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Contents

Federal Register

Vol. 83, No. 26

Wednesday, February 7, 2018

Agriculture Department
NOTICES
Requests for Information:
Improving Customer Service, 5400

Air Force Department
NOTICES
Environmental Impact Statements; Availability, etc.:
F–35 Operational Beddown—Air National Guard, 5408

Census Bureau
NOTICES
Meetings:
Scientific Advisory Committee, 5400–5401

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5425–5428

Coast Guard
RULES
Special Local Regulations:
Black Warrior River, Tuscaloosa, AL, 5306–5307

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Acquisition Regulations System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5408–5409

Defense Department
See Air Force Department
See Defense Acquisition Regulations System
NOTICES
Charter Terminations:
Judicial Proceedings Since Fiscal Year 2012 Amendments Panel, 5409
Housing Price Inflation Adjustment, 5409
Meetings:
Board of Visitors National Defense University, 5409–5410

Delaware River Basin Commission
NOTICES
Hearings and Meetings, 5410–5411

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Flexibility for Equitable Per-pupil Funding, 5411–5412

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program:
Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products, 5374–5375

Environmental Protection Agency
RULES
Identification and Listing of Hazardous Waste; CFR Correction, 5340
List of Categorical Non-Waste Fuels; Additions:
Other Treated Railroad Ties, 5317–5340
Pesticide Tolerances:
Fomesafen, 5312–5317
Isoxaben, 5307–5312
Voluntary Consensus Standards Update:
Formaldehyde Emission Standards for Composite Wood Products, 5340–5349
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
California; Interstate Transport Requirements for Ozone, Fine Particulate Matter, and Sulfur Dioxide, 5375–5399
NOTICES
Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2016, 5422

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Airplanes, 5297–5306
NOTICES
Meetings:
Nineteenth Tactical Operations Committee, 5506

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5422–5424
Preliminary Nonbroadcast Network Rankings, 5424–5425

Federal Emergency Management Agency
NOTICES
Adjustment of Statewide Per Capita Indicator for Recommending a Cost Share Adjustment, 5449–5450
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, 5450
National Fire Academy Long-Term Evaluation Form for Supervisors and National Fire Academy Long-Term Evaluation Form for Students/Trainees, 5448
National Flood Insurance Program—Mortgage Portfolio Protection Program, 5447–5448
Flood Hazard Determinations; Changes, 5451–5454
Meetings:
National Advisory Council, 5448–5449

Federal Energy Regulatory Commission
RULES
Annual Update to Fee Schedule for the Use of Government Lands by Hydropower Licensees; Correction, 5306
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5416–5422
Applications:
Brookfield White Pine Hydro, LLC, 5415
Combined Filings, 5412–5414, 5417–5420
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
New Mexico Wind, LLC, 5415–5416

Federal Motor Carrier Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, 5508–5510
Crash Preventability Demonstration Program, 5506–5508

Federal Railroad Administration
NOTICES
Establishment of an Emergency Relief Docket:
Calendar Year 2018, 5510–5511
Petitions for Modifications:
Single Car Air Brake Test Procedures, 5510
Petitions for Waivers of Compliance, 5511

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 5425
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 5425

Fiscal Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Government Securities Act, 5511–5512

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Expedited Programs for Serious Conditions—Drugs and Biologics, 5428–5429
State Enforcement Notifications, 5438–5439
Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types, 5441–5445
Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Retail and Foodservice Facility Types, 5433–5436
Determinations of Regulatory Review Periods for Purposes of Patent Extensions:
BLINCYTO, 5440–5441
FARXIGA, 5436–5438
GENVOYA, 5431–5433
SEDASYS System, 5429–5431

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Properties, 5512–5513

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
EngageDHS, 5454–5455

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Energy Efficient Mortgages, 5455–5456
Use Restriction Agreement Monitoring and Compliance, 5456

Indian Affairs Bureau
NOTICES
Indian Trust Asset Reform Act, Title II—Indian Trust Asset Management Demonstration Project, 5456–5457

Interior Department
See Indian Affairs Bureau
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Carbon and Alloy Steel Wire Rod from Belarus, the Russian Federation, and the United Arab Emirates; Correction, 5402
Carbon and Certain Alloy Steel Wire Rod from Mexico, 5405–5407
Certain Welded Carbon Steel Pipes and Tubes from India, Thailand, and Turkey; Certain Circular Welded Non-Alloy Steel Pipe from Brazil, Mexico, the Republic of Korea, and Taiwan, and Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan, 5402–5405
Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China, 5401

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Stainless Steel Flanges from China and India, 5459–5461

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Cancellation of Withdrawal Application and Withdrawal Proposal and Termination; California Desert Conservation Area Withdrawal, CA, 5459
Plats of Survey:
Nevada, 5457–5459

Legal Services Corporation
NOTICES
Funding Opportunities:
2018 Technology Initiative Grant, 5461–5464

National Archives and Records Administration
NOTICES
Records Schedules, 5464–5465

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 5446
National Institute of Allergy and Infectious Diseases, 5445–5446
National Institute on Aging, 5446–5447

National Oceanic and Atmospheric Administration
RULES
List of Fisheries for 2018, 5349–5372
NOTICES
Meetings:
North Pacific Fishery Management Council, 5407–5408

Nuclear Regulatory Commission
PROPOSED RULES
Regulatory Improvements for Power Reactors Transitioning to Decommissioning, 5373–5374
NOTICES
Exemptions and Combined Licenses; Amendments:
Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; Shield Building Roof Changes, 5467–5468
Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Station, Units 3 and 4; Addition of a Residual Heat Removal Suction Relief Valve for Low-Temperature Overpressure Protection, 5465–5467
Meetings:
Advisory Committee on the Medical Uses of Isotopes, 5465

Postal Service
NOTICES
Product Changes:
Parcel Select Negotiated Service Agreement, 5468
Priority Mail and First-Class Package Service Negotiated Service Agreement, 5468–5469

Presidential Documents
ADMINISTRATIVE ORDERS
Defense and National Security:
National Defense Authorization Act for Fiscal Year 2018; Delegation of Certain Functions and Authorities (Memorandum of February 5, 2018), 5517–5519

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BZX Exchange, Inc., 5469–5470
Cboe EDGX Exchange, Inc., 5493–5494
Municipal Securities Rulemaking Board, 5474–5488
Nasdaq ISE, LLC, 5470–5473
Nasdaq PHLX, LLC, 5473–5474
New York Stock Exchange, LLC, 5488–5493, 5499
NYSE American, LLC, 5494–5499
NYSE Arca, Inc., 5500–5504

Small Business Administration
NOTICES
Surrender of License of Small Business Investment Company, 5504

State Department
NOTICES
Meetings:
United States-Oman Free Trade Agreement Environment Chapter Implementation, Joint Forum on Environmental Cooperation, and Public Session, 5505
Presidential Permits:
Application from the California Department of Transportation for Construction, Connection, Operation, and Maintenance of a New Border Crossing at Otay Mesa East, 5504–5505

Susquehanna River Basin Commission
NOTICES
Meetings:
Regular Business, 5505–5506

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

Treasury Department
See Fiscal Service
See Foreign Assets Control Office

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Approval of Licensing or Certification Test and Organization or Entity, 5515
Report of General Information, Report of First Notice of Death, Report of Nursing Home or Assisted Living Information, Report of Defense Finance and Accounting Service, Report of Non–Receipt of Payment, Report of Incarceration, Report of Month of Death, 5513–5514
Yellow Ribbon Agreement, 5514–5515

Separate Parts In This Issue

Part II
Presidential Documents, 5517–5519

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:

Memorandums:

Memorandum of February 5, 2018 5519

10 CFR

Proposed Rules:

20.....5373
26.....5373
50.....5373
51.....5373
52.....5373
72.....5373
73.....5373
140.....5373
430.....5374

14 CFR

39 (4 documents) ...5297, 5299, 5301, 5304

18 CFR

11.....5306

33 CFR

100.....5306

40 CFR

180 (2 documents) 5307, 5312
241.....5317
261 (2 documents) 5340
770.....5340

Proposed Rules:

52.....5375

50 CFR

229.....5349

Rules and Regulations

Federal Register

Vol. 83, No. 26

Wednesday, February 7, 2018

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0069; Product Identifier 2013–NM–090–AD; Amendment 39–19181; AD 2018–03–08]

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) 2005–19–28, which applied to certain Airbus Model A330–301, –321, –322, –341, and –342 airplanes; and Model A340–200 and A340–300 series airplanes. AD 2005–19–28 required repetitive inspections for cracks in the aft face of the rear spar at the area adjacent to the bolt holes and the end of the build slot, and repair if necessary. AD 2005–19–28 also provided an optional terminating action for the repetitive inspections. This new AD was prompted by the results of a new fatigue and damage tolerance assessment, which determined that several compliance thresholds and intervals needed to be reduced. 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 February 22, 2018.

We must receive comments on this AD by March 26, 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–2018–0069; 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

As described in FAA Advisory Circular 120–104 (*http://www.faa.gov/documentLibrary/media/Advisory_Circular/120-104.pdf*), several programs have been developed to support initiatives that will ensure the continued airworthiness of aging airplane structure. The last element of those initiatives is the requirement to establish a limit of validity (LOV) of the engineering data that support the structural maintenance program under 14 CFR 26.21. This AD is the result of an assessment of the previously established programs by the design approval holder (DAH) during the process of establishing the LOV for the affected airplanes. The actions specified in this AD are necessary to complete certain programs to ensure the continued airworthiness of aging airplane structure and to support an airplane reaching its LOV.

We issued AD 2005–19–28, Amendment 39–14293 (70 FR 57493, October 3, 2005) (''AD 2005–19–28''), which applied to certain Airbus Model A330–301, –321, –322, –341, and –342 airplanes; and Model A340–200 and A340–300 series airplanes. AD 2005–19–28 was prompted by a report that, during fatigue tests of the wing, cracks were found in the vertical web of the rear spar between ribs 1 and 2 having initiated at the build slot. AD 2005–19–28 required repetitive inspections for cracks in the aft face of the rear spar at the area adjacent to the bolt holes and the end of the build slot, and repair if necessary. AD 2005–19–28 also provided an optional terminating action for the repetitive inspections. We issued AD 2005–19–28 to detect and correct fatigue cracking in the vertical web of the wing rear spar, which could result in reduced structural integrity of the wing.

Since we issued AD 2005–19–28, a new fatigue and damage tolerance assessment was done, taking into account airplane utilization and widespread fatigue damage analysis. This analysis led to the determination that several compliance thresholds and intervals needed to be reduced. We have also determined that the unsafe condition is not applicable to Airbus Model A330–341 airplanes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2013–0101, dated April 30, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–301, –321, –322, and –342 airplanes; and Model A340–200 and A340–300 series airplanes. The MCAI states:

> During wing fatigue test, a crack was detected which propagated from the tip of the build slot in the vertical web of the wing inner rear spar between rib 1 and 2.
>
> This condition, if not detected and corrected, could lead to reduced structural integrity of the wing.
>
> To address this potentially unsafe condition, [Direction Générale de l'Aviation Civile] DGAC France issued AD 2001–268(B)R1 and AD 2001–269(B) [which correspond to FAA AD 2005–19–28] to

require repetitive High Frequency Eddy Current (HFEC) inspections of the aft face of the inner rear spar web in the area adjacent to the outboard end of the build slot and, depending of findings, repair of the inner rear spar web.

Since these [DGAC France] ADs were issued, in the frame of a new fatigue and damage tolerance evaluation, taking into account aeroplane utilization and Widespread Fatigue Damage (WFD) analysis, the thresholds and intervals of the affected inspections have been reassessed. This reassessment led to the amendment of several thresholds and to the reduction of inspection intervals to allow timely detection of cracks and to the accomplishment of applicable corrective actions. EASA issued AD 2013–0092, which retained the requirements of DGAC France AD 2001–268(B)R1 and AD 2001–269(B), which were superseded, but required those actions within the new thresholds and intervals.

Since issuance of EASA AD 2013–0092, it has been discovered that certain A330 aeroplanes, incorporating another modification in production, must be excluded from the Applicability. In addition, it has been found necessary to clarify that for the initial inspection, the previous thresholds (to be counted from aeroplane first flight) or intervals, as required by [DGAC France] AD 2001–268(B)R1 and [DGAC France] AD 2001–269(B), cannot be exceeded.

For the reasons described above, this [EASA] AD partially retains the requirements of EASA AD 2013–0092, which is superseded, and introduces the changes as outlined above.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0069.

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–2018–0069; Product Identifier 2013–NM–090–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
HFEC inspection [retained action from AD 2005–19–28 with reduced threshold and intervals].	4 work-hours × $85 per hour = $340 per inspection cycle.	$0	$340 per inspection cycle.
Modification [retained action from AD 2005–19–28].	153 work-hours × $85 per hour = $13,005	0	$13,005.

We estimate the following costs to do any necessary on-condition repairs that would be required based on the results of the required actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair [retained action from AD 2005–19–28]	85 work-hours × $85 per hour = $7,225	Unavailable	$7,225

We acknowledge that since the above actions are retained from AD 2005–19–28, but with reduced threshold and intervals, operators would essentially revise their maintenance or inspection program, as applicable, to incorporate the reduced threshold and intervals. We estimate the revision to an operator's maintenance and inspection program would take approximately 1 work-hour × $85 per hour.

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) 2005–19–28, Amendment 39–14293 (70 FR 57493, October 3, 2005), and adding the following new AD:

2018–03–08 Airbus: Amendment 39–19181; Docket No. FAA–2018–0069; Product Identifier 2013–NM–090–AD.

(a) Effective Date

This AD becomes effective February 22, 2018.

(b) Affected ADs

This AD replaces AD 2005–19–28, Amendment 39–14293 (70 FR 57493, October 3, 2005) (''AD 2005–19–28'').

(c) Applicability

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

(1) Model A330–301, –321, –322, and –342 airplanes, all manufacturers serial numbers, except those on which Airbus modification 42547 or 44599 has been embodied in production.

(2) Model A340–211, –212, –213, –311, –312, and –313 airplanes, all manufacturer serial numbers, except those on which Airbus modification 42547 or 41300 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a report that, during fatigue tests of the wing, cracks were found in the vertical web of the rear spar between ribs 1 and 2 having initiated at the build slot, and a determination that several compliance thresholds and intervals need to be reduced. We are issuing this AD to detect and correct fatigue cracking in the vertical web of the wing rear spar, which could result in reduced structural integrity of the wing.

(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 2013–0101, dated April 30, 2013.

(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 2013–0101, dated April 30, 2013, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0069.

(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 January 26, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–02352 Filed 2–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0070; Product Identifier 2015–NM–146–AD; Amendment 39–19182; AD 2018–03–09]

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 A321–211 and –231 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 a determination that the flat-headed pin at the upper attachment point of the overhead stowage compartments at a certain frame may not sustain the maximum weight load for each flight phase. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective February 22, 2018.

We must receive comments on this AD by March 26, 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–2018–0070; 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: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone: 425–227–1405; 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 2015–0164, dated August 10, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A321–211 and –231 airplanes. The MCAI states:

> The overhead stowage compartments (OHSC), located at Frame 47.2 left-hand (LH) and right-hand (RH) side of the fuselage in certain aeroplanes, are currently installed with a flat headed pin at the upper attachment point. The pin passes through the OHSC upper attachment hole, then through the upper attachment fitting, and is secured by a split ring through the pin. A design review identified a risk that the OHSC attachment may not sustain the maximal loads for each flight phase, over the aeroplane life.
>
> This condition, if not corrected, could lead to OHSC detachment during flight, possibly resulting in injury to cabin crew or passengers.
>
> To address this potential unsafe condition, Airbus defined a new attachment design to secure the OHSC attachment in all the flight phases over the aeroplane life. Airbus issued Service Bulletin (SB) A320–25–1852 to provide modification instructions.
>
> For the reason described above, this [EASA] AD requires modification of the affected OHSC attachments.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0070.

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–2018–0070; Product Identifier 2015–NM–146–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
Modification	4 work-hours × $85 per hour = $340	$161	$501

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 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 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):

2018–03–09 Airbus: Amendment 39–19182; Docket No. FAA–2018–0070; Product Identifier 2015–NM–146–AD.

(a) Effective Date

This AD becomes effective February 22, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A321–211 and –231 airplanes, certificated in any category, manufacturer serial numbers 3191, 3217, 3241, 3251, 3267, 3334, 3459, 3493, 3507, 3552, 3566, 3587, 3645, 3681, 3764, 3784, 3847, 3867, 3920, 3934, 3938, 3951, 3981, 4058, 4074, 4099, 4103, 4116, 4148, 4184, 4189, 4194, 4217, 4224, 4230, 4266, 4271, 4274, 4292, 4299, 4338, 4341, 4369, 4387, 4416, 4430, 4461, and 4500.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that the flat-headed pin at the upper attachment point of the overhead stowage compartments (OHSCs) at a certain frame may not sustain the maximum weight load for each flight phase. We are issuing this AD to prevent OHSC detachment during flight, which could cause injury to the crew or passengers.

(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 2015–0164, dated August 10, 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 2015–0164, dated August 10, 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–2018–0070.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–1149.

(j) Material Incorporated by Reference

None.

Issued in Renton, Washington, on January 26, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–02357 Filed 2–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0029; Product Identifier 2015–NM–132–AD; Amendment 39–19179; AD 2018–03–06]

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) 2015–02–18, which applied to all Airbus Model A330–201, –202, –203, –301, –302, and –303 airplanes. AD 2015–02–18 required a one-time ultrasonic inspection for fractures of all aft mount-pylon bolts of each engine. This new AD was prompted by the failure of a bolt on the aft engine mount upper beam, which was found to be caused by inappropriate in-production upper beam installation. 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 February 22, 2018.

We must receive comments on this AD by March 26, 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–2018–0029; 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 2015–02–18, Amendment 39–18085 (80 FR 5020, January 30, 2015) (''AD 2015–02–18''), which applied to all Airbus Model A330–201, –202, –203, –301, –302, and –303 airplanes. AD 2015–02–18 was prompted by a report of one bolt on the aft engine mount upper beam found totally broken. AD 2015–02–18 required a one-time ultrasonic inspection for fractures of all aft mount-pylon bolts of each engine. We issued AD 2015–02–18 to detect and correct fracture of the aft mount-pylon bolts, which could result in failure of the engine mount and consequent detachment of the engine.

Since we issued AD 2015–02–18, further investigation showed that the pylon bolt failure was caused by inappropriate upper beam installation during production. We have determined that repetitive inspections are necessary 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 2015–0126, dated July 1, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200 and –300 series airplanes. The MCAI states:

> During a scheduled replacement of a CF6–80E1 engine on an A330 aeroplane, a bolt on the aft engine mount upper beam was found sheared. The affected bolt is one out of four bolts that attach the upper beam to the pylon.
>
> Investigation results revealed an unusual contact with the counter-bore edge of the beam which induced a significant groove on the bolt during its installation in production. It is suspected that the induced groove led to a fatigue crack initiation and subsequent quick propagation leading to the complete fracture of the bolt. In case of multiple bolt fractures, the remaining bolts would be insufficient to sustain the residual fatigue and limit loads.
>
> This condition, if not detected and corrected, could lead, in case of multiple bolt fracture, to loss of an engine mount structural integrity and possible in-flight engine detachment, resulting in reduced control of the aeroplane and/or injury to persons on the ground.
>
> To address this potential unsafe condition, EASA issued AD 2013–0094 to require a one-time ultrasonic (US) inspection of the four aft mount-pylon bolts of both engines to detect sheared bolts and, depending on findings, accomplishment of applicable corrective actions.
>
> Since EASA AD 2013–0094 was issued, further investigation results revealed that the pylon bolt failure was caused by inappropriate upper beam installation during production. An abnormal bending load applied on the bolt during installation of the upper beam could have increased the stress close to or beyond the limit strength, high enough to fracture the bolt.
>
> Prompted by these findings, Airbus issued Service Bulletin (SB) A330–71–3031 providing instructions for repetitive inspections and the applicable corrective actions.
>
> For the reasons described above, this [EASA] AD, which supersedes EASA AD 2013–0094, requires repetitive US inspections of the aft mount-pylons bolts of each engine and, depending on findings, corrective actions.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0029.

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–2018–0029; Product Identifier 2015–NM–132–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
Inspections (new action)	8 work-hours × $85 per hour = $680 per inspection cycle..	$0	$680 per inspection cycle.

We estimate the following costs to do any necessary on-condition repairs that would be required based on the results of the required actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair (new action)	Up to 337 work-hours × $85 per hour = $28,645	(1)	Up to $28,645.

[1]We have received no definitive data that would enable us to provide parts cost estimates for the on-condition actions 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

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) 2015–02–18, Amendment 39–18085 (80 FR 5020, January 30, 2015), and adding the following new AD:

2018–03–06 Airbus: Amendment 39–19179; Docket No. FAA–2018–0029; Product Identifier 2015–NM–132–AD.

(a) Effective Date

This AD becomes effective February 22, 2018.

(b) Affected ADs

This AD replaces AD 2015–02–18, Amendment 39–18085 (80 FR 5020, January 30, 2015) (''AD 2015–02–18'').

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –301, –302, and –303 airplanes, certificated in any category, all manufacturer serial numbers, except those on which Airbus modification 203947 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by the failure of a bolt on the aft engine mount upper beam, which was found to be caused by inappropriate in-production upper beam installation. We are issuing this AD to detect and correct fracture of the aft mount-pylon bolts, which could result in loss of engine mount structural integrity, consequent detachment of the engine and reduced control 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 2015–0126, dated July 1, 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 2015–0126, dated July 1, 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–2018–0029.

(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 January 25, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–02350 Filed 2–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0030; Product Identifier 2014–NM–161–AD; Amendment 39–19180; AD 2018–03–07]

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 A330–202, –203, –223, and –243 airplanes; and Model A340–211, –212, –311, and –313 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 a report of a hard contact that was found between the constant speed motor/generator feeder line route 6G/6E and the optional cabin temperature control pipe on the upper shell between certain frames. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective February 22, 2018.

We must receive comments on this AD by March 26, 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–2018–0030; 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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2014–0161, dated July 10, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–202, –203, –223, and –243 airplanes; and Model A340–211, –212, –311, and –313 airplanes. The MCAI states:

> A hard contact was found on an A330 aeroplane during production between the Constant Speed Motor/Generator (CSM/G) feeder line route 6G/6E (Functional Item Number 1526VB) and the optional cabin temperature control pipe on the upper shell between Frame (FR)37.4 and FR38 on stringer 5, right hand (RH) side.
>
> This condition, if not corrected, may lead to chafing and, consequently, a short circuit when the emergency generation is activated, resulting in the loss of emergency generation. The loss of normal generation combined with the loss of emergency generation jeopardizes the aeroplane safe flight.
>
> To address this potential unsafe condition, Airbus developed a modification to provide adequate clearance between harness 1526VB and the affected (optional) air-conditioning temperature control pipe. A340–200/–300 aeroplanes equipped with this optional cabin temperature control pipe are also affected by this issue. The modification can be embodied in service through Airbus Service Bulletin (SB) A330–92–3125, or SB A340–92–4097, as applicable.
>
> For the reasons described above, this [EASA] AD requires modification of the CSM/G mounting with installation of new stacking and/or longer bracket, depending on aeroplane configuration.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0030.

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–2018–0030; Product Identifier 2014–NM–161–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
Modification	Up to 17 work-hours × $85 per hour = $1,445	Up to $256	Up to $1,701.

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):

2018–03–07 Airbus: Amendment 39–19180; Docket No. FAA–2018–0030; Product Identifier 2014–NM–161–AD.

(a) Effective Date

This AD becomes effective February 22, 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) Airbus Model A330–202, –203, –223, and –243 airplanes, all manufacturer serial numbers on which Airbus modification 45775, 45790, 45795, 46165, 46779, 48099, 48454, 52131, 52802, 53730, 53819, 54310, 54410, 54420, 54530, 55231, 55630, 56080, 56260, 56620, 57186, 57430, 200774, 201071, 201298, 201888, 202558, or 203045 has been embodied in production, except those on which Airbus modification 203395 has been embodied in production.

(2) Airbus Model A340–211, –212, –311, and –313 airplanes, all manufacturer serial numbers on which Airbus modification 40413, 40550, 40901, 42021, 43590, or 46487 has been embodied in production, except those on which Airbus modification 203395 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 92, Electrical system installation.

(e) Reason

This AD was prompted by a report of a hard contact that was found between the constant speed motor/generator feeder line route 6G/6E and the optional cabin temperature control pipe on the upper shell between certain frames. We are issuing this AD to prevent chafing, which can lead to a short circuit when the emergency generation is activated and a consequent loss of emergency generation. The loss of normal generation combined with the loss of emergency generation could adversely affect the airplane's continued safe flight and landing.

(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 2014–0161, dated July 10, 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 2014–0161, dated July 10, 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–2018–0030.

(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 January 26, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–02354 Filed 2–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM11–6–000]

Annual Update to Fee Schedule for the Use of Government Lands by Hydropower Licensees; Correction

AGENCY: Federal Energy Regulatory Commission,DOE.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final rule (RM11–6–000) which published in the **Federal Register** on Tuesday, March 7, 2017 (82 FR 12717). The Final Rule provided the annual update to the fee schedule in Appendix A to Part 11, which lists per-acre rental fees by county (or other geographic area) for use of government lands by hydropower licensees and updated Appendix A to Part 11 with the fee schedule of per-acre rental fees by county (or other geographic area) from October 1, 2016, through September 30, 2017 (Fiscal Year 2017).

DATES: Effective February 7, 2018, and is applicable beginning October 1, 2016.

FOR FURTHER INFORMATION CONTACT: Norman Richardson, Financial Management Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6219, *Norman.Richardson@ferc.gov.*

SUPPLEMENTARY INFORMATION:

On February 28, 2017, the Commission issued an *Annual Update to Fee Schedule for the Use of Government Lands for Hydropower Licensees* in the above-captioned proceeding. Pursuant to *Annual Charges for the Use of Government Lands in Alaska,* Order No. 838, 83 FR 1 (Jan. 2, 2018), FERC Stats. & Regs. ¶ 61,281 (2017), this document updates the per-acre rental fees for the State of Alaska, as reflected in the caption below.

List of Subjects in 18 CFR Part 11

Public lands.

Accordingly, 18 CFR part 11 is corrected by making the following correcting amendment:

PART 11—[AMENDED]

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 16 U.S.C. 792–828c; 42 U.S.C. 7101–7352.

■ 2. Appendix A to Part 11 is amended by:

■ a. Revising the entries under ''Alaska''; and

■ b. Removing footnote 1.

The revisions read as follows:

Appendix A to Part 11—Fee Schedule for FY 2017

State	County	Fee/acre/yr
* * *	* * *	* * *
Alaska	Aleutian Islands Area	$1.02
	Statewide per-acre	$36.53
* * *	* * *	* * *

Issued: February 1, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–02412 Filed 2–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2018–0013]

Special Local Regulation; Black Warrior River, Tuscaloosa, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation on the Black Warrior River extending the entire width of the channel from mile marker 339.0 to mile marker 341.5 in Tuscaloosa, AL on March 24, 2018, to provide for the safety of life on navigable waterways during the Rowing Competition marine event. Our regulation for Recurring Marine Events in Captain of the Port Sector Mobile Zone identifies the regulated area for this rowing event. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Sector Mobile or a designated representative.

DATES: The regulation in 33 CFR 100.801, Table 7, line 4, will be enforced from 6 a.m. through 4:30 p.m. on March 24, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email call or email LT Kyle D. Berry, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251–441–5940, email *Kyle.D.Berry@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a special local regulation for the annual ''Rowing Competition/University of South Alabama'', listed in 33 CFR 100.801, Table 7, line 4, from 6 a.m. through 4:30 p.m. on March 24, 2018. This action is

being taken to provide for the safety of life on navigable waterways during the rowing event. Our regulation for Recurring Marine Events in Captain of the Port Sector Mobile Zone, § 100.801, specifies the location of the regulated area for this 2-and-½-mile-long rowing event. As specified in § 100.801 during the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Sector Mobile (COTP) or a COTP designated representative.

This notice of enforcement is issued under authority of 33 CFR 100.801 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and Broadcast Notice to Mariners.

Dated: January 31, 2018.

M.R. Mclellan,

Captain, U. S. Coast Guard, Captain of the Port Sector Mobile.

[FR Doc. 2018–02425 Filed 2–6–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0650; FRL–9972–75]

Isoxaben; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of isoxaben in or on apple, the bushberry subgroup 13–07B, the tree nut group 14–12, and the small vine climbing fruit (except fuzzy kiwifruit) subgroup 13–07F. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 7, 2018. Objections and requests for hearings must be received on or before April 9, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0650, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0650 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 9, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0650, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 10, 2017 (82 FR 17175) (FRL–9959–61), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E8516) by Interregional Research Project No. 4 (IR–4) Project Headquarters, Rutgers, The State University of NJ, 500 College Road East, Suite 201, W, Princeton, NJ 08540. The petition requested that 40 CFR 180.650 be amended by establishing tolerances for residues of the herbicide isoxaben, *N*-[3-(1-ethyl-1-methylpropyl)-5-isoxazolyl]-2, 6-dimethoxybenzamide, in or on the raw agricultural commodities apple at 0.01 parts per million (ppm); the bushberry subgroup 13–07B at 0.01 ppm; the fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.01 ppm; and the nut, tree, group 14–12 at 0.02 ppm. The petition also requested to remove the tolerances in 40 CFR 180.650 in or on the raw agricultural

commodities grape at 0.01 ppm; nut, tree, group 14 at 0.02 ppm; and pistachio at 0.02 ppm. That document referenced a summary of the petition prepared by Dow AgroSciences, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Isoxaben shows low acute toxicity by all routes. In chronic oral studies, the liver (mouse) and kidney (rat) were target organs, and decreased body weight was observed in the rat, mouse, and dog. There was no indication of neurotoxicity or immunotoxicity. No evidence of increased susceptibility was observed in the rat or rabbit developmental toxicity studies, but was observed in the rat reproductive toxicity study only at the limit dose.

Isoxaben is currently classified as having ''suggestive evidence of carcinogenic potential,'' based on the presence of liver tumors in male and female mice. Because the tumors were benign and observed at dose levels exceeding the limit dose of 1,000 mg/kg/day and there was low concern for genotoxicity, the cRfD is considered protective of potential carcinogenicity and a quantitative assessment of cancer risk was not conducted.

Specific information on the studies received and the nature of the adverse effects caused by isoxaben as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document title ''*Isoxaben. Aggregate Human Health Risk Assessment to Support Proposed New Uses on Bushberry Subgroup 13–07B and Apple, Crop Group Conversion (Tree Nut Group 14–12), and Crop Group Expansion (Small Vine Climbing Fruit Except Fuzzy Kiwifruit Subgroup 13–07F)*'' on pages 26–31 in docket ID number EPA–HQ–OPP–2016–0650.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for isoxaben used for human risk assessment is shown in Table 1 of this unit.

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations) ..	An appropriate endpoint for a single exposure was not identified		
Chronic dietary (All populations)	NOAEL = 5.0 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.05 mg/kg/day. cPAD = 0.05 mg/kg/day.	Chronic combined toxicity/Carcinogenicity (oral)—rat. LOAEL = 50.7 mg/kg/day, based on renal toxicity in males.

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

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Incidental oral intermediate-term (1 to 6 months).	NOAEL = 200 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Reproductive toxicity (oral)—rat. Offspring LOAEL = 1,000 mg/kg/day, based on decreased body weight gain in F_1 females on day 70, decreased F_2 pup weights, gestation survival, live pups/litter, and increased incidence of malformations. One-year dietary study (co-critical supporting study)—rat. LOAEL = 625 mg/kg/day, based on decreased body weight gain in females during the first six months, with a NOAEL of 62.5 mg/kg/day.
Inhalation short-term (1 to 30 days).	NOAEL = 200 mg/kg/day (inhalation toxicity assumed to be equivalent to oral toxicity). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Reproductive toxicity (oral)—rat. Offspring LOAEL = 1,000 mg/kg/day, based on decreased body weight gain in F_1 females on day 70, decreased F_2 pup weights, gestation survival, live pups/litter, and increased incidence of malformations.
Inhalation intermediate-term (1 to 6 months).	NOAEL = 200 mg/kg/day (inhalation toxicity assumed to be equivalent to oral toxicity). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Reproductive toxicity (oral)—rat. Offspring LOAEL = 1,000 mg/kg/day, based on decreased body weight gain in F_1 females on day 70, decreased F_2 pup weights, gestation survival, live pups/litter, and increased incidence of malformations. One-year dietary study (co-critical supporting study)—rat. LOAEL = 625 mg/kg/day, based on decreased body weight gain in females during the first six months, with a NOAEL of 62.5 mg/kg/day.
Cancer (Oral, dermal, inhalation).	''Suggestive Evidence of Carcinogenic Potential,'' based on increased incidence of hepatocellular adenomas in male and female mice. Quantitative assessment of cancer risk using a cancer potency factor is not required. The chronic RfD is protective of potential cancer risk.		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to isoxaben, EPA considered exposure under the petitioned-for tolerances as well as all existing isoxaben tolerances in 40 CFR 180.650. EPA assessed dietary exposures from isoxaben in food as follows:

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

No such effects were identified in the toxicological studies for isoxaben; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used 2003–2008 food consumption data from the US Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance-level residues and 100 percent crop treated (PCT).

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to isoxaben. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for isoxaben. Tolerance-level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for isoxaben in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of isoxaben. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Surface Water Concentration Calculator (SWCC v1.106) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of isoxaben for chronic exposures are estimated to be 43.6 parts per billion (ppb) for surface water and 909 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the chronic dietary risk assessment, the water concentration value of 909 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Isoxaben is currently registered for the following uses that could result in residential exposures: Residential turf. EPA assessed residential exposure using the following assumptions: Isoxaben residential uses constitute short- and intermediate-term exposure scenarios. For residential handlers, since a dermal endpoint was not selected, the only route of exposure quantitatively assessed for adult handlers is through inhalation. For post-application exposures, only intermediate-term incidental oral exposures for children were assessed due to the persistence of isoxaben residues in soil. Neither a short-term dermal nor short-term incidental oral endpoint was selected for children. Although there is potential for post-application inhalation exposure of both adults and children, the estimated exposure is anticipated to be negligible; therefore, a quantitative post-application inhalation assessment was not required.

For the purpose of performing an aggregate assessment, the Agency selected only the most conservative, or worst-case, residential adult and child scenarios to be included in the aggregate, based on the lowest overall MOE (highest exposure estimates). For adults, handler inhalation exposure resulting from the application of a granular formulation of isoxaben to residential lawns via push-type spreader has been used to estimate adult aggregate exposure. (The inhalation exposure was added to background exposure from food and water, and compared to the short-term inhalation POD.) Post-application risks for adults in residential settings were not assessed due to the lack of a dermal endpoint.

For children, an intermediate-term aggregate assessment was conducted by adding the incidental soil ingestion exposure, and average food and water exposure (chronic dietary exposure). The incidental oral residential exposure value selected for the aggregate analysis is based on children ingesting soil particles containing pesticide residues while playing on treated turf. Due to the persistence of isoxaben in the soil, the Agency used a conservative approach by using the maximum seasonal application rate for estimating soil ingestion by children rather than the standard maximum single application rate. This scenario resulted in the highest calculated exposure levels; therefore, it is protective for all other oral post-application exposure and risk for children in residential settings.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found isoxaben to share a common mechanism of toxicity with any other substances, and isoxaben does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that isoxaben does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No evidence of increased susceptibility was observed in the rat or rabbit developmental toxicity studies, but was observed in the rat reproductive toxicity study only at the limit dose.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for isoxaben is adequately complete to allow the Agency to assess the toxicological profile of isoxaben.

ii. There is no indication that isoxaben is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. No evidence of increased susceptibility was observed in the rat or rabbit developmental toxicity studies, but was observed in the rat reproductive toxicity study only at the limit dose; however, this risk assessment is protective of the susceptibility observed at the limit dose in the reproductive toxicity study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to isoxaben in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by isoxaben.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, isoxaben is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to isoxaben from food and water will utilize 98% of the cPAD for all infants less than 1-year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of isoxaben is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account

short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Isoxaben is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to isoxaben.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 6,700 for females 13–49 years old. Because EPA's level of concern for isoxaben is a MOE of 100 or below, this MOE is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Isoxaben is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to isoxaben.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in an aggregate MOE of 7,200 for children 1–2 years old. Because EPA's level of concern for isoxaben is a MOE of 100 or below, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the discussion in Unit III.A., EPA considers the chronic aggregate risk assessment to be protective of any aggregate cancer risk. As there is no chronic risk of concern, EPA does not expect any cancer risk to the U.S. population from aggregate exposure to isoxaben.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to isoxaben residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate residue analytical method (RAM) utilizing liquid chromatography with tandem mass spectrometric detection (LC/MS/MS), GRM 02.26.S.1 (a revision of GRM 02.26), is available for enforcement of isoxaben residues in crop commodities.

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

B. International Residue Limits

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

The Codex has not established any MRLs for isoxaben.

C. Response to Comments

Seven comments were received in response to the notice of filing. All of the comments were general in nature, not specific to the chemical isoxaben. They included statements such as ''I am not in favor of relaxing requirements on pesticides,'' ''I am opposed to this proposal,'' and ''My body doesn't live well on pesticides.''

The Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops; however, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. These citizens' comments appear to be directed at the underlying statute and not EPA's implementation of it; the citizens have made no contention that EPA has acted in violation of the statutory framework nor have they provided any specific information or allegation that would support a finding that these tolerances are unsafe.

V. Conclusion

Therefore, tolerances are established for residues of isoxaben including its metabolites and degradates, in or on apple at 0.01 ppm; the bushberry subgroup 13–07B at 0.01 ppm; the fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.01 ppm; and the nut, tree, group 14–12 at 0.02 ppm. In addition, the following existing tolerances are removed since they are superseded by the new tolerances: Grape, nut, tree, group 14; and pistachio.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001); Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not

have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: January 19, 2018.

