calculating the amount of the invoice, the correct fee calculations showing the corrected fee amounts; and

(iv) Any other information from the claimant that explains why the invoiced amount is in error and what the fee amount invoiced should be if corrected.

(3) EPA's system billing representatives must respond to billing

dispute claims made under this section within ten days of receipt of a claim. In response to a claim, the system's billing representative will:

(i) State whether the claim is accepted or rejected, and if accepted, the response will indicate the amount of any fee adjustment that will be refunded or credited to the facility; and

(ii) If a claim is rejected, then the response shall provide a brief statement of the reasons for the rejection of the claim and advise the claimant of their right to appeal the claim to the Office Director for the Office of Resource Conservation and Recovery.

(c) Fee dispute claimants that are not satisfied by the response to their claim from the system's billing representatives may appeal their claim and initial decision to the Office Director for the Office of Resource Conservation and Recovery.

(1) Any appeal from the initial decision of the system's billing representatives must be taken within 10 days of the initial decision of the system's billing representatives under paragraph (b) of this section.

(2) The claimant shall provide the Office Director with the claim materials submitted to the system's billing representatives, the response provided by the system's billing representatives to the claim, and a brief written statement by the claimant explaining the nature and amount of the billing error, explaining why the claimant believes the decision by the system's billing representatives is in error, and why the claimant is entitled to the relief requested on its appeal.

(3) The Office Director shall review the record presented to him or her on an appeal under this paragraph (c), and shall determine whether the claimant is entitled to relief from the invoice alleged to be in error, and if so, shall state the amount of the recalculated invoice and the amount of the invoice to be adjusted.

(4) The decision of the Office Director on any appeal brought under this section is final and non-reviewable.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 19. The authority section for part 271 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

■ 20. Section 271.3 is amended by revising paragraph (b)(4) to read as follows:

§ 271.3 Availability of final authorization.

* * * * *

(b) * * *

(4) Any requirement imposed under the authority of the Hazardous Waste Electronic Manifest Establishment Act:

(i) Shall take effect in each State having a finally authorized State program on the same date as such requirement takes effect in other States;

(ii) Shall supersede any less stringent or inconsistent provision of a State program; and

(iii) Shall be carried out by the Administrator in an authorized state except where, pursuant to section 3006(b) of RCRA, the State has received final authorization to carry out the requirement in lieu of the Administrator.

* * * * *

■ 21. Section 271.10 is amended by revising paragraph (h) introductory text to read as follows:

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(h) The state must follow the federal manifest format for the paper manifest forms (EPA Forms 8700–22 and 8700–22A) and their instructions and must follow the federal electronic manifest format and instructions as obtained from the Electronic Manifest System described in § 260.10 of this chapter.

* * * * *

■ 22. Section 271.12 is amended by revising paragraph (i) and adding paragraph (k) to read as follows:

§ 271.12 Requirements for hazardous waste management facilities.

* * * * *

(i) Compliance with the manifest system including the requirement that facility owners or operators return a signed copy of the manifest:

(1) To the generator to certify delivery of the hazardous waste shipment or to identify discrepancies;

(2) To the EPA's e-Manifest system, in lieu of submitting a signed facility copy directly to either the origination state or the destination state; and

(3) After listing the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from Item 9b, to EPA using the allowable methods listed in 40 CFR 262.84(b)(1) until the facility can submit such a copy to the e-Manifest system per 40 CFR 264.71(a)(2)(v) and 265.71(a)(2)(v).

* * * * *

(k) Requirements for owners or operators of facilities to pay user fees to EPA to recover EPA's costs related to the development and operation of an electronic hazardous waste manifest system, in the amounts specified by the user fee methodology included in subpart FF of 40 CFR parts 264 and 265, for all paper and electronic manifests submitted to the e-Manifest system.

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