Donna S. Davis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.650, revise the table in paragraph (a) to read as follows:

§ 180.650 Isoxaben; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hulls	0.40
Apple	0.01
Bushberry subgroup 13–07B	0.01
Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F	0.01
Nut, tree, group 14–12	0.02

* * * * *

[FR Doc. 2018–02346 Filed 2–6–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0629; FRL–9972–66]

Fomesafen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fomesafen in or on the tuberous and corm vegetable subgroup 1C, the legume vegetable group 6, and the low growing berry subgroup 13–07G (except cranberry). Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 7, 2018. Objections and requests for hearings must be received on or before April 9, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0629, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0629 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 9, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior

notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0629, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 21, 2015 (80 FR 63731) (FRL–9935–29), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5E8395) by Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR 180.433 be amended by establishing tolerances for residues of fomesafen, 5-[2-cloro-4-(trifluoromethyl)phenoxy]-N-(methylsulfonyl)-2-nitrobenzamide in or on the following raw agricultural commodities: Vegetable, tuberous and corm, subgroup 1C at 0.025 parts per million (ppm); berry, low growing subgroup 13–07G except cranberry at 0.02 ppm; and vegetable, legume group 6 at 0.05 ppm. The petition also requested to amend 40 CFR 180.433 by removing the existing tolerances on the raw agricultural commodities bean, dry at 0.05 ppm; bean, snap, succulent at 0.05 ppm; bean Lima, succulent at 0.05 ppm; pea, succulent at 0.025 ppm; potato at 0.025 ppm; soybean at 0.05 ppm; and soybean, vegetable succulent at 0.05 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The primary target organs of fomesafen are the liver and hematological system. Generally, hyalinization of hepatocytes provided the most sensitive toxicological endpoint (intermediate, and long term) in mammals. In the subchronic and chronic toxicity studies in rats and mice, food consumption, food efficiency, body weight, body weight gain, and histopathological changes in the liver were parameters that were most often affected. In addition, dogs, rats, and mice also showed hematological changes (*e.g.,* decreased erythrocyte count, hemoglobin, or hematocrit). No progression of hematological effects was observed beyond 90 days. Neurotoxicity (decreased motor activity) was observed at doses above those causing liver toxicity or impacting hematological parameters. Post-implantation loss was noted in the developmental study, but no quantitative or qualitative evidence of increased susceptibility was seen following *in utero* exposure to rats or rabbits in developmental studies or in the reproduction study. As the etiology of the post-implantation loss is unknown, it is considered to be both a maternal and fetal endpoint. Fomesafen can result in suppression of anti-SRBC IgM response; however, this immunotoxic potential was noted only at high doses.

Carcinogenicity was not observed in the rat chronic toxicity/carcinogenicity study. Liver tumors were produced in the mouse carcinogenicity study; however, the Agency determined that fomesafen should be classified as ''Not Likely to be Carcinogenic to Humans.'' This decision was based on the weight-of-evidence which supports activation of peroxisome proliferator-activated receptor alpha (PPARα) as the mode of action for fomesafen-induced hepatocarcinogenesis in mice. Fomesafen was not considered to be mutagenic.

Specific information on the studies received and the nature of the adverse effects caused by fomesafen as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''*Fomesafen: Draft Human Health Risk Assessment for Registration Review and for the Section 3 Registration Action on Tuberous and Corm Vegetables (Crop Group 1C), Legume Vegetable (Crop Group 6) and Low Growing Berry (Except Cranberry) (Crop Group 13–07G)*'' on pages 36–45 in docket ID number EPA–HQ–OPP–2015–0629.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the

dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for fomesafen used for human risk assessment is shown in the Table of this unit.

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age).	No toxic effects of fomesafen attributable to a single dose and specific to females of ages 13–49 were found in the database.		
Acute dietary (General population including infants and children).	NOAEL = 100 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 1 mg/kg/day. aPAD = 1 mg/kg/day	Acute neurotoxicity test in rats. LOAEL = 250 mg/kg/day based on decreased motor activity (horizontal and vertical activity and time in central quadrant) in males.
Chronic dietary (All populations)	NOAEL = 1 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.01 mg/kg/day. cPAD = 0.01 mg/kg/day.	Subchronic toxicity in the dog. LOAEL = 25 mg/kg/day based on hematology (decreased hemoglobin and hematocrit concentrations and erythrocyte count and increased platelet count and prothrombin time).
Cancer (Oral, dermal, inhalation).	Classification: The Agency has classified Fomesafen as ''Not Likely to be Carcinogenic to Humans''		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fomesafen, EPA considered exposure under the petitioned-for tolerances as well as all existing fomesafen tolerances in 40 CFR 180.433. EPA assessed dietary exposures from fomesafen in food as follows:

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

Such effects were identified for fomesafen. In estimating acute dietary exposure, EPA used 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance level residues and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used 2003–2008 food consumption data from the USDA's NHANES/WWEIA. As to residue levels in food, EPA assumed tolerance level residues and 100 PCT.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fomesafen does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for fomesafen. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fomesafen in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fomesafen. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide in Water Calculator (PWC) model (Version 1.52) the estimated drinking water concentrations (EDWCs) of fomesafen for acute exposures are estimated to be 168 parts per billion (ppb) and for chronic exposures are estimated to be 125 ppb. These modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fomesafen is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other

substances that have a common mechanism of toxicity.''

EPA has not found fomesafen to share a common mechanism of toxicity with any other substances, and fomesafen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fomesafen does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of rat fetuses to *in utero* exposure to fomesafen. Post-implantation loss was observed in the rat developmental toxicity study. However, as the etiology of the effect is unknown, it is considered to be a part of both a maternal and fetal effect. The 2-generation reproduction study in rats did not show evidence of increased susceptibility to fomesafen. Although the developmental toxicity study in rabbits was classified as unacceptable due to mortality from bacterial infections, there was adequate information to show that there was no evidence of increased susceptibility of rabbit fetuses due to the treatment with fomesafen.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicology database for fomesafen is complete and sufficient for assessing potential susceptibility to infants and children. Although the developmental toxicity study in rabbits was classified unacceptable due to mortality from bacterial infections, there was no evidence of increased susceptibility of rabbit fetuses due to the treatment with fomesafen. Therefore, the lack of an acceptable developmental toxicity study in non-rodents is not considered a data gap.

ii. There is no need for a developmental neurotoxicity study or a need to retain the FQPA SF to account for the lack of such study. Decreased motor activity (horizontal and vertical activity and time in central quadrant) was observed in male rats in the acute neurotoxicity screening battery. In the subchronic neurotoxicity test, neither general systemic toxicity nor neurotoxicity was observed at the highest dose tested. All points of departure used in the risk assessment are protective of potential neurotoxicity.

iii. There is no evidence that fomesafen results in increased susceptibility in *in utero* rats in the prenatal developmental studies or in young rats in the 2-generation reproduction study. Although the developmental toxicity study in rabbits was classified as unacceptable due to mortality from bacterial infections, there was adequate information to show that there was no evidence of increased susceptibility of rabbit fetuses due to the treatment with fomesafen.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fomesafen in drinking water. These assessments will not underestimate the exposure and risks posed by fomesafen.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fomesafen will occupy 2.9% of the aPAD for all infants less than 1-years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fomesafen from food and water will utilize 70% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. There are no residential uses for fomesafen.

3. *Short- and Intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Both short- and intermediate-term adverse effects were identified; however, fomesafen is not registered for any use patterns that would result in either short- or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess either short- or intermediate-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for fomesafen.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fomesafen is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to fomesafen residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate residue analytical methods are available for the purpose of fomesafen tolerance enforcement for plant commodities. A high performance liquid chromatography method with tandem mass spectrometry detection (LC/MS/MS) method (GRM045.01A) has

previously been submitted as an enforcement method. The method uses extraction procedures similar to previous methods, SPE cleanup procedures, and the final determination step by LC/MS/MS for analysis of fomesafen residues. The validated limit of quantitation (LOQ) of the method is 0.02 ppm.

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

B. International Residue Limits

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

The Codex has not established any MRLs for fomesafen.

C. Response to Comments

Two comments were received in response to the notice of filing. The first was related to a different chemical, azoxystrobin, and is therefore not relevant to this action. The second was from the Center for Biological Diversity and centered primarily around impacts on endangered and threatened species. This comment is not relevant to the Agency's evaluation of safety of the fomesafen tolerances under section 408 of the FFDCA, which requires the Agency to evaluate the potential harms to human health, not effects on the environment.

V. Conclusion

Therefore, tolerances are established for residues of fomesafen, including its metabolites and degradates, in or on the following commodities: Berry, low growing, subgroup 13–07G, except cranberry at 0.02 ppm; vegetable, legume, group 6 at 0.05 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.025 ppm. In addition, the following existing tolerances are removed as unnecessary since they are superseded by the newly established tolerances: Bean, dry at 0.05 ppm; bean, lima, succulent at 0.05 ppm; bean, snap, succulent at 0.05 ppm; pea, succulent at 0.025 ppm; potato at 0.025 ppm; soybean at 0.05 ppm; and soybean, vegetable, succulent at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001); Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: January 25, 2018.

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.433, amend the table in paragraph (a) by:

■ i. Removing the commodities ''Bean, dry''; ''Bean, lima, succulent''; and ''Bean, snap, succulent'';

■ ii. Adding alphabetically the commodity ''Berry, low growing, subgroup 13–07G, except cranberry'';

■ iii. Removing the commodities ''Pea, succulent''; ''Potato''; ''Soybean''; and ''Soybean, vegetable, succulent''; and

■ iv. Adding alphabetically the commodities ''Vegetable, legume, group 6'' and ''Vegetable, tuberous and corm, subgroup 1C''.

The additions read as follows:

§ 180.433 Fomesafen; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Berry, low growing, subgroup 13–07G, except cranberry	0.02
* * * * *	
Vegetable, legume, group 6	0.05
Vegetable, tuberous and corm, subgroup 1C	0.025
* * * * *	

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[FR Doc. 2018–02344 Filed 2–6–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 241

[EPA–HQ–OLEM–2016–0248; FRL–9969–80–OLEM]

RIN 2050–AG83

Additions to List of Categorical Non-Waste Fuels: Other Treated Railroad Ties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing amendments to the Non-Hazardous Secondary Materials regulations, which generally established standards and procedures for identifying whether non-hazardous secondary materials are solid wastes when used as fuels or ingredients in combustion units. In February 2013, the EPA listed particular non-hazardous secondary materials as ''categorical non-waste fuels'' provided certain conditions are met. This final rule adds the following other treated railroad ties (OTRT) to the categorical non-waste fuel list: Processed creosote-borate, copper naphthenate and copper naphthenate-borate treated railroad ties, under certain conditions depending on the chemical treatment.

DATES: This rule is effective February 7, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2016–0248. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *https://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: George Faison, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5303P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (703) 305–7652; email: *faison.george@epa.gov.*

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this preamble.

I. General Information
- A. List of Abbreviations and Acronyms Used in This Final Rule
- B. What is the statutory authority for this final rule?
- C. Does this action apply to me?
- D. What is the purpose of this final rule?
- E. Effective Date

II. Background
- A. History of the NHSM Rulemakings
- B. Background to This Final Rule
- C. How will EPA make categorical non-waste determinations?

III. Comments on the Proposed Rule and Rationale for Final Decisions
- A. Detailed Description of OTRTs
- B. OTRTs Under Current NHSM Rules
- C. Scope of the Final Categorical Non-Waste Listing for OTRTs
- D. Rationale for Final Rule
- E. Copper and Borates Literature Review and Other EPA Program Summary
- F. Summary of Comments Requested
- G. Responses to Comments

IV. Effect of This Final Rule on Other Programs

V. State Authority
- A. Relationship to State Programs
- B. State Adoption of the Rulemaking

VI. Costs and Benefits

VII. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
- C. Paperwork Reduction Act (PRA)
- D. Regulatory Flexibility Act (RFA)
- E. Unfunded Mandates Reform Act (UMRA)
- F. Executive Order 13132: Federalism
- G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- J. National Technology Transfer and Advancement Act (NTTAA)
- K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- L. Congressional Review Act (CRA)

I. General Information

A. List of abbreviations and acronyms used in this final rule

AWPA American Wood Protection Association
Btu British thermal unit
C&D Construction and demolition
CAA Clean Air Act
CBI Confidential business information
CFR Code of Federal Regulations
CISWI Commercial and Industrial Solid Waste Incinerator
CTRT Creosote-treated railroad ties
EPA U.S. Environmental Protection Agency
FR Federal Register
HAP Hazardous air pollutant
MACT Maximum achievable control technology
MDL Method detection limit
NAICS North American Industrial Classification System
ND Non-detect
NESHAP National emission standards for hazardous air pollutants
NHSM Non-hazardous secondary material
OMB Office of Management and Budget
OTRT Other Treated Railroad Ties
PAH Polycyclic aromatic hydrocarbons
ppm Parts per million
RCRA Resource Conservation and Recovery Act
RIN Regulatory information number
RL Reporting Limits
SBA Small Business Administration
SO_2 Sulfur dioxide
SVOC Semi-volatile organic compound
TCLP Toxicity characteristic leaching procedure
UPL Upper prediction limit
U.S.C. United States Code
VOC Volatile organic compound

B. What is the statutory authority for this final rule?

The EPA is amending 40 CFR 241.4(a) to list additional non-hazardous secondary materials (NHSMs) as

categorical non-waste fuels under the authority of sections 2002(a)(1) and 1004(27) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6912(a)(1) and 6903(27). Section 129(a)(1)(D) of the Clean Air Act (CAA) directs the EPA to establish standards for Commercial and Industrial Solid Waste Incinerators (CISWI), which burn solid waste. Section 129(g)(6) of the CAA provides that the term ''solid waste'' is to be established by the EPA under RCRA (42 U.S.C. 7429(g)(6)). Section 2002(a)(1) of RCRA authorizes the Agency to promulgate regulations as are necessary to carry out its functions under the Act. The statutory definition of ''solid waste'' is stated in RCRA section 1004(27).

C. Does this action apply to me?

Categories and entities potentially affected by this action, either directly or indirectly, include, but may not be limited to the following:

GENERATORS AND POTENTIAL USERS [a] OF THE NEW MATERIALS TO BE ADDED TO THE LIST OF CATEGORICAL NON-WASTE FUELS

Primary Industry Category or Sub Category	NAICS [b]
Utilities	221
Site Preparation Contractors	238910
Manufacturing	31, 32, 33
Wood Product Manufacturing	321
Sawmills	321113
Wood Preservation (includes crosstie creosote treating)	321114
Pulp, Paper, and Paper Products	322
Cement manufacturing	32731
Railroads (includes line haul and short line)	482
Scenic and Sightseeing Transportation, Land (Includes: railroad, scenic and sightseeing)	487110
Port and Harbor Operations (Used railroad ties)	488310
Landscaping Services	561730
Solid Waste Collection	562111
Solid Waste Landfill	562212
Solid Waste Combustors and Incinerators	562213
Marinas	713930

[a] Includes: Major Source Boilers, Area Source Boilers, and Solid Waste Incinerators.
[b] NAICS—North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially impacted by this action. This table lists examples of the types of entities of which EPA is aware that could potentially be affected by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in this rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

D. What is the purpose of this final rule?

The RCRA statute defines ''solid waste'' as ''any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material* . . . resulting from industrial, commercial, mining, and agricultural operations, and from community activities.'' (RCRA section 1004(27) (emphasis added)). The key concept is that of ''discard'' and, in fact, this definition turns on the meaning of the phrase, ''other discarded material,'' since this term encompasses all other examples provided in the definition.

The meaning of ''solid waste,'' as defined under RCRA, is of particular importance as it relates to section 129 of the CAA. If material is a solid waste, under RCRA, a combustion unit burning it is required to meet the CAA section 129 emission standards for solid waste incineration units. If the material is not a solid waste, combustion units are required to meet the CAA section 112 emission standards for commercial, industrial, and institutional boilers, or if the combustion unit is a cement kiln, the CAA 112 standards for Portland cement kilns. Under CAA section 129, the term ''solid waste incineration unit'' is defined, in pertinent part, to mean ''a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments.'' 42 U.S.C. 7429(g)(1). CAA section 129 further states that the term ''solid waste'' shall have the meaning ''established by the Administrator pursuant to the Solid Waste Disposal Act.'' *Id* at 7429(g)(6). The Solid Waste Disposal Act, as amended, is commonly referred to as the Resource Conservation and Recovery Act or RCRA.

Regulations concerning NHSMs used as fuels or ingredients in combustion units are codified in 40 CFR part 241.[1] This action amends the part 241 regulations by adding three NHSMs, summarized below, to the list of categorical non-waste fuels codified in § 241.4(a):

(1) Creosote-borate treated railroad ties, and mixtures of creosote, borate and/or copper naphthenate treated railroad ties that are processed and then combusted in:

(i) Units designed to burn both biomass and fuel oil as part of normal operations and not solely as part of start-up or shut-down operations, and

(ii) Units at major source pulp and paper mills or power producers subject to 40 CFR part 63, subpart DDDDD, designed to burn biomass and fuel oil as part of normal operations and not solely as part of start-up or shut-down operations, but are modified in order to use natural gas instead of fuel oil. The creosote-borate and mixed creosote, borate and copper naphthenate treated railroad ties may continue to be combusted as product fuel only if certain conditions are met, which are intended to ensure that such railroad ties are not being discarded.

(iii) Units meeting requirements in (i) or (ii) that are also designed to burn coal.

[1] *See* 40 CFR 241.2 for the definition of non-hazardous secondary material.

(2) Copper naphthenate treated railroad ties that are processed and then combusted in units designed to burn biomass, biomass and fuel oil, or biomass and coal.

(3) Copper naphthenate-borate treated railroad ties that are processed and then combusted in units designed to burn biomass, biomass and fuel oil, or biomass and coal.

E. Effective Date

The Administrative Procedure Act requires publication of a substantive rule 30 days or more before the effective date unless one of the following conditions in 5 U.S.C. 553(d) are met:

(1)A substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

This final rule establishing an OTRT non-waste categorical determination satisfies 553(d)(1) in that it relieves a restriction by allowing OTRTs to be combusted as non-waste rather than as waste when certain conditions are met as described below in Section III. OTRTs represent a relatively small percentage of the railroad ties in use with the majority being creosote treated railroad ties (CTRTs). When the railroad ties are taken out of service and used as fuel, there is no way to distinguish between the OTRTs and the CTRTs. In order to ensure that CTRTs mixed with OTRTs are not considered a waste, EPA is making this final rule effective immediately and providing regulatory certainty.

II. Background

A. History of the NHSM Rulemakings

The Agency first solicited comments on how the RCRA definition of solid waste should apply to NHSMs when used as fuels or ingredients in combustion units in an advanced notice of proposed rulemaking (ANPRM), which was published in the **Federal Register** on January 2, 2009 (74 FR 41). We then published an NHSM proposed rule on June 4, 2010 (75 FR 31844), which the EPA made final on March 21, 2011 (76 FR 15456).

In the March 21, 2011 (76 FR 15456) rule, the EPA finalized standards and procedures to be used to identify whether NHSMs are solid wastes when used as fuels or ingredients in combustion units. ''Secondary material'' was defined for the purposes of that rulemaking as any material that is not the primary product of a manufacturing or commercial process, and can include post-consumer material, off-specification commercial chemical products or manufacturing chemical intermediates, post-industrial material, and scrap (codified in 40 CFR 241.2). ''Non-hazardous secondary material'' is a secondary material that, when discarded, would not be identified as a hazardous waste under 40 CFR part 261 (codified in 40 CFR 241.2). Traditional fuels, including historically managed traditional fuels (*e.g.,* coal, oil, natural gas) and ''alternative'' traditional fuels (*e.g.,* clean cellulosic biomass) are not secondary materials and thus, are not solid wastes under the rule unless discarded (codified in 40 CFR 241.2).

A key concept under the March 21, 2011 rule is that NHSMs used as non-waste fuels and ingredients in combustion units must meet the legitimacy criteria specified in 40 CFR 241.3(d)(1). Application of the legitimacy criteria helps ensure that the fuel product is being legitimately and beneficially used and not simply being discarded through combustion (*i.e.,* via sham recycling). To meet the legitimacy criteria, the NHSM must be managed as a valuable commodity, have a meaningful heating value and be used as a fuel in a combustion unit that recovers energy, and contain contaminants or groups of contaminants [2] at concentrations comparable to (or lower than) those in traditional fuels which the combustion unit is designed to burn. For NHSMs used as an ingredient, in addition to the other listed criteria, the ingredient must be used to make a valuable product.

Based on these criteria, the March 21, 2011 rule identified the following NHSMs as not being solid wastes:

- The NHSM is used as a fuel and remains under the control of the generator (whether at the site of generation or another site the generator has control over) that meets the legitimacy criteria (40 CFR 241.3(b)(1));
- The NHSM is used as an ingredient in a manufacturing process (whether by the generator or outside the control of the generator) that meets the legitimacy criteria (40 CFR 241.3(b)(3));
- Discarded NHSM that has been sufficiently processed to produce a fuel or ingredient that meets the legitimacy criteria (40 CFR 241.3(b)(4)); or
- Through a case-by-case petition process, it has been determined that the NHSM handled outside the control of the generator has not been discarded and is indistinguishable in all relevant aspects from a fuel product, and meets the legitimacy criteria (40 CFR 241.3(c)).

In October 2011, the Agency announced it would be initiating a new rulemaking proceeding to revise certain aspects of the NHSM rule.[3] On February 7, 2013, the EPA published a final rule, which addressed specific targeted amendments and clarifications to the 40 CFR part 241 regulations (78 FR 9112). These revisions and clarifications were limited to certain issues on which the Agency had received new information, as well as targeted revisions that the Agency believed were appropriate in order to allow implementation of the rule as the EPA originally intended. The amendments modified 40 CFR 241.2 and 241.3, added 40 CFR 241.4, and included the following: [4]

- *Revised Definitions:* The EPA revised three definitions discussed in the proposed rule: (1) ''Clean cellulosic biomass,'' (2) ''contaminants,'' and (3) ''established tire collection program.'' In addition, based on comments received on the proposed rule, the Agency revised the definition of ''resinated wood.''
- *Contaminant Legitimacy Criterion for NHSMs Used as Fuels:* The EPA issued revised contaminant legitimacy criterion for NHSMs used as fuels to provide additional details on how contaminant-specific comparisons between NHSMs and traditional fuels may be made.
- *Categorical Non-Waste Determinations for Specific NHSMs Used as Fuels.* The EPA codified determinations that certain NHSMs are non-wastes when used as fuels. If a material is categorically listed as a non-waste fuel, persons that generate or burn these NHSMs will not need to make individual determinations, as required under the existing rules, that these NHSMs meet the legitimacy criteria. Except where otherwise noted, combustors of these materials will not be required to provide further information demonstrating their non-waste status. Based on all available information, the EPA determined the following NHSMs are not solid wastes when burned as a fuel in combustion units and categorically listed them in 40 CFR 241.4(a).[5]

[2] For additional information on grouping of contaminants see 78 FR 9146.

[3] *See* October 14, 2011, Letter from Administrator Lisa P. Jackson to Senator Olympia Snowe. A copy of this letter is in the docket for the February 7, 2013 final rule (EPA–HQ–RCRA–2008–1873).

[4] *See* 78 FR 9112 (February 7, 2013) for a discussion of the rule and the Agency's basis for its decisions.

[5] In the March 21, 2011 NHSM rule (76 FR 15456), EPA identified two NHSMs as not being solid wastes, although persons would still need to make individual determinations that these NHSMs

Continued

—Scrap tires that are not discarded and are managed under the oversight of established tire collection programs, including tires removed from vehicles and off-specification tires;
—Resinated wood;
—Coal refuse that has been recovered from legacy piles and processed in the same manner as currently-generated coal that would have been refuse if mined in the past;
—Dewatered pulp and paper sludges that are not discarded and are generated and burned on-site by pulp and paper mills that burn a significant portion of such materials where such dewatered residuals are managed in a manner that preserves the meaningful heating value of the materials.

• *Rulemaking Petition Process for Other Categorical Non-Waste Determinations:* EPA made final a process in 40 CFR 241.4(b) that provides persons an opportunity to submit a rulemaking petition to the Administrator, seeking a determination for additional NHSMs to be categorically listed in 40 CFR 241.4(a) as non-waste fuels, if they can demonstrate that the NHSM meets the legitimacy criteria or, after balancing the legitimacy criteria with other relevant factors, EPA determines that the NHSM is not a solid waste when used as a fuel.

The February 8, 2016 final rule amendments (81 FR 6688) added the following to the list of categorical non-waste fuels:

• Construction and demolition (C&D) wood processed from C&D debris according to best management practices. Under this listing, combustors of C&D wood must obtain a written certification from C&D processing facilities that the C&D wood has been processed by trained operators in accordance with best management practices. Best management practices must include sorting by trained operators that excludes or removes the following materials from the final product fuel: non-wood materials (*e.g.,* polyvinyl chloride and other plastics, drywall, concrete, aggregates, dirt, and asbestos), and wood treated with creosote, pentachlorophenol, chromated copper arsenate, or other copper, chromium, or arsenical preservatives. Additional required best management practices address removal of lead-painted wood.

• Paper recycling residuals generated from the recycling of recovered paper, paperboard and corrugated containers and combusted by paper recycling mills whose boilers are designed to burn solid fuel.

• Creosote-treated railroad ties (CTRT) that are processed (which includes metal removal and shredding or grinding at a minimum) and then combusted in the following types of units:

○ Units designed to burn both biomass and fuel oil as part of normal operations and not solely as part of start-up or shut-down operations, and

○ Units at major source pulp and paper mills or power producers subject to 40 CFR part 63, subpart DDDDD, that combust CTRTs and had been designed to burn biomass and fuel oil, but are modified (*e.g.,* oil delivery mechanisms are removed) in order to use natural gas instead of fuel oil, as part of normal operations and not solely as part of start-up or shut-down operations. The CTRTs may continue to be combusted as product fuel only if the following conditions are met, which are intended to ensure that the CTRTs are not being discarded: CTRTs must be burned in existing (*i.e.,* commenced construction prior to April 14, 2014) stoker, bubbling bed, fluidized bed, or hybrid suspension grate boilers; and, CTRTs can comprise no more than 40 percent of the fuel that is used on an annual heat input basis.

Based on these non-waste categorical determinations, as discussed previously, facilities burning NHSMs that meet the categorical listing description will not need to make individual determinations that the NHSM meets the legitimacy criteria or provide further information demonstrating their non-waste status on a site-by-site basis, provided they meet the conditions of the categorical listing.

B. Background to This Final Rule

The Agency received a petition from the Treated Wood Council (TWC) in April 2013 [6] requesting that various nonhazardous treated wood (including borate and copper naphthenate) be categorically listed as non-waste fuels in 40 CFR 241.4(a). Under the April 2013 petition, nonhazardous treated wood included: waterborne borate based preservatives; waterborne organic based preservatives; waterborne copper based wood preservatives (ammoniacal/alkaline copper quat, copper azole, copper HDO, alkaline copper betaine, or copper naphthenate); creosote; oil borne copper naphthenate; pentachlorophenol; or dual-treated with any of the above.

In the course of EPA's review of the April 2013 petition, additional data was requested and received, and meetings were held between TWC and EPA representatives. Overall, the EPA review determined that there were limited data points available and the analytical techniques for some contaminants were not appropriate to provide information on the entire preserved wood sample as it would be combusted. EPA also questioned the representativeness of the samples being analyzed and the repeatability of the analyses.

In the subsequent August 21, 2015 letter from TWC to Barnes Johnson,[7] TWC requested that the Agency move forward on a subset of materials that were identified in the original April 2013 petition which are creosote borate, copper naphthenate, and copper naphthenate-borate treated railroad ties. In the letter, TWC indicated that these types of ties are increasingly being used as alternatives to CTRT, due, in part, to lower overall contaminant levels and because the ability to reuse these new types of treated ties as fuel is an important consideration in overall rail tie purchasing decisions. Other industry information claimed that these treatments have proven to increase decay resistance for ties in severe decay environments and for species that are difficult to treat with creosote alone.[8]

The Agency reviewed TWC's information on the three types of treated railroad ties, creosote borate, copper naphthenate, and copper naphthenate-borate, submitted on September 11, 2015 and requested additional contaminant data, which was submitted on October 5, 2015 and October 19, 2015.[9] Based on that information, EPA stated in the February 2016 final rule that we believe these three treated railroad ties are candidates for categorical non-waste listings and expected to begin development of a proposed rule under 40 CFR 241.4(a) regarding those listings in the near future. That proposed rule was issued November 1, 2016 (81 FR 75781).

C. How will EPA make categorical non-waste determinations?

The February 7, 2013 revisions to the NHSM rule discuss the process and

meet the legitimacy criteria: (1) Scrap tires used in a combustion unit that are removed from vehicles and managed under the oversight of established tire collection programs and (2) resinated wood used in a combustion unit. However, in the February 2013 NHSM rule, the Agency amended the regulations and listed these NHSMs as categorical non-waste fuels.

[6] Included in the docket for the February 2016 final rule—EPA–HQ–RCRA–2013–0110–0056.

[7] Included in the docket for the February 2016 final rule. Follow-up meetings were also held with TWC on September 14, 2015 and December 17, 2015 summaries of which are also included in that docket.

[8] Railway Tie Association ''Frequently Asked Questions'' available on *http://www.rta.org/faqs.*

[9] These data submissions and the letter from TWC on August 21, 2015 are included in the docket for this rule.

decision criteria whereby the Agency would make additional categorical non-waste determinations (78 FR 9158). These determinations follow the weight-of-evidence criteria set out in 40 CFR 241.4(b)(5), which the Agency established to assess additional categorical non-waste petitions and follow the statutory standards as interpreted by the EPA in the NHSM rule for deciding whether secondary materials qualify as solid wastes. Those criteria include: (1) Whether each NHSM has not been discarded in the first instance (*i.e.,* was not initially abandoned or thrown away) and is legitimately used as a fuel in a combustion unit or, if discarded, has been sufficiently processed into a material that is legitimately used as a fuel; and, (2) if the NHSM does not meet the legitimacy criteria described in 40 CFR 241.3(d)(1), whether the NHSM is integrally tied to the industrial production process, the NHSM is functionally the same as the comparable traditional fuel, or other relevant factors as appropriate.

Based on the information in the rulemaking record and comments received, the Agency is finalizing amendments to 40 CFR 241.4(a) by listing three other types of treated railroad ties as categorical non-waste fuels, in addition to CTRTs added in February 2016. Specific determinations regarding these other treated railroad ties (OTRTs, *i.e.,* creosote-borate, copper naphthenate, copper naphthenate-borate; and, mixtures of creosote, borate and/or copper naphthenate treated railroad ties) and how the information was assessed by EPA according to the criteria in 40 CFR 241.4(b)(5), are discussed in detail in section III of this preamble.

The rulemaking record for this rule (*i.e.,* EPA–HQ–RCRA–2016–0248) includes those documents and information submitted specifically to support a determination as to whether certain OTRTs should be listed as a categorical non-waste fuel. However, the principles used to determine categorical listings are based on the NHSM rules promulgated over the past few years. While EPA is not formally including in the record for this rule materials supporting the previous NHSM rulemakings, the Agency is nevertheless issuing this rule consistent with the NHSM regulations and the supporting records for those rules. This rulemaking in no way reopens any issues resolved in previous NHSM rulemakings. It simply responds to a petition in accordance with the standards and procedures outlined in the existing NHSM regulations.

III. Comments on the Proposed Rule and Rationale for Final Decisions

The following sections provide the Agency rationale for its determination that OTRTs are appropriate for listing in § 241.4(a) as categorical non-wastes when burned as a fuel in prescribed combustion units. It also addresses major comments the Agency received on the November 1, 2016 NHSM OTRT proposed rule (81 FR 75781). That proposal explained the status of OTRT under current rules, discussed information received during previous rulemakings, as well as the scope of the proposed categorical non-waste fuel listings. The proposed rationale for the listings is found at 81 FR 75788–96 and is incorporated into this final rule, along with all sources referenced in that discussion and cited therein. The final decision in this rule is based on the information in the proposal, comments received on the proposal and supporting materials in the rulemaking record. Any changes from the proposed rule made to the final rule are identified below.

A. Detailed Description of OTRTs

1. Processing

As described in the proposed rulemaking (81 FR 75781, November 1, 2016 (page 75785)), industry representatives stated that the removal of OTRTs from service and processing of those ties into a product fuel is similar to processing of CTRTs described in the February 2016 rule.[10] OTRTs are typically comprised of North American hardwoods that have been treated with a wood preservative. The removal from service, processing and use as a fuel happens through three parties: the generator of the crossties (railroad or utility); the reclamation company that sorts the crossties, and in some cases processes the material received from the generator; and the combustor as third party energy producers. Typically, ownership of the OTRTs are generally transferred directly from the generator to the reclamation company that sorts materials for highest value secondary uses, and then sells the products to end-users, including those combusting the material as fuel. Some reclamation companies sell OTRTs to processors who remove metal contaminants and grind the ties into chipped wood. Other reclamation companies have their own grinders, do their own contaminant removal, and can sell directly to the combusting facilities. Information submitted to the Agency indicates there are approximately 15 recovery companies in North America with industry-wide revenues of $65–75 million.

After crossties are removed from service, they are transferred for sorting/processing, but in some cases, they may be temporarily stored in the railroad rights-of-way or at another location selected by the reclamation company. One information source[11] indicated that when the crossties are temporarily stored, they are stored until their value as an alternative fuel can be realized, generally through a contract completed for transferal of ownership to the reclamation contractor or combustor. This means that not all OTRTs originate from crossties removed from service in the same year; some OTRTs are processed from crossties removed from service in prior years and stored by railroads or removal/reclamation companies until their value as a landscaping element or fuel could be realized.

Typically, reclamation companies receive OTRTs by rail. The processing of the crossties into fuel by the reclamation/processing companies involves several steps. Contaminant metals (spikes, nails, plates, etc.) undergo initial separation and removal by the user organization (railroad company) during inspection. At the reclamation company, the crossties are then ground or shredded to a specified size depending on the particular needs of the end-use combustor, with chip size typically between 1–2 inches. Such grinding and shredding facilitates handling, storage and metering to the combustion chamber. By achieving a uniform particle size, combustion efficiency will be improved due to the uniform and controlled fuel feed rate and the ability to regulate the air supply. Additionally, the size reduction process exposes a greater surface area of the particle prior to combustion, releasing any moisture more rapidly, and thereby enhancing its heating value. This step may occur in several phases, including primary and secondary grinding, or in a single phase. Additional metal removal may also occur after shredding.

Once the crossties are ground to a specific size, there is further screening based on the particular needs of the end-use combustor. Depending on the configuration of the facility and

[10] 81 FR 6688 The OTRTs removed from service are considered discarded because they can be stored for long periods of time without a final determination regarding their final end use. In order for them to be considered a non-waste fuel, they must be processed, thus transforming the OTRTs into a product fuel that meets the legitimacy criteria. (81 FR 75788; November 1, 2016)

[11] M.A. Energy Resources LLC, Petition submitted to Administrator, EPA, February 2013.

equipment, screening may occur concurrently with grinding or at a subsequent stage. Once the processing of OTRTs is complete, the OTRTs are sold directly to the end-use combustor for energy recovery. Processed OTRTs are delivered to the buyers by railcar or truck. The processed OTRTs are then stockpiled prior to combustion in a manner consistent with biomass fuels, with a typical storage timeframe ranging from a day to a week. When the OTRTs are to be burned for energy recovery, the material is then transferred from the storage location using a conveyor belt or front-end loader. The OTRTs may be combined with other biomass fuels, including hog fuel and bark. OTRTs are commonly used to provide the high British thermal unit (Btu) fuel to supplement low (and sometimes wet) Btu biomass to ensure proper combustion, often in lieu of coal or other fossil fuels.[12] The combined fuel may be further hammered and screened prior to combustion.

In general, contracts for the purchase and combustion of OTRTs include fuel specifications limiting contaminants, such as metals, and prohibiting the receipt of wood treated with other preservatives such as pentachlorophenol.

2. Treatment Descriptions

i. Copper Naphthenate

Copper naphthenate's effectiveness as a preservative has been known since the early 1900s, and various formulations have been used commercially since the 1940s. It is an organometallic compound formed as a reaction product of copper salts and naphthenic acids derived from petroleum. Unlike other commercially applied wood preservatives, small quantities of copper naphthenate can be purchased at retail hardware stores and lumberyards. Cuts or holes in treated wood can be treated in the field with copper naphthenate. Wood treated with copper naphthenate has a distinctive bright green color that weathers to light brown. The treated wood also has an odor that dissipates somewhat over time. Oil borne copper naphthenate is used for treatment of railroad ties since that treatment results in the ties being more resistant to cracks and checking. Waterborne copper naphthenate is used only for interior millwork and exterior residential dimensional lumber applications such as decking, fencing, lattice, recreational equipment, and other structures. Thus, this final rule does not address waterborne copper naphthenate.

Copper naphthenate can be dissolved in a variety of solvents: The heavy oil solvent (specified in American Wood Protection Association (AWPA) Standard P9, Type A) or the lighter solvent (AWPA Standard P9, Type C). The lighter solvent is the most commonly used for railroad ties due to its ability to penetrate the wood. Copper naphthenate is listed in AWPA standards for treatment of major softwood species that are used for a variety of wood products. It is not listed for treatment of any hardwood species, except when the wood is used for railroad ties. The minimum copper naphthenate retentions (the amount of retention of the preservative in the tie after treatment application) range from 0.04 pounds per cubic foot (0.6 kilograms per cubic meter) for wood used aboveground, to 0.06 pounds per cubic foot (1 kilogram per cubic meter) for wood that will contact the ground and 0.075 pounds per cubic foot (1.2 kilograms per cubic meter) for wood used in critical structural applications.[13]

When dissolved in No. 2 fuel oil (Type C under AWPA standards), copper naphthenate can penetrate wood that is difficult to treat. Copper naphthenate loses some of its ability to penetrate wood when it is dissolved in heavier oils. Copper naphthenate treatments do not significantly increase the corrosion of metal fasteners relative to untreated wood.

Copper naphthenate is commonly used to treat utility poles, although fewer facilities treat utility poles with copper naphthenate than with creosote or pentachlorophenol. Unlike creosote and pentachlorophenol, copper naphthenate is not listed as a Restricted Use Pesticide (RUP)[14] by the EPA. Even though human health concerns do not require copper naphthenate to be listed as an RUP, precautions such as the use of dust masks and gloves are used when working with wood treated with copper naphthenate.

ii. Borates

Borates is the name for a large number compounds containing the element boron. Borate compounds are the most commonly used unfixed waterborne preservatives. Unfixed preservatives can leach from treated wood. They are used for pressure treatment of framing lumber used in areas with high termite hazard and as surface treatments for a wide range of wood products, such as cabin logs and the interiors of wood structures. They are also applied as internal treatments using rods or pastes. At higher rates of retention, borates also are used as fire-retardant treatments for wood. Copper naphthenate treated ties are most effective when dual-treated with borate to prevent decay.[15]

Performance characteristics of borate treatment include protection of the wood against fungi and insects, with low mammalian toxicity. Another advantage of boron is its ability to diffuse with water into wood that normally resists traditional pressure treatment. Wood treated with borates has no added color, no odor, and can be finished (primed and painted).

Inorganic boron is listed as a wood preservative in the AWPA standards, which include formulations prepared from sodium octaborate, sodium tetraborate, sodium pentaborate, and boric acid. Inorganic boron is also standardized as a pressure treatment for a variety of species of softwood lumber used out of contact with the ground and continuously protected from water. The minimum borate (B_2O_3) retention is 0.17 pounds per cubic foot (2.7 kilograms per cubic meter). A retention of 0.28 pounds per cubic foot (4.5 kilograms per cubic meter) is specified for areas with Formosan subterranean termites.[16]

Borate preservatives are available in several forms, but the most common is disodium octaborate tetrahydrate (DOT). DOT has higher water solubility than many other forms of borate, allowing more concentrated solutions to be used and increasing the mobility of the borate through the wood. With the use of heated solutions, extended pressure periods, and diffusion periods after treatment, DOT can penetrate wood species that are relatively difficult to treat, such as spruce. Several pressure treatment facilities in the United States use borate solutions. For refractory wood species destined for high decay areas, it has now become relatively common practice to use borates as a pre-treatment to protect the wood prior to processing with creosote.

iii. Creosote

Creosote was introduced as a wood preservative in the late 1800's to prolong the life of railroad ties. CTRTs

[12] American Forest & Paper Association, American Wood Council—Letter to EPA Administrator, December 6, 2012.

[13] U.S. Forest Service Preservative Treated Wood and Alternative Products in the Forest Service: *https://www.fs.fed.us/t-d/pubs/htmlpubs/htm06772809/page02.htm*

[14] List of Restricted Use Pesticides found at: *https://www.epa.gov/pesticide-worker-safety/restricted-use-products-rup-report.*

[15] Railroad Tie Association. Frequently Asked Questions *http://www.rta.org/faqs-main.*

[16] U.S. Forest Service Preservative Treated Wood and Alternative Products in the Forest Service *https://www.fs.fed.us/t-d/pubs/htmlpubs/htm06772809/page02.htm.*

remain the material of choice by railroads due to their long life, durability, cost effectiveness, and sustainability. As creosote is a by-product of coal tar distillation, and coal tar is a by-product of making coke from coal, creosote is considered a derivative of coal. The creosote component of CTRTs is also governed by the standards established by AWPA. AWPA has established two blends of creosote, P1/13 and P2. Railroad ties are typically manufactured using the P2 blend that is more viscous than other blends.

B. OTRTs Under Current NHSM Rules

1. March 2011 NHSM Final Rule

The March 2011 NHSM final rule stated that most creosote-treated wood is non-hazardous. However, the presence of hexachlorobenzene, a CAA section 112 hazardous air pollutant (HAP), as well as other HAPs suggested that creosote-treated wood, including CTRTs, contained contaminants at levels that are not comparable to or lower than those found in wood or coal, the fuel that creosote-treated wood would replace. In making this assessment in 2011, the Agency did not consider fuel oil [17] as a traditional fuel that CTRTs would replace, and concluded at the time that combustion of creosote-treated wood may result in destruction of contaminants contained in those materials. Such destruction is an indication of discard and incineration, a waste activity. Accordingly, creosote-treated wood, including CTRTs when burned, seemed more like a waste than a commodity, and did not meet the contaminant legitimacy criterion. This material, therefore, was considered a solid waste when burned, and units' combusting it would be subject to the CAA section 129 emission standards (40 CFR part 60, subparts CCCC and DDDD).

Regarding borate-treated wood, after reviewing data from one commenter which showed that the levels of contaminants in this material are comparable to those found in unadulterated wood for the seven contaminants for which data was presented, the Agency stated in the March 2011 final rule that such treated-wood meets the legitimacy criterion on the level of contaminants and comparability to traditional fuels. The rule further stated that borate-treated wood could be classified as a non-waste fuel, provided the other two legitimacy criteria are met and the contaminant levels for any other HAP that may be present in this material are also comparable to or less than those in traditional fuels. The rule noted that such borate-treated wood would need to be burned as a fuel for energy recovery within the control of the generator. Finally, the rule indicated that EPA was aware of some borate-treated wood is subsequently treated with creosote, to provide an insoluble barrier to prevent the borate compounds from leaching out of the wood. The Agency did not receive data on the contaminant levels of the resulting material with both treatments, but data presented on creosote treated lumber when combusted in units designed to burn biomass indicated that this NHSM would likely no longer meet the legitimacy criteria and would be considered a solid waste when burned as a fuel.

As indicated in the rule, EPA did not have information generally about the transfer of borate-treated wood to other companies to make a broad determination about its use as a fuel outside the control of the generator. Thus, under the March 2011 rule, borate-treated wood would need to be burned as a fuel for energy recovery within the control of the generator (76 FR 15484). Persons could make self-determinations regarding other uses of the material as fuel including use outside the control of the generator.

With regard to wood treated with copper naphthenate, the March 2011 rule indicated that no additional contaminant data was provided that would reverse the position in the June 2010 proposed rule, which considered wood treated with copper naphthenate a solid waste because of concerns of elevated levels of contaminants (76 FR 15484, March 21, 2011). The March 2011 rule acknowledged, as in the June 2010 proposed rule (75 FR 31862, June 4, 2010), that the Agency did not have sufficient information on the contaminant levels in wood treated with copper naphthenate. The rule further stated that if a person could demonstrate that copper naphthenate treated-wood is burned in a combustion unit as a fuel for energy recovery within the control of the generator and meets the legitimacy criteria, or if discarded, can demonstrate that they have sufficiently processed the material and meet legitimacy criteria, that person can handle its copper naphthenate treated-wood as a non-waste fuel.

2. February 2013 NHSM Final Rule

In the February 2013 NHSM final rule (78 FR 9173), EPA noted that the American Forest and Paper Association (AF&PA) and the American Wood Council submitted a letter with supporting information on December 6, 2012, seeking a categorical non-waste listing and clarification letter for CTRTs combusted in any unit.[18] The letter included information regarding the amounts of railroad ties combusted each year and the value of the ties as fuel. The letter also discussed how CTRTs satisfy the legitimacy criteria, including its high Btu value.

While this information was useful, it was not sufficient for the EPA to propose that CTRTs be listed categorically as a non-waste fuel at that time. Therefore, EPA requested that additional information be provided, and indicated that if this additional information supported and supplemented the representations made in the December 2012 letter, EPA would expect to propose a categorical non-waste listing for CTRTs. The requested information included:

- A list of industry sectors, in addition to forest product mills, that burn railroad ties for energy recovery,
- The types of boilers (*e.g.,* kilns, stoker boilers, circulating fluidized bed, etc.) that burn railroad ties for energy recovery,
- The traditional fuels and relative amounts (*e.g.,* startup, 30 percent, 100 percent) of these traditional fuels that could otherwise generally be burned in these types of units. The extent to which non-industrial boilers (*e.g.,* commercial or residential boilers) burn CTRTs for energy recover, and
- Laboratory analyses for contaminants known or reasonably suspected to be present in creosote-treated railroad ties, and contaminants known to be significant components of creosote, specifically polycyclic aromatic hydrocarbons (*i.e.,* PAH–16), dibenzofuran, cresols, hexachlorobenzene, 2,4-dinitrotoluene, biphenyl, quinoline, and dioxins.[19] (78 FR 9173, February 7, 2013.)

See 81 FR 6723–24, February 8, 2016, for the detailed responses to the above requested information.

[17] For the purposes of this rule, fuel oil means oils 1–6, including distillate, residual, kerosene, diesel, and other petroleum based oils. It does not include gasoline or unrefined crude oil.

[18] American Forest & Paper Association, American Wood Council—Letter to EPA Administrator, December 6, 2012. Included in docket for this final rule.

[19] The Agency requested these analyses based on the limited information previously available concerning the chemical makeup of CTRTs. That limited information included one sample from 1990 (showing the presence of both PAHs and dibenzofuran), past TCLP results (which showing the presence of cresols, hexachlorobenzene and 2,4-dinitrotoluene), Material Safety Data Sheets for coal tar creosote (which showing the potential presence of biphenyl and quinoline), and the absence of dioxin analyses prior to combustion despite dioxin analyses of post-combustion emissions.

3. February 2016 NHSM Final Rule

As discussed in section II.B of this preamble, the February 2016 final rule stated that EPA had reviewed the information submitted from stakeholders regarding CTRTs and determined that the information supported a categorical determination for those materials under certain conditions which were promulgated in that rule (see 40 CFR 241.4(a)(7)). The final rule preamble language also referenced an August 21, 2015 letter to Barnes Johnson where TWC requested that the Agency move forward on a subset of materials that were identified in the April 2013 petition (*i.e.* creosote borate, copper naphthenate, and copper naphthenate-borate) (81 FR 6738, February 8, 2016). EPA stated that based on the information received, the Agency believed these three types of treated railroad ties were candidates for categorical non-waste listings and expected to begin development of a proposed rule under 40 CFR 241.4(a) for the three materials in the near future.

C. Scope of the Final Categorical Non-Waste Listing for OTRTs

As discussed in section II.B of this preamble, the November 1, 2016 proposed OTRT rule was based on TWC submitted letters and supporting documents requesting a categorical non-waste fuel listing for OTRTs. The information supporting the proposal and the comments received indicated that these materials have been processed, and meet legitimacy criteria including management as a valuable commodity, meaningful heating value and contaminants at levels comparable to or less than those in the traditional fuels that these combustion units are designed to burn as fuel. In this final rule, the Agency is listing, as categorical non-wastes, processed OTRTs when used as fuels. The rationale for this listing is discussed in detail in the Section D.

For units combusting copper naphthenate-borate and/or copper naphthenate railroad ties, such materials could be combusted as non-waste fuels in units designed to burn biomass, biomass and fuel oil, or biomass and coal under CAA 112 standards. For units combusting railroad ties containing creosote, including creosote-borate or any mixtures of ties containing creosote, borate and copper naphthenate, such materials must be burned in combustion units that are designed to burn, both, biomass and fuel oil in order for the material to be considered a non-waste fuel. The Agency would consider combustion units to meet this requirement if the unit combusts fuel oil as part of normal operations and not solely as part of start up or shut down operations. Units combusting ties mixed with creosote that are designed to burn biomass and fuel oil may also be designed to burn coal under this categorical non-waste fuel listing.

Consistent with, and for the same reasons as the approach for CTRTs outlined in the February 2016 final rule (81 FR 6725), units combusting railroad ties treated with creosote-borate (or other combination mixtures of railroad ties containing creosote, borate and copper naphthenate) in units designed to burn biomass and fuel oil, could also combust those materials in units at major pulp and paper mills or units at power production facilities subject to 40 CFR part 63, subpart DDDDD (Boiler MACT), that combust such ties and had been designed to burn biomass and fuel oil, but are modified (*e.g.,* oil delivery mechanisms are removed) in order to use natural gas instead of fuel oil as part of normal operations and not solely as part of start-up or shut-down operations. These ties may continue to be combusted as a product fuel only if certain conditions are met, which are intended to ensure that they are not being discarded:

- Must be combusted in existing (*i.e.,* commenced construction prior to April 14, 2014) stoker, bubbling bed, fluidized bed or hybrid suspension grate boilers; and
- Must comprise no more than 40 percent of the fuel that is used on an annual heat input basis.[20]

These conditions will also apply if an existing unit designed to burn fuel oil and biomass (at a power production facility or pulp and paper mill) is modified to burn natural gas at some point in the future.

Units combusting ties mixed with creosote that are designed to burn biomass and fuel oil, but have switched from fuel oil to natural gas, may also be designed to burn coal under this categorical non-waste fuel listing.

The approach for railroad ties treated with creosote-borate (or other mixtures of treated railroad ties containing creosote, borate and copper naphthenate) addresses only the circumstance where contaminants in these railroad ties are comparable to or less than the traditional fuels the combustion unit was originally designed to burn (both fuel oil and biomass) but that design was modified in order to combust natural gas. The approach is not a general means to circumvent the contaminant legitimacy criterion by allowing combustion of any NHSM with elevated contaminant levels, *i.e.,* levels not comparable to the traditional fuel the unit is currently designed to burn. As contaminants in railroad ties treated with creosote are comparable to the contaminant in biomass and fuel oil, units that had switched to natural gas from fuel oil would clearly be in compliance with the legitimacy criteria if they did not switch to the cleaner natural gas fuel. While contaminant levels may in fact be higher when compared to natural gas, boilers at pulp and paper mills and power production facilities have demonstrated the ability to combust these materials should not be penalized for switching to a cleaner fuel. Removal of oil delivery mechanisms from units designed to burn fuel oil does not support a conclusive decision that such ties do not meet legitimacy criteria and are now being discarded.

Information indicating that these railroad ties alone or in the combination mixtures are an important part of the fuel mix because of the consistently lower moisture content and higher Btu value, benefit the combustion units with significant swings in steam demand, therefore suggesting that discard is not occurring. The Agency believes it appropriate to balance other relevant factors in this categorical non-waste determination and to decide that the switching to the cleaner natural gas would not render these materials a waste fuel.

This determination is consistent with the February 2016 rule, and is based on the historical usage of CTRT as a product fuel in stoker, bubbling bed, fluidized bed and hybrid suspension grate boilers (*i.e.,* boiler designs used to combust used railroad ties, see 81 FR 6732).

D. Rationale for Final Rule

1. Discard

When deciding whether an NHSM should be listed as a categorical non-waste fuel in accordance with 40 CFR 241.4(b)(5), EPA first evaluates whether or not the NHSM has been discarded, and if not discarded, whether or not the

[20] As noted in the February 2016 rule, the standards are based on information received after the February 7, 2013 rule specifically with regard to *existing* stoker, bubbling bed, fluidized bed or hybrid suspension grate boilers in the pulp and paper and power production industries that were switching from fuel oil to natural gas due to lower compliance costs and the ability to use cleaner fuels during operation. The 40% fuel use condition is based on statements from industry indicating that CTRTs generally compromise 40% of the total fuel load. These conditions regarding types of existing units and fuel use were designed to ensure, in this circumstance, that the ties were not discarded. (81 FR 6724).

material is legitimately used as a product fuel in a combustion unit. If the material has been discarded, EPA evaluates whether the NHSM has been sufficiently processed into a material that is legitimately used as a product fuel.

Information submitted by petitioners regarding OTRTs removed from service and processed was analogous to that for CTRTs. Specifically, OTRTs removed from service are sometimes temporarily stored in the railroad right-of-way or at another location selected by the removal/reclamation company. This means that not all OTRTs originate from crossties removed from service in the same year; some OTRTs are processed from crossties removed from service in prior years and stored by railroads or removal/reclamation companies until a contract for reclamation is in place.

EPA reiterates its position from the February 8, 2016 (81 FR 6725) final rule regarding cases where a railroad or reclamation company waits for more than a year to realize the value of OTRTs as a fuel. The Agency again concludes that OTRTs are removed from service and stored in a railroad right-of-way or location for long periods of time, that is, a year or longer without a determination regarding their final end use (*e.g.,* landscaping, as a fuel or landfilled) indicates that the material has been discarded in the first instance and is a solid waste (see also the general discussion of discard at 76 FR 15463, March 11, 2011 rule).[21] Regarding any assertion that OTRTs are a valuable commodity in a robust market, the Agency would like to remind persons that NHSMs may have value in the marketplace and still be considered solid wastes.

2. Processing

Since the OTRTs removed from service are considered discarded because they can be stored for long periods of time without a final determination regarding their final end use, to be considered a non-waste fuel they must be processed, *i.e.* transforming the OTRTs into a product fuel that meets the legitimacy criteria.[22] The Agency concludes that the processing of OTRTs described previously in section III.A.1 of this preamble meets the definition of processing in 40 CFR 241.2. As discussed in that section, processing includes operations that transform a discarded NHSM into a non-waste fuel or non-waste ingredient, including operations necessary to: Remove or destroy contaminants; significantly improve the fuel characteristics (*e.g.,* sizing or drying of the material, in combination with other operations); chemically improve the as-fired energy content; or improve the ingredient characteristics. Minimal operations that result only in modifying the size of the material by shredding do not constitute processing for the purposes of the definition. The Agency concludes that OTRTs meet the definition of processing in 40 CFR 241.3 because contaminant metals are removed in several steps and the fuel characteristics are significantly improved; specifically:

- Contaminants (*e.g.,* spikes, plates, transmission wire and insulator bulbs) are removed during initial inspection by the user organization;
- Removal of contaminant metals occurs again at the reclamation facility using magnets; such removal may occur in multiple stages;
- The fuel characteristics of the material are improved when the crossties are ground or shredded to a specified size (typically 1–2 inches) due to increased surface area. The final size depends on the particular needs of the end-use combustor. The grinding may occur in one or more phases; and
- Once the contaminant metals are removed and the OTRTs are ground, there may be additional operations to bring the material to a specified size.

3. Legitimacy Criteria

EPA can list a discarded NHSM as a categorical non-waste fuel if it has been ''sufficiently processed,'' and meets the legitimacy criteria. The three legitimacy criteria to be evaluated are: (1) The NHSM must be managed as a valuable commodity, (2) the NHSM must have a meaningful heating value and be used as a fuel in a combustion unit to recover energy, and (3) the NHSM must have contaminants or groups of contaminants at levels comparable to or less than those in the traditional fuel the unit is designed to burn.[23]

i. Managed as a Valuable Commodity

Data submitted[24] indicates that OTRT processing and subsequent management is analogous to that of CTRTs outlined in the February 8, 2016 final rule (81 FR 6725). The processing of OTRTs is correlated to the particular needs of the end-use combustor. The process begins when the railroad or utility company removes the old OTRTs from service. An initial inspection is conducted where non-combustible materials are sorted out. OTRTs are stored in staging areas until shippable quantities are collected. Shippable quantities are transported via truck or rail to a reprocessing center.

At the reprocessing center, pieces are again inspected, sorted, and non-combustible materials are removed. Combustible pieces then undergo size reduction and possible blending with compatible combustibles. Once the OTRTs meet the end use specification, they are then sold directly to the end-use combustor for energy recovery. OTRTs are delivered to the end-use combustors via railcar and/or truck similar to delivery of traditional biomass fuels.

After receipt, OTRTs are stockpiled similar to analogous biomass fuels (*e.g.,* in fuel silos) to maximize dryness and minimize dust. While awaiting combustion at the end-user, which usually occurs within one day to a week of arrival, the OTRTs are also transferred and/or handled from storage in a manner consistent with the transfer and handling of biomass fuels. Procedures include screening by the end-use combustor, combining with other biomass fuels, and transferring to the combustor via conveyor belt or front-end loader.

Since the storage of the processed material does not exceed reasonable time frames and the processed ties are handled/treated similar to analogous biomass fuels by end-use combustors, OTRTs meet the criterion for being managed as a valuable commodity.

ii. Meaningful Heating Value and Used as a Fuel To Recover Energy

EPA received the following information for the heating values of processed OTRTs: 6,867 Btu/lb for creosote-borate; 7,333 Btu/lb for copper naphthenate; 5,967 Btu/lb for copper naphthenate-borate; 5,232 Btu/lb for mixed railroad ties containing 56% creosote, 41% creosote-borate, 1% copper naphthenate, 2% copper naphthenate-borate; and 7,967 Btu/lb for mixed ties containing 25% creosote, 25% creosote borate, 25% copper naphthenate and 25% copper

[22] Persons who concluded that their OTRTs are not discarded and thus are not subject to this categorical determination may submit an application to the EPA Regional Administrator that the material has not been discarded when transferred to a third party and is indistinguishable from a product fuel (76 FR 15551, March 21, 2011). Persons can also make self-determinations for their NHSM.

[23] We note that even if the NHSM does not meet one or more of the legitimacy criteria, the Agency could still propose to list an NHSM categorically by balancing the legitimacy criteria with other relevant factors (see 40 CFR 241.4(b)(5)(ii).

[24] See section III.D.4. of this preamble for a description of EPA's review of all data submitted regarding meeting legitimacy criteria.

naphthenate-borate.[25] [26] In the March 2011 NHSM final rule, the Agency indicated that NHSMs with an energy value greater than 5,000 Btu/lb, as fired, are considered to have a meaningful heating value.[27] Thus, OTRTs meet the criterion for meaningful heating value and used as a fuel to recover energy.

iii. Contaminants Comparable to or Lower Than Traditional Fuels

For each type of OTRT, EPA has compared the September 2015 data submitted on contaminant levels by petitioners to contaminant data for biomass/untreated wood, and fuel oil. In response to comments on the proposal, EPA has also taken the September 2015 data and compared them to coal. The petitioner's data included samples taken from 15 different used creosote-borate ties, 15 different copper naphthenate-borate ties, 15 creosote ties, and 15 copper naphthenate ties. Each type of tie sample was divided into three groups of five tie samples each. This resulted in 12 total groups corresponding to the four different types ties. Each group was then isolated, mixed together, processed into a fuel-type consistency, and shipped to the laboratory for analysis.

Use of these types of ties are relatively new compared to creosote, so few of these OTRT have transitioned to fuel use at this time, but we expect more in the future. To simulate that transition over time, three samples of unequally-blended tie material (56% creosote, 41% creosote-borate, 1% copper naphthenate, 2% copper naphthenate-borate) and three samples of equally blended tie material (25% creosote, 25% creosote-borate, 25% copper naphthenate, 25% copper naphthenate-borate) were analyzed. The lab analyzed three samples of each of the processed tie treated with creosote, creosote-borate, copper naphthenate and copper naphthenate-borate. In addition, the lab analyzed three samples of equally-blended tie material, three samples of unevenly-blended tie material, and three samples of untreated wood for a total of 18 samples.

In addition to September 2015 data, copper naphthenate-borate, and copper naphthenate test data had also been submitted in conjunction with TWC's earlier December 4, 2013 petition and are included in the following tables. As noted in section II.B of this preamble, the 2013 data did not have details on the number of samples collected. In addition, sulfur was measured using leachable anion techniques that do not provide results of the total contaminant content, and heat content was not measured. Therefore, the Agency's decisions are based on the complete data submitted in 2015 supplemented by the 2013 data. The results of the analysis of the 2015 and 2013 data are shown in the following tables.

Copper Naphthenate

Contaminant	Copper naphthenate railroad ties contaminant levels [a f]	Biomass/ untreated wood [b]	Fuel oil [b]	Coal [b]
Metal Elements (PPM-dry basis)				
Antimony	ND<1.4	ND–26	ND–15.7	0.5–10
Arsenic	0.53–0.93	ND–298	ND–13	0.5–174
Beryllium	ND–0.05	ND–10	ND–19	0.1–206
Cadmium	ND–0.20	ND–17	ND–1.4	0.1–19
Chromium	0.22–0.50	ND–340	ND–37	0.5–168
Cobalt	ND–0.81	ND–213	ND–8.5	0.5–30
Lead	ND–3.5	ND–340	ND–56.8	2–148
Manganese	7.1–166	ND–15,800	ND–3,200	5–512
Mercury	ND<0.20	ND–1.1	ND–0.2	0.02–3.1
Nickel	0.79–1.1	ND–540	ND–270	0.5–730
Selenium	0.41–0.84	ND–9.0	ND–4	0.2–74.3
Non-Metal Elements (ppm-dry basis)				
Chlorine	ND<100	ND–5,400	ND–1,260	ND–9,080
Fluorine	ND<100	ND–300	ND–14	ND–178
Nitrogen	ND<500	200–39,500	42–8,950	13,600–54,000
Sulfur	190–240	ND–8,700	ND–57,000	740–61,300
Semivolatile Hazardous Air Pollutants (ppm-dry basis)				
Acenaphthene	3.0–95	ND–50	[h] 111	—
Acenaphthylene	ND<1.3	ND–4	4.1	—
Anthracene	ND–6.3	0.4–87	96	—
Benzo[a]anthracene	ND<1.3	ND–62	41–1,900	—
Benzo[a]pyrene	ND<1.3	ND–28	0.60–960	—
Benzo[b]fluoranthene	ND<1.3	ND–42	11–540	—
Benzo[ghi]perylene	ND<1.3	ND–9	11.4	—
Benzo[k]fluoranthene	ND<1.3	ND–16	0.6	—
Chrysene	ND<1.3	ND–53	2.2–2,700	—
Dibenz [a, h] anthracene	ND<1.3	ND–3	4.0	—
Fluoranthene	ND–6.5	0.6–160	31.6–240	—
Fluorene	4.5–53	[h] ND–40	3,600	—
Indeno[1,2,3-cd] pyrene	ND<1.3	ND–12	2.3	—
Naphthalene	8.2–80	[h] ND–38	34.3–4,000	—

[25] Letter from Jeff Miller to Barnes Johnson, September 11, 2015; *see* docket for this rule.

[26] These values reflect averages from 2013 and 2015 data. Relevant lab data on Btu/lb for each types of processed OTRT can be viewed in the September and October 2015 letters from Jeff Miller to Barnes Johnson included in the docket.

[27] *See* 76 FR 15541, March 21, 2011.

Contaminant	Copper naphthenate railroad ties contaminant levels [a f]	Biomass/ untreated wood [b]	Fuel oil [b]	Coal [b]
Phenanthrene	8.2–77	0.9–190	0–116,000	—
Pyrene	ND–15	0.2–160	23–178	—
16–PAH	49–298	5–921	3,900–54,700	[h] 6–253
PAH (52 extractable)	[e] —	—	—	14–2,090
Pentachlorophenol	[g] ND<30	ND–1	—	—
Biphenyl	[e] —	—	1,000–1,200	—
Total SVOC [c]	77–328	5–922	4,900–54,700	20–2,343
Volatile Organic Compound Hazardous Air Pollutants (ppm-dry basis)				
Benzene	ND<0.69	—	ND–75	ND–38
Phenol	[e] —	—	ND–7,700	—
Styrene	ND<0.69	—	ND–320	1.0–26
Toluene	ND<0.69	—	ND–380	8.6–56
Xylenes	ND<0.69	—	ND–3,100	4.0–28
Cumene	[e] —	—	6,000–8,600	—
Ethyl benzene	ND<0.69	—	22–1,270	0.7–5.4
Formaldehyde	[e] —	1.6–27	—	—
Hexane	[e] —	—	50–10,000	—
Total VOC [d]	ND<3.4	1.6–27	6,072–19,810	14.3–125.4

Notes:

[a] Data provided by Treated Wood Council on April 3, 2013, September 11, 2015 and October 19, 2015.

[b] Contaminant Concentrations in Traditional Fuels: Tables for Comparison, November 29, 2011, available at *https://www.epa.gov/rcra/contaminant-concentrations-traditional-fuels-tables-comparison.* Contaminant data drawn from various literature sources and from data submitted to USEPA, Office of Air Quality Planning and Standards (OAQPS). SVOC values from 2013 IEc data that will be available in the rule docket.

[c] Total SVOC ranges do not represent a simple sum of the minimum and maximum values for each contaminant. This is because minimum and maximum concentrations for individual VOCs and SVOCs do not always come from the same sample.

[d] Naphthalene was the only analyte detected in Oct 2015 VOC testing, but this analyte is included in the SVOC group, so is not reflected here.

[e] Cells with the "—" indicate analytes not tested for in treated wood, but these are not expected to be present in treated wood formulation being analyzed based on preservative chemistry and results from previous CTRT testing (*i.e.,* not present in CTRT ties).

[f] Non-detects are indicated by "<" preceding the method reporting limit, not the method detection limit. Therefore, there are many cases where the non-detect value may be greater than another test's detected value due to analysis-specific RLs being different between individual tests (*i.e.,* differences in tested amount or analyzer calibration range adjustments). If result is less than the method detection limit (MDL), the method reporting limit (MRL), which is always greater than MDL, was used by the lab.

[g] Not expected in the treated wood formulation being tested based on preservative chemistry.

[h] EPA has generally defined "comparable to or lower than" to mean contaminants can be presented in NHSMs within a small acceptable range or at lower levels, relative to the contaminants found in the traditional fuels. Thus, fuels that are produced from nonhazardous secondary materials can have contaminants that are somewhat higher than the traditional fuel that otherwise would be burned and still qualify as being comparable, and would not be considered a solid waste (76 FR 15481).

As indicated, railroad ties treated with copper naphthenate have contaminants that are comparable to or less than those in biomass/untreated wood, fuel oil or coal. Given that these railroad ties are a type of wood biomass material, such ties can be combusted in units designed to burn biomass, biomass and fuel oil, or biomass and coal.

Copper Naphthenate—Borate

Contaminant	Copper naphthenate-borate railroad ties contaminant levels [a f]	Biomass/ untreated wood [b]	Fuel oil [b]	Coal [b]
Metal Elements (ppm-dry basis)				
Antimony	ND<1.4	ND–26	ND–15.7	0.5–10
Arsenic	0.52–0.72	ND–298	ND–13	0.5–174
Beryllium	ND<.67	ND–10	ND–19	0.1–206
Cadmium	ND–0.078	ND–17	ND–1.4	0.1–19
Chromium	0.11–0.78	ND–340	ND–37	0.5–168
Cobalt	ND–0.74	ND–213	ND–8.5	0.5–30
Lead	ND–4.0	ND–340	ND–56.8	2–148
Manganese	14–170	ND–15,800	ND–3,200	5–512
Mercury	ND<0.15	ND–1.1	ND–0.2	0.02–3.1
Nickel	0.46–2.0	ND–540	ND–270	0.5–730
Selenium	ND–0.52	ND–9.0	ND–4	0.2–74.3
Non-Metal Elements (ppm-dry basis)				
Chlorine	ND<100	ND–5,400	ND–1,260	ND–9,080

Contaminant	Copper naphthenate-borate railroad ties contaminant levels [a f]	Biomass/ untreated wood [b]	Fuel oil [b]	Coal [b]
Fluorine	ND<100	ND–300	ND–14	ND–178
Nitrogen	ND<500	200–39,500	42–8,950	13,600–54,000
Sulfur	140–170	ND–8,700	ND–57,000	740–61,300
Semivolatile Hazardous Air Pollutants (ppm-dry basis)				
Acenaphthene	4.8–17	ND–50	111	—
Acenaphthylene	ND–0.9	ND–4	4.1	—
Anthracene	ND–7.2	0.4–87	96	—
Benzo[a]anthracene	ND–3.7	ND–62	41–1,900	—
Benzo[a]pyrene	ND–1.4	ND–28	0.60–960	—
Benzo[b]fluoranthene	ND–3.9	ND–42	11–540	—
Benzo[ghi]perylene	ND<1.2	ND–9	11.4	—
Benzo[k]fluoranthene	ND–20	[h] ND–16	0.6	—
Chrysene	ND–6.6	ND–53	2.2–2,700	—
Dibenz [a, h] anthracene	ND<1.2	ND–3	4.0	—
Fluoranthene	ND–20	0.6–160	31.6–240	—
Fluorene	2.2–16	ND–40	3,600	—
Indeno[1,2,3-cd] pyrene	ND<1.2	ND–12	2.3	—
Naphthalene	5.2–82	[h] ND–38	34.3–4,000	—
Phenanthrene	3.6–43	0.9–190	0–116,000	—
Pyrene	ND–19	0.2–160	23–178	—
16–PAH	39–145	5–921	3,900–54,700	6–253
PAH (52 extractable)	[e] —	—	—	14–2,090
Pentachlorophenol	[g] ND <28	ND–1	—	—
Biphenyl	[e] —	—	1,000–1,200	—
Total SVOC [c]	66–173	5–922	4,900–54,700	20–2,343
Volatile Organic Compound Hazardous Air Pollutants (ppm-dry basis)				
Benzene	ND<0.77	—	ND–75	ND–38
Phenol	[e] —	—	ND–7,700	—
Styrene	ND<0.77	—	ND–320	1.0–26
Toluene	ND<0.77	—	ND–380	8.6–56
Xylenes	ND<0.77	—	ND–3,100	4.0–28
Cumene	[e] —	—	6,000–8,600	—
Ethyl benzene	ND<0.77	—	22–1,270	0.7–5.4
Formaldehyde	[e] —	1.6–27	—	—
Hexane	[e] —	—	50–10,000	—
Total VOC [d]	ND<3.8	1.6–27	6,072–19,810	14.3–125.4

Notes:

[a] Data provided by Treated Wood Council on April 3, 2013, September 11, 2015 and October 19, 2015.

[b] Contaminant Concentrations in Traditional Fuels: Tables for Comparison, November 29, 2011, available at *https://www.epa.gov/rcra/contaminant-concentrations-traditional-fuels-tables-comparison.* Contaminant data drawn from various literature sources and from data submitted to USEPA, Office of Air Quality Planning and Standards (OAQPS). SVOC values from 2013 IEc data that will be available in the rule docket.

[c] Total SVOC ranges do not represent a simple sum of the minimum and maximum values for each contaminant. This is because minimum and maximum concentrations for individual VOCs and SVOCs do not always come from the same sample.

[d] Naphthalene was the only analyte detected in Oct 2015 VOC testing, but this analyte is included in the SVOC group, so is not reflected here.

[e] Cells with the "—" indicate analytes not tested for in treated wood, but these are not expected to be present in treated wood formulation being analyzed based on preservative chemistry and results from previous CTRT testing (*i.e.,* not present in CTRT ties).

[f] Non-detects are indicated by "<" preceding the method reporting limit, not the method detection limit. Therefore, there are many cases where the non-detect value may be greater than another test's detected value due to analysis-specific RLs being different between individual tests (*i.e.,* differences in tested amount or analyzer calibration range adjustments). If result is less than the method detection limit (MDL), the method reporting limit (MRL), which is always greater than MDL, was used by the lab.

[g] Not expected in the treated wood formulation being tested based on preservative chemistry.

[h] EPA has generally defined "comparable to or lower than" to mean contaminants can be presented in NHSMs within a small acceptable range or at lower levels, relative to the contaminants found in the traditional fuels. Thus, fuels that are produced from nonhazardous secondary materials can have contaminants that are somewhat higher than the traditional fuel that otherwise would be burned and still qualify as being comparable, and would not be considered a solid waste (76 FR 15481).

As indicated, railroad ties treated with copper naphthenate-borate have contaminants that are comparable to or less than those in biomass/untreated wood, fuel oil (see discussion of grouping of SVOCs, 78 FR 9146, February 7, 2013) or coal. Given that these railroad ties are a type of treated wood biomass, such ties can be combusted in units designed to burn biomass, or biomass and fuel oil, or biomass and coal.

Creosote-Borate

Contaminant	Creosote-borate railroad ties contaminant levels [a f]	Biomass/ untreated wood [b]	Fuel oil [b]	Coal [b]
Metal Elements (ppm-dry basis)				
Antimony	ND<1.3	ND–26	ND–15.7	0.5–10
Arsenic	ND–0.80	ND–298	ND–13	0.5–174
Beryllium	ND–0.032	ND–10	ND–19	0.1–206
Cadmium	0.059–0.25	ND–17	ND–1.4	0.1–19
Chromium	0.10–1.1	ND–340	ND–37	0.5–168
Cobalt	ND–0.22	ND–213	ND–8.5	0.5–30
Lead	ND–1.8	ND–340	ND–56.8	2–148
Manganese	22–140	ND–15,800	ND–3,200	5–512
Mercury	ND–0.066	ND–1.1	ND–0.2	0.02–3.1
Nickel	0.71–1.8	ND–540	ND–270	0.5–730
Selenium	0.59–1.4	ND–9.0	ND–4	0.2–74.3
Non-Metal Elements (ppm-dry basis)				
Chlorine	ND<100	ND–5,400	ND–1,260	ND–9,080
Fluorine	ND<100	ND–300	ND–14	ND–178
Nitrogen	ND<500	200–39,500	42–8,950	13,600–54,000
Sulfur	170–180	ND–8,700	ND–57,000	740–61,300
Semivolatile Hazardous Air Pollutants				
Acenaphthene	600–2,200	ND–50	111	—
Acenaphthylene	17–96	ND–4	4.1	—
Anthracene	350–2,000	0.4–87	96	—
Benzo[a]anthracene	200–1,500	ND–62	41–1,900	—
Benzo[a]pyrene	62–500	ND–28	0.60–960	—
Benzo[b]fluoranthene	110–960	ND–42	11–540	—
Benzo[ghi]perylene	13–170	ND–9	11.4	—
Benzo[k]fluoranthene	40–320	ND–16	0.6	—
Chrysene	210–1,300	ND–53	2.2–2,700	—
Dibenz [a, h] anthracene	ND–58	ND–3	4.0	—
Fluoranthene	1,100–8,400	0.6–160	31.6–240	—
Fluorene	500–2,200	ND–40	3,600	—
Indeno[1,2,3-cd] pyrene	14–170	ND–12	2.3	—
Naphthalene	660–2,900	ND–38	34.3–4,000	—
Phenanthrene	2,000–12,000	0.9–190	0–116,000	—
Pyrene	780–5,200	0.2–160	23–178	—
16–PAH	6,600–38,000	5–921	3,900–54,700	6–253
PAH (52 extractable)	[e] —	—	—	14–2,090
Pentachlorophenol	[g] ND <790	ND–1	—	—
Biphenyl	[h] 137–330	—	1,000–1,200	—
Total SVOC [c]	7,200–39,000	5–922	4,900–54,700	20–2,343
Volatile Organic Compound Hazardous Air Pollutants (ppm-dry basis)				
Benzene	ND<3.9	—	ND–75	ND–38
Phenol	[e] —	—	ND–7,700	—
Styrene	ND<3.9	—	ND–320	1.0–26
Toluene	ND<3.9	—	ND–380	8.6–56
Xylenes	ND<3.9	—	ND–3,100	4.0–28
Cumene	[e] —	—	6,000–8,600	—
Ethyl benzene	ND<3.9	—	22–1,270	0.7–5.4
Formaldehyde	[e] —	1.6–27	—	—
Hexane	[e] —	—	50–10,000	—
Total VOC [d]	ND<20	1.6–27	6,072–19,810	14.3–125.4

Notes:

[a] Data provided by Treated Wood Council on September 11, 2015 and October 19, 2015.

[b] Contaminant Concentrations in Traditional Fuels: Tables for Comparison, November 29, 2011, available at *https://www.epa.gov/rcra/contaminant-concentrations-traditional-fuels-tables-comparison.* Contaminant data drawn from various literature sources and from data submitted to USEPA, Office of Air Quality Planning and Standards (OAQPS). SVOC values from 2013 IEc data that will be available in the rule docket.

[c] For SVOC contaminant analyses, grouping of contaminants is appropriate in this case when making contaminant comparisons for purposes of meeting the legitimacy criterion. Under the grouping concept, individual SVOC levels may be elevated above that of the traditional fuel, but the contaminant legitimacy criterion will be met as long as total SVOCs is comparable to or less than that of the traditional fuel. Such an approach is standard practice employed by the Agency in developing regulations and is consistent with monitoring standards under CAA sections 112 and 129. *See* 78 FR 9146, February 7, 2013, for further findings that relate to the issue of grouping contaminants. Note also, total SVOC ranges do not represent a simple sum of the minimum and maximum values for each contaminant. This is because minimum and maximum concentrations for individual VOCs and SVOCs do not always come from the same sample.

[d] Naphthalene was the only analyte detected in Oct 2015 VOC testing, but this analyte is included in the SVOC group, so is not reflected here.

[e] Cells with the "—" indicate analytes not tested for in treated wood, but these are not expected to be present in treated wood formulation being analyzed based on preservative chemistry and results from previous CTRT testing (*i.e.,* not present in CTRT ties).

[f] Non-detects are indicated by "<" preceding the method reporting limit, not the method detection limit. Therefore, there are many cases where the non-detect value may be greater than another test's detected value due to analysis-specific RLs being different between individual tests (*i.e.,* differences in tested amount or analyzer calibration range adjustments). If result is less than the method detection limit (MDL), the method reporting limit (MRL), which is always greater than MDL, was used by the lab.

[g] Not expected in the treated wood formulation being tested based on preservative chemistry.

[h] Not tested for, but presumptive worst-case value is presented for treated wood type based on data from previous CTRT testing.

In the contaminant comparison, EPA considered two scenarios. In the first scenario, where a combustion unit is designed to only burn biomass or coal, EPA compared contaminant levels in creosote-borate treated railroad ties to contaminant levels in biomass/untreated wood and coal. In this scenario, the total SVOC levels can reach 39,000 ppm, driven by high levels of polycyclic aromatic hydrocarbons (PAHs).[28] As these compounds are at very low levels in biomass/untreated wood and coal, the contaminants are not comparable to the traditional fuel that the unit was designed to burn.

In the second scenario, a combustion unit is designed to burn both, biomass/untreated wood and fuel oil as well as coal. As previously mentioned, SVOCs are present in creosote-borate railroad ties (up to 39,000 ppm) at levels within the range observed in fuel oil (up to 54,700 ppm). Therefore, creosote-borate railroad ties have comparable contaminant levels as compared to other fuels combusted in units designed to burn both biomass/untreated wood and fuel oil, and as such, meet this criterion if used in facilities that are designed to burn both, biomass/untreated wood and fuel oil.[29] Such facilities designed to burn both biomass and fuel may also burn coal.

As stated in the preamble to the February 7, 2013, NHSM final rule, combustors may burn NHSMs as a product fuel if the contaminants are comparable to or lower than a traditional fuel the unit is designed to burn (78 FR 9149). Combustion units are often designed to burn multiple traditional fuels, and some units can and do rely on different fuel types at different times based on availability of fuel supplies, market conditions, power demands, and other factors. Under these circumstances, it is arbitrary to restrict the combustion for energy recovery of NHSMs based on contaminant comparison to only one traditional fuel if the unit could burn a second traditional fuel chosen due to such changes in fuel supplies, market conditions, power demands or other factors. If a unit can burn both a solid and liquid fuel, then comparison to either fuel would be appropriate.

In order to make comparisons to multiple traditional fuels, units must be designed to burn those fuels. If a facility compares contaminants in an NHSM to a traditional fuel a unit is not designed to burn, and that material is highly contaminated, a facility would then be able to burn excessive levels of waste components in the NHSM as a means of discard. Such NHSMs would be considered wastes regardless of any fuel value (78 FR 9149, February 7, 2013).[30] Accordingly, the ability to burn a fuel in a combustion unit does have a basic set of requirements, the most basic of which is the ability to feed the material into the combustion unit. The unit must also be able to ensure the material is well-mixed and maintain temperatures within unit specifications.

Mixed Treatments—Creosote, Borate, Copper Naphthenate

Contaminant	Mixed railroad ties (25%C–25%CB–25%CuN–25%CuNB) contaminant levels [a f]	Biomass/untreated wood [b]	Fuel oil [b]	Coal [b]
Mixed Elements (ppm-dry basis)				
Antimony	ND<1.4	ND–26	ND–15.7	0.5–10
Arsenic	ND–0.81	ND–298	ND–13	0.5–174
Beryllium	ND<0.70	ND–10	ND–19	0.1–206
Cadmium	0.15–0.38	ND–17	ND–1.4	0.1–19
Chromium	0.15–0.17	ND–340	ND–37	0.5–168
Cobalt	ND–0.07	ND–213	ND–8.5	0.5–30
Lead	0.50–0.81	ND–340	ND–56.8	2–148
Manganese	110–190	ND–15,800	ND–3,200	5–512
Mercury	ND–0.06	ND–1.1	ND–0.2	0.02–3.1
Nickel	0.75–1.4	ND–540	ND–270	0.5–730
Selenium	ND–0.50	ND–9.0	ND–4	0.2–74.3

[28] We note that for several SVOCs—cresols, hexachlorobenzene, and 2,4-dinitrotoluene, which were expected to be in creosote, and for which information was specifically requested in the February 7, 2013 NHSM final rule (78 FR 9111), the data demonstrate that they were not detectable, or were present at levels so low to be considered comparable.

[29] As discussed previously, the March 21, 2011 NHSM final rule (76 FR 15456), noting the presence of hexachlorobenzene and dinitrotoluene, suggested that creosote-treated lumber include contaminants at levels that are not comparable to those found in wood or coal, the fuel that creosote-treated wood would replace, and would thus be considered solid wastes. The February 8, 2016 final rule (81 FR 6688) differs in several respects from the conclusions in the March 2011 rule. The February 2016 final rule concludes that CTRTs are a categorical non-waste when combusted in units designed to burn both fuel oil and biomass. The March 2011 rule, using 1990 data on railroad cross ties, was based on contaminant comparisons to coal and biomass and not fuel oil. As discussed above, when compared to fuel oil, total SVOC contaminant concentrations (which would include dinitrotoluene and hexachlorobenzene) in CTRTs would be less that those found in fuel oil, and in fact, the 2012 data referenced in this final rule showed non-detects for those two contaminants.

[30] 78 FR 9149 states "If a NHSM does not contain contaminants at levels comparable to or lower than those found in *any* [emphasis added] traditional fuel that a combustion unit could burn, then it follows that discard could be occurring if the NHSM were combusted. Whether contaminants in these cases would be destroyed or discarded through releases to the air, they could not be considered a normal part of a legitimate fuel and the NHSM would be considered a solid waste when used as a fuel in that combustion unit."

Contaminant	Mixed railroad ties (25%C–25%CB–25%CuN–25%CuNB) contaminant levels [a f]	Biomass/ untreated wood [b]	Fuel oil [b]	Coal [b]
Non-Metal Elements (ppm-dry basis)				
Chlorine	ND<100	ND–5,400	ND–1,260	ND–9,080
Fluorine	ND<100	ND–300	ND–14	ND–178
Nitrogen	ND<500	200–39,500	42–8,950	13,600–54,000
Sulfur	140–210	ND–8,700	ND–57,000	740–61,300
Semivolatile Hazardous Air Pollutants (ppm-dry basis)				
Acenaphthene	500–1,100	ND–50	111	—
Acenaphthylene	12–25	ND–4	4.1	—
Anthracene	290–1,100	0.4–87	96	—
Benzo[a]anthracene	140–350	ND–62	41–1,900	—
Benzo[a]pyrene	47–120	ND–28	0.60–960	—
Benzo[b]fluoranthene	83–210	ND–42	11–540	—
Benzo[ghi]perylene	9.4–23	ND–9	11.4	—
Benzo[k]fluoranthene	30–64	ND–16	0.6	—
Chrysene	160–360	ND–53	2.2–2,700	—
Dibenz [a, h] anthracene	ND–4.7	[i] ND–3	[i] 4.0	—
Fluoranthene	800–2,100	0.6–160	31.6–240	—
Fluorene	350–1,000	ND–40	3,600	—
Indeno[1,2,3-cd] pyrene	10–28	ND–12	2.3	—
Naphthalene	320–580	ND–38	34.3–4,000	—
Phenanthrene	1,300–3,800	0.9–190	0–116,000	—
Pyrene	520–1,400	0.2–160	23–178	—
16–PAH	4,500–12,000	5–921	3,900–54,700	6–253
PAH (52 extractable)	[e] —	—	—	14–2,090
Pentachlorophenol	[g] ND	ND–1	—	—
Biphenyl	[h] 137–330	—	1,000–1,200	—
Total SVOC [c]	4,800–13,000	5–922	4,900–54,700	20–2,343
Volatile Organic Compounds (ppm-dry basis)				
Benzene	ND<1.1	—	ND–75	ND–38
Phenol	[e] —	—	ND–7,700	—
Styrene	ND<1.1	—	ND–320	1.0–26
Toluene	ND<1.1	—	ND–380	8.6–56
Xylenes	ND<1.1	—	ND–3,100	4.0–28
Cumene	[e] —	—	6,000–8,600	—
Ethyl benzene	ND<1.1	—	22–1,270	0.7–5.4
Formaldehyde	[e] —	1.6–27	—	—
Hexane	[e] —	—	50–10,000	—
Total VOC [d]	ND<5.3	1.6–27	6,072–19,810	14.3–125.4

Notes:

[a] Data provided by Treated Wood Council on September 11, 2015 and October 19, 2015.

[b] Contaminant Concentrations in Traditional Fuels: Tables for Comparison, November 29, 2011, available at *https://www.epa.gov/rcra/contaminant-concentrations-traditional-fuels-tables-comparison.* Contaminant data drawn from various literature sources and from data submitted to USEPA, Office of Air Quality Planning and Standards (OAQPS). SVOC values from 2013 IECP data that will be available in the rule docket. As units must be designed to burn both fuel oil and biomass, contaminant concentrations in mixed creosote ties must be lower than either fuel oil or biomass to be comparable.

[c] For SVOC contaminant analyses, grouping of contaminants is appropriate in this case when making contaminant comparisons for purposes of meeting the legitimacy criterion. Under the grouping concept, individual SVOC levels may be elevated above that of the traditional fuel, but the contaminant legitimacy criterion will be met as long as total SVOCs is comparable to or less than that of the traditional fuel. Such an approach is standard practice employed by the Agency in developing regulations and is consistent with monitoring standards under CAA sections 112 and 129. *See* 78 FR 9146, February 7, 2013, for further findings that relate to the issue of grouping contaminants. Note also, total SVOC ranges do not represent a simple sum of the minimum and maximum values for each contaminant. This is because minimum and maximum concentrations for individual VOCs and SVOCs do not always come from the same sample.

[d] Naphthalene was the only analyte detected in Oct 2015 VOC testing, but this analyte is included in the SVOC group, so is not reflected here.

[e] Cells with the "—" indicate analytes not tested for in treated wood, but these are not expected to be present in treated wood formulation being analyzed based on preservative chemistry and results from previous CTRT testing (*i.e.,* not present in CTRT ties).

[f] Non-detects are indicated by "<" preceding the method reporting limit, not the method detection limit. Therefore, there are many cases where the non-detect value may be greater than another test's detected value due to analysis-specific RLs being different between individual tests (*i.e.,* differences in tested amount or analyzer calibration range adjustments). If result is less than the method detection limit (MDL), the method reporting limit (MRL), which is always greater than MDL, was used by the lab.

[g] Not expected in the treated wood formulation being tested based on preservative chemistry.

[h] Not tested for, but presumptive worst-case value is presented for treated wood type based on data from previous CTRT testing.

[i] EPA has generally defined "comparable to or lower than" to mean contaminants can be presented in NHSMs within a small acceptable range or at lower levels, relative to the contaminants found in the traditional fuels. Thus, fuels that are produced from nonhazardous secondary materials can have contaminants that are somewhat higher than the traditional fuel that otherwise would be burned and still qualify as being comparable, and would not be considered a solid waste (76 FR 15481).

Contaminant	Mixed railroad ties (56%C–41%CB–1%CuN–2%CuNB) contaminant levels [a f]	Biomass/ untreated wood [b]	Fuel oil [b]	Coal [b]
Metal Elements (ppm-dry basis)				
Antimony	ND	ND–26	ND–15.7	0.5–10
Arsenic	ND–0.65	ND–298	ND–13	0.5–174
Beryllium	ND	ND–10	ND–19	0.1–206
Cadmium	0.08–0.09	ND–17	ND–1.4	0.1–19
Chromium	0.12–0.78	ND–340	ND–37	0.5–168
Cobalt	ND–0.18	ND–213	ND–8.5	0.5–30
Lead	ND–0.93	ND–340	ND–56.8	2–148
Manganese	47–77	ND–15,800	ND–3,200	5–512
Mercury	ND–0.03	ND–1.1	ND–0.2	0.02–3.1
Nickel	0.50–0.99	ND–540	ND–270	0.5–730
Selenium	0.56–0.68	ND–9.0	ND–4	0.2–74.3
Non-Metal Elements (ppm-dry basis)				
Chlorine	ND<100	ND–5,400	ND–1,260	ND–9,080
Fluorine	ND<100	ND–300	ND–14	ND–178
Nitrogen	ND<500	200–39,500	42–8,950	13,600–54,000
Sulfur	230–280	ND–8,700	ND–57,000	740–61,300
Semivolatile Hazardous Air Pollutants (ppm-dry basis)				
Acenaphthene	1,500–1,800	ND–50	111	—
Acenaphthylene	31–40	ND–4	4.1	—
Anthracene	760–1,100	0.4–87	96	—
Benzo[a]anthracene	390–490	ND–62	41–1,900	—
Benzo[a]pyrene	150–200	ND–28	0.60–960	—
Benzo[b]fluoranthene	230–310	ND–42	11–540	—
Benzo[ghi]perylene	28–56	ND–9	11.4	—
Benzo[k]fluoranthene	93–130	ND–16	0.6	—
Chrysene	390–520	ND–53	2.2–2,700	—
Dibenz [a, h] anthracene	ND<28	ND–3	4.0	—
Fluoranthene	2,000–2,700	0.6–160	31.6–240	—
Fluorene	1,100–1,300	ND–40	3,600	—
Indeno[1,2,3-cd] pyrene	32–52	ND–12	2.3	—
Naphthalene	890–1,200	ND–38	34.3–4,000	—
Phenanthrene	3,600–4,500	0.9–190	0–116,000	—
Pyrene	1,300–1,800	0.2–160	23–178	—
16–PAH	13,000–16,000	5–921	3,900–54,700	6–253
PAH (52 extractable)	—	—	—	14–2,090
Pentachlorophenol	[g] ND	ND–1	—	—
Biphenyl	[h] 137–330	—	1,000–1,200	—
Total SVOC [c]	13,000–17,000	5–922	4,900–54,700	20–2,343
Volatile Organic Compounds (ppm-dry basis)				
Benzene	ND<2.3	—	ND–75	ND–38
Phenol	[e] —	—	ND–7,700	—
Styrene	ND<2.3	—	ND–320	1.0–26
Toluene	ND<2.3	—	ND–380	8.6–56
Xylenes	ND<2.3	—	ND–3,100	4.0–28
Cumene	[e] —	—	6,000–8,600	—
Ethyl benzene	ND<2.3	—	22–1,270	0.7–5.4
Formaldehyde	[e] —	1.6–27	—	—
Hexane	[e] —	—	50–10,000	—
Total VOC [d]	ND<12	1.6–27	6,072–19,810	14.3–125.4

Notes:

[a] Data provided by Treated Wood Council on September 11, 2015 and October 19, 2015.

[b] Contaminant Concentrations in Traditional Fuels: Tables for Comparison, November 29, 2011, available at (insert link) *https://www.epa.gov/rcra/contaminant-concentrations-traditional-fuels-tables-comparison.* Contaminant data drawn from various literature sources and from data submitted to USEPA, Office of Air Quality Planning and Standards (OAQPS). SVOC values from 2013 IEc data that will be available in the rule docket. As units must be designed to burn both fuel oil and biomass, contaminant concentrations in mixed creosote ties must be lower than either fuel oil or biomass to be comparable.

[c] For SVOC contaminant analyses, grouping of contaminants in this case is appropriate when making contaminant comparisons for purposes of meeting the legitimacy criterion. Under the grouping concept, individual SVOC levels may be elevated above that of the traditional fuel, but the contaminant legitimacy criterion will be met as long as total SVOCs is comparable to or less than that of the traditional fuel. Such an approach is standard practice employed by the Agency in developing regulations and is consistent with monitoring standards under CAA sections 112 and 129. *See* 78 FR 9146, February 7, 2013, for further findings that relate to the issue of grouping contaminants. Note also, total SVOC ranges do not represent a simple sum of the minimum and maximum values for each contaminant. This is because minimum and maximum concentrations for individual VOCs and SVOCs do not always come from the same sample.

[d] Naphthalene was the only analyte detected in Oct 2015 VOC testing, but this analyte is included in the SVOC group, so is not reflected here.

[e] Cells with the "—" indicate analytes not tested for in treated wood, but these are not expected to be present in treated wood formulation being analyzed based on preservative chemistry and results from previous CTRT testing (*i.e.,* not present in CTRT ties).

[f] Non-detects are indicated by "<" preceding the method reporting limit, not the method detection limit. Therefore, there are many cases where the non-detect value may be greater than another test's detected value due to analysis-specific RLs being different between individual tests (*i.e.,* differences in tested amount or analyzer calibration range adjustments). If result is less than the method detection limit (MDL), the method reporting limit (MRL), which is always greater than MDL, was used by the lab.

[g] Not expected in the treated wood formulation being tested based on preservative chemistry.

[h] Not tested for, but presumptive worst-case value is presented for treated wood type based on data from previous CTRT testing.

[i] To be comparable, units must be designed to burn both biomass and fuel oil or have switched from fuel oil to natural gas. Such units may also be designed to burn coal.

In the mixed railroad ties scenarios above, as previously discussed, SVOCs are present (up to 17,000 ppm) at levels well within the range observed in fuel oil (up to 54,700 ppm). Therefore, railroad ties mixed with creosote, borate and copper naphthenate have comparable contaminant levels to biomass and fuel oil, and as such, meet this criterion if used in combustion units that are designed to burn both of those traditional fuels. Such units may also be designed to burn coal.

4. OTRT Sampling and Analysis Data History

The data collection supporting the OTRT categorical non-waste determination has been based on two rounds of data submittals by TWC, followed by EPA questions and TWC responses on the data provided. The process of developing the data set is described below and all materials provided by TWC are available in the docket to this rulemaking.

The TWC requested a categorical determination that all types of treated wood were non-waste fuels and submitted data on various wood preservative types, specifically, those referred to as OTRTs, in their April 3, 2013 petition letter (see docket EPA–HQ–OLEM–2016–0248–0019). However, the contaminant comparison data presented in the petition were incomplete and not based on established analytical data. The EPA response requested submittal of additional analytical data to determine contaminant concentrations in the OTRT.

In November 2013, TWC responded to EPA's request, submitting laboratory reports on analyses of various [31] preservative wood types and combinations, including OTRTs. The EPA reviewed the laboratory reports and techniques, and determined that there were limited data points available (*i.e.,* one data point per preservative type) and that the analytical techniques for several contaminants (chlorine, nitrogen, sulfur, and fluorine) were not appropriate to provide information on the entire preserved wood sample as combusted, reflecting only a leachable component. Furthermore, EPA questioned the representativeness of the samples being analyzed and the repeatability of the analyses.

In August 2015, TWC performed additional sampling and analyses to address these deficiencies in the data. In response to EPA's concerns, TWC developed a sampling program in which 15 OTRT railroad ties of each preservative type were collected from various geographical areas. These 15 ties were then separated into three 5-tie groups, then processed into a boiler-fuel consistency using commercial processing techniques. A sample of each 5-tie group was then shipped to an independent laboratory for analysis, thereby producing 3 data points for each preservative type. TWC also prepared two blends: One with equal portions of creosote, creosote-borate, copper naphthenate, and copper naphthenate-borate to estimate projected future ratios; and the second a weighted blend of these tie types in proportion to current usage ratios of each preservative chemistry. These blends samples were analyzed in triplicate, for a total of 15 samples being analyzed (*i.e.,* three from each tie sample group). Two laboratories were used by TWC to perform the analysis: One laboratory analyzed metals, mercury, semi-volatiles, and heat of combustion; and the other laboratory analyzed volatiles, chlorine, fluorine, and nitrogen. All methods used were EPA or ASTM methods, and were appropriate for the materials being tested. No specific sampling methodology was employed in taking the samples from the 5-ties group.

The EPA reviewed the 2015 test data, which was provided by TWC on September 11, 2015, and provided TWC with additional follow-up questions and clarifications, including the specific sources of the railroad ties. TWC's response noted the sources of railroad ties for each chemistry and indicated that the railroad ties generally originated in the southeast, but there are also ties from Pennsylvania, South Dakota, and Kentucky represented within the TWC data set. Chlorine is not part of any of the preservative chemistries, and was not detected in any of the samples analyzed.

The EPA also noted some exceptions and flags within the analytical report, such as sample coolers upon receipt at the lab were outside the required temperature criterion; surrogate recoveries for semi-volatile samples (which represent extraction efficiency within a sample matrix) were sometimes lower or higher than those for samples containing creosote-treated wood; and dilution factors (dilution is used when the sample is higher in concentration than can be analyzed) for creosote-treated wood samples were high (up to 800). The laboratory noted these issues in the report narrative, but concluded that there were no corrective actions necessary. EPA requested further information on these issues noted in the report narrative, as well as supporting quality assurance documentation from the laboratories.

[31] Untreated, copper naphthenate, copper naphthenate and borate, creosote, creosote and borate, combination of C/CB/CuN/CuNB equal mixture C/CB/CuN/CuNB 56/41/1/2 percent mixture FIX.

With respect to surrogate recoveries and dilutions, the lab indicated that the high dilutions were required for the creosote-containing matrix to avoid saturation of the detector instrument.[32] Also, the shipping cooler temperature criterion is 4 degrees Celsius and the lab noted the discrepancy in the report as part of laboratory standard operating procedure (see also section III. G. Responses to Comments of this preamble). However, the ties were used and stored after being taken out of service in ambient atmosphere and were not biologically active, therefore, shipping cooler temperatures are not expected to affect contaminant levels in the ties.

E. Copper and Borates Literature Review and Other EPA Program Summary

Neither copper nor borate are currently listed as HAPs under the Clean Air Act, and thus are not defined as contaminants under NHSM regulations section 241.2. or used for contaminant comparison in meeting legitimacy criteria (see 78 FR 9139–9143, February 7, 2013).[33] [34] To determine whether those compounds pose human health or ecological risk concerns, outside the requirements of the NHSM legitimacy criteria, and how those concerns might be addressed under other Agency programs, we conducted a literature review of copper and borate during development of the proposed rule. We also requested comments or any additional information on this topic during proposal. One comment was received on copper emissions which is discussed in section E of this preamble.

Under the Clean Water Act, EPA's Office of Water developed the Lead and Copper Rule which became effective in 1991 (56 FR 26460, June 7, 1991). This rule set a limit of 1.3 ppm copper concentration in 10% of customer taps sampled as an action level for public water systems. Exceedances of this limit require additional treatment steps in order to reduce drinking water corrosivity and prevent leaching of these metals (including copper) from plumbing and distribution systems. EPA's Office of Water also issued a fact sheet for copper under the Clean Water Act section 304(a) titled the Aquatic Life Ambient Freshwater Quality Criteria.[35] This fact sheet explains that copper is an essential nutrient at low concentrations, but is toxic to aquatic organisms at higher concentrations and listed the following industries that contribute to manmade discharges of copper to surface waters: Mining, leather and leather products, fabricated metal products, and electric equipment. There are no National Recommended Aquatic Life Criteria for boron or borates.

EPA also investigated whether there were any concerns that copper and borate can react to form polychlorinated dibenzodioxin and dibenzofurans (PCDD/PCDF) during the combustion process. Specific studies evaluating copper involvement in dioxins and furans formation in municipal or medical waste incinerator flue gas have been conducted.[36] While the exact mechanism and effects of other combustion parameters on PCDD and PCDF formation are still unknown, increased copper chloride (CuCl) and/or cupric chloride ($CuCl_2$) on fly ash particles has been shown to increase concentrations of PCDD and PCDF in fly ash. Various researchers conclude that CuCl and/or $CuCl_2$ are serving either roles as catalysts in dioxin formation or as chlorine sources for subsequent PCDD/PCDF formation reactions (*i.e.,* the CuCl and/or $CuCl_2$ serve as dechlorination/chlorination catalysts). Overall, results from many studies reviewed indicate that most of the copper ends up in the bottom ash, so fly ash copper content may be minimal. Further, copper entrained on fly ash would be co-controlled or reduced with the use of good particulate matter controls on the combustion device. A high performance fabric filter may be the best control device, although some portion of fine particulate matter may pass through. Cyclone separators and electro-static precipitators have not been shown to be effective in controlling these emissions, and these types of controls may be more prevalent amongst smaller area source boilers.

Generally, borates have a low toxicity and should not be a concern from a health risk perspective.[37] As indicated previously, neither boron nor borates are listed as HAPs under CAA section 112, nor are they considered to be criteria air pollutants subject to any emissions limitations. However, elemental boron has been identified by EPA in the coal combustion residuals (CCR) risk analysis [38] to present some potential risks for ecological receptors. As a result of this risk, and boron's ability to move through the subsurface,[39] boron has been included as a constituent in CCR monitoring provisions for coal ash impoundments.

Copper has some acute human health effects, but these exposures appear to be the result of direct drinking water or cooking-related intake. We anticipate the only possible routes that copper releases to the environment could result from burning copper naphthenate treated ties would be stormwater runoff from the ties during storage and deposition from boiler emissions. As mentioned earlier, the majority of copper in combusted material appears to remain in the bottom ash, so human health effects from inhalation of fly ash and environmental effects from deposition of copper-containing fly ash are likely very low. Further, the amount of copper remaining in the railroad tie after its useful life may be greatly reduced from the original content due to weathering, and facilities manage the processed shredded railroad tie material in covered areas to prevent significant moisture swings. Therefore, we do not expect impacts from copper in stormwater runoff from the storage of the copper naphthenate treated ties.

F. Summary of Comments Requested

The Agency solicited comments in the proposed rule on non-waste fuel categorical determinations as described previously. The Agency also specifically requested comments on the following:

[32] Samples with concentrations exceeding the calibration range must be diluted to fall within the calibration range. The more a sample is diluted, the higher the reporting limit. Sample dilution is required when the concentration of a compound exceeds the amount that produces a full-scale response. At that point the detector becomes saturated and fails to respond to additional target compound(s). Diluting samples to accommodate the high-concentrations can reduce the concentration of the target analytes to levels where they can no longer be detected.

[33] CAA Section 112 requires EPA to promulgate regulations to control emissions of 187 HAPs from sources in source categories listed by EPA under section 112(c), while CAA section 129 CISWI standards include numeric emission limitations for the nine pollutants, plus opacity (as appropriate), that are specified in CAA section 129(a)(4). For the purpose of NHSM standards, the definition of contaminants is limited to HAPs under CAA 112 and CAA 129.

[34] We also note that under the CAA standards for smaller area sources, emission limits are not required for copper, borate (or for HAPs). Standards for area sources focus on tune-ups of the boiler unit (see 40 CFR 40 CFR part 63, subpart JJJJJJ).

[35] Aquatic life criteria for toxic chemicals are the highest concentration of specific pollutants or parameters in water that are not expected to pose a significant risk to the majority of species in a given environment or a narrative description of the desired conditions of a water body being ''free from'' certain negative conditions. See *https://www.epa.gov/wqc/aquatic-life-criteria-copper.*

[36] See memorandum ''Literature Review of Copper-related Combustion Emissions Studies'' and bibliography available in the docket to this rulemaking for specific studies and further information on the findings from studies of copper compounds in waste incinerators discussed in this section of the preamble.

[37] *https://www.atsdr.cdc.gov/toxprofiles/tp26-c2.pdf.*

[38] Human and Ecological Risk Assessment of Coal Combustion Residuals, EPA, December 2014.

[39] See 80 FR 21302, April 17, 2015.

• Whether railroad ties with *de minimis* levels of creosote should be allowed to be combusted in biomass only units;

• Should a particular *de minimis* level should be designated and on what should this level be based;

• Whether these OTRTs are combusted in units designed to burn coal in lieu of, or in addition to biomass and fuel oil, and whether the contaminant comparisons to meet legitimacy criteria should include comparisons to coal;

• In light of the data and sampling history described above, whether the quality of data is adequate to support the proposed determination;

• Additional data that should be considered in making the comparability determinations for OTRT.

• Additional information on the copper borate literature review.

G. Responses to Comments

Summaries of comments received in response to solicitations listed above are presented below, along with EPA's responses to the comments. All additional comments received are addressed in EPA's Response to Comments document, located in the docket EPA–HQ–OLEM–2016–0248.

1. De Minimis Levels of Creosote

For purposes of contaminant comparisons under NHSM, contaminants in railroad ties treated with creosote-borate and mixtures of creosote, copper naphthenate and copper naphthenate-borate treated railroad ties are not comparable to those contaminants found in biomass. Contaminants in such railroad ties would, however, be comparable to contaminants in fuel oil. Accordingly, such ties are categorical non-wastes fuels only when they are processed and then combusted in: (i) Units designed to burn both biomass and fuel oil and (ii) units at major source pulp and paper mills or power producers that had been designed to burn biomass and fuel oil, but are modified in order to use natural gas instead of fuel oil. Mixtures of treated railroad ties containing creosote cannot be combusted in biomass only units. The Agency requested comment as to whether OTRTs used as fuel containing de minimis levels of creosote, should be allowed to be combusted in biomass only units, and if so, what should the level be based on.

Comments: One commenter supported a de minimis exception, but did not propose any specific levels that the exception would be based on. The commenter stated that there was no practical method for establishing with certainty the minimal amount of creosote that will be present after processing and cited previous determinations discussed above. Another commenter opposed a de minimis exception stating that the Agency has proposed no rationale for such an action and it is unclear what statute or requirements that the Agency was requesting an exception from. The commenter also cited court decisions that emphasized that a unit burning any solid waste was a solid waste incineration unit (see *NRDC* v. *EPA*, 489 F. 3d 1250, 1257–60 (D.C. Cir. 2007).

Response: De minimis contaminant levels have been addressed in previous NHSM rules. The 2011 final rule stated that C&D wood that has been processed to remove contaminants prior to burning (*e.g.,* lead-painted wood, and treated wood containing contaminants such as arsenic and chromium, metals and other non-wood materials), likely meets the processing standard and legitimacy criteria, and can be combusted as a non-waste fuel. The 2011 rule further stated that such C&D wood may contain de minimis amounts of contaminants and other materials after processing provided it meets the legitimacy criteria for contaminant level comparison. The February 2016 final rule specifically codified a de minimis approach for removal of painted wood from C&D wood stating that all painted wood must be excluded to the extent that only de minimis quantities inherent to the processing limitations may remain from the final product fuel (81 FR 6743, February 8, 2016).

De minimis levels for OTRTs when combusted with creosote treated railroad ties (CTRTs) were also addressed in the February 2016 final NHSM rule (81 FR 6738, February 8, 2016). As discussed in the preamble, TWC had requested that the Agency move forward on a subset of materials (*i.e.,* OTRTs) that were identified in their original April 2013 petition. As these treatments were just coming into use, concern was expressed that the presence of small amounts of OTRTs, which were not categorically listed non-waste fuels, that may have been processed with CTRTs would render all of that material solid wastes since OTRTs are not included in the February 2016 categorical determination. The Agency concluded that, consistent with the determination in the March 2011 rule (76 FR 15486), small (de minimis) amounts of OTRTs would not result in determinations that the CTRTs being combusted are solid wastes.

The processing of OTRTs is similar to CTRTs (*e.g.,* removal of contaminant metals using magnets, improvement of fuel characteristics through grindings or shredding) and is conducted by the approximately 15 treated wood reclamation companies in North America. These systems that may process mixtures of both CTRT and OTRT may result in the presence of de minimis levels of cresosote in processed railroad ties treated with copper naphthenate and copper-naphthenate borate.

Regarding a definition for de minimis amounts of contaminants remaining in OTRT, the agency stated in the February 2013 NHSM rule that it was not appropriate to identify specific concentration levels. Rather, the agency interprets de minimis as that term is commonly understood; (*i.e.,* insignificant or negligible amounts of contamination such as small wood sliver containing lead paint [40]).

Based on the factors discussed above, the Agency has concluded, that OTRT containing *de minimis* levels (*i.e.,* insignificant or negligible amounts) of creosote railroad ties, in mixture combinations with the other ORTS, can be combusted in biomass only units provided it meets the legitimacy criteria for contaminant levels (*i.e.,* concentration levels of contaminants in the processed OTRT are comparable to or less than the levels in biomass.

2. Inclusion of Coal

Comment: Regarding whether the OTRTs considered in this rulemaking are combusted in units designed to burn coal (in lieu of or in addition to biomass and fuel oil), one commenter indicated that, although they were unaware of any cement kilns currently combusting OTRTs, cement kilns have burned OTRTs, and cement kilns can burn a range of materials, including biomass and coal. Another commenter requested that EPA include comparisons to the traditional fuel in its analysis. The commenter reported that contaminant comparisons to coal would show that the categorical non-waste fuel definition of OTRTs should be expanded to include OTRTs burned in units designed to burn coal or units designed to burn coal and fuel oil.

Specifically, the commenter noted the following:

• For the copper naphthenate treated ties, the maximum contaminant levels in coal are higher for all contaminants except naphthalene and 16–PAHs. However, the semi-volatile organic compound (SVOC) grouping level (which includes naphthalene and 16–PAHs) is higher for coal than copper naphthenate treated ties.

[40] See 78 FR 9139, February 7, 2013.

• For the copper naphthenate-borate treated ties, the contaminant levels in coal are higher for all contaminants except naphthalene. However, the SVOC grouping level (which includes naphthalene) is higher for coal than copper naphthenate-borate treated ties.

• For the creosote-borate treated ties, the contaminant levels in coal are higher for all contaminants except naphthalene, biphenyl, 16–PAHs, and the SVOC grouping overall. However, the SVOC grouping contaminant level is higher for fuel oil than creosote-borate treated ties.

The commenter requested that EPA expand the proposed non-waste fuel definition, based on these results, to include copper naphthenate and copper naphthenate-borate treated ties combusted in units designed to burn coal during normal operations. The commenter further requested that EPA include creosote-borate treated ties combusted in units designed to burn coal and fuel oil during normal operations.

Response: EPA has added coal to the contaminant comparisons of OTRTs to traditional fuels as well as adding specific regulatory language. Specifically, contaminants in OTRTs are presented in comparison to those in coal and other traditional fuels in the tables in section III.D.3.iii of this preamble, and wording has been added to the regulatory language in § 241.4(a)(8)–(10).

Thus, EPA is listing the following OTRTs as categorical non-waste fuels:

• Copper naphthenate treated railroad ties combusted in units designed to burn biomass only, biomass and fuel oil, or biomass and coal.

• Copper naphthenate-borate treated railroad ties combusted in units designed to burn biomass only, biomass and fuel oil or biomass and coal.

• Creosote-borate treated railroad ties (and mixtures of creosote, borate and copper naphthenate treated railroad ties) combusted only in units designed to burn both biomass and fuel oil, or units that have switched to natural gas from fuel oil; and where such units may also be designed to burn coal.

3. Sampling and Data Quality Concerns

Comment: Regarding the data used to support these non-waste determinations, one commenter stated that the data were insufficient. The commenter argued that only three data points were used and that statistical techniques to address variability were not applied.

Response: EPA disagrees with the commenter that the data were insufficient. A total of 18 grab samples were analyzed, and sample ties were comingled with ties originating from numerous manufacturing locations in multiple states in order to represent actual processing. All data and sampling procedures exceptions were addressed by the company and were within normal operating and analytical parameters (*i.e.,* no corrective actions were deemed necessary to validate the data). Thus, EPA agrees that the sampling results submitted were appropriate for use in comparing contaminant levels with those in comparable traditional fuels.

To address the commenter's concerns regarding variability, EPA has reviewed the TWC 2015 data presented in the petition and calculated the 90, 95, and 99 percent upper prediction limits (UPLs) for contaminants listed in the comparison charts to see how they compare with the TWC's data. EPA calculated UPLs for metals, sulfur, naphthalene, and 16–PAH.[41] The UPL calculation methodology and results are presented in the memo ''Contaminant Data UPL Calculations for Other Treated Railroad Ties (OTRTs)'' found in the docket for this rulemaking. For copper naphthenate and copper naphthenate-borate treated ties, contaminant levels at the 99 percent UPL fell within the corresponding contaminant ranges for biomass and fuel oil. For creosote-borate treated ties, SVOCs (naphthalene and 16–PAH) are the only contaminants at the 99 percent UPL that does not fall within the range of SVOC concentrations found in biomass or fuel oil. At the 95 percent UPL, all three OTRTs are within the biomass and fuel oil contaminant ranges. EPA therefore believes that variability in the data has been sufficiently accounted for in the contaminant comparisons.

Comment: One commenter stated that more sensitive testing should have been done to determine if pentachlorophenol was present in the cases where it was tested for but results were below method detection limit (MDL). The commenter noted that if high enough, pentachlorophenol levels could render discarded railroad ties hazardous waste, which would require a facility combusting the material to be regulated as a hazardous waste combustor.

Response: EPA has evaluated the comment against the data available, and does not agree that more sensitive testing for pentachlorophenol is necessary for the three OTRTs and mixtures analyzed and discussed in the proposal. As noted in the proposal, pentachlorophenol is a distinct preservative type used by the industry; it is not one of the preservatives being presented in the data of the proposal, nor is it expected to be present in any of the preservative types being considered under the OTRT rulemaking. Pentachlorophenol has a distinctly different chemical structure than any of the preservatives being currently considered under the OTRT rulemaking. First, none of the preservatives being considered contain chlorine as part of the chemical structure. Pentachlorophenol, as the name suggests, contains 5 chlorine atoms attached to a phenolic base. In the case of the OTRT samples, chlorine, in addition to pentachlorophenol, was found to be non-detect at a level of 100 ppm (dry basis), which is at the lower range of chlorine content values found in untreated wood.

Second, as also discussed in the proposed rulemaking preamble, the dilution amounts used for semivolatile (which behave similarly to pentachlorophenol) was necessarily larger for the creosote-containing preservative mixes, which influenced the detection levels for semivolatile analytes. The detection levels for pentachlorophenol follow this trend, where the copper naphthenate and copper naphthenate-borate pentachlorophenol method reporting limits are 30 and 28 ppm, respectively, and the mixtures with creosote being an order of magnitude higher. This increase in the method reporting limit for these creosote-containing samples is not an indication that pentachlorophenol is present in the creosote-containing samples, but more of procedural necessity due to the method and the equipment used for the analysis, as the laboratory pointed out in their results narrative.

4. Additional Data for Copper and Borates Literature Review

As discussed in the OTRT proposal, direct stormwater runoff from material storage and deposition from boiler emissions are expected to be the only paths for copper to be released to the environment from burning copper naphthenate treated ties. Additionally, there is evidence that copper in the presence of chlorine could lead to polychlorinated dioxin/furan (PCDD/PCDF) through a reaction pathway involving CuCl and $CuCl_2$. EPA stated in the proposal that copper emissions from units burning these ties would be controlled in the units' air pollution control devices.

[41] Cl, F and N were not detected in any of the analyses, so with equal detection limits for each data point, no UPL value could be calculated for these three contaminants.

Comment: Area sources may not have any PM control requirements under the area source boilers rule. Emission limits for copper, borate, or HAPs are not required under CAA standards for smaller area sources (standards for area sources focus on tune-ups of the boiler unit).

Response: EPA stated in the proposal that copper emissions from units burning these ties would be controlled in the units' air pollution control devices. While such controls are required for major sources of HAPs, EPA agrees with the commenter that emission controls for area source are not required. However, as stated previously, copper is not a HAPs and is therefore not subject to regulation under CAA sections 112 (nor is it a pollutant listed under CAA section 129). NHSM rule limits the definition of ''contaminant'' to the HAPs covered under CAA 112 and 129. CAA 112 lists 187 HAPs from sources in source categories, and CAA section 129 CISWI standards include numeric emission limitations for the nine pollutants, plus opacity (as appropriate), that are specified in CAA section 129(a)(4).

IV. Effect of This Final Rule on Other Programs

Beyond expanding the list of NHSMs that categorically qualify as non-waste fuels, this rule does not change the effect of the NHSM regulations on other programs as described in the March 21, 2011 NHSM final rule (76 FR 15456), as amended on February 7, 2013 (78 FR 9138) and February 8, 2016 (81 FR 6688). Refer to section VIII of the preamble to the March 21, 2011 NHSM final rule [42] for the discussion on the effect of the NHSM rule on other programs.

V. State Authority

A. Relationship to State Programs

This final rule does not change the relationship to state programs as described in the March 21, 2011 NHSM final rule. Refer to section IX of the preamble to the March 21, 2011 NHSM final rule [43] for the discussion on state authority including, ''Applicability of State Solid Waste Definitions and Beneficial Use Determinations'' and ''Clarifications on the Relationship to State Programs.'' The Agency, however, would like to reiterate that this final rule (like the March 21, 2011 and the February 7, 2013 final rules) is not intended to interfere with a state's program authority over the general management of solid waste.

B. State Adoption of the Rulemaking

No federal approval procedures for state adoption of this final rule are included in this rulemaking action under RCRA subtitle D. While states are not required to adopt regulations promulgated under RCRA subtitle D, some states incorporate federal regulations by reference or have specific state statutory requirements that their state program can be no more stringent than the federal regulations. In those cases, the EPA anticipates that, if required by state law, the changes being made in this document will be incorporated (or possibly adopted by authorized state air programs) consistent with the state's laws and administrative procedures.

VI. Costs and Benefits

As discussed in previous sections, this final rulemaking establishes a categorical non-waste determination for OTRT. The determination allows OTRTs to be combusted as a product fuel in units subject to the CAA section 112 emission standards (provided the conditions of the categorical listing are met) without being subject to a detailed case-by-case analysis of the material by individual combustion facilities. The rule provides additional clarity and direction for generators, potential users and owners or operators of combustion facilities.

The proposed OTRT rule stated that the action was definitional in nature, and any costs or benefits accrued to the corresponding Clean Air Act rules. In accordance with the Office of Management and Budget (OMB) Circular A–4 requirement that EPA analyze the costs and benefits of regulations, EPA prepared an economic assessment (EA) document [44] for the proposal that examined the scope of indirect impacts for both costs and benefits.

Based on public comments, information from stakeholders and the Executive Order 13771 signed January 30, 2017, the Agency has expanded the EA for the final rule to take into account additional cost savings. In considering this information, EPA determined that the final OTRT rule EA should consider the potential aggregate cost savings to industry when these materials are regulated as non-waste fuels (because of this rulemaking), rather than as solid waste. In addition, the Agency is ensuring that its cost benefit analysis is consistent with the OMB guidance for E.O. 13771. To do that, we made necessary adjustments to the final OTRT rule EA.[45]

For purposes of the final rule EA, combustion facilities that wish to add OTRT to their fuel mix now or in the future are assumed to operate under CAA 112 standards. OTRTs currently represent a small fraction of treated railroad ties combusted for fuel, but that amount will increase over time. The EA concludes that absent the final categorical rule, OTRT would be considered a solid waste and combustion facilities that wish to add OTRT to their fuel mix would have to incur the costs associated with upgrading to section 129.

The EA concludes that the categorical rule, which designates OTRT as non-wastes under certain conditions, results in a cost savings from these avoided costs of section 129 upgrades for facilities adding OTRT to the fuel mix. The unit-level cost savings were estimated, on average, to be approximately $266,000 per year. EPA estimates that industry-wide undiscounted costs savings from not having to operate under CAA Section 129 regulations when combusting these OTRTs for energy on the magnitude of between $3.1 million and $24 million annually over the next 20 years. In addition, the assessment indicated that the increased regulatory clarity associated with the action could stimulate increased product fuel use for one or more of these NHSMs, potentially resulting in upstream life cycle benefits associated with reduced extraction of selected virgin materials.

Another, more likely scenario is also addressed in the EA, where, absent a categorical non-waste fuel determination for OTRTs, combustors decide not to combust OTRTs and do not perform any air pollution control upgrades to meet section 129 standards. In this scenario, OTRTs are instead disposed of in landfills and virgin biomass is purchased by the combustor to make up for the additional heat content that OTRTs would provide. EPA

[42] 76 FR 15456, March 21, 2011 (page 15545).

[43] 76 FR 15456, March 21, 2011 (page 15546).

[44] U.S. EPA, Office of Resource Conservation and Recovery, ''Assessment of the Potential Costs, Benefits and Other Impacts for the Proposed Rule: Categorical Non-Waste Determination for Selected Non-Hazardous Secondary Materials (NHSMs) Creosote Borate Treated Railroad Ties, Copper Naphthenate Treated Railroad Ties and Copper Naphthenate-Borate Treated Railroad Ties'' EPA Docket Number: EPA–HQ–OLEM–2016–0248.

[45] U.S. EPA, Office of Resource Conservation and Recovery, ''Assessment of the Potential Costs, Benefits and Other Impacts for the Final Rule: Categorical Non-Waste Determination for Selected Non-Hazardous Secondary Materials (NHSMs) Creosote Borate Treated Railroad Ties, Copper Naphthenate Treated Railroad Ties and Copper Naphthenate-Borate Treated Railroad Ties'' EPA Docket Number: EPA–HQ–OLEM–2016–0248.

estimates that the undiscounted costs avoided by the final rule of landfilling the OTRT, is between $190,000 and $1.4 million annually over the next 20 years. Looking at these two scenarios and applying a 7% discount rate, EPA estimates that the present value range of cost savings for this rule over 20 years are approximately $6.9 million on the low end (landfilling) and approximately $110 million on the high end (avoided air pollution control upgrades).

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 policy issues. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an economic analysis of the potential costs and benefits associated with this action. This analysis, ''Assessment of the Potential Costs, Benefits, and Other Impacts for the Final Rule—Categorical Non-Waste Determination for Selected Non-Hazardous Secondary Materials (NHSMs): Creosote-Borate Treated Railroad Ties, Copper Naphthenate Treated Railroad Ties, and Copper Naphthenate-Borate Treated Railroad Ties,'' is available in the docket. Interested persons were asked to submit comments on this document but none were received.

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)

This action does not impose any new information collection burden under the PRA as this action only adds three new categorical non-waste fuels to the NHSM regulations. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2050–0205.

D. Regulatory Flexibility Act (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 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 addition of three NHSMs to the list of categorical non-waste fuels is expected to indirectly reduce materials management costs. In addition, this action will reduce regulatory uncertainty associated with these materials and help increase management efficiency. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action contains no Federal mandates as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. Affected entities are not required to manage the final additional NHSMs as non-waste fuels. As a result, this action may be considered voluntary under UMRA. Therefore, this action is not subject to the requirements of section 202 or 205 of the UMRA

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, this proposal will not impose direct compliance costs on small governments.

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 neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Potential aspects associated with the categorical non-waste fuel determinations under this final rule may invoke minor indirect tribal implications to the extent that entities generating or consolidating these NHSMs on tribal lands could be affected. However, any impacts are expected to be negligible. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in the Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Based on the following discussion, the Agency found that populations of children near potentially affected boilers are either not significantly greater than national averages, or in the case of landfills, may potentially result in reduced discharges near such populations.

The final rule, in conjunction with the corresponding CAA rules, may indirectly stimulate the increased fuel use of one or more the three NHSMs by providing enhanced regulatory clarity and certainty. This increased fuel use may result in the diversion of a certain quantity of these NHSMs away from current baseline management practices, which is assumed to be landscape use or being sent to landfills. Some crossties may also go to CISWI units. Any corresponding disproportionate impacts among children would depend upon whether children make up a disproportionate share of the population living near the affected units. Therefore, to assess the potential indirect disproportionate effect on children, we conducted a demographic analysis for this population group surrounding CAA section 112 major source boilers, municipal solid waste landfills, and construction and demolition (C&D) landfills for the Major and Area Source Boilers rules and the CISWI rule.[46] We assessed the share of the population under the age of 18 living within a three-mile (approximately five kilometers) radius of these facilities.

[46] The extremely large number of area source boilers and a lack of site-specific coordinates prevented us from assessing the demographics of populations located near area sources. In addition, we did not assess child population percentages surrounding cement kilns that may use CTRTs/OTRTs for their thermal value.

Three miles has been used often in other demographic analyses focused on areas around industrial sources.[47]

For major source boilers, our findings indicate that the percentage of the population in these areas under age 18 years is generally the same as the national average.[48] In addition, while the fuel source and corresponding emission mix for some of these boilers may change as an indirect response to this rule, emissions from these sources would remain subject to the protective CAA section 112 standards. For municipal solid waste and C&D landfills, we do not have demographic results specific to children. However, using the population below the poverty level as a rough surrogate for children, we found that within three miles of landfills that may experience diversions of one or more of these NHSMs, low-income populations, as a percent of the total population, are disproportionately high relative to the national average. Thus, to the extent that these NHSMs are diverted away from municipal solid waste or C&D landfills, any landfill-related emissions, transportation, discharges, or other negative activity potentially affecting low-income (children) populations living near these units are likely to be reduced. Finally, transportation emissions associated with the diversion of some of this material away from landfills to boilers are likely to be generally unchanged.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not ''significant energy action'' because it is not likely to have a significance adverse effect on the supply, distribution or use of energy. The selected NHSMs affected by this final action are not generated in quantities sufficient to significantly (adversely or positively) impact the supply, distribution, or use of energy at the national level.

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 believes that this action does not have 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). This is because the overall level of emissions, or the emissions mix from boilers, are not expected to change significantly because the three NHSMs categorically listed as non-waste fuels are generally comparable to the types of fuels that these combustors would otherwise burn. Furthermore, these units remain subject to the protective standards established under CAA section 112.

Our environmental justice demographics assessment conducted for the prior rulemaking[49] remains relevant to this action. This assessment reviewed the distributions of minority and low-income groups living near potentially affected sources using U.S. Census blocks. A three-mile radius (approximately five kilometers) was examined in order to determine the demographic composition (*e.g.,* race, income, etc.) of these blocks for comparison to the corresponding national compositions. Findings from this analysis indicated that populations living within three miles of major source boilers represent areas with minority and low-income populations that are higher than the national averages. In these areas, the minority share[50] of the population was 33 percent, compared to the national average of 25 percent. For these same areas, the percent of the population below the poverty line (16 percent) was higher than the national average (13 percent).

In addition to the demographics assessment described previously, we also considered the potential for non-combustion environmental justice concerns related to the potential incremental increase in NHSMs diversions from current baseline management practices. These may include the following:

- *Reduced upstream emissions resulting from the reduced production of virgin fuel:* Any reduced upstream emissions that may indirectly occur in response to reduced virgin fuel mining or extraction may result in a human health and/or environmental benefit to minority and low-income populations living near these projects.
- *Alternative materials transport patterns:* Transportation emissions associated with NHSMs diverted from landfills to combustion units are likely to be similar.
- *Change in emissions from baseline management units:* The diversion of some of these NHSMs away from disposal in landfills may result in a marginal decrease in activity at these facilities. This may include non-adverse impacts, such as marginally reduced emissions, odors, groundwater and surface water impacts, noise pollution, and reduced maintenance cost to local infrastructure. Because municipal solid waste and C&D landfills were found to be located in areas where minority and low-income populations are disproportionately high relative to the national average, any reduction in activity and emissions around these facilities is likely to benefit the citizens living near these facilities.

Finally, this rule, in conjunction with the corresponding CAA rules, may help accelerate the abatement of any existing stockpiles of the targeted NHSMs. To the extent that these stockpiles may represent negative human health or environmental implications, minority and/or low-income populations that live near such stockpiles may experience marginal health or environmental improvements. Aesthetics may also be improved in such areas.

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 in 40 CFR Part 241

Environmental protection, Air pollution control, Non-hazardous

[47] The following publications which have provided demographic information using a 3-mile or 5-kilometer circle around a facility:

* U.S. GAO (Government Accountability Office). Demographics of People Living Near Waste Facilities. Washington DC: Government Printing Office 1995.

** Mohai P, Saha R. ''Reassessing Racial and Socio-economic Disparities in Environmental Justice Research''. Demography. 2006;43(2): 383–399.

** Mennis, Jeremy ''Using Geographic Information Systems to Create and Analyze Statistical Surfaces of Population and Risk for Environmental Justice Analysis'' Social Science Quarterly, 2002, 83(1):281–297.

** Bullard RD, Mohai P, Wright B, Saha R *et al.,* Toxic Wastes and Race at Twenty, 1987–2007, March 2007. 5 CICWI Rule and Major Source Boilers Rule.

[48] U.S. EPA, Office of Resource Conservation and Recovery. *Summary of Environmental Justice Impacts for the Non-Hazardous Secondary Material (NHSM) Rule, the 2010 Commercial and Industrial Solid Waste Incinerator (CISWI) Standards, the 2010 Major Source Boiler NESHAP and the 2010 Area Source Boiler NESHAP.* February 2011.

[49] U.S. EPA, Office of Resource Conservation and Recovery. *Summary of Environmental Justice Impacts for the Non-Hazardous Secondary Material (NHSM) Rule, the 2010 Commercial and Industrial Solid Waste Incinerator (CISWI) Standards, the 2010 Major Source Boiler NESHAP and the 2010 Area Source Boiler NESHAP.* February 2011.

[50] This figure is for overall population minus white population and does not include the Census group defined as ''White Hispanic.''

secondary materials, Waste treatment and disposal.

Dated: January 26, 2018.

E. Scott Pruitt,

Administrator.

For the reasons stated in the preamble, EPA is amending title 40, chapter I, of the Code of Federal Regulations as follows:

PART 241—SOLID WASTES USED AS FUELS OR INGREDIENTS IN COMBUSTION UNITS

■ 1. The authority citation for part 241 continues to read as follows:

Authority: 42 U.S.C. 6903, 6912, 7429.

■ 2. Section 241.2 is amended by adding in alphabetical order the definitions ''Copper naphthenate treated railroad ties'', ''Copper naphthenate-borate treated railroad ties'', and ''Creosote-borate treated railroad ties'' to read as follows:

§ 241.2 Definitions.

* * * * *

Copper naphthenate treated railroad ties means railroad ties treated with copper naphthenate made from naphthenic acid and copper salt.

Copper naphthenate-borate treated railroad ties means railroad ties treated with copper naphthenate and borate, including borate made from disodium octaborate tetrahydrate.

* * * * *

Creosote-borate treated railroad ties means railroad ties treated with a wood preservative containing creosols and phenols and made from coal tar oil and borate, including borate made from disodium octaborate tetrahydrate.

* * * * *

■ 3. Section 241.4 is amended by adding paragraphs (a)(8) through (10) to read as follows:

§ 241.4 Non-Waste Determinations for Specific Non-Hazardous Secondary Materials When Used as a Fuel.

(a) * * *

(8) Creosote-borate treated railroad ties, and mixtures of creosote, borate and/or copper naphthenate treated railroad ties that are processed and then combusted in the following types of units. Processing must include, at a minimum, metal removal and shredding or grinding.

(i) Units designed to burn both biomass and fuel oil as part of normal operations and not solely as part of start-up or shut-down operations; and

(ii) Units at major source pulp and paper mills or power producers subject to 40 CFR part 63, subpart DDDDD, designed to burn biomass and fuel oil as part of normal operations and not solely as part of start-up or shut-down operations, but are modified (*e.g.,* oil delivery mechanisms are removed) in order to use natural gas instead of fuel oil, The creosote-borate and mixed creosote, borate and copper naphthenate treated railroad ties may continue to be combusted as product fuel under this subparagraph only if the following conditions are met, which are intended to ensure that such railroad ties are not being discarded:

(A) Creosote-borate and mixed creosote, borate and copper naphthenate treated railroad ties must be burned in existing (*i.e.,* commenced construction prior to April 14, 2014) stoker, bubbling bed, fluidized bed, or hybrid suspension grate boilers; and

(B) Creosote-borate and mixed creosote, borate and copper naphthenate treated railroad ties can comprise no more than 40 percent of the fuel that is used on an annual heat input basis.

(iii) Units meeting requirements in paragraph (a)(8)(i) or (ii) of this section that are also designed to burn coal.

(9) Copper naphthenate treated railroad ties that are processed and then combusted in units designed to burn biomass, biomass and fuel oil, or biomass and coal. Processing must include at a minimum, metal removal, and shredding or grinding.

(10) Copper naphthenate-borate treated railroad ties that are processed and then combusted in units designed to burn biomass, biomass and fuel oil, or biomass and coal. Processing must include at a minimum, metal removal, and shredding or grinding.

* * * * *

[FR Doc. 2018–02337 Filed 2–6–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

Identification and Listing of Hazardous Waste

CFR Correction

■ In Title 40 of the Code of Federal Regulations, Parts 260 to 265, revised as of July 1, 2017, on page 64, in § 261.6, paragraph (a)(2)(iv) is reinstated to read as follows:

§ 261.6 Requirements for recyclable materials.

(a)(1) * * *

(2) * * *

(iv) Spent lead-acid batteries that are being reclaimed (40 CFR part 266, subpart G).

* * * * *

[FR Doc. 2018–02518 Filed 2–6–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

Identification and Listing of Hazardous Waste

CFR Correction

■ In Title 40 of the Code of Federal Regulations, Parts 260 to 265, revised as of July 1, 2017, on page 67, in part 261, the heading of subpart C is reinstated to read: ''Characteristics of Hazardous Waste''.

[FR Doc. 2018–02513 Filed 2–6–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 770

[EPA–HQ–OPPT–2017–0245; FRL–9972–68]

RIN 2070–AK36

Voluntary Consensus Standards Update; Formaldehyde Emission Standards for Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is publishing this final rule to revise the formaldehyde standards for composite wood products regulations . The revision updates the incorporation by reference of multiple voluntary consensus standards that have been updated, superseded, or withdrawn, and provides a technical correction to allow panel producers to correlate their approved quality control test method to the ASTM E1333–14 test chamber, or, upon showing equivalence, the ASTM D6007–14 test chamber.

DATES: This final rule is effective on February 7, 2018. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 7, 2018.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0245, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket),

Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Erik Winchester, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–6450; email address: *winchester.erik@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be affected by this final rule if you manufacture (including import), sell, supply, offer for sale, test, or work with certification firms that certify hardwood plywood, medium-density fiberboard, particleboard, and/or products containing these composite wood materials in the United States. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Veneer, plywood, and engineered wood product manufacturing (NAICS code 3212).
- Manufactured home (mobile home) manufacturing (NAICS code 321991).
- Prefabricated wood building manufacturing (NAICS code 321992).
- Furniture and related product manufacturing (NAICS code 337).
- Furniture merchant wholesalers (NAICS code 42321).
- Lumber, plywood, millwork, and wood panel merchant wholesalers (NAICS code 42331).
- Other construction material merchant wholesalers (NAICS code 423390), *e.g.,* merchant wholesale distributors of manufactured homes (*i.e.,* mobile homes) and/or prefabricated buildings.
- Furniture stores (NAICS code 4421).
- Building material and supplies dealers (NAICS code 4441).
- Manufactured (mobile) home dealers (NAICS code 45393).
- Motor home manufacturing (NAICS code 336213).
- Travel trailer and camper manufacturing (NAICS code 336214).
- Recreational vehicle (RV) dealers (NAICS code 441210).
- Recreational vehicle merchant wholesalers (NAICS code 423110).
- Engineering services (NAICS code 541330).
- Testing laboratories (NAICS code 541380).
- Administrative management and general management consulting services (NAICS code 541611).
- All other professional, scientific, and technical services (NAICS code 541990).
- All other support services (NAICS code 561990).
- Business associations (NAICS code 813910).
- Professional organizations (NAICS code 813920).

If you have any questions regarding the applicability of this action, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What action is the Agency taking?

Following the publication of a Notice of Proposed Rulemaking (*see* 78 FR 34796 and 78 FR 34820) and promulgation of EPA's December 12, 2016 final rule addressing formaldehyde emission standards for composite wood products (81 FR 89674), multiple voluntary consensus standards that were incorporated by reference have been updated or withdrawn and superseded. EPA is incorporating by reference into the regulations at 40 CFR part 770 current versions of the voluntary consensus standards assembled by:

- APA—the Engineered Wood Association,
- Composite Panel Association (CPA),
- American National Standards Institute (ANSI),
- American Society for Testing and Materials (ASTM),
- International Organization for Standardization (ISO),
- Japanese Standards Association (JIS), and
- National Institute of Standards and Technology (NIST).

EPA is taking action to update several voluntary consensus standards in the formaldehyde emission standards for composite wood products final rule to reflect the current editions that are in-use by regulated entities and industry stakeholders. EPA believes that this action is warranted to facilitate regulated entities using the most up-to-date voluntary consensus standards to comply with the final rule.

1. Direct final rule and notice of proposed rulemaking. The Agency published a direct final rule on October 25, 2017 (82 FR 49287) to update several voluntary consensus standards that since publication of the December 12, 2016 final rule, have been updated, superseded, or withdrawn. Additionally, the action would have updated an existing regulatory provision regarding the correlation of quality control test methods. The Agency solicited public comment on a parallel proposed action by issuing a companion Notice of Proposed Rulemaking (82 FR 49308) with the direct final rule. If EPA received adverse public comment and had to withdraw the direct final rule, this parallel proposed action would continue. EPA received six comments on this action; three comments were not germane to the action, two were supportive, and one of which the Agency considered to be adverse; thus, the direct final rule was withdrawn on December 8, 2017, as published in the **Federal Register** (82 FR 57874).

Having withdrawn the direct final rule, EPA is taking action based on the companion Notice of Proposed Rulemaking (NPRM), which includes consideration of all public comments submitted in response to the provisions discussed in the direct final rule and companion proposal. EPA is issuing this final rule and a Response to Comments document which addresses all of the comments received on this action. The response to comments document can be found in the supporting documents section of the final rule section of the docket for this action.

2. Final rule. EPA is updating the references for multiple voluntary consensus standards that were incorporated by reference into the formaldehyde emission standards for composite wood products regulations (40 CFR part 770) because they have been updated, superseded, or withdrawn by their respective organization, as proposed in the companion NPRM. Table 1 of this preamble outlines only the voluntary consensus standards being addressed in this rulemaking and their respective updated versions. Under 1 CFR part 51, the Director of the Federal Register indefinitely approves specific versions of individual standards for use in clearly identified sections. The incorporation by reference of any other

voluntary consensus standard in part 770 remains unchanged. EPA would need to initiate additional rulemaking to change any material incorporated by reference in the part, including adding, updating, or removing standard.

TABLE 1—VOLUNTARY CONSENSUS STANDARDS COMPARISON

Current standard established by final rule 81 (FR 89674)	Status	Update to be promulgated effective February 7, 2018
ANSI/AITC A190.1–2002 American National Standard for Structural Glued Laminated Timber [1].	Updated version	ANSI A190.1–2017 Standard for Wood Products—Structural Glued Laminated Timber [1].
ANSI A208.1–2009 American National Standard for Particleboard.	Updated version	ANSI A208.1–2016 American National Standard for Particleboard.
ANSI A208.2–2009 American National Standard for Medium Density Fiberboard for Interior Applications.	Updated version	ANSI A208.2–2016 American National Standard for Medium Density Fiberboard for Interior Applications.
ANSI–HPVA HP–1–2009 American National Standard for Hardwood and Decorative Plywood.	Updated version	ANSI–HPVA HP–1–2016 American National Standard for Hardwood and Decorative Plywood.
ASTM D5055–05 Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists.	Updated version	ASTM D5055–16 Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists.
ASTM D5456–06 Standard Specification for Evaluation of Structural Composite Lumber Products.	Updated version	ASTM D5456–14b Standard Specification for Evaluation of Structural Composite Lumber Products.
ASTM D5582–00 Standard Test Method for Determining Formaldehyde Levels from Wood Products Using a Desiccator.	Updated version	ASTM D5582–14 Standard Test Method for Determining Formaldehyde Levels from Wood Products Using a Desiccator.
ASTM D6007–02 Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small-Scale Chamber.	Updated version	ASTM D6007–14 Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small-Scale Chamber.
ASTM E1333–10 Standard Test Method for Determining Formaldehyde Concentration in Air and Emission Rated from Wood Products Using a Large Chamber.	Updated version	ASTM E1333–14 Standard Test Method for Determining Formaldehyde Concentration in Air and Emission Rates from Wood Products Using a Large Chamber.
BS EN 717–2: 1995 Wood-based panels—Determination of formaldehyde release—Part 2: Formaldehyde release by the gas analysis method.	Withdrawn, superseded by BS EN ISO 12460–3:2015.	BS EN ISO 12460–3:2015 Wood-based panels—Determination of formaldehyde release. Part 3: Gas analysis method.
BS EN 120: 1992 Wood-based panels. Determination of formaldehyde content—Extraction method called the perforator method.	Withdrawn, superseded by BS EN ISO 12460–5:2015.	BS EN ISO 12460–5:2015 Wood-based panels—Determination of formaldehyde release. Part 5: Extraction method (called the perforator method).
JIS A1460:2001(E) Building boards-determination of formaldehyde emission—Desiccator method.	Updated version	JIS A1460:2015 Determination of the emission of formaldehyde from building boards—Desiccator method.
PS–1–07 Structural Plywood	Updated version	PS–1–09 Structural Plywood.
PS–2–04 Performance Standard for Wood-Based Structural-Use Panels.	Updated version	PS–2–10 Performance Standard for Wood-Based Structural-Use Panels.

[1] Note that the ANSI/AITC 190.1–2002 Standard is no longer under the American Institute of Timber Construction purview for the 2017 version, and is now an APA—the Engineered Wood Association managed standard.

EPA adopts all of the updated versions of the standards referenced in Table 1 in this rule. Any future versions or updates to withdrawn/superseded standards will be announced by EPA through a separate **Federal Register** document with opportunity for public comment.

EPA is also taking final action on several technical corrections to references to the ISO/IEC 17020:2012(E) in the testing correlation requirements under § 770.20, as discussed below. The Agency did not receive any adverse comment related specifically to these technical corrections.

EPA received approval to incorporate ISO/IEC 17020: 2012(E) by reference into part 770, as part of the December 2016 final rule, instead of the 1998 version that was originally proposed. However, that updated version was not reflected everywhere in that published rule. This rule corrects those remaining instances and ensures that all of the references are to the version of the standard that is approved for incorporation by reference.

EPA is also finalizing a revision at § 770.20(d)(2)(i) to allow the correlation of the tests conducted through the quality control methods listed in § 770.20(b) to either ASTM E1333–14 or, upon a showing of equivalence, ASTM D6007–14 test chamber tests. The California Air Resources Board (CARB) under its Air Toxic Control Measure (ATCM) has approved the use of ASTM D6007–14 test chambers that have previously shown equivalence under § 770.20(d) to an ASTM E1333–14 test chamber to be correlated to other mill quality control method tests listed in § 770.20(b). According to CARB staff, this is the commonly used method for conducting correlation between test methods. Several third-party certifiers, regulated entities and their associations expressed the importance of allowing mill quality control tests to be correlated to ASTM D6007–14 test chambers as they currently operate under the CARB ATCM using this approach and not allowing test chamber correlation in this manner under TSCA Title VI would significantly disrupt product certifications and supply chain processes. EPA agrees that significant disruptions would occur, including problems with completing testing which would lead to significant shortfalls in supply of TSCA Title VI certified product if the correlation of mill quality control tests were allowed only through the use of ASTM E1333–14 test chambers. Additionally, based on consultations with the CARB staff, allowing correlation to be established through the use of ASTM D6007–14 test chambers in addition to the ASTM E1333–14 test chambers does not result in a decrease in testing reliability and yields comparable results if the ASTM D6007–14 test chambers have shown equivalence to the ASTM E1333–14 test chambers. To maintain consistency with this revision, EPA is also updating the definition of *quality control limit (QCL)*

to allow for the use of the ASTM E1333–14 test chamber, or, upon showing equivalence, the ASTM D6007–14 test chamber.

To aid mills and third-party certifiers in understanding the practical implications of this revision, and to help them implement this revision into the TSCA Title VI program, the Agency is clarifying that data generated beginning December 12, 2016 using an ASTM E1333–10 test chamber, or, upon showing equivalence, an ASTM D6007–02 test chamber, and a panel producer's quality control (QC) test method under § 770.20(b)(1) may be used to establish the required annual correlation. Data generated beginning December 12, 2016 from a panel producer's QC test method under § 770.20(b)(1) that has been correlated to either an ASTM E1333–10 test chamber, or, upon showing equivalence, an ASTM D6007–02 test chamber, may be used to certify compliant composite wood products under the TSCA Title VI program until a new annual correlation is required. Beginning on February 7, 2018, data used to establish correlations must be generated using an ASTM E1333–14 test chamber, or, upon showing equivalence, an ASTM D6007–14 test chamber and the panel producer's QC test method under § 770.20(b)(1).

B. What is the Agency's authority for taking this action?

These regulations are established under authority of Section 601 of TSCA, 15 U.S.C. 2697.

III. Effective Date

This final rule is not subject to the 30-day delay of effective date generally required by 5 U.S.C. 553(d) because the amendments relieve a restriction. *See* 5 U.S.C. 553(d)(1). Specifically, the current regulation requires the correlation of the tests conducted through the quality control methods listed in § 770.20(b) to be to ASTM E1333–14 test chamber tests. The amendments allow the correlation of the tests conducted through the quality control methods listed in § 770.20(b) to be to *either* ASTM E1333–14 *or,* upon a showing of equivalence, ASTM D6007–14 test chamber tests. This will provide another option for testing and facilitate compliance by the regulated entities. The amendments regarding the voluntary consensus standards reflect the current voluntary consensus standards. To the extent that the regulation required regulated entities to demonstrate compliance according to outdated standards that have been updated, superseded, or withdrawn by their respective organization, this change relieves that restriction. This will avoid confusion over compliance, as the amended versions represent the current voluntary consensus standards in use. Moreover, EPA also finds that there is ''good cause'' under 5 U.S.C. 553(d)(3) to make the updates to the voluntary consensus standards effective upon publication. The references for the voluntary consensus standards are being updated because the prior versions have been updated, superseded, or withdrawn by their respective organization. If these updates were delayed by 30 days, regulated entities would face uncertainty about whether current standards could be used to comply with the rule. In addition, the regulated entities do not need a 30-day delay in the effective date to prepare for these amendments because they are already familiar with and able to apply the current voluntary consensus standards.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA because it does not create any new reporting or recordkeeping obligations. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2070–0185.

D. Regulatory Flexibility Act (RFA)

The Agency certifies 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 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. This rule updates the voluntary consensus standards that were incorporated by reference in the final rule to the most current versions. The updated versions of the standards are substantially similar to the previous versions. EPA expects that many small entities are already complying with the updated versions of the standards listed in Table

This action would relieve these entities of the burden of having to also demonstrate compliance with outdated versions of these standards. This action also provides an amendment to the equivalence and correlation requirements at § 770.20 that would reduce testing burdens without compromising the integrity of the data collected by panel producers and third party certifiers to demonstrate compliance with the emission standards in the final rule. This action will relieve or have no net regulatory burden for directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate 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. This final rule will not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, because it does not concern an environmental health risk or safety risk. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this

action present a disproportionate risk to children. As addressed in Unit II.A., this action would not materially alter the final rule as published, and will update existing voluntary consensus standards incorporated by reference in the final rule and provide an amendment to the testing requirements at § 770.20.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves voluntary consensus standards, many of which EPA is directed to use by TSCA Title VI. Voluntary consensus standards identified in the statute have been updated by the voluntary consensus standard management bodies which antiquates the statutorily required versions.

EPA is updating voluntary consensus standards as issued by ASTM International, ANSI, APA, HPVA, NIST, BSI, and JIS. Copies of the standards referenced in the regulatory text have been placed in the docket for this rule. Additionally, each of these standards is available for inspection at the OPPT Docket in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA, West Bldg., 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. EPA has determined that all of these standards are reasonably available to the class of persons affected by this rulemaking. The following voluntary consensus standards are being updated:

(a) APA, CPA, and HPVA standards. Copies of these standards may be obtained from the specific publisher, as noted below, or from the American National Standards Institute, 1899 L Street NW, 11th Floor, Washington, DC 20036, or by calling (202) 293–8020, or at *http://ansi.org.* Note that ANSI/APA A190.1–2017 is published by APA—the Engineered Wood Association. ANSI A208.1–2016 and ANSI A208.2–2016 are published by the Composite Panel Association. And ANSI ANSI/HPVA–HP–1–2016 is published by the Hardwood Plywood Veneer Association.

1. ANSI/APA A190.1–2017, *Structural Glued Laminated Timber.* This standard describes minimum requirements for the manufacture and production of structural glued laminated timber, including size tolerances, grade combinations, lumber, adhesives, and appearance grades.

2. ANSI A208.1–2016, *American National Standard, Particleboard.* This standard describes the requirements and test methods for dimensional tolerances, physical and mechanical properties and formaldehyde emissions for particleboard, along with methods of identifying products conforming to the standard.

3. ANSI A208.2–2016, *American National Standard, Medium Density Fiberboard (MDF) for Interior Applications.* This standard describes the requirements and test methods for dimensional tolerances, physical and mechanical properties and formaldehyde emissions for MDF, along with methods of identifying products conforming to the standard.

4. ANSI/HPVA HP–1–2016, *American National Standard for Hardwood and Decorative Plywood.* This standard details the specific requirements for all face, back, and inner ply grades of hardwood plywood as well as formaldehyde emission limits, moisture content, tolerances, sanding, and grade marking.

(b) ASTM material. Copies of these materials may be obtained from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, or by calling (877) 909–ASTM, or at *http://www.astm.org.*

1. ASTM E1333–14, *Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber.* This test method measures the formaldehyde concentration in air and emission rate from wood products containing formaldehyde under conditions designed to simulate product use. The concentration in air and emission rate is determined in a large chamber under specific test conditions of temperature and relative humidity. The general procedures are also intended for testing product combinations at product-loading ratios and at air-exchange rates typical of the indoor environment.

2. ASTM D6007–14, *Determining Formaldehyde Concentrations in Air from Wood Products Using a Small-Scale Chamber.* This test method measures the formaldehyde concentrations in air from wood products under defined test conditions of temperature and relative humidity. Results obtained from this small-scale chamber test method are intended to be comparable to results obtained testing larger product samples by the large chamber test method for wood products, Test Method E 1333.

3. ASTM D5582–14, *Determining Formaldehyde Levels from Wood Products Using a Dessicator.* This test method describes a small scale procedure for measuring formaldehyde emissions potential from wood products. The formaldehyde level is determined by collecting airborne formaldehyde in a small distilled water reservoir within a closed desiccator. The quantity of formaldehyde is determined by a chromotropic acid test procedure.

4. ASTM D5456–14b, *Evaluation of Structural Composite Lumber Products.* This specification describes initial qualification sampling, mechanical and physical tests, analysis, and design value assignments. Requirements for a quality-control program and cumulative evaluations are included to ensure maintenance of allowable design values for the product.

5. ASTM D5055–16, *Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists.* This specification gives procedures for establishing, monitoring, and reevaluating structural capacities of prefabricated wood I-joists, such as shear, moment, and stiffness. The specification also provides procedures for establishing common details and itemizes certain design considerations specific to wood I-joists.

(c) CEN materials. Copies of these materials are not directly available from the European Committee for Standardization, but from one of CEN's National Members, Affiliates, or Partner Standardization Bodies. To purchase a standard, go to CEN's website, *http://www.cen.eu,* and select ''Products'' for more detailed information.

1. BS EN 12460–3: 2015, *Wood-based Panels—Determination of Formaldehyde Release* [*Part 3: Gas Analysis Method*]. This British Version of the European standard describes a procedure for determination of accelerated formaldehyde release from wood-based panels.

2. BS EN 12460–5: 2015, *Wood-based Panels—Determination of Formaldehyde Release* [*Part 5: Extraction Method (Called the Perforator Method)*]. This British Version of the European standard describes an extraction method, known as the perforator method, for determining the formaldehyde content of unlaminated and uncoated wood-based panels.

(d) Copies of JIS A 1460: 2015, *Determination of the Emission of Formaldehyde from Building Boards—*

Desiccator Method, English Version, may be obtained from Japanese Industrial Standards, 1–24, Akasaka 4, Minatoku, Tokyo 107–8440, Japan, or by calling +81–3–3583–8000, or at *http://www.jsa.or.jp.* This method describes a method for testing formaldehyde emissions from construction boards by measuring the concentration of formaldehyde absorbed in distilled or deionized water from samples of a specified surface area placed in a glass desiccator for 24 hours.

(e) NIST material. Copies of these materials may be obtained from the National Institute of Standards and Technology (NIST) by calling (800) 553–6847 or from the U.S. Government Printing Office (GPO). To purchase a NIST publication you must have the order number. Order numbers may be obtained from the Public Inquiries Unit at (301) 975–NIST. Mailing address: Public Inquiries Unit, NIST, 100 Bureau Dr., Stop 1070, Gaithersburg, MD 20899–1070. If you have a GPO stock number, you can purchase printed copies of NIST publications from GPO. GPO orders may be mailed to: U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197–9000, placed by telephone at (866) 512–1800 (DC Area only: (202) 512–1800), or faxed to (202) 512–2104. Additional information is available online at: *http://www.nist.gov.*

1. PS 1–09, *Structural Plywood.* This standard describes the principal types and grades of structural plywood, covering the wood species, veneer grading, adhesive bonds, panel construction and workmanship, dimensions and tolerances, marking, moisture content and packaging of structural plywood intended for construction and industrial uses. Test methods to determine compliance and a glossary of trade terms and definitions are included, as is a quality certification program involving inspection, sampling, and testing of products identified as complying with this standard by qualified testing agencies.

2. PS 2–10, *Performance Standard for Wood-Based Structural-Use Panels.* This standard covers performance requirements, adhesive bond performance, panel construction and workmanship, dimensions and tolerances, marking, and moisture content of structural-use panels, such as plywood, waferboard, oriented strand board, structural particle board, and composite panels. The standard includes test methods, a glossary of trade terms and definitions, and a quality certification program involving inspection, sampling, and testing of products for qualification under the standard.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA has determined that the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations, as specified in Executive Order 12898. As addressed in Unit II.A., this action would not materially alter the final rule as published, and will update existing voluntary consensus standards incorporated by reference in the final rule and provide an amendment to the testing requirements at § 770.20.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and 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). Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. As required by 5 U.S.C. 808(2), this determination is supported by a brief statement in Unit III.

List of Subjects in 40 CFR Part 770

Environmental protection, Formaldehyde, Incorporation by reference, Reporting and recordkeeping requirements, Third-party certification, Toxic substances, Wood.

Dated: January 26, 2018.

E. Scott Pruitt,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 770—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

■ 1. The authority citation for part 770 continues to read as follows:

Authority: 15 U.S.C. 2697(d).

■ 2. In § 770.1, paragraphs (c)(3), (4), (5), (7), and (8) are revised to read as follows:

§ 770.1 Scope and applicability.

* * * * *

(c) * * *

(3) Structural plywood, as specified in PS 1–09, Structural Plywood (incorporated by reference, see § 770.99).

(4) Structural panels, as specified in PS 2–10, Performance Standard for Wood-Based Structural-Use Panels (incorporated by reference, see § 770.99).

(5) Structural composite lumber, as specified in ASTM D5456–14b, Standard Specification for Evaluation of Structural Composite Lumber Products (incorporated by reference, see § 770.99).

* * * * *

(7) Glued laminated lumber, as specified in ANSI A190.1–2017, Standard for Wood Products—Structural Glued Laminated Timber (incorporated by reference, see § 770.99).

(8) Prefabricated wood I-joists, as specified in ASTM D5055–16, Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists (incorporated by reference, see § 770.99).

* * * * *

■ 3. In § 770.3:

■ a. In the terms ''EPA TSCA Title VI Product Accreditation Body or EPA TSCA Title VI Product AB'' and ''TPC laboratory'', remove ''17020:1998(E)'' and add in its place ''17020:2012(E)''; and

■ b. Revise the terms ''Hardboard,'' ''Hardwood plywood,'' ''Medium-density fiberboard,'' ''Particleboard,'' and ''Quality control limit or QCL''.

The revisions read as follows:

§ 770.3 Definitions.

* * * * *

Hardboard means a composite panel composed of cellulosic fibers, consolidated under heat and pressure in a hot press by: A wet process; or a dry process that uses a phenolic resin, or a resin system in which there is no formaldehyde as part of the resin cross-linking structure; or a wet formed/dry pressed process; and that is commonly or commercially known, or sold, as hardboard, including any product conforming to one of the following ANSI standards: Basic Hardboard (ANSI A135.4–2012) (incorporated by reference, see § 770.99), Prefinished Hardboard Paneling (ANSI A135.5–2012) (incorporated by reference, see § 770.99), Engineered Wood Siding (ANSI A135.6–2012) (incorporated by reference, see § 770.99), or Engineered Wood Trim (ANSI A135.7–2012) (incorporated by reference, see § 770.99). There is a rebuttable

presumption that products emitting more than 0.06 ppm formaldehyde as measured by ASTM E1333–14 (incorporated by reference, see § 770.99) or ASTM D6007–14 (incorporated by reference, see § 770.99) are not hardboard.

Hardwood plywood means a hardwood or decorative panel that is intended for interior use and composed of (as determined under ANSI/HPVA HP–1–2016 (incorporated by reference, see § 770.99)) an assembly of layers or plies of veneer, joined by an adhesive with a lumber core, a particleboard core, a medium-density fiberboard core, a hardboard core, a veneer core, or any other special core or special back material. Hardwood plywood does not include military-specified plywood, curved plywood, or any plywood specified in PS 1–09, Structural Plywood (incorporated by reference, see § 770.99), or PS 2–10, Performance Standard for Wood-Based Structural-Use Panels (incorporated by reference, see § 770.99). In addition, hardwood plywood includes laminated products except as provided at § 770.4.

* * * * *

Medium-density fiberboard means a panel composed of cellulosic fibers made by dry forming and pressing a resinated fiber mat (as determined under ANSI A208.2–2016 (incorporated by reference, see § 770.99)).

* * * * *

Particleboard means a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with resin (as determined under ANSI A208.1–2016 (incorporated by reference, see § 770.99)). Particleboard does not include any product specified in PS 2–10 (incorporated by reference, see § 770.99).

* * * * *

Quality control limit or *QCL* means the value from the quality control method test that is the correlative equivalent to the applicable emission standard based on the ASTM E1333–14 method (incorporated by reference, see § 770.99) or, upon showing equivalence in accordance with § 770.20(d), the ASTM D6007–14 method (incorporated by reference, see § 770.99).

* * * * *

■ 4. In § 770.7:

■ a. In paragraphs (a)(5)(i)(A) introductory text, (b)(1)(iv), (c)(1)(iii), (c)(2)(v), and (c)(4)(i)(F), remove ''17020:1998(E)'' and add in its place ''17020:2012(E)''; and

■ b. Revise paragraphs (a)(5)(i)(D) and (F), (b)(5)(i) introductory text, (c)(1)(ii) and (v), (c)(2)(iv) and (viii), (c)(4)(i)(B), and (c)(4)(v)(C).

The revisions read as follows:

§ 770.7 Third-party certification.

(a) * * *

(5) * * *

(i) * * *

(D) A review of the approach that the TPC laboratory will use for establishing correlation or equivalence between ASTM E1333–14 and ASTM D6007–14, if used, (incorporated by reference, see § 770.99) or allowable formaldehyde test methods listed under § 770.20.

* * * * *

(F) A review of the accreditation credentials of the TPC laboratory, including a verification that the laboratory has been accredited to ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99) with a scope of accreditation to include this part—Formaldehyde Standards for Composite Wood Products and the formaldehyde test methods ASTM E1333–14 and ASTM D6007–14, if used, by an EPA TSCA Title VI Laboratory AB (incorporated by reference, see § 770.99).

* * * * *

(b) * * *

(5) * * *

(i) *Accreditation.* EPA TSCA Title VI Laboratory ABs must determine the accreditation eligibility, and accredit if appropriate, each TPC seeking recognition under the EPA TSCA Title VI Third-Party Certification Program by performing an assessment of each TPC. The assessment must include an on-site assessment by the EPA TSCA Title VI Laboratory AB to determine whether the laboratory meets the requirements of ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99), is in conformance with ISO/IEC 17020:2012(E) (incorporated by reference, see § 770.99) and the EPA TSCA Title VI TPC requirements under this part including the formaldehyde test methods ASTM E1333–14 and ASTM D6007–14 (incorporated by reference, see § 770.99), if used. In performing the on-site assessment, the EPA TSCA Title VI Laboratory AB must:

* * * * *

(c) * * *

(1) * * *

(ii) Be, or have a contract with a laboratory that is, accredited by an EPA TSCA Title VI Laboratory AB to ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99) with a scope of accreditation to include this part—Formaldehyde Standards for Composite Wood Products—and the formaldehyde test methods ASTM E1333–14 and ASTM D6007–14, if used (incorporated by reference, see § 770.99);

* * * * *

(v) Have demonstrated experience in performing or verifying formaldehyde emissions testing on composite wood products, including experience with test method ASTM E1333–14 and ASTM D6007–14, if used, (incorporated by reference, see § 770.99), and experience evaluating correlation between test methods. Applicant TPCs that have demonstrated experience with test method ASTM D6007–14 only, must be contracting testing with a laboratory that has a large chamber and demonstrate its experience with ASTM E1333–14.

(2) * * *

(iv) A copy of the TPC laboratory's certificate of accreditation from an EPA TSCA Title VI Laboratory AB to ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99) with a scope of accreditation to include this part—Formaldehyde Standards for Composite Wood Products—and the formaldehyde test methods ASTM E1333–14 and ASTM D6007–14 (incorporated by reference, see § 770.99), if used;

* * * * *

(viii) A description of the TPC's experience with test method ASTM E1333–14 and/or ASTM D6007–14, if used, (incorporated by reference, see § 770.99), and experience evaluating correlation between test methods. Applicant TPCs that have experience with test method ASTM D6007–14 only, must be contracting testing with a laboratory that has a large chamber and describe its experience with ASTM E1333–14; and

* * * * *

(4) * * *

(i) * * *

(B) Verify each panel producer's quality control test results compared with test results from ASTM E1333–14 and ASTM D6007–14, if used, (incorporated by reference, see § 770.99) by having the TPC laboratory conduct quarterly tests and evaluate test method equivalence and correlation as required under § 770.20;

* * * * *

(v) * * *

(C) Notification of a panel producer exceeding its established QCL for more than two consecutive quality control tests within 72 hours of the time that the TPC becomes aware of the second exceedance. The notice must include the product type, dates of the quality control tests that exceeded the QCL, quality control test results, ASTM E1333–14 (incorporated by reference, see § 770.99) or ASTM D6007–14 method (incorporated by reference, see

§ 770.99) correlative equivalent values in accordance with § 770.20(d), the established QCL value(s) and the quality control method used.

* * * * *

■ 5. In § 770.10, paragraph (b) introductory text is revised to read as follows:

§ 770.10 Formaldehyde emission standards.

* * * * *

(b) The emission standards are based on test method ASTM E1333–14 (incorporated by reference, see § 770.99), and are as follows:

* * * * *

■ 6. In § 770.15, paragraphs (c)(1)(v) and (c)(2)(iii) are revised to read as follows:

§ 770.15 Composite wood product certification.

* * * * *

(c) * * *

(1) * * *

(v) At least five tests conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333–14 or ASTM D6007–14 (incorporated by reference, see § 770.99). Test results obtained by ASTM D6007–14 must include a showing of equivalence in accordance with § 770.20(d)(1);

* * * * *

(2) * * *

(iii) At least five tests conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333–14 or ASTM D6007–14 (incorporated by reference, see § 770.99). Test results obtained by ASTM D6007–14 must include a showing of equivalence in accordance with § 770.20(d)(1);

* * * * *

■ 7. In § 770.17, paragraph (a)(3) is revised to read as follows:

§ 770.17 No-added formaldehyde-based resins.

(a) * * *

(3) At least one test conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333–14 or ASTM D6007–14 (incorporated by reference, see § 770.99). Test results obtained by ASTM D6007–14 must include a showing of equivalence in accordance with § 770.20(d)(1); and

* * * * *

■ 8. In § 770.18, paragraph (a)(3) is revised to read as follows:

§ 770.18 Ultra low-emitting formaldehyde resins.

(a) * * *

(3) At least two tests conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333–14 or ASTM D6007–14 (incorporated by reference, see § 770.99). Test results obtained by ASTM D6007–14 must include a showing of equivalence in accordance with § 770.20(d)(1); and

* * * * *

■ 9. In § 770.20, paragraphs (b)(1)(i) through (iii), (vi), and (vii), (c)(1), (d) introductory text, (d)(1), (d)(2) introductory text, and (d)(2)(i) are revised to read as follows:

§ 770.20 Testing requirements.

* * * * *

(b) * * *

(1) * * *

(i) ASTM D6007–14 (incorporated by reference, see § 770.99).

(ii) ASTM D5582–14 (incorporated by reference, see § 770.99).

(iii) BS EN ISO 12460–3:2015 E (Gas Analysis Method) (incorporated by reference, see § 770.99).

* * * * *

(vi) BS EN ISO 12460–5:2015 E (Perforator Method) (incorporated by reference, see § 770.99).

(vii) JIS A 1460:2015(E) (24-hr Desiccator Method) (incorporated by reference, see § 770.99).

* * * * *

(c) * * *

(1) *Allowable methods.* Quarterly testing must be performed using ASTM E1333–14 (incorporated by reference, see § 770.99) or, with a showing of equivalence pursuant to paragraph (d) of this section, ASTM D6007–14 (incorporated by reference, see § 770.99).

* * * * *

(d) *Equivalence or correlation.* Equivalence or correlation between ASTM E1333–14 (incorporated by reference, see § 770.99) and any other test method used for quarterly or quality control testing must be demonstrated by EPA TSCA Title VI TPCs or panel producers, respectively, at least once each year for each testing apparatus or whenever there is a significant change in equipment, procedure, or the qualifications of testing personnel. Once equivalence or correlation have been established for three consecutive years, equivalence or correlation must be demonstrated every two years or whenever there is a significant change in equipment, procedure, or the qualifications of testing personnel.

(1) *Equivalence between ASTM E1333–14 and ASTM D6007–14 when used by the TPC for quarterly testing.* Equivalence must be demonstrated for at least five comparison sample sets, which compare the results of the two methods. Equivalence must be demonstrated for each small chamber used and for the ranges of emissions of composite wood products tested by the TPC.

(i) *Samples.* (A) For the ASTM E1333–14 method (incorporated by reference, see § 770.99), each comparison sample must consist of the result of testing panels, using the applicable loading ratios specified in the ASTM E1333–14 method (incorporated by reference, see § 770.99), from similar panels of the same product type tested by the ASTM D6007–14 method (incorporated by reference, see § 770.99).

(B) For the ASTM D6007–14 method (incorporated by reference, see § 770.99), each comparison sample shall consist of testing specimens representing portions of panels similar to the panels tested in the ASTM E1333–14 method (incorporated by reference, see § 770.99) and matched to their respective ASTM E1333–14 method (incorporated by reference, see § 770.99) comparison sample result. The ratio of air flow to sample surface area specified in ASTM D6007–14 (incorporated by reference, see § 770.99) must be used.

(C) The five comparison sample must consist of testing a minimum of five sample sets as measured by the ASTM E1333–14 method (incorporated by reference, see § 770.99).

(ii) *Average and standard deviation.* The arithmetic mean, x, and standard deviation, S, of the difference of all comparison sets must be calculated as follows:

$$\overline{X} = \sum_{i=1}^{n} D_i / n \qquad S = \sqrt{\sum_{i=1}^{n} (D_i - \overline{X})^2 / (n-1)}$$

Where x = arithmetic mean; S = standard deviation; n = number of sets; D i = difference between the ASTM E1333–14 and ASTM D6007–14 method (incorporated by reference, see § 770.99) values for the i th set; and i ranges from 1 to n.

(iii) *Equivalence determination.* The ASTM D6007–14 method (incorporated by reference, see § 770.99) is considered equivalent to the ASTM E1333–14 method (incorporated by reference, see § 770.99) if the following condition is met:

$$\left|\overline{X}\right| + 0.88S \leq C$$

Where C is equal to 0.026.

(2) *Correlation between ASTM E1333–14 and any quality control test method.* Correlation must be demonstrated by establishing an acceptable correlation coefficient (''r'' value).

(i) *Correlation.* The correlation must be based on a minimum sample size of five data pairs and a simple linear regression where the dependent variable (Y-axis) is the quality control test value and the independent variable (X-axis) is the ASTM E1333–14 (incorporated by reference, see § 770.99) test value or, upon a showing of equivalence in accordance with paragraph (d) of this section, the equivalent ASTM D6007–14 (incorporated by reference, see § 770.99) test value. Either composite wood products or formaldehyde emissions reference materials can be used to establish the correlation.

* * * * *

■ 10. In § 770.99, paragraphs (a) introductory text, (a)(5) through (8), (b)(1) through (5), (c)(1) and (2), (f)(1), and (g)(1) and (2) are revised to read as follows:

§ 770.99 Incorporation by reference.

* * * * *

(a) *CPA, APA, and HPVA Materials.* Copies of these materials may be obtained from the specific publisher, as noted in this paragraph (a), or from the American National Standards Institute, 1899 L Street NW, 11th Floor, Washington, DC 20036, or by calling (202) 293–8020, or at *http://ansi.org/.* Note that ANSI A190.1–2017 is published by APA—the Engineered Wood Association. ANSI A135.4–2012, ANSI A135.5–2012, ANSI A135.6–2012, ANSI A135.7–2012, ANSI A208.1–2016 and ANSI A208.2–2016 are published by the Composite Panel Association; and ANSI/HPVA–HP–1–2016 is published by the Hardwood Plywood Veneer Association.

* * * * *

(5) ANSI A190.1–2017, Standard for Wood Products—Structural Glued Laminated Timber, Approved January 24, 2017, IBR approved for § 770.1(c).

(6) ANSI A208.1–2016, Particleboard, Approved May 12, 2016, IBR approved for § 770.3.

(7) ANSI A208.2–2016, Medium Density Fiberboard (MDF) for Interior Applications, Approved May 12, 2016, IBR approved for § 770.3.

(8) ANSI/HPVA HP–1–2016, American National Standard for Hardwood and Decorative Plywood, Approved January 12, 2016, IBR approved for § 770.3.

(b) * * *

(1) ASTM D5055–16, Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists, Approved June 1, 2016, IBR approved for § 770.1(c).

(2) ASTM D5456–14b, Standard Specification for Evaluation of Structural Composite Lumber Products, Approved October 1, 2014, IBR approved for § 770.1(c).

(3) ASTM D5582–14, Standard Test Method for Determining Formaldehyde Levels from Wood Products Using a Desiccator, Approved-August 1, 2014, IBR approved for § 770.20(b).

(4) ASTM D6007–14, Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small-Scale Chamber, Approved October 1, 2014, IBR approved for §§ 770.3, 770.7(a) through (c), 770.15(c), 770.17(a), 770.18(a), and 770.20(b) through (d).

(5) ASTM E1333–14, Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber, Approved October 1, 2014, IBR approved for §§ 770.3, 770.7(a) through (c), 770.10(b), 770.15(c), 770.17(a), 770.18(a), and 770.20(c) and (d).

(c) * * *

(1) BS EN ISO 12460–3:2015 E, Wood-based panels.—Determination of formaldehyde release—Part 3: Gas analysis method, November 2015, IBR approved for § 770.20(b).

(2) BS EN ISO 12460–5:2015 E, Wood based panels.—Determination of formaldehyde release—Part 5: Extraction method (called the perforator method), December 2015, IBR approved for § 770.20(b).

* * * * *

(f) * * *

(1) JIS A 1460:2015(E), Determination of the emission of formaldehyde from building boards—Desiccator method, First English edition, published 2015–10, IBR approved for § 770.20(b).

* * * * *

(g) * * *

(1) PS 1–09, Structural Plywood, May 2010, IBR approved for §§ 770.1(c) and 770.3.

(2) PS 2–10, Performance Standard for Wood-Based Structural-Use Panels, June

2011, IBR approved for §§ 770.1(c) and 770.3.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 170303230–8047–02]

RIN 0648–BG72

List of Fisheries for 2018

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2018, as required by the Marine Mammal Protection Act (MMPA). The LOF for 2018 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of mortality and serious injury of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: The applicability date of this final rule is March 9, 2018.

ADDRESSES: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kristy Long, Office of Protected Resources, 301–427–8402; Allison Rosner, Greater Atlantic Region, 978–281–9328; Jessica Powell, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 562–980–3209; Suzie Teerlink, Alaska Region, 907–586–7240; Kevin Brindock, Pacific Islands Region, 808–725–5146. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental mortality and serious injury of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SARs) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (OSP). This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock. If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock will be placed in Category III (unless those fisheries interact with other stock(s) for which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2: Tier 2 considers fishery-specific mortality and serious injury for a particular stock.

Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (*i.e.,* frequent incidental mortality and serious injury of marine mammals).

Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (*i.e.,* occasional incidental mortality and serious injury of marine mammals).

Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level (*i.e.,* a remote likelihood of or no known incidental mortality and serious injury of marine mammals).

Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086; August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one category for one marine mammal stock and another category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (*e.g.,* a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II). Stocks driving a fishery's classification are denoted with a superscript ''1'' in Tables 1 and 2.

Other Criteria That May Be Considered

The tier analysis requires a minimum amount of data, and NMFS does not have sufficient data to perform a tier analysis on certain fisheries. Therefore, NMFS has classified certain fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, or according to factors discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995) and listed in the regulatory definition of a Category II fishery: In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental mortality or serious injury is ''frequent,'' ''occasional,'' or ''remote'' by evaluating other factors

such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species and/or stocks incidentally killed or injured in each commercial fishery. The list of species and/or stocks incidentally killed or injured includes ''serious'' and ''non-serious'' documented injuries as described later in the List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean and the Atlantic Ocean, Gulf of Mexico, and Caribbean sections. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs and injury determination reports. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. The best available scientific information used in the SARs reviewed for the 2018 LOF generally summarizes data from 2010–2014. NMFS also reviews other sources of new information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.,* MMPA mortality/injury reports), and anecdotal reports from that time period. In some cases, more recent information may be available and used in the LOF, but in an effort to be consistent with the most recent SARs and across the LOF, NMFS typically restricts the analysis to data within the five-year time period summarized in the current SAR.

For fisheries with observer coverage, species or stocks are generally removed from the list of marine mammal species and/or stocks incidentally killed or injured if no interactions are documented in the five-year timeframe summarized in that year's LOF. For fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.,* fishery has low observer coverage and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery) species and stocks may be retained for longer than five years. For these fisheries, NMFS will review the other sources of information listed above and use its discretion to decide when it is appropriate to remove a species or stock.

Where does NMFS obtain information on the level of observer coverage in a fishery on the LOF?

The best available information on the level of observer coverage and the spatial and temporal distribution of observed marine mammal interactions is presented in the SARs. Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. Starting with the 2005 SARs, each Pacific and Alaska SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including the observer coverage in those fisheries. For Atlantic fisheries, this information can be found in the LOF Fishery Fact Sheets. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are generally not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Fishery information presented in the SARs' appendices and other resources referenced during the tier analysis may include: Level of observer coverage; target species; levels of fishing effort; spatial and temporal distribution of fishing effort; characteristics of fishing gear and operations; management and regulations; and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources website at: *http://www.nmfs.noaa.gov/pr/sars/.* Information on observer coverage levels in Category I, II, and III fisheries can be found in the fishery fact sheets on the NMFS Office of Protected Resources' website: *http://www.nmfs.noaa.gov/pr/interactions/fisheries/lof.html.* Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: *http://www.st.nmfs.gov/observer-home/.*

How do I find out if a specific fishery is in Category I, II, or III?

The LOF includes three tables that list all U.S. commercial fisheries by Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S.-authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRTs).

Are high seas fisheries included on the LOF?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (*e.g.,* trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 by a ''*'' after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

HSFCA permits are valid for five years, during which time Fishery Management Plans (FMPs) can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits

displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008). Additional information about HSFCA permits can be found at: *http://www.nmfs.noaa.gov/ia/permits/highseas.html.*

Where can I find specific information on fisheries listed on the LOF?

Starting with the 2010 LOF, NMFS developed summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: When the fishery was added to the LOF; the basis for the fishery's initial classification; classification changes to the fishery; changes to the list of species and/or stocks incidentally killed or injured in the fishery; fishery gear and methods used; observer coverage levels; fishery management and regulation; and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under ''How Do I Find Out if a Specific Fishery is in Category I, II, or III?'' on the NMFS Office of Protected Resources' website: *http://www.nmfs.noaa.gov/pr/interactions/fisheries/lof.html,* linked to the ''List of Fisheries by Year'' table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets is taking significant time to complete. NMFS began posting Category III fishery fact sheets online with the LOF for 2016.

Am I required to register under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How do I register and receive my Marine Mammal Authorization Program (MMAP) authorization certificate?

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials.

In the Pacific Islands, West Coast, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail or with their state or Federal license or permit at the time of issuance or renewal.

In the West Coast Region, authorization certificates may be obtained from the website *http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/fisheries_interactions.html.*

In the Alaska Region, authorization certificates may be obtained by visiting the Alaska Regional Office website *https://alaskafisheries.noaa.gov/pr/mmapregistration.*

In the Greater Atlantic Region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year. Certificates may also be obtained by visiting the Greater Atlantic Regional Office website *http://www.greateratlantic.fisheries.noaa.gov/mmap/.*

In the Southeast Region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year. Vessel or gear owners can receive additional authorization certificates by contacting the Southeast Regional Office at 727–209–5952 or by visiting the Southeast Regional Office website *http://sero.nmfs.noaa.gov/protected_resources/marine_mammal_authorization_program/* and following the instructions for printing the certificate.

The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal license or permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries.

Individuals fishing in Category I and II fisheries for which no state or Federal license or permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

How do I renew my registration under the MMAP?

In Alaska regional and Greater Atlantic regional fisheries, registrations of vessel or gear owners are automatically renewed and participants should receive an authorization certificate by January 1 of each new year. Certificates can also be obtained from the region's website. In Pacific Islands regional fisheries, vessel or gear owners receive an authorization certificate by January 1 for state fisheries and with their permit renewal for Federal fisheries. In West Coast regional fisheries, vessel or gear owners receive authorization either with each renewed state fishing license in Washington and Oregon, with their permit renewal for Federal fisheries (the timing of which varies based on target species), or via U.S. mail. Vessel or gear owners who participate in fisheries in these regions and have not received authorization certificates by January 1 or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **FOR FURTHER INFORMATION CONTACT**). In Southeast regional fisheries, vessel or gear owners' registrations are automatically renewed and participants will receive an authorization certificate via U.S. mail automatically at the beginning of each calendar year. Additional authorization certificates are available for printing on the Southeast Regional Office website *http://sero.nmfs.noaa.gov/protected_resources/marine_mammal_authorization_program/.*

Am I required to submit reports when I kill or injure a marine mammal during the course of commercial fishing operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II, or III) within 48 hours of the end of the fishing trip or,

in the case of non-vessel fisheries, fishing activity. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported.

Mortality/injury reporting forms and instructions for submitting forms to NMFS can be found at: *http://www.nmfs.noaa.gov/pr/interactions/mmap/#form* or by contacting the appropriate regional office (see **FOR FURTHER INFORMATION CONTACT**). Forms may be submitted via any of the following means: (1) Online using the electronic form; (2) emailed as an attachment to *nmfs.mireport@noaa.gov;* (3) faxed to the NMFS Office of Protected Resources at 301–713–0376; or (4) mailed to the NMFS Office of Protected Resources (mailing address is provided on the postage-paid form that can be printed from the web address listed above). Reporting requirements and procedures can be found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 states that the Secretary is not required to place an observer on a vessel if the facilities for quartering an observer or performing observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; thereby authorizing the exemption of vessels too small to safely accommodate an observer from this requirement. However, U.S. Atlantic Ocean, Caribbean, or Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)) will not be exempted from observer requirements, regardless of their size. Observer requirements can be found in 50 CFR 229.7.

Am I required to comply with any marine mammal TRP regulations?

Table 4 provides a list of fisheries affected by TRPs and TRTs. TRP regulations can be found at 50 CFR 229.30 through 229.37. A description of each TRT and copies of each TRP can be found at: *http://www.nmfs.noaa.gov/pr/interactions/trt/teams.html.* It is the responsibility of fishery participants to comply with applicable take reduction regulations.

Where can I find more information about the LOF and the MMAP?

Information regarding the LOF and the MMAP, including: Registration procedures and forms; current and past LOFs; descriptions of each Category I and II fishery and some Category III fisheries; observer requirements; and marine mammal mortality/injury reporting forms and submittal procedures; may be obtained at: *http://www.nmfs.noaa.gov/pr/interactions/fisheries/lof.html,* or from any NMFS Regional Office at the addresses listed below:

NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Allison Rosner;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Jessica Powell;

NMFS, West Coast Region, Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Dan Lawson;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Suzie Teerlink; or

NMFS, Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, Attn: Kevin Brindock.

Sources of Information Reviewed for the 2018 LOF

NMFS reviewed the marine mammal incidental mortality and serious injury information presented in the SARs for all fisheries to determine whether changes in fishery classification are warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of mortality and serious injury of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fishermen self-reports, reports to the SRGs, conference papers, FMPs, and ESA documents.

The LOF for 2018 was based on, among other things, stranding data; fishermen self-reports; and SARs, primarily the 2016 SARs, which are based on data from 2010–2014. The SARs referenced in this LOF include: 2014 (80 FR 50599; August 20, 2015), 2015 (81 FR 38676; June 14, 2016), 2016 (82 FR 29039; June 27, 2017). The SARs are available at: *http://www.nmfs.noaa.gov/pr/sars/.*

Comments and Responses

NMFS received letters containing comments on the proposed LOF for 2018 (82 FR 47424; October 12, 2017) from the Marine Mammal Commission (Commission); five non-governmental organizations (Center for Biological Diversity (CBD), Hawaii Longline Association (HLA), Southeast Alaska Fishermen's Alliance (SEAFA), Southeast Alaska Sperm Whale Avoidance Project (SEASWAP), and Turtle Island Restoration Network (TIRN); and two individuals. Responses to substantive comments are below; comments on actions not related to the LOF are not included.

Comments on Commercial Fisheries in the Pacific Ocean

Comment 1: The Commission believes that NMFS' approach to classifying the Gulf of Alaska sablefish longline (GOA SLL) fishery based on the statutory definitions of fishery categories in the MMPA, in the absence of an estimate of PBR, is appropriate. Further, the Commission states that NMFS has the discretion to classify a fishery as Category I in the absence of the data necessary to calculate mortality and serious injury (M/SI) as a fraction of PBR. The Commission notes that while the current M/SI is almost certainly greater than 10 percent of PBR, exactly where M/SI as a percentage of PBR falls relative to the Category I and II thresholds depends on what proportion of the stock's U.S. range was surveyed, and other factors not taken into account in NMFS' analysis. The Commission recommends that the GOA SLL fishery should be classified as at least a Category II fishery. However, two other commenters, SEASWAP and SEAFA, oppose the proposed change to reclassify the GOA SLL from a Category III to a Category II fishery based on interactions with sperms whales. These commenters disagree that these temporary sperm whale entanglements resulted in serious injuries and assert that prorating these serious injuries to mortalities is not appropriate (see

comments 3, 4, and 5 below). They urge NMFS to retain the existing Category III ranking for the fishery.

Response: NMFS agrees with the Commission and has reclassified the fishery as Category II. Given our analysis of the estimated mean annual M/SI attributed to the GOA SLL fishery, and our best available information regarding the North Pacific sperm whale stock, the AK Gulf of Alaska sablefish pot fishery will be classified as Category II in the 2018 LOF; NMFS will continue to consider all available data in its future classifications of this fishery.

Comment 2: The Commission recommends that NMFS give high priority to: (1) Surveying enough of the range of sperm whales to provide a reliable estimate of PBR for the portion of the stock that occupies the EEZ in Alaska, (2) increasing observer coverage in the GOA SLL fishery (currently 14–19 percent), and (3) developing a take reduction plan for the North Pacific stock of sperm whales. The Commission comments that these actions will enable NMFS to more definitively classify the GOA SLL fishery and to mitigate the bycatch problem.

Response: NMFS agrees with the Commission on the need for reliable estimates of abundance and PBR for the North Pacific sperm whale stock; however, the funding necessary for surveying sperm whales in the Gulf of Alaska is currently unavailable. Next, observer coverage is determined through the Annual Deployment Plan (ADP) process, which provides a statistically-based sampling approach for the random deployment of human observers onto longline vessels operating in the Gulf of Alaska. The ADP is part of a larger annual process where NMFS consults with the North Pacific Fishery Management Council and its Scientific and Statistical Committee on to determine the amount of coverage for an upcoming year. This method is described in the 2018 ADP (available at *https://www.afsc.noaa.gov/Publications/ProcRpt/PR2017-07.pdf*). Regarding take reduction plans, NMFS' available resources for Take Reduction Teams (TRTs) are fully utilized at this time. When NMFS lacks sufficient funding to convene a TRT for all stocks that interact with Category I and II fisheries, NMFS gives highest priority for developing and implementing new take reduction plans to species and stocks whose level of incidental mortality and serious injury exceeds PBR, that have a small population size, and that are declining most rapidly, pursuant to MMPA section 118(f)(3).

Comment 3: SEASWAP and SEAFA assert that NMFS' assignment of the significant injury and 75 percent mortality rate to temporary sperm whale entanglements is unsubstantiated and inconsistent with the determination criteria used for other cetacean species, such as beluga and humpback whales. SEASWAP and SEAFA request that NMFS lower the pro-rated mortality rate for sperm whales.

Response: NMFS implemented a policy for distinguishing serious from non-serious injury of marine mammals to increase transparency and consistency nationwide in assessing and quantifying serious injuries of marine mammals in 2012 (NMFS 2012). This policy serves as the basis for evaluating injury reports of marine mammals. The policy involves applying guidelines to determine whether an injury should be considered serious and describes a variety of injuries specific to large cetaceans, small cetaceans, and pinnipeds. The policy and guidelines cover most types of injury and were developed to fit data rich as well as data poor injury events.

Criteria for evaluating large whale injuries include three types of entanglements. Two of these types are ''constricting wrap,'' a serious injury (SI), and ''loose wrap, bridled or draped gear,'' a non-serious injury (NSI). If documentation of a confirmed entanglement is inadequate to assign an entanglement to either of these types a third category is used, ''evidence of entanglement.'' Events falling in this category are prorated. To prorate, the number of events assigned to this category within the assessment period is multiplied by 0.75. This value was calculated based on 114 documented entanglement events with known outcomes that occurred between 2004 and 2008, of which 85 (75 percent) resulted in the whales' deteriorating health or death. Although more severe or prolonged entanglements may be more likely to be reported, the 0.75 prorating reflects the probability that some confirmed entanglement reports lacking detail will be of minor events.

SEASWAP and SEAFA are correct that using a prorate value of 0.75 for sperm whale entanglements reflects assumptions about the fate of the entangled animals. We would welcome data analyses or other information from SEASWAP on sperm whale interactions with longline fisheries that would help inform future injury determinations. The 0.75 value is based on the best available information.

The other injury determinations referenced by SEASWAP are also consistent with NMFS' policy and guidelines for distinguishing serious from non-serious injury. The vessel strike that left a piece of whale skin on a vessel's hull was categorized as a ''superficial laceration'' and a vessel strike under ''vessel any size less than 10 knots,'' both of which are considered non-serious injuries. Injuries to small cetaceans, such as beluga whales, are assigned to a category from a list specific to small cetaceans. The beluga entangled in gillnet that was later freed from gear was assigned to the ''anchored, immobilized, entangled, or entrapped before being freed without gear attached'' category. This category does not have a defined injury value, and instead requires a case-specific assessment. NMFS evaluated the record of the injury and considered it a non-serious injury because the animal was able to surface while entangled and was confirmed to be free of gear when released.

Comment 4: SEASWAP and SEAFA disagree with the conclusion in the March 2016 NOAA report (NOAA–TM–AFSC–315) that the temporary sperm whale entanglements reported during 2010–2014 resulted in 6.25 dead sperm whales. They further assert that of the five cases described by observers, not one included a documented case of the whales remaining entangled or having visible injury from the entanglement, yet ''serious injury'' was assigned in four cases (Haul numbers 225, 7, 82, and 116). SEASWAP and SEAFA urge NOAA to reassign these ''significant injury'' designations to ''non-serious injury.''

Response: When we review entanglement records, we pay close attention to the observer's recorded description of events. When an observer codes an interaction as ''entangled in gear (not trailing gear),'' we still assess whether gear could have remained on the animal post hoc. Fishery observers are not trained to assess the severity of marine mammal injuries, and we do not use their assessment of injury severity. This explains the differences SEASWAP noted between the observer's assessment on the marine mammal interaction form and the final injury determinations as reported in ''Human-Caused Injury and Mortality of NMFS-managed Alaska Marine Mammal Stocks, 2010–2014'' (Helker *et al.,* 2016).

In response to SEASWAP's and SEAFA's comments, we will reevaluate these entanglements and injury determinations; if we determine any changes to the injury determinations due to these entanglements are necessary, they will be reviewed consistent with NMFS policy and reported in the 2018 Marine Mammal Stock Assessment Reports and Human-

caused Serious Injury and Mortality Report.

Comment 5: SEASWAP and SEAFA disagree with NMFS' extrapolation of the observed temporary entanglements to the sperm whale/GOA SLL fishery interactions, including the pro-rating to the unobserved fleet, and assert that NMFS is oversimplifying sperm whale behavior near fishing boats. SEAFA argues that because some sperm whales have been documented as serial longline depredators, the actual M/SI is likely less than NMFS' estimate and it is inappropriate to extrapolate across the fleet. SEAFA comments that NMFS does not provide enough information to verify if the extrapolated data is reasonable and how these data were handled prior to and following the restructuring of the observer program to correct for bias in observer coverage.

Response: Extrapolating bycatch events that are observed in fisheries with partial observer coverage, such as components of the GOA SLL fishery, is standard practice. Bycatch extrapolation relies on the observed bycatch in a sampled portion of a fishery to estimate the bycatch across that entire fishery. Depredation by sperm whales is a common occurrence in this fishery, and an entanglement preceded by depredation is treated no differently than other bycatch events since it reflects one of the risks posed to marine mammals by the fishery.

The methodology for estimating bycatch is explained in NOAA Tech. Memo. NMFS–AFSC–260 (Breiwick 2013) and has not changed appreciably since that time. Specifically, the serious injuries are extrapolated only within a stratum defined by the NMFS statistical area, three categories of vessel size (>125, between 60 and 125, <60), and three time periods (January to April, May through August, September through December). The two serious injuries that were extrapolated in 2012 occurred in vessels between 60 and 125 feet, whereas the one serious injury in 2013 that was extrapolated occurred on a vessel <60 feet, so the observer coverage within that stratum is much lower, which is what is actually used to extrapolate the serious injury. We do not extrapolate observed bycatch in one statum to strata where no bycatch was observed. For simplicity, we do not report the observer coverage within the extrapolated strata, but instead report observer coverage for the entire fishery across all strata. Therefore, it is not possible for the reader to extrapolate the observed bycatch to estimate the total bycatch (see Breiwick 2013).

Comment 6: SEAFA notes that the proposed rule suggests breaking the Category III AK Miscellaneous finfish handline/hand troll and mechanical jig fishery into several fisheries by gear type and geography. In order to maintain consistency with the State of Alaska fishery permits, SEAFA recommends the new names for the groundfish troll fisheries be (2) AK BSAI groundfish hand troll and dinglebar troll and (4) AK Gulf of Alaska groundfish hand troll and dinglebar troll.

Response: NMFS agrees. We will adopt and use the suggested clarifications to fisheries names (AK Bering Sea, Aleutian Islands groundfish hand troll and dinglebar troll and AK Gulf of Alaska groundfish hand troll and dinglebar troll) in the 2018 LOF.

Comment 7: SEAFA comments that it is unclear whether the proposed updates in Table 1 for the ''estimated number of vessels/persons'' participating in a fishery reflects the total number of potential participants or the number of actual participants in a fishery. SEAFA recommends that NMFS consult with the State of Alaska's Commercial Fisheries Entry Commission for the most accurate information about the number of available permits versus the number of permits actively fished, particularly for the AK Southeast shrimp pot fishery and AK Southeast Alaska crab pot fisheries.

Response: NMFS has been making efforts to report the category ''estimated number of vessels/persons'' across Table 1 more consistently. As SEAFA points out, this is especially important for fisheries where there is a large discrepancy between the number of valid permits versus the number of active permits. Where possible, Table 1 will report the number of active permits to most accurately depict the relative effort of each fishery. In response to this comment, we have revisited the number of participants for the AK Southeast shrimp pot fishery and AK Southeast Alaska crab pot fishery and identified that the wrong permit count was used for the AK Southeast shrimp pot fishery. To correct this, in the final LOF NMFS changed the estimated number of vessels/persons for this fishery to the number of active permits (99).

Comment 8: TIRN and CBD comment that before listing the AK Gulf of Alaska sablefish pot fishery as a Category III fishery, NMFS should analyze the data of all Alaska and West Coast sablefish pot fisheries and humpback interactions and compare it to an updated humpback whale stock assessment. They recommend that, as a precautionary measure, the fishery should be listed as Category II. TIRN and CBD assert that, in the absence of statistically-reliable data regarding humpback whale serious injuries and mortalities for Alaska pot fisheries, NMFS must list these fisheries as Category II until: (a) The MMPA humpback stock is revised to be consistent with the ESA stock listings and (b) NMFS uses available fishing effort and humpback abundance data to determine co-occurrence.

Response: NMFS considers data from several sources for the mean annual M/SI estimates and LOF process, including observer data, self-reports, and stranding data. We acknowledge that reliable data are not always available and that analogous fisheries can provide more insight into the potential for incidental M/SI. However, these situations require a clear justification for which fishery is being considered analogous and why. In the case of the AK Gulf of Alaska sablefish pot fishery, NMFS considers the newly authorized fishery to be most analogous with the other sablefish pot fisheries in the State, which are Category III. Further, the AK Gulf of Alaska sablefish pot fishery has observer coverage, and NMFS will continue to consider any new data collected by the observer program or other sources in future LOF analyses.

Comment 9: TIRN and CBD recommend that humpback whales be listed as marine mammal species and/or stocks incidentally killed or injured in the AK Aleutian Islands sablefish pot fishery and the Category III AK Bering Sea sablefish pot fishery, based on observer records that humpback whales have been incidentally caught in both these fisheries.

Response: The species and/or stocks listed as incidentally killed or injured in Table 1 includes the species and/or stocks in which there are recent reports of incidental mortality or injury by a particular fishery consistent with the information reported in the SARs. Typically, species and/or stocks are removed from Table 1 when recent data do not include documented mortality or injury of that species or stock. NMFS has a report of a humpback whale considered seriously injured in the AK Bering Sea sablefish pot fishery in 2002. However, NMFS has observed this fishery since that time and there were no documented injuries or mortalities. Therefore, in 2013, NMFS removed humpback whales from the list of species/stocks killed or injured in this fishery (78 FR 53336, August 29, 2013).

Comment 10: TIRN and CBD support combining the Category III AK Aleutian Islands sablefish pot fishery in the LOF with the Category III AK Bering Sea sablefish pot fishery for consistency with other regional designations in the

LOF, but urge NMFS to analyze humpback whale interactions first before listing this combined fishery as Category III.

Response: The LOF uses data consistent with the SARs, which is generally from a 5-year rolling window to evaluate a fishery's impacts to marine mammal stocks. For the 2018 LOF, 2010–2014 data are considered in the LOF tier analyses. There are no documented reports of incidental M/SI of humpback whales during this time in either of the fisheries being combined. Given all available data, including recent observer data for the AK Bering Sea sablefish pot fishery, NMFS believes that Category III is most appropriate for this location, target species, and gear type. Thus, we will classify the newly combined AK Bering Sea, Aleutian Island sablefish pot fishery as Category III.

Comment 11: The Commission concurs with NMFS that the CA thresher shark/swordfish drift gillnet fishery should be reclassified from Category I to Category II based on the most recent estimate of M/SI for the California/Oregon/Washington stock of sperm whales in this fishery.

Response: NMFS agrees and has reclassified the CA thresher shark/swordfish drift gillnet (≥14 in mesh) fishery from Category I to Category II based on the most recent estimates of marine mammal M/SI in this fishery.

Comment 12: TIRN and CBD comment that more than a year has passed since the listing of the Central America humpback whale distinct population segment (DPS), and reported entanglements are at record highs in the area off California that is the near-exclusive feeding grounds for this DPS. They assert that NMFS should consider the Central American humpback whale DPS as a relevant stock in its determinations for the 2018 List of Fisheries.

Response: For the 2018 LOF, NMFS relied upon information on the current status of humpback whale stocks on the U.S. west coast as described in the most recent SAR available (Carretta *et al.,* 2017a). The most recent SAR available does not contain an MMPA stock delineation for humpback whales that corresponds with the recent ESA-listing decision that established several DPSs of humpback whales that may be present in U.S. west coast waters. While NMFS may consider updates to humpback whale stock delineations under the MMPA in light of the recent ESA-listing decision, we will continue to rely upon the most current SAR for the status of humpback whale stocks on the U.S. west coast relative to human-caused M/SI and the classification of fisheries under the MMPA LOF. Currently, there is no Central America DPS stock of marine mammals delineated under the MMPA. NMFS is currently evaluating the humpback whale stock structure under the MMPA with respect to the ESA listing.

Comment 13: CBD and TIRN urge NMFS to designate the CA Dungeness crab pot fishery as a Category I fishery because it frequently entangles, seriously injures, and kills imperiled humpback whales. CBD and TIRN state that the PBR calculation for the international stock of Central America humpbacks results in an estimated PBR of 0.8 humpback whales per year, and the best estimate of minimum average annual M/SI is 1.35 whales per year, well above the PBR estimate. They further maintain that the average numbers of annual M/SI is an underestimate as it is based on reported entanglements, and does not account for many entanglements that go unobserved, and does not include the 2016 entanglement of 19 humpback whales in the CA Dungeness crab pot fishery. CBD and TIRN suggest that according to the historical rate of serious injury determinations, 84 percent of these entanglements, or 16 whales, resulted in a serious injury or mortality and this is well above the PBR estimate. CBD and TIRN assert that the available information clearly demonstrates that NMFS should reclassify the fishery as Category I.

Response: The most recent SAR for humpback whales on the U.S. west coast does not establish or provide a PBR for the Central America DPS of humpback whales because it is not a delineated MMPA stock, as explained in Comment 12 above. Until such time that the SAR reports a PBR for an MMPA stock delineation of humpback whales that may more closely reflect the Central America DPS as suggested by the commenter, calculation of hypothetical PBRs by any other sources are considered premature. NMFS will continue to rely upon the most recent SAR for the calculation of PBR for humpback whale stocks on the U.S. west coast for classifying fisheries under the LOF. In addition, commenters reference data sources from 2016 that have not yet been reviewed for M/SI in the SARs; NMFS will use those data for classifying fisheries once they have been incorporated into the SARs.

Comment 14: CBD and TIRN state that preliminary evidence shows that the CA Dungeness crab pot fishery, and not the Oregon or Washington Dungeness crab pot fishery, primarily impacts the Central America humpback whale DPS. They recommend that without additional information, all interactions of the CA Dungeness crab pot fishery should be assigned to the Central America DPS.

Response: As described in Comment 12 above, the most current SAR does not delineate a Central America DPS of humpback whales as a stock under the MMPA. Until such time that the humpback whale stock structure under the MMPA with respect to the ESA listing has been completed, assignment of M/SI to humpback stocks in the SAR and under the LOF will continue to reflect the current MMPA stock delineations.

Comment 15: CBD and TIRN recommend that NMFS add blue whales, ENP, Offshore killer whales, and the western North Pacific gray whale to the list of species incidentally killed or injured in the CA Dungeness crab pot fisheries.

Response: Entanglement data from the U.S. west coast that has been reviewed for M/SI include recent data through 2015 (Carretta *et al.,* 2017b). We note that through 2015, no blue whale injuries have been documented in the CA Dungeness crab pot fishery. Information on entanglements reported in 2016 and 2017 referenced by commenters will be used to inform the list of marine mammal stocks incidentally killed or injured in any U.S. west coast fisheries once it has been incorporated into the SARs, at which time NMFS will use those data for the LOF.

We thank the commenter for pointing out that we omitted the identity of the killer whale stock associated with a dead killer whale reported to NMFS in 2015 that was entangled with CA Dungeness crab gear. NMFS is currently reviewing the available information regarding the identification of the stock of killer whales to which this individual belongs. Once this information has been evaluated and reported in a future SAR, NMFS will add the appropriate stock of killer whales to the list of marine mammal stocks incidentally killed or injured by the CA Dungeness crab fishery in the LOF. As stated previously, entanglement information from 2016 has not yet been evaluated for M/SI and will not be used to inform the list of marine mammal stocks incidentally killed or injured in any U.S. west coast fisheries at this time.

NMFS acknowledges that the most recent SAR suggests that because some Western North Pacific gray whales occur in U.S. waters, there is a possibility these whales could be killed or injured by ship strikes or entangled in fishing gear within U.S. waters. However, while

it may be possible that at least one or more Western North Pacific gray whales have been among the many gray whales reported entangled on the U.S. west coast historically, NMFS recognizes that relatively few of those instances are known to have involved gear from the CA Dungeness crab fishery. We also acknowledge that many other U.S. commercial fisheries on the U.S. west coast have been identified as associated with entanglements of gray whales historically, and it is likely other U.S. commercial, tribal, and foreign fisheries from countries surrounding gray whale migration routes that have not been identified have also been involved. In the absence of more specific information from any particular entanglement of gray whales that involved CA Dungeness crab gear to suggest those entanglements involved a Western North Pacific gray whale, NMFS does not have sufficient data to conclude that Western North Pacific gray whales have been entangled in CA Dungeness crab gear versus other fisheries throughout the range of gray whales; thus, we will not include Western North Pacific gray whales on the list of stocks incidentally killed or injured in the CA Dungeness crab fishery at this time. Based on the relative population sizes of the Western North Pacific and Eastern North Pacific stocks of gray whales, and what is known about migrations of the Western North Pacific stock to the eastern North Pacific (Moore and Weller 2013), NMFS has concluded the likelihood that any of the particular gray whales that are known to have interacted with CA Dungeness crab fishery were Western North Pacific stock gray whales is extremely low. NMFS strives to collect photographic or genetic data from entangled gray whales that may allow for stock and will continue to develop and promote this aspect as a key data need surrounding all gray whale strandings and entanglements.

Comment 16: TIRN and CBD oppose NMFS' proposal to lower the CA thresher shark/swordfish drift gillnet fishery classification from Category I to Category II. They note that NMFS' decreased annual take estimate of sperm whales may not adequately reflect the mortality or serious injury that the fishery causes for sperm whales. In addition, TIRN/CBD comment that the MMPA Section 101(a)(5)(E) authorization to take humpback and sperm whales by this fishery has expired, and a reclassification of the fishery to Category II prior to the completion of the rulemaking process for a new authorization is premature. Based on the uncertainty stemming from low observer coverage and the past observation of sperm whale M/SI, and the pending MMPA authorization rule-making, TIRN/CBD urge NMFS to maintain the CA thresher shark/swordfish drift gillnet fishery's classification as Category I.

Response: The reclassification of this fishery from Category I to Category II is based upon published scientific information that includes estimates of bycatch and subsequent M/SI in this fishery that are considered robust given annual variance in observer coverage rates. These estimates are based on methodologies that represent an improved approach to estimate relatively rare bycatch events over time compared to methods referenced in previous SARs and classifications under the LOF. NMFS has determined these estimates are appropriate to inform the LOF classification of the CA thresher shark/swordfish drift gillnet (≥14 in mesh) fishery as Category II. Further, classifications made under the LOF are based on the best available science and are not dependent or related to the current status of other regulatory processes including the issuance of authorizations under section 101(a)(5)(E) of the MMPA.

Comment 17: TIRN and CBD support NMFS' proposal to add the CA/OR/WA stock of Dall's porpoise to the list of stocks incidentally killed or injured in the Category I California thresher shark/swordfish drift gillnet (≥14 in mesh) fishery based on a 2014 observed entanglement.

Response: NMFS agrees and has added the CA/OR/WA stock of Dall's porpoise to the list of stocks incidentally killed or injured in the Category I CA thresher shark/swordfish drift gillnet (≥14 in mesh) fishery.

Comment 18: TIRN and CBD recommend, based on interactions between 2010 through 2016, that NMFS add Guadalupe fur seals to the list of species and/or stocks incidentally killed or injured in the California drift gillnet fishery, and the gillnet fisheries that operate from Tillamook County, OR, to Jefferson County, WA, such as the WA Willapa Bay drift gillnet, WA/OR lower Columbia River drift gillnet, and the WA Grays Harbor salmon drift gillnet fishery.

Response: NMFS has reviewed the available information on Guadalupe fur seal interactions and M/SI associated with gillnet entanglements from 2010–2014. Based on information that is available (Carretta *et al.,* 2017a and Carretta *et al.,* 2017b), we are not able to determine the fishery origin of Guadalupe fur seal strandings that have been associated with gillnet entanglements. Guadalupe fur seals have a wide range that brings them into potential contact with numerous gillnet fisheries that include U.S. commercial fisheries as well as tribal and foreign fisheries from neighboring countries. While we continually aim to improve our ability to evaluate incoming information and identify the origins of fishing gear present on all stranded marine mammals, we will not attribute any Guadalupe fur seal M/SI to any U.S. gillnet fisheries or list Guadalupe fur seals as a marine mammal stock that is killed or injured by any U.S. gillnet fisheries at this time absent more specific information regarding the origins of gillnet interactions.

Comment 19: TIRN and CBD recommend NMFS add Guadalupe fur seals to the list of species and/or stocks incidentally killed or injured in the Hawaii deep-set and Hawaii shallow-set longline fisheries based on 2015 and 2016 reported interactions.

Response: The recently observed Guadalupe fur seal interaction from 2015 has not yet been included in a SAR, an injury determination has not been finalized for this interaction, and the interaction has not yet been evaluated as part of the tier analysis for these fisheries. This species will be included in a future LOF, as appropriate.

Comment 20: HLA opposes including the Hawaii stock of *Kogia* species (Hawaii) on the list of species injured or killed in the Hawaii-based deep-set longline fishery. HLA requests that NMFS remove *Kogia* species from the list of stocks that are interacting with the deep-set longline fishery, because the most recent SAR (2013) for Hawaii pygmy whales and dwarf sperm whales identifies no observed interactions between either of these stocks and this fishery. However, two other commenters, TIRN and CBD, support NMFS' proposal to add the Hawaii stock of Kogia spp. to the list of stocks incidentally killed or injured in the Category I HI deep-set longline fishery based upon the serious injury of a pygmy or dwarf sperm whale in 2014 in this fishery.

Response: Although the 2013 SAR does not include observed interactions with Hawaii pygmy whales and dwarf sperm whales, a Kogia spp. interaction was observed in the Hawaii deep-set longline fishery on February 25, 2014, resulting in a serious injury (Carretta *et al.,* 2017b). This injury determination has been finalized, and the interaction is included in the draft 2017 SAR (82 FR 60181; December 19, 2017).

Comment 21: The HLA restates a previous comment that the Hawaii-

based deep-set longline fishery does not interact with the MHI insular or Northwestern Hawaiian Islands (NWHI) stocks of false killer whales. HLA notes that (a) the False Killer Whale Take Reduction Plan closed the deep-set longline fishery for almost the entire range of the MHI insular and NWHI stocks, (b) since this change was made in 2013 there have been no interactions between the fishery and an animal from either stock, and (c) there has never been a deep-set longline fishery interaction in the very small area of the stocks' respective ranges that are not closed to longline fishing. HLA requests that NMFS remove these two stocks from the list of marine mammals that interact with the deep-set longline fishery, as the best available information demonstrates the fishery is not interacting with either of these stocks.

Response: This comment has been addressed previously (see 78 FR 53336, August 29, 2013, comment 11; 79 FR 14418, March 14, 2014, comment 4; 79 FR 77919, December 29, 2014, comment 2; and 81 FR 20550, April 8, 2016, comment 5). NMFS determines which species or stocks are included as incidentally killed or injured in a fishery by annually reviewing the information presented in the current SARs, among other relevant sources. The SARs are based on the best available scientific information and provide information on each stock, including range, abundance, PBR, and level of interaction with commercial fishing operations. Determinations in the LOF are based on the information reported in the SARs.

The 2018 LOF is based on the 2016 SARs, which report fishery interactions from 2010–2014; this is the best scientific and commercial information available for the time period examined. As reported in the 2016 SAR, 12 false killer whales were taken within the Hawaiian EEZ between 2010 and 2014, ten of those occurred within the range of the pelagic stock, and two occurred within an overlap zone that included the range of more than one false killer whale stock. Applying the proration methods described in detail in the 2016 SAR for takes in overlap zones, NMFS estimates a five-year average mortality and serious injury level of 0.1 MHI insular and 0.4 NWHI false killer whales per year incidental to the Hawaii-based deep-set longline fishery from 2010–2014 (Carretta *et al.,* 2017a). NMFS is retaining the stocks on the list of marine mammal stocks incidentally killed or injured in the Hawaii deep-set longline fishery.

Comment 22: HLA opposes including the pygmy killer whale (Hawaii stock) on the list of species injured or killed in the Hawaii-based deep-set fishery. HLA requests that NMFS remove the pygmy killer whale from the list of stocks that are interacting with the deep-set fishery, because the most recent SAR (2013) identifies no observed interactions between the stock and the deep-set longline fishery.

Response: The 2013 SAR reports marine mammal interactions with the deep-set fishery that occurred between 2007 and 2011. Although the 2013 SAR does not include any observed interactions with pygmy killer whales, an interaction was observed between a pygmy killer whale and the Hawaii deep-set longline fishery on January 5, 2013, resulting in a serious injury (Carretta *et al.,* 2017b). This injury determination has been finalized, and the interaction is included in the draft 2017 SAR (82 FR 60181; December 19, 2017).

Comment 23: TIRN and CBD support NMFS' proposal to add the Central North Pacific stock of humpback whale to the list of stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery based upon the serious injury of a humpback in 2014 in this fishery.

Response: NMFS agrees and has added the Central North Pacific stock of humpback whale to the list of stocks incidentally killed or injured in the Hawaii deep-set longline fishery.

Comment 24: TIRN and CBD recommend that the California/Oregon/Washington (CA/OR/WA) humpback whale stock be added to the list of species or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery based upon known M/SI to the Central North Pacific humpback stock from interaction with this fishery in 2014. In addition, they comment that NMFS is currently considering an exempted fishing permit to allow the use of both deep-set and shallow-set longline gear within the West Coast EEZ, which would provide this fishery greater access to this stock and further increase the pressure on the stock.

Response: The LOF relies on information reported in the SARs to add/remove species/stocks that are killed or injured in a particular fishery. The 2016 SAR reports a humpback whale from the Central North Pacific stock was seriously injured in 2014 in the Category I Hawaii deep-set longline fishery; consequently, this stock is included in the list of stocks incidentally killed or injured in this fishery. The SAR does not list any mortalities or injuries of the CA/OR/WA humpback whale stock in the Hawaii deep-set fishery in 2014; consequently, this stock is not included in the list of stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery.

Comment 25: TIRN and CBD request that the CA/OR/WA humpback whale stock be added to the list of stocks incidentally killed or injured in the Category I Hawaii shallow-set longline fishery. They assert that the fishery's potential for interactions with this stock is justified by the inclusion of the Central North Pacific humpback whale stock in the list of species and/or stocks incidentally killed or injured. In addition, TIRN/CBD comment that NMFS currently is considering an exempted fishing permit to allow the use of both deep-set and shallow-set longline gear within the West Coast EEZ, which would provide this fishery greater access to this stock and further increase the pressure on the stock.

Response: NMFS uses the criteria described in the preamble to classify fisheries and list species or stocks that may be incidentally killed or injured by those fisheries. Under these criteria, NMFS lists species or stocks as incidentally killed or injured based on documented mortalities or injuries using the best scientific information available (*i.e.,* SARs). Because there are no documented mortalities or injuries of CA/OR/WA humpbacks, NMFS is not including this stock as incidentally killed or injured by the Category I Hawaii shallow-set longline fishery. Should NMFS approve an exempted fishing permit for the deep-set and shallow-set longline fishery operating within the U.S. West Coast EEZ, NMFS will continue to use all relevant information to inform future LOFs.

Comment 26: HLA contends that the best available science does not support a determination that the Hawaii-based shallow-set longline fishery has ''occasional'' interactions with the pelagic false killer whale stock and should therefore be listed as Category III. They note that the 2016 SAR attributes a 0.3 M/SI rate to the shallow-set fishery for the Pelagic FKW Stock in the U.S. EEZ, which amounts to 1.07 percent of the Pelagic FKW Stock's PBR level. However, the 0.3 M/SI rate derives entirely from an interaction that occurred in 2012 for which NMFS was unable to make an injury determination (*i.e.* ''cannot be determined'' or ''CBD'' determination). Further, the ''CBD'' interaction was prorated as 0.3 M/SI because, in the previous five years, there had been three EEZ interactions between the shallow-set fishery and the Pelagic FKW Stock, only one of which (in 2009) was ''serious'' (a one-third

M/SI rate). HLA notes that if the 2012 ''CBD'' interaction is prorated based upon the five-year lookback period used in the 2016 SAR (2010–14) (the best available data), then it would be 0.0 because there were only two other interactions in 2010–14, both of which were determined to be non-serious. HLA argues that the Category II status of the shallow-set fishery hinges on a single interaction in 2012 for which no injury determination was made and that NMFS prorated based upon data that is no longer relevant or accurate. For these reasons, HLA recommends the shallow-set fishery be listed as Category III, as the fishery is more accurately described as having a ''remote likelihood'' of interaction with the stock.

Response: NMFS uses the classification criteria described in the preamble to classify fisheries as Category I, Category II, or Category III. A fishery is classified under Category II if the annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the stock's PBR level. Additional details regarding categorization of fisheries is provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086; August 30, 1995). The false killer whale interaction in 2012 that resulted in a ''CBD'' determination was prorated following the methods described in the 2016 SAR (Carretta *et al.,* 2017a), which prorates serious versus non-serious injuries using the historic rate of serious injury while accounting for changes in gear following implementation of the False Killer Whale Take Reduction Plan in 2013. This proration resulted in a 0.3 M/SI for the Pelagic FKW stock as reported in the 2016 SAR, which is 1.07 percent of PBR and within the range of 1–50 percent of PBR, requiring NMFS to classify the fishery as a Category II fishery consistent with section 118 of the MMPA.

Comment 27: HLA opposes including the rough-toothed dolphin (Hawaii stock) on the list of species injured or killed in the Hawaii-based shallow-set fishery. HLA requests that NMFS remove the rough-toothed dolphin from the list of stocks that are interacting with the shallow-set fishery, because the most recent SAR (2013) identifies no observed interactions between the stock and the shallow-set longline fishery.

Response: The 2013 SAR reports marine mammal interactions with the shallow-set fishery that occurred between 2007 and 2011. Although the 2013 SAR does not include observed interactions with rough-toothed dolphins, an interaction was observed between a rough-toothed dolphin and the Hawaii shallow-set longline fishery on April 24, 2013, resulting in a mortality (Carretta *et al.,* 2017b). This interaction has been finalized and is included in the draft 2017 SAR (82 FR 60181, December 19, 2017).

Comment 28: HLA restates a previous comment that the LOF should distinguish between high seas stocks and U.S. EEZ stocks when listing stocks with which fisheries interact, and requests that NMFS revise the LOF to attribute species interactions in transboundary fisheries to only those geographic regions where interactions are actually observed. HLA recommends that if NMFS does not revise the LOF, then they should include a footnote in the LOF to clarify, for certain stocks and fisheries, that interactions have only been observed on the high seas or in the U.S. EEZ, as appropriate. HLA notes that NMFS readily separates transboundary stocks into high seas and U.S. EEZ components for reporting purposes in its SARs and for the purpose of comparing M/SI rates to PBR levels (a trigger for the take reduction planning process), and asserts that the LOF should make similar distinctions when reporting the stocks with which fisheries interact.

Response: This comment has been addressed previously (see 79 FR 14418, March 14, 2014, comment 7; 79 FR 77919, December 29, 2014, comment 5; and 81 FR 20550, April 8, 2016, comment 8). As described in the preamble, NMFS has included high seas fisheries in Table 3 of the LOF since 2009. Several fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery but an extension of a fishery operating within U.S. waters. For these fisheries, the lists of species or stocks injured or killed in Table 3 are identical to their Tables 1 or 2 counterparts, except for those species or stocks with distributions known to occur on only one side of the EEZ boundary. Because the fisheries and the marine mammal lists are the same, takes of these animals are not being attributed to one geographic area or the other, even when that information may be available. This parallel list structure is explained in the footnotes for each table. We are not including additional footnotes to individual stocks and fisheries to indicate whether interactions have only been observed on the high seas or in the U.S. EEZ, but that information may be available in previous LOFs when species and stocks are added or deleted.

Summary of Changes From the Proposed Rule

NMFS renames the newly classified fisheries, ''AK BSAI groundfish troll'' and the ''AK Gulf of Alaska groundfish troll,'' as listed in the proposed LOF for 2018, to ''AK BSAI groundfish hand troll and dinglebar troll'' and ''AK Gulf of Alaska groundfish hand troll and dinglebar troll,'' respectively. This change is the result of public comment on the proposed rule and maintains consistency with the State of Alaska fishery permits.

NMFS corrects the estimated number of vessels/persons for the AK Southeast shrimp pot fishery (Table 1) from 210, as listed in the proposed LOF for 2018, to 99 in the final LOF based on a reanalysis of permit data.

NMFS corrects the estimated number of vessels/persons for the Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon in the Atlantic Ocean, Gulf of Mexico, and Caribbean (Table 2) from 3,084, as listed in the proposed LOF for 2018, to 2,846 in the final LOF based on a review of permit data. Permits for this fishery are based on target species rather than gear type, so these numbers indicate the total number of fishers that have the potential to use the specified gear type.

Summary of Changes to the LOF for 2018

The following summarizes changes to the LOF for 2018, including the classification of fisheries, fisheries listed, the estimated number of vessels/persons in a particular fishery, and the species and/or stocks that are incidentally killed or injured in a particular fishery. NMFS re-classifies two fisheries in the LOF for 2018. Additionally, NMFS adds two fisheries to the LOF and removes 12 fisheries from the LOF. NMFS makes changes to the estimated number of vessels/persons and list of species and/or stocks killed or injured in certain fisheries. The classifications and definitions of U.S. commercial fisheries for 2018 are identical to those provided in the LOF for 2017 with the changes discussed below. State and regional abbreviations used in the following paragraphs include: AK (Alaska), BSAI (Bering Sea and Aleutian Islands), CA (California), DE (Delaware), FL (Florida), GOA (Gulf of Alaska), GMX (Gulf of Mexico), HI (Hawaii), MA (Massachusetts), ME (Maine), NC (North Carolina), NY (New York), OR (Oregon), RI (Rhode Island), SC (South Carolina), VA (Virginia), WA (Washington), and WNA (Western North Atlantic).

Commercial Fisheries in the Pacific Ocean

Classification of Fisheries

NMFS reclassifies the CA thresher shark/swordfish drift gillnet (≥14 inch (in) mesh) fishery from Category I to Category II.

NMFS reclassifies the Category III AK Gulf of Alaska sablefish longline fishery to Category II based on M/SI of North Pacific sperm whales.

Addition of Fisheries

NMFS adds the AK BSAI halibut longline fishery as a Category III fishery.

NMFS adds the AK Gulf of Alaska sablefish pot fishery as a Category III fishery.

Removal of Fisheries

NMFS removes the following Category III fisheries from the LOF:

- AK miscellaneous finfish set gillnet fishery
- AK miscellaneous finfish beach seine fishery
- AK miscellaneous finfish purse seine fishery
- AK octopus/squid purse seine fishery
- AK BSAI rockfish longline fishery
- AK Gulf of Alaska rockfish longline fishery
- AK halibut longline/set line (state and Federal waters)
- AK miscellaneous finfish otter/beam trawl fishery
- AK statewide miscellaneous finfish pot fishery
- AK snail pot fishery
- AK octopus/squid handline fishery
- AK abalone fishery

Fishery Name and Organizational Changes and Clarification

NMFS clarifies that the Category II AK BSAI rockfish trawl fishery includes sablefish as a target species.

NMFS adds a superscript ''1'' to the CA/OR/WA stock of humpback whale to indicate it is driving the Category II classification of the CA spiny lobster fishery.

NMFS renames the Category III AK salmon purse seine (excluding salmon purse seine fisheries listed elsewhere) fishery to AK salmon purse seine (Prince William Sound, Chignik, Alaska Peninsula) fishery.

NMFS clarifies that the Category III AK Gulf of Alaska rockfish trawl fishery includes sablefish as a target species.

NMFS renames the Category III AK food/bait herring trawl fishery to AK Kodiak food/bait herring otter trawl fishery.

NMFS renames the Category III AK shrimp otter trawl and beam trawl (statewide and Cook Inlet) fishery to AK shrimp otter trawl and beam trawl fishery.

NMFS renames the Category III AK State-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl fishery to AK State-managed waters of Prince William Sound groundfish trawl fishery.

NMFS combines the Category III AK Aleutian Islands sablefish pot fishery in the LOF with the Category III AK Bering Sea sablefish pot fishery for consistency with other regional designations in the LOF. The combined fishery is named the AK BSAI sablefish pot fishery.

NMFS separates the Category III AK miscellaneous finfish handline/hand troll and mechanical jig fishery into several fisheries by gear and geography for improved fishery categorization of potential impacts to marine mammals. The new Category III fishery names are: (1) AK BSAI groundfish jig, (2) AK BSAI groundfish hand troll and dinglebar troll, (3) AK Gulf of Alaska groundfish jig, (4) AK Gulf of Alaska groundfish hand troll and dinglebar troll.

NMFS renames the Category III AK North Pacific halibut handline/hand troll and mechanical jig fishery to AK halibut jig fishery for clarity and consistency.

NMFS renames the Category III AK urchin and other fish/shellfish fishery to AK miscellaneous invertebrates hand pick fishery for clarity and consistency.

NMFS makes an administrative change to the Category III Alaska scallop dredge fishery to be renamed AK scallop dredge for consistency.

Number of Vessels/Persons

NMFS updates the estimated number of vessels/persons in the Pacific Ocean (Table 1) as follows:

Category	Fishery	Number of vessels/persons (2017 LOF)	Number of vessels/persons (2018 LOF)
I	HI deep-set longline	139	143
II	HI shallow-set longline	20	22
II	American Samoa longline	20	18
III	AK Gulf of Alaska crab pot	381	271
III	AK Gulf of Alaska Pacific cod pot	128	116
III	AK Southeast Alaska crab pot	41	375
III	AK Southeast Alaska shrimp pot	269	99
III	AK shrimp pot, except Southeast	236	141
III	AK octopus/squid pot	26	15
III	AK herring spawn on kelp	339	266
III	AK miscellaneous invertebrates handpick	398	214
III	American Samoa bottomfish handline	24	17
III	AK commercial passenger fishing vessel	2,702	1,006

List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean

NMFS adds the Central North Pacific stock of humpback whale to the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery.

NMFS adds the Hawaii stock of Kogia *spp.* (Pygmy or dwarf sperm whale) to the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery.

NMFS adds the CA/OR/WA stock of Dall's porpoise to the list of species and/or stocks incidentally killed or injured in the Category I CA thresher shark/swordfish drift gillnet (≥14 in mesh) fishery.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Number of Vessels/Persons

NMFS updates the estimated number of vessels/persons in the Atlantic Ocean, Gulf of Mexico, and Caribbean (Table 2) as follows:

Category	Fishery	Number of vessels/persons (2017 LOF)	Number of vessels/persons (2018 LOF)
I	Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	420	280
II	Southeastern U.S. Atlantic shark gillnet	30	23
III	Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon	428	2,846
III	Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	<125	39
III	Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	1,446	680

List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean

NMFS adds the Northern Gulf of Mexico stock of rough-toothed dolphin to the list of species and/or stocks incidentally killed or injured in the Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery.

NMFS removes the WNA stock of white-sided dolphin from the species and/or stocks listed as incidentally killed or injured in the Category II Mid-Atlantic mid-water trawl fishery.

NMFS adds the WNA stock of white-sided dolphin to the list of species and/or stocks incidentally killed or injured in the Category II Mid-Atlantic bottom trawl fishery.

NMFS adds the WNA offshore stock of bottlenose dolphin to the list of species and/or stocks incidentally killed or injured in the Category III Gulf of Maine, U.S., Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon fishery.

NMFS adds three stocks to the list of species and/or stocks incidentally killed or injured in the Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery. The three stocks are: (1) WNA stock of short-finned pilot whale and (2) Barataria Bay estuarine system stock and (3) Mississippi Sound, Lake Borgne, Bay Boudreau stock of bottlenose dolphins.

NMFS corrects three administrative errors in Table 2. Under species and/or stocks listed as incidentally killed or injured in the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagic longline fishery, NMFS updates the stock name for Atlantic spotted dolphin from ''GMX continental and oceanic'' to ''Northern GMX''. Second, in the Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery, NMFS updates the stock name for bottlenose dolphin from ''Southern SC/GA coastal'' to ''SC/GA coastal''. Lastly, NMFS removes the WNA stocks of Risso's dolphin and white-sided dolphin from the species and/or stocks listed as incidentally injured or killed in the Category I Mid-Atlantic gillnet fishery.

Commercial Fisheries on the High Seas

Removal of Fisheries

NMFS removes the Category II Atlantic highly migratory species drift gillnet fishery from the LOF as there are currently no participants.

Fishery Name and Organizational Changes and Clarification

NMFS designates the list of species and/or stocks incidentally killed or injured in a fishery from ''undetermined'' to ''no information'' for clarity that no data are available on mortalities or injuries incidental to a particular fishery.

Number of Vessels/Persons

NMFS updates to the estimated number of vessels/persons on the High Seas (Table 3) as follows:

Category	Fishery	Number of vessels/persons (2017 LOF)	Number of vessels/persons (2018 LOF)
I	Atlantic highly migratory species longline	86	79
I	Western Pacific pelagic longline (HI deep-set component)	139	143
I	Pacific highly migratory species drift gillnet	5	4
II	Atlantic highly migratory species trawl	1	2
II	South Pacific tuna purse seine	38	35
II	Western Pacific pelagic purse seine	3	1
II	South Pacific albacore troll longline	10	9
II	South Pacific tuna longline	2	4
II	Western Pacific pelagic longline (HI shallow-set component)	20	22
II	Atlantic highly migratory species handline/pole and line	3	2
II	Pacific highly migratory species handline/pole and line	46	42
II	South Pacific albacore troll handline/pole and line	7	11
II	Western Pacific pelagic handline/pole and line	2	5
II	Atlantic highly migratory species troll	2	1
II	South Pacific albacore troll	30	22
II	Western Pacific pelagic troll	17	6
III	Pacific highly migratory species longline	114	105
III	Pacific highly migratory species purse seine	6	7
III	Northwest Atlantic trawl	1	2
III	Pacific highly migratory species troll	187	149

List of Species and/or Stocks Incidentally Killed or Injured on the High Seas

NMFS adds the Hawaii stock of Kogia *spp.* (Pygmy or dwarf sperm whale) to the list of species and/or stocks incidentally killed or injured in the Category I Western Pacific Pelagic (HI deep-set component) longline fishery.

NMFS adds the Central North Pacific stock of humpback whale to the list of

species and/or stocks incidentally killed or injured in the Category I Western Pacific Pelagic (HI deep-set component) longline fishery.

List of Fisheries

The following tables set forth the list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska), Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean, Table 3 lists commercial fisheries on the high seas, and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels or persons participating in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels or persons in the fishery. NMFS acknowledges that, in some cases, these estimates may be inflations of actual effort. For example, the State of Hawaii does not issue fishery-specific licenses, and the number of participants reported in the LOF represents the number of commercial marine license holders who reported using a particular fishing gear type/method at least once in a given year, without considering how many times the gear was used. For these fisheries, effort by a single participant is counted the same whether the fisherman used the gear only once or every day. In the Mid-Atlantic and New England fisheries, the numbers represent the potential effort for each fishery, given the multiple gear types for which several state permits may allow. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates, as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Tables 1 and 2 serve to provide a description of the fishery's potential effort (state and Federal). If NMFS is able to extract more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, contact the relevant regional office (contact information included above in **SUPPLEMENTARY INFORMATION**).

For high seas fisheries, Table 3 lists the number of valid HSFCA permits currently held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time. As noted previously in this LOF, the number of HSFCA permits listed in Table 3 for the high seas components of fisheries that also operate within U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

Tables 1, 2, and 3 also list the marine mammal species and/or stocks incidentally killed or injured (seriously or non-seriously) in each fishery based on SARs, injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.,* MMPA reports), and anecdotal reports. The best available scientific information included in these reports is based on data through 2012. This list includes all species and/or stocks known to be killed or injured in a given fishery but also includes species and/or stocks for which there are anecdotal records of a mortality or injury. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.,* MMPA reports) may not be verified. In Tables 1 and 2, NMFS has designated those species/stocks driving a fishery's classification (*i.e.,* the fishery is classified based on mortalities and serious injuries of a marine mammal stock that are greater than or equal to 50 percent (Category I), or greater than 1 percent and less than 50 percent (Category II), of a stock's PBR) by a ''1'' after the stock's name.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented mortalities or serious injuries of marine mammals, or fisheries that did not result in a mortality or serious injury rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2 (*i.e.,* fishing techniques, gear types, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by a ''2'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the exclusive economic zone (EEZ) boundary and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately between Table 1 or 2 and Table 3, are considered the same fisheries on either side of the EEZ boundary. NMFS has designated those fisheries in each table by a ''*'' after the fishery's name.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
CATEGORY I		
LONGLINE/SET LINE FISHERIES:		
HI deep-set longline * ∧	143	Bottlenose dolphin, HI Pelagic, False killer whale, MHI Insular,[1] False killer whale, HI Pelagic,[1] False killer whale, NWHI, Humpback whale. Central North Pacific, Kogia *spp.* (Pygmy or dwarf sperm whale), HI, Pygmy killer whale, HI, Risso's dolphin, HI, Short-finned pilot whale, HI, Sperm whale, HI, Striped dolphin, HI.
CATEGORY II		
GILLNET FISHERIES:		
CA thresher shark/swordfish drift gillnet (≥14 in mesh) *	18	Bottlenose dolphin, CA/OR/WA offshore, California sea lion, U.S., Dall's porpoise, CA/OR/WA, Humpback whale, CA/OR/WA, Long-beaked common dolphin, CA, Minke whale, CA/OR/WA, Northern elephant seal, CA breeding, Northern right-whale dolphin, CA/OR/WA, Pacific white-sided dolphin, CA/OR/WA, Risso's dolphin, CA/OR/WA, Short-beaked common dolphin, CA/OR/WA, Short-finned pilot whale, CA/OR/WA, Sperm Whale, CA/OR/WA.[1]
CA halibut/white seabass and other species set gillnet (>3.5 in mesh).	50	California sea lion, U.S., Harbor seal, CA, Humpback whale, CA/OR/WA [1], Long-beaked common dolphin, CA, Northern elephant seal, CA breeding, Sea otter, CA, Short-beaked common dolphin, CA/OR/WA.
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in) [2].	30	California sea lion, U.S., Long-beaked common dolphin, CA, Short-beaked common dolphin, CA/OR/WA.
AK Bristol Bay salmon drift gillnet [2]	1,862	Beluga whale, Bristol Bay, Gray whale, Eastern North Pacific, Harbor seal, Bering Sea, Northern fur seal, Eastern Pacific, Pacific white-sided dolphin, North Pacific, Spotted seal, AK, Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet [2]	979	Beluga whale, Bristol Bay, Gray whale, Eastern North Pacific, Harbor seal, Bering Sea, Northern fur seal, Eastern Pacific, Spotted seal, AK.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA [1], Harbor seal, GOA, Sea otter, Southwest AK, Steller sea lion, Western U.S.
AK Cook Inlet salmon set gillnet	736	Beluga whale, Cook Inlet, Dall's porpoise, AK, Harbor porpoise, GOA, Harbor seal, GOA, Humpback whale, Central North Pacific [1], Sea otter, South central AK, Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	569	Beluga whale, Cook Inlet, Dall's porpoise, AK, Harbor porpoise, GOA [1], Harbor seal, GOA, Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet [2]	162	Dall's porpoise, AK, Harbor porpoise, GOA, Harbor seal, GOA, Northern fur seal, Eastern Pacific.
AK Peninsula/Aleutian Islands salmon set gillnet [2]	113	Harbor porpoise, Bering Sea, Northern sea otter, Southwest AK, Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK, Harbor porpoise, GOA [1], Harbor seal, GOA, Northern fur seal, Eastern Pacific, Pacific white-sided dolphin, North Pacific, Sea otter, South central AK, Steller sea lion, Western U.S.[1]
AK Southeast salmon drift gillnet	474	Dall's porpoise, AK, Harbor porpoise, Southeast AK, Harbor seal, Southeast AK, Humpback whale, Central North Pacific [1], Pacific white-sided dolphin, North Pacific, Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet [2]	168	Gray whale, Eastern North Pacific, Harbor Porpoise, Southeastern AK, Harbor seal, Southeast AK, Humpback whale, Central North Pacific (Southeast AK).
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded).	210	Dall's porpoise, CA/OR/WA, Harbor porpoise, inland WA [1], Harbor seal, WA inland.
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands flatfish trawl	32	Bearded seal, AK, Gray whale, Eastern North Pacific, Harbor porpoise, Bering Sea, Harbor seal, Bering Sea, Humpback whale, Western North Pacific [1], Killer whale, AK resident,[1] Killer whale, GOA, AI, BS transient,[1] Northern fur seal, Eastern Pacific, Ringed seal, AK, Ribbon seal, AK, Spotted seal, AK, Steller sea lion, Western U.S. [1], Walrus, AK.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
AK Bering Sea, Aleutian Islands pollock trawl	102	Bearded Seal, AK, Dall's porpoise, AK, Harbor seal, AK, Humpback whale, Central North Pacific, Humpback whale, Western North Pacific, Northern fur seal, Eastern Pacific, Ribbon seal, AK, Ringed seal, AK, Spotted seal, AK, Steller sea lion, Western U.S. [1]
AK Bering Sea, Aleutian Islands rockfish trawl	17	Killer whale, ENP AK resident [1], Killer whale, GOA, AI, BS transient.[1]
POT, RING NET, AND TRAP FISHERIES:		
CA spiny lobster	194	Bottlenose dolphin, CA/OR/WA offshore, Humpback whale, CA/OR/WA [1], Gray whale, Eastern North Pacific.
CA spot prawn pot	25	Gray whale, Eastern North Pacific, Humpback whale, CA/OR/WA [1].
CA Dungeness crab pot	570	Gray whale, Eastern North Pacific, Humpback whale, CA/OR/WA [1].
OR Dungeness crab pot	433	Gray whale, Eastern North Pacific, Humpback whale, CA/OR/WA [1].
WA/OR/CA sablefish pot	309	Humpback whale, CA/OR/WA [1].
WA coastal Dungeness crab pot	228	Gray whale, Eastern North Pacific, Humpback whale, CA/OR/WA [1].
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Pacific cod longline	45	Dall's Porpoise, AK, Killer whale, GOA, BSAI transient [1]. Northern fur seal, Eastern Pacific, Ringed seal, AK.
AK Gulf of Alaska sablefish longline	295	Sperm whale, North Pacific.
HI shallow-set longline *	22	Blainville's beaked whale, HI, Bottlenose dolphin, HI Pelagic, False killer whale, HI Pelagic [1]. Humpback whale, Central North Pacific, Risso's dolphin, HI, Rough-toothed dolphin, HI, Short-finned pilot whale, HI, Striped dolphin, HI.
American Samoa longline [2]	18	Bottlenose dolphin, unknown, Cuvier's beaked whale, unknown, False killer whale, American Samoa, Rough-toothed dolphin, American Samoa, Short-finned pilot whale, unknown.
HI shortline [2]	9	None documented.
CATEGORY III		
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,778	Harbor porpoise, Bering Sea.
AK Prince William Sound salmon set gillnet	29	Harbor seal, GOA, Sea otter, South central AK, Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	920	None documented.
CA set gillnet (mesh size <3.5 in)	296	None documented.
HI inshore gillnet	36	Bottlenose dolphin, HI, Spinner dolphin, HI.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast.
WA/OR Mainstem Columbia River eulachon gillnet	15	None documented.
WA/OR lower Columbia River (includes tributaries) drift gillnet.	110	California sea lion, U.S., Harbor seal, OR/WA coast.
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast, Northern elephant seal, CA breeding.
MISCELLANEOUS NET FISHERIES:		
AK Cook Inlet salmon purse seine	83	Humpback whale, Central North Pacific.
AK Kodiak salmon purse seine	376	Humpback whale, Central North Pacific.
AK Southeast salmon purse seine	315	None documented in the most recent five years of data.
AK Metlakatla salmon purse seine	10	None documented.
AK roe herring and food/bait herring beach seine	10	None documented.
AK roe herring and food/bait herring purse seine	356	None documented.
AK salmon beach seine	31	None documented.
AK salmon purse seine (Prince William Sound, Chignik, Alaska Peninsula).	936	Harbor seal, GOA, Harbor seal, Prince William Sound.
WA/OR sardine purse seine	42	None documented.
CA anchovy, mackerel, sardine purse seine	65	California sea lion, U.S., Harbor seal, CA.
CA squid purse seine	80	Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA.
CA tuna purse seine *	10	None documented.
WA/OR Lower Columbia River salmon seine	10	None documented.
WA/OR herring, smelt, squid purse seine or lampara	130	None documented.
WA salmon purse seine	75	None documented.
WA salmon reef net	11	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
HI lift net	17	None documented.
HI inshore purse seine	<3	None documented.
HI throw net, cast net	23	None documented.
HI seine net	24	None documented.
DIP NET FISHERIES:		
CA squid dip net	115	None documented.
MARINE AQUACULTURE FISHERIES:		
CA marine shellfish aquaculture	unknown	None documented.
CA salmon enhancement rearing pen	>1	None documented.
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented.
WA salmon net pens	14	California sea lion, U.S., Harbor seal, WA inland waters.
WA/OR shellfish aquaculture	23	None documented.
TROLL FISHERIES:		
WA/OR/CA albacore surface hook and line/troll	705	None documented.
CA halibut hook and line/handline	unknown	None documented.
CA white seabass hook and line/handline	unknown	None documented.
AK Bering Sea, Aleutian Islands groundfish hand troll and dinglebar troll.	unknown	None documented.
AK Gulf of Alaska groundfish hand troll and dinglebar troll	unknown	None documented.
AK salmon troll	1,908	Steller sea lion, Eastern U.S., Steller sea lion, Western U.S.
American Samoa tuna troll	13	None documented.
CA/OR/WA salmon troll	4,300	None documented.
HI troll	2,117	Pantropical spotted dolphin, HI.
HI rod and reel	322	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	40	None documented.
Guam tuna troll	432	None documented.
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	4	Killer whale, AK resident.
AK Bering Sea, Aleutian Islands sablefish longline	22	None documented.
AK Bering Sea, Aleutian Islands halibut longline	127	None documented.
AK Gulf of Alaska halibut longline	855	None documented.
AK Gulf of Alaska Pacific cod longline	92	Steller sea lion, Western U.S.
AK octopus/squid longline	3	None documented.
AK state-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish).	464	None documented.
WA/OR/CA groundfish, bottomfish longline/set line	367	Bottlenose dolphin, CA/OR/WA offshore.
WA/OR Pacific halibut longline	350	None documented.
CA pelagic longline	1	None documented in the most recent five years of data.
HI kaka line	15	None documented.
HI vertical line	3	None documented.
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	13	Ribbon seal, AK, Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	72	Ringed seal, AK, Steller sea lion, Western U.S.
AK Gulf of Alaska flatfish trawl	36	Northern elephant seal, North Pacific.
AK Gulf of Alaska Pacific cod trawl	55	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	67	Dall's porpoise, AK, Fin whale, Northeast Pacific, Northern elephant seal, North Pacific, Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	43	None documented.
AK Kodiak food/bait herring otter trawl	4	None documented.
AK shrimp otter trawl and beam trawl	38	None documented.
AK state-managed waters of Prince William Sound groundfish trawl.	2	None documented.
CA halibut bottom trawl	47	California sea lion, U.S., Harbor porpoise, unknown, Harbor seal, unknown, Northern elephant seal, CA breeding, Steller sea lion, unknown.
CA sea cucumber trawl	16	None documented.
WA/OR/CA shrimp trawl	300	None documented.
WA/OR/CA groundfish trawl	160–180	California sea lion, U.S., Dall's porpoise, CA/OR/WA, Harbor seal, OR/WA coast, Northern fur seal, Eastern Pacific, Pacific white-sided dolphin, CA/OR/WA, Steller sea lion, Eastern U.S.
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea, Aleutian Islands sablefish pot	6	None documented.
AK Bering Sea, Aleutian Islands Pacific cod pot	59	None documented.
AK Bering Sea, Aleutian Islands crab pot	540	Gray whale, Eastern North Pacific.
AK Gulf of Alaska crab pot	271	None documented.
AK Gulf of Alaska Pacific cod pot	116	Harbor seal, GOA.
AK Gulf of Alaska sablefish pot	248	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
AK Southeast Alaska crab pot	375	Humpback whale, Central North Pacific (Southeast AK).
AK Southeast Alaska shrimp pot	99	Humpback whale, Central North Pacific (Southeast AK).
AK shrimp pot, except Southeast	141	None documented.
AK octopus/squid pot	15	None documented.
CA/OR coonstripe shrimp pot	36	Gray whale, Eastern North Pacific, Harbor seal, CA.
CA rock crab pot	124	Gray whale, Eastern North Pacific, Harbor seal, CA.
WA/OR/CA hagfish pot	54	None documented.
WA/OR shrimp pot/trap	254	None documented.
WA Puget Sound Dungeness crab pot/trap	249	None documented.
HI crab trap	5	Humpback whale, Central North Pacific.
HI fish trap	9	None documented.
HI lobster trap	<3	None documented in recent years.
HI shrimp trap	10	None documented.
HI crab net	4	None documented.
HI Kona crab loop net	33	None documented.
HOOK-AND-LINE, HANDLINE, AND JIG FISHERIES:		
AK Bering Sea, Aleutian Islands groundfish jig	2	None documented.
AK Gulf of Alaska groundfish jig	214	Fin whale, Northeast Pacific.
AK halibut jig	71	None documented.
American Samoa bottomfish	17	None documented.
Commonwealth of the Northern Mariana Islands bottomfish.	28	None documented.
Guam bottomfish	>300	None documented.
HI aku boat, pole, and line	<3	None documented.
HI bottomfish handline	578	None documented in recent years.
HI inshore handline	357	None documented.
HI pelagic handline	534	None documented.
WA groundfish, bottomfish jig	679	None documented.
Western Pacific squid jig	0	None documented.
HARPOON FISHERIES:		
CA swordfish harpoon	6	None documented.
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	291	None documented.
AK Southeast herring roe/food/bait pound net	2	None documented.
HI bullpen trap	3	None documented.
BAIT PENS:		
WA/OR/CA bait pens	13	California sea lion, U.S.
DREDGE FISHERIES:		
AK scallop dredge	108 (5 AK)	None documented.
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK clam	130	None documented.
AK Dungeness crab	2	None documented.
AK herring spawn on kelp	266	None documented.
AK miscellaneous invertebrates handpick	214	None documented.
HI black coral diving	<3	None documented.
HI fish pond	5	None documented.
HI handpick	46	None documented.
HI lobster diving	19	None documented.
HI spearfishing	163	None documented.
WA/CA kelp	4	None documented.
WA/OR bait shrimp, clam hand, dive, or mechanical collection.	201	None documented.
OR/CA sea urchin, sea cucumber hand, dive, or mechanical collection.	10	None documented.
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (1,006 AK).	Killer whale, unknown, Steller sea lion, Eastern U.S., Steller sea lion, Western U.S.
LIVE FINFISH/SHELLFISH FISHERIES:		
CA nearshore finfish live trap/hook-and-line	93	None documented.
HI aquarium collecting	90	None documented.

List of Abbreviations and Symbols Used in Table 1: AI—Aleutian Islands; AK—Alaska; BS—Bering Sea; CA—California; ENP—Eastern North Pacific; GOA—Gulf of Alaska; HI—Hawaii; MHI—Main Hawaiian Islands; OR—Oregon; WA—Washington.

[1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR.

[2] Fishery classified by analogy.

* Fishery has an associated high seas component listed in Table 3.

^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of species and/or stocks killed or injured in high seas component of the fishery, minus species and/or stocks that have geographic ranges exclusively on the high seas. The species and/or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
CATEGORY I		
GILLNET FISHERIES:		
Mid-Atlantic gillnet	3,950	Bottlenose dolphin, Northern Migratory coastal [1], Bottlenose dolphin, Southern Migratory coastal [1], Bottlenose dolphin, Northern NC estuarine system [1], Bottlenose dolphin, Southern NC estuarine system [1], Bottlenose dolphin, WNA offshore, Common dolphin, WNA, Gray seal, WNA, Harbor porpoise, GME/BF, Harbor seal, WNA, Harp seal, WNA, Humpback whale, Gulf of Maine, Minke whale, Canadian east coast.
Northeast sink gillnet	4,332	Bottlenose dolphin, WNA offshore, Common dolphin, WNA, Fin whale, WNA, Gray seal, WNA, Harbor porpoise, GME/BF [1], Harbor seal, WNA, Harp seal, WNA, Hooded seal, WNA, Humpback whale, Gulf of Maine, Long-finned pilot whale, WNA, Minke whale, Canadian east coast, North Atlantic right whale, WNA, Risso's dolphin, WNA, White-sided dolphin, WNA.
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	10,163	Humpback whale, Gulf of Maine, Minke whale, Canadian east coast, North Atlantic right whale, WNA [1].
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline *.	280	Atlantic spotted dolphin, Northern GMX, Bottlenose dolphin, Northern GMX oceanic, Bottlenose dolphin, WNA offshore, Common dolphin, WNA, Cuvier's beaked whale, WNA, False killer whale, WNA, Harbor porpoise, GME, BF, Kogia *spp.* (Pygmy or dwarf sperm whale), WNA, Long-finned pilot whale, WNA [1], Mesoplodon beaked whale, WNA, Minke whale, Canadian East coast, Pantropical spotted dolphin, Northern GMX, Pygmy sperm whale, GMX, Risso's dolphin, Northern GMX, Risso's dolphin, WNA, Rough-toothed dolphin, Northern GMX, Short-finned pilot whale, Northern GMX, Short-finned pilot whale, WNA[1].
CATEGORY II		
GILLNET FISHERIES:		
Chesapeake Bay inshore gillnet [2]	248	Bottlenose dolphin, unknown (Northern migratory coastal or Southern migratory coastal).
Gulf of Mexico gillnet [2]	248	Bottlenose dolphin, GMX bay, sound, and estuarine, Bottlenose dolphin, Northern GMX coastal, Bottlenose dolphin, Western GMX coastal.
NC inshore gillnet	2,850	Bottlenose dolphin, Northern NC estuarine system [1], Bottlenose dolphin, Southern NC estuarine system [1].
Northeast anchored float gillnet [2]	852	Harbor seal, WNA, Humpback whale, Gulf of Maine, White-sided dolphin, WNA.
Northeast drift gillnet [2]	1,036	None documented.
Southeast Atlantic gillnet [2]	273	Bottlenose dolphin, Central FL coastal, Bottlenose dolphin, Northern FL coastal, Bottlenose dolphin, SC/GA coastal, Bottlenose dolphin, Southern migratory coastal.
Southeastern U.S. Atlantic shark gillnet	23	Bottlenose dolphin, unknown (Central FL, Northern FL, SC/GA coastal, or Southern migratory coastal), North Atlantic right whale, WNA.
TRAWL FISHERIES:		
Mid-Atlantic mid-water trawl (including pair trawl)	382	Gray seal, WNA, Harbor seal, WNA.
Mid-Atlantic bottom trawl	785	Bottlenose dolphin, WNA offshore, Common dolphin, WNA [1], Gray seal, WNA, Harbor seal, WNA, Risso's dolphin, WNA [1], White-sided dolphin, WNA.
Northeast mid-water trawl (including pair trawl)	1,087	Common dolphin, WNA, Gray seal, WNA, Harbor seal, WNA, Long-finned pilot whale, WNA [1], Minke whale, Canadian East Coast.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Northeast bottom trawl	2,238	Bottlenose dolphin, WNA offshore, Common dolphin, WNA, Gray seal, WNA, Harbor porpoise, GME/BF, Harbor seal, WNA, Harp seal, WNA, Long-finned pilot whale, WNA, Risso's dolphin, WNA, White-sided dolphin, WNA [1].
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	4,950	Atlantic spotted dolphin, GMX continental and oceanic, Bottlenose dolphin, Charleston estuarine system, Bottlenose dolphin, Eastern GMX coastal [1], Bottlenose dolphin, GMX bay, sound, estuarine [1], Bottlenose dolphin, GMX continental shelf, Bottlenose dolphin, Northern GMX coastal, Bottlenose dolphin, SC/GA coastal [1], Bottlenose dolphin, Southern migratory coastal, Bottlenose dolphin, Western GMX coastal[1], West Indian manatee, Florida.
TRAP/POT FISHERIES:		
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot [2].	1,384	Bottlenose dolphin, Biscayne Bay estuarine, Bottlenose dolphin, Central FL coastal, Bottlenose dolphin, Eastern GMX coastal, Bottlenose dolphin, FL Bay, Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion), Bottlenose dolphin, Indian River Lagoon estuarine system, Bottlenose dolphin, Jacksonville estuarine system, Bottlenose dolphin, Northern GMX coastal.
Atlantic mixed species trap/pot [2]	3,436	Fin whale, WNA, Humpback whale, Gulf of Maine.
Atlantic blue crab trap/pot	7,714	Bottlenose dolphin, Central FL coastal, Bottlenose dolphin, Central GA estuarine system, Bottlenose dolphin, Charleston estuarine system [1], Bottlenose dolphin, Indian River Lagoon estuarine system, Bottlenose dolphin, Jacksonville estuarine system, Bottlenose dolphin, Northern FL coastal [1], Bottlenose dolphin, Northern GA/Southern SC estuarine system, Bottlenose dolphin, Northern Migratory coastal, Bottlenose dolphin, Northern NC estuarine system [1], Bottlenose dolphin, Northern SC estuarine system, Bottlenose dolphin, SC/GA coastal, Bottlenose dolphin, Southern GA estuarine system, Bottlenose dolphin, Southern Migratory coastal, Bottlenose dolphin, Southern NC estuarine system, West Indian manatee, FL.
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, GMX bay, sound, estuarine, Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau, Bottlenose dolphin, Northern GMX coastal [1], Bottlenose dolphin, Western GMX coastal [1].
Mid-Atlantic menhaden purse seine [2]	19	Bottlenose dolphin, Northern Migratory coastal, Bottlenose dolphin, Southern Migratory coastal.
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	359	Bottlenose dolphin, Northern Migratory coastal [1], Bottlenose dolphin, Northern NC estuarine system [1], Bottlenose dolphin, Southern Migratory coastal [1].
NC long haul seine	30	Bottlenose dolphin, Northern NC estuarine system [1], Bottlenose dolphin, Southern NC estuarine system.
STOP NET FISHERIES:		
NC roe mullet stop net	1	Bottlenose dolphin, Northern NC estuarine system, Bottlenose dolphin, unknown (Southern migratory coastal or Southern NC estuarine system).
POUND NET FISHERIES:		
VA pound net	26	Bottlenose dolphin, Northern migratory coastal, Bottlenose dolphin, Northern NC estuarine system, Bottlenose dolphin, Southern Migratory coastal [1].
CATEGORY III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	None documented in the most recent five years of data.
DE River inshore gillnet	unknown	None documented in the most recent five years of data.
Long Island Sound inshore gillnet	unknown	None documented in the most recent five years of data.
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet.	unknown	None documented in the most recent five years of data.
Southeast Atlantic inshore gillnet	unknown	Bottlenose dolphin, Northern SC estuarine system.
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	>58	None documented.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic, Bottlenose dolphin, Northern GMX continental shelf.
Gulf of Mexico mixed species trawl	20	None documented.
GA cannonball jellyfish trawl	1	Bottlenose dolphin, SC/GA coastal.
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA.
Shellfish aquaculture	unknown	None documented.
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	>7	Harbor seal, WNA, Gray seal, WNA.
Gulf of Maine menhaden purse seine	>2	None documented.
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal.
U.S. Atlantic tuna purse seine *	5	Long-finned pilot whale, WNA, Short-finned pilot whale, WNA.
LONGLINE/HOOK-AND-LINE FISHERIES:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	>1,207	None documented.
Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon..	2,846	Bottlenose dolphin, WNA offshore, Humpback whale, Gulf of Maine.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/ hook-and-line.	>5,000	Bottlenose dolphin, GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	39	Bottlenose dolphin, Eastern GMX coastal, Bottlenose dolphin, Northern GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	680	None documented.
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented.
TRAP/POT FISHERIES:		
Caribbean mixed species trap/pot	>501	None documented.
Caribbean spiny lobster trap/pot	>197	None documented.
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine Bottlenose dolphin, Central FL coastal, Bottlenose dolphin, Eastern GMX coastal, Bottlenose dolphin, FL Bay estuarine, Bottlenose dolphin, FL Keys.
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Barataria Bay, Bottlenose dolphin, Eastern GMX coastal, Bottlenose dolphin, GMX bay, sound, estuarine, Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau, Bottlenose dolphin, Northern GMX coastal, Bottlenose dolphin, Western GMX coastal, West Indian manatee, FL.
Gulf of Mexico mixed species trap/pot	unknown	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot.	10	None documented.
U.S. Mid-Atlantic eel trap/pot	unknown	None documented.
STOP SEINE/WEIR/POUND NET/FLOATING TRAP/FYKE NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/ weir.	>1	Harbor porpoise, GME/BF, Harbor seal, WNA, Minke whale, Canadian east coast, Atlantic white-sided dolphin, WNA.
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented.
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net).	unknown	Bottlenose dolphin, Northern NC estuarine system.
RI floating trap	9	None documented.
Northeast and Mid-Atlantic fyke net	unknown	None documented.
DREDGE FISHERIES:		
Gulf of Maine sea urchin dredge	unknown	None documented.
Gulf of Maine mussel dredge	unknown	None documented.
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	>403	None documented.
Mid-Atlantic blue crab dredge	unknown	None documented.
Mid-Atlantic soft-shell clam dredge	unknown	None documented.
Mid-Atlantic whelk dredge	unknown	None documented.
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented.
New England and Mid-Atlantic offshore surf clam/quahog dredge.	unknown	None documented.
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	None documented in the most recent five years of data.
Gulf of Mexico haul/beach seine	unknown	None documented.
Southeastern U.S. Atlantic haul/beach seine	25	None documented.
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
Gulf of Maine urchin dive, hand/mechanical collection	unknown	None documented.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented.
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	Bottlenose dolphin, Barataria Bay estuarine system, Bottlenose dolphin, Biscayne Bay estuarine, Bottlenose dolphin, Central FL coastal, Bottlenose dolphin, Choctawhatchee Bay, Bottlenose dolphin, Eastern GMX coastal, Bottlenose dolphin, FL Bay, Bottlenose dolphin, GMX bay, sound, estuarine, Bottlenose dolphin, Indian River Lagoon estuarine system, Bottlenose dolphin, Jacksonville estuarine system, Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau, Bottlenose dolphin, Northern FL coastal, Bottlenose dolphin, Northern GA/Southern SC estuarine, Bottlenose dolphin, Northern GMX coastal, Bottlenose dolphin, Northern migratory coastal, Bottlenose dolphin, Northern NC estuarine, Bottlenose dolphin, Southern migratory coastal, Bottlenose dolphin, Southern NC estuarine system, Bottlenose dolphin, SC/GA coastal, Bottlenose dolphin, Western GMX coastal, Short-finned pilot whale, WNA.

List of Abbreviations and Symbols Used in Table 2: DE—Delaware; FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; MA—Massachusetts; NC—North Carolina; NY—New York; RI—Rhode Island; SC—South Carolina; VA—Virginia; WNA—Western North Atlantic.

[1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR.

[2] Fishery classified by analogy.

* Fishery has an associated high seas component listed in Table 3.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
CATEGORY I		
LONGLINE FISHERIES:		
Atlantic Highly Migratory Species *	79	Atlantic spotted dolphin, WNA, Bottlenose dolphin, Northern GMX oceanic, Bottlenose dolphin, WNA offshore, Common dolphin, WNA, Cuvier's beaked whale, WNA, False killer whale, WNA, Killer whale, GMX oceanic, Kogia *spp.* whale (Pygmy or dwarf sperm whale), WNA, Long-finned pilot whale, WNA, Mesoplodon beaked whale, WNA, Minke whale, Canadian East coast, Pantropical spotted dolphin, WNA, Risso's dolphin, GMX, Risso's dolphin, WNA, Short-finned pilot whale, WNA.
Western Pacific Pelagic (HI Deep-set component) * ∧	143	Bottlenose dolphin, HI Pelagic, False killer whale, HI Pelagic, Humpback whale, Central North Pacific, Kogia *spp.* (Pygmy or dwarf sperm whale), HI, Pygmy killer whale, HI, Risso's dolphin, HI, Short-finned pilot whale, HI, Sperm whale, HI, Striped dolphin, HI.
CATEGORY II		
DRIFT GILLNET FISHERIES:		
Pacific Highly Migratory Species * ∧	4	Long-beaked common dolphin, CA, Humpback whale, CA/OR/WA, Northern right-whale dolphin, CA/OR/WA, Pacific white-sided dolphin, CA/OR/WA, Risso's dolphin, CA/OR/WA, Short-beaked common dolphin, CA/OR/WA.
TRAWL FISHERIES:		
Atlantic Highly Migratory Species * *	2	No information.
CCAMLR	0	Antarctic fur seal.
PURSE SEINE FISHERIES:		
South Pacific Tuna Fisheries	35	No information.
Western Pacific Pelagic	1	No information.
LONGLINE FISHERIES:		
CCAMLR	0	None documented.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
South Pacific Albacore Troll	9	No information.
South Pacific Tuna Fisheries**	4	No information.
Western Pacific Pelagic (HI Shallow-set component)*∧	22	Blainville's beaked whale, HI, Bottlenose dolphin, HI Pelagic, False killer whale, HI Pelagic, Humpback whale, Central North Pacific, Northern elephant seal, CA breeding, Risso's dolphin, HI, Rough-toothed dolphin, HI, Short-beaked common dolphin, CA/OR/WA, Short-finned pilot whale, HI, Striped dolphin, HI.
HANDLINE/POLE AND LINE FISHERIES:		
Atlantic Highly Migratory Species	2	No information.
Pacific Highly Migratory Species	42	No information.
South Pacific Albacore Troll	11	No information.
Western Pacific Pelagic	5	No information.
TROLL FISHERIES:		
Atlantic Highly Migratory Species	1	No information.
South Pacific Albacore Troll	22	No information.
South Pacific Tuna Fisheries**	4	No information.
Western Pacific Pelagic	6	No information.
CATEGORY III		
LONGLINE FISHERIES:		
Northwest Atlantic Bottom Longline	1	None documented.
Pacific Highly Migratory Species	105	None documented in the most recent 5 years of data.
PURSE SEINE FISHERIES:		
Pacific Highly Migratory Species*∧	7	None documented.
TRAWL FISHERIES:		
Northwest Atlantic	2	None documented.
TROLL FISHERIES:		
Pacific Highly Migratory Species*	149	None documented.

List of Terms, Abbreviations, and Symbols Used in Table 3: CA-California; GMX-Gulf of Mexico; HI-Hawaii; OR-Oregon; WA-Washington; WNA-Western North Atlantic.

*Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.

**These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.

∧The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species and/or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS

Take reduction plans	Affected fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP)—50 CFR 229.32	*Category I:* Mid-Atlantic gillnet, Northeast/Mid-Atlantic American lobster trap/pot, Northeast sink gillnet. *Category II:* Atlantic blue crab trap/pot, Atlantic mixed species trap/pot, Northeast anchored float gillnet, Northeast drift gillnet, Southeast Atlantic gillnet, Southeastern U.S. Atlantic shark gillnet*, Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.∧
Bottlenose Dolphin Take Reduction Plan (BDTRP)—50 CFR 229.35	*Category I:* Mid-Atlantic gillnet. *Category II:* Atlantic blue crab trap/pot, Chesapeake Bay inshore gillnet fishery, Mid-Atlantic haul/beach seine, Mid-Atlantic menhaden purse seine, NC inshore gillnet, NC long haul seine, NC roe mullet stop net, Southeast Atlantic gillnet, Southeastern U.S. Atlantic shark gillnet, Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl∧, Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot∧, VA pound net.
False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37	*Category I:* HI deep-set longline. *Category II:* HI shallow-set longline.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS—Continued

Take reduction plans	Affected fisheries
Harbor Porpoise Take Reduction Plan (HPTRP)—50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic).	*Category I:* Mid-Atlantic gillnet, Northeast sink gillnet.
Pelagic Longline Take Reduction Plan (PLTRP)—50 CFR 229.36	*Category I:* Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.
Pacific Offshore Cetacean Take Reduction Plan (POCTRP)—50 CFR 229.31.	*Category I:* CA thresher shark/swordfish drift gillnet (≥14 in mesh).
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	*Category II:* Mid-Atlantic bottom trawl, Mid-Atlantic mid-water trawl (including pair trawl), Northeast bottom trawl, Northeast mid-water trawl (including pair trawl).

*Only applicable to the portion of the fishery operating in U.S. waters; ^Only applicable to the portion of the fishery operating in the Atlantic Ocean.

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) at the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received on that certification, and no new information has been discovered to change that conclusion. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

This rule contains collection-of-information (COI) requirements subject to the Paperwork Reduction Act. The COI for the registration of individuals under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants). The requirement for reporting marine mammal mortalities or injuries has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the COI. Send comments regarding these reporting burden estimates or any other aspect of the COI, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a COI, subject to the requirements of the Paperwork Reduction Act, unless that COI displays a currently valid OMB control number.

This rule has been determined to be not significant for the purposes of Executive Orders 12866 and 13563.

This rule is not expected to be an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

In accordance with the Companion Manual for NAO 216–6A, NMFS determined that publishing this LOF qualifies to be categorically excluded from further NEPA review. Issuance of this final rule is consistent with categories of activities identified in Categorical Exclusion G7 of the Companion Manual, and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude application of this categorical exclusion. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an Environmental Impact Statement (EIS) or Environmental Assessment (EA), as required under NEPA, specific to that action.

This rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would consult under ESA section 7 on that action.

This rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

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Dated: February 2, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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Proposed Rules

Federal Register
Vol. 83, No. 26
Wednesday, February 7, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 26, 50, 51, 52, 72, 73, and 140

[NRC–2015–0070]

RIN 3150–AJ59

Regulatory Improvements for Power Reactors Transitioning to Decommissioning

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory analysis; availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has prepared a regulatory analysis to support the regulatory basis for a rulemaking to amend the NRC's regulations for the decommissioning of nuclear power reactors. This regulatory analysis is based on receipt of public comments for the preliminary draft regulatory analysis, which was issued in the **Federal Register** on May 9, 2017. The NRC is making the regulatory analysis available for public information.

DATES: The regulatory analysis is available February 7, 2018.

ADDRESSES: Please refer to Docket ID NRC–2015–0070 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–2015–0070. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for ''Regulatory Analysis for Regulatory Basis: Regulatory Improvements for Power Reactors Transitioning to Decommissioning'' is ML17332A075.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chris Howells, *Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;* telephone: 301–415–1381, email: *Christopher.Howells@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC staff has prepared a regulatory analysis for the regulatory basis to support a rulemaking that would amend the NRC's regulations for the decommissioning of nuclear power reactors. The NRC's goals in amending these regulations would be to provide for an efficient decommissioning process; reduce the need for exemptions from existing regulations; address other decommissioning issues deemed relevant by the NRC staff; and support the principles of good regulation, including openness, clarity, and reliability. The NRC is recommending rulemaking in the areas of emergency planning, physical security, cyber security, drug and alcohol testing, training requirements for certified fuel handlers, decommissioning trust funds, applicability of backfitting provisions, and offsite and onsite financial protection requirements and indemnity agreements. These revised requirements would formalize steps to transition a power reactor from operating status to decommissioning while reducing the need for exemptions and license amendments. The NRC staff is also recommending clarifying requirements regarding topics such as spent fuel management and environmental reporting.

Accompanying this rulemaking are updates to guidance that address aging management, the appropriate role of State and local governments in the decommissioning process, the level of NRC review of a licenee's Post-Shutdown Decommissioning Activities Report, the options for decommissioning, and the timeframe associated with decommissioning.

The regulatory analysis discusses the economic impact to the nuclear power industry, government, and society that would result from the rulemaking and guidance contemplated by the regulatory basis. The regulatory analysis discusses the cost benefit analysis that was completed for the various alternatives put forth by the staff, and shows that the staff's recommendation for rulemaking and guidance development is overall cost benefical to the nuclear power industry, government, and society.

II. Cost Benefit Analysis Summary

The following table provides the quantified and non-quantified costs and benefits for the staff-recommended alternatives discussed in the regulatory basis for each area of decommissioning under specific decommissioning topics and regulatory approaches. The complete analysis discusses at length the NRC staff's process, alternatives considered, and evaluation of costs and benefits for each area of decommissioning.

Summary of Totals for the Recommended Alternatives

Areas of Decommissioning	Recommended Alternatives	Total Costs (2017 dollars)	
		7% NPV	3% NPV
Level of PSDAR Review by NRC	Rulemaking	$ (377,000)	$ (376,000)
Maintaining the Decommissioning Options	Guidance	$ (220,000)	$ (212,000)
Timeframe Associated with Decommissioning	Guidance	$ (227,000)	$ (218,000)
Role of External Stakeholders in Decommissioning	Guidance	$ (239,000)	$ (239,000)
Clarification Spent Fuel Management	Rulemaking	$ (320,000)	$ (324,000)
Record Retention Requirements	Guidance	$ 851,000	$ 963,000
Transportation Investigation, Tracing and Reporting Requirements	Guidance	$ 615,000	$ 698,000
Emergency Preparedness	Rulemaking	$ 6,148,000	$ 14,513,000
Physical Security	Rulemaking	$ 340,000	$ 1,850,000
Cyber Security	Rulemaking	$ (200,000)	$ (208,000)
Fitness for Duty, Drugs & Alcohol	Guidance	$ 5,809,000	$ 13,377,000
Fitness for Duty, Fatigue	Status Quo	$ -	$ -
Minimum Staffing and Training Requirements NLO/CFH	Rulemaking	$ 265,000	$ 829,000
Decommissioning Trust Fund	Rulemaking	$ 71,000	$ 1,032,000
Offsite & Onsite Financial Protection	Rulemaking	$ 264,000	$ 870,000
Backfit Protection	Rulemaking	$ (216,000)	$ (224,000)
Aging Management	Guidance	$ (25,000)	$ (25,000)
Total:		$ 12,540,000	$ 32,305,000
Nonmonetary Benefits			
Regulatory Efficiency: These alternatives would enable the NRC to better maintain and administer regulatory activities over the decommissioning process and ensure that the requirements for decommissioning power reactors are clear and appropriate.			
Safety and Security: These alternatives would continue to provide reasonable assurance of adequate protection of the public health and safety, and common defense and security at nuclear power reactor sites that have started decommissioning.			

Dated at Rockville, Maryland, this 1st day of February 2018.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Division of Rulemaking, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–02402 Filed 2–6–18; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0062]

Energy Conservation Program: Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of comment period extension.

SUMMARY: The Department of Energy (DOE) published, on December 18, 2017, a Request for Information (RFI) seeking comments from interested parties to assist DOE in identifying potential modifications to its ''Process Rule'' for the development of appliance standards. The comment period for the RFI ends on February 16, 2018. Through this notice, DOE extends the comment period until March 2, 2018.

DATES: The comment period for the RFI published in the **Federal Register** on December 18, 2017 (82 FR 59992) is extended to March 2, 2018. Written comments and information are requested on or before March 2, 2018.

ADDRESSES: Interested persons are encouraged to submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Regulatory.Review@hq.doe.gov.* Include ''Process Rule RFI'' in the subject line of the message.
- *Postal Mail:* U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue SW, Room 6A245, Washington, DC 20585

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2017-BT-STD-0062.* The docket web page will contain simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Caitlin Davis, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585. Email: *Regulatory.Review@hq.doe.gov.* Telephone: 202–586–6803.

SUPPLEMENTARY INFORMATION: As part of its implementation of, ''Reducing Regulation and Controlling Regulatory Costs,'' (January 30, 2017) and, ''Enforcing the Regulatory Reform Agenda,'' (February 24, 2017), the Department of Energy (DOE) published a Request for Information (RFI), on December 18, 2017 (82 FR 59992), seeking comments from interested parties to assist DOE in identifying potential modifications to its ''Process Rule'' for the development of appliance standards, in an effort to achieve meaningful burden reduction while continuing to achieve the Department's statutory obligations in the development

of appliance standards. DOE also held a public meeting to receive input from interested parties on potential improvements to the ''Process Rule''. The comment period for the RFI was previously February 16, 2018. At the public meeting, DOE received several requests to extend the comment period to give interested parties sufficient opportunity to provide comments and information on this topic. In addition, in a joint letter dated January 29, 2018, the Air Conditioning, Heating & Refrigeration Institute, Association of Home Appliance Manufacturers, and National Electrical Manufacturers Association together offered DOE support in its efforts to improve the Process Rule and requested that the comment period for the RFI be extended. (EERE–2017–STD–0062–0017)

The Department intends to move forward expeditiously with further actions to improve the ''Process Rule''. Given the importance to DOE of receiving public input on means to make such improvements, however, DOE grants those requests and extends the comment period for an additional two weeks, until March 2, 2018.

Approval of the Office of the Secretary

The Secretary of Energy has approved the publication of this document.

Issued in Washington, DC, on January 31, 2018.

Daniel R Simmons,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2018–02440 Filed 2–6–18; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0177; FRL–9974–10–Region 9]

Approval and Promulgation of Air Quality State Implementation Plans; California; Interstate Transport Requirements for Ozone, Fine Particulate Matter, and Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) submission from the State of California regarding certain interstate transport requirements of the Clean Air Act (CAA or ''Act''). This submission addresses the 2008 ozone national ambient air quality standards (NAAQS), the 2006 fine particulate matter ($PM_{2.5}$) and 2012 $PM_{2.5}$ NAAQS, and the 2010 sulfur dioxide (SO_2) NAAQS. The interstate transport requirements under the CAA consist of several elements; this proposal pertains only to significant contribution to nonattainment and interference with maintenance of the NAAQS in other states. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by March 9, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2017–0177 at *http://www.regulations.gov,* or via email to Rory Mays at *mays.rory@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Rory Mays, Air Planning Office (AIR–2), EPA Region IX, (415) 972–3227, *mays.rory@epa.gov.*

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

Table of Contents

I. Background
A. Interstate Transport
B. California's Submission
II. Interstate Transport Evaluation
A. The EPA's General Evaluation Approach
B. Evaluation for the 2008 8-Hour Ozone NAAQS
C. Evaluation for the 2006 $PM_{2.5}$ and 2012 $PM_{2.5}$ NAAQS
D. Evaluation for the 2010 1-hour SO_2 NAAQS
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background

Section 110(a)(1) of the CAA requires states to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as the EPA may prescribe. Section 110(a)(2) requires states to address structural SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to provide for implementation, maintenance, and enforcement of the NAAQS. The EPA refers to the SIP submissions required by these provisions as ''infrastructure SIP'' submissions. Section 110(a) imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances. This proposed rule pertains to the infrastructure SIP requirements for interstate transport of air pollution.

A. Interstate Transport

Section 110(a)(2)(D)(i) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS, or interfere with measures required to prevent significant deterioration of air quality or to protect visibility in any other state. This proposed rule addresses the two requirements under section 110(a)(2)(D)(i)(I), which we refer to as prong 1 (significant contribution to nonattainment of the NAAQS in any other state) and prong 2 (interference with maintenance of the NAAQS in any other state).[1] The EPA refers to SIP revisions addressing the requirements of section 110(a)(2)(D)(i)(I) as ''good

[1] The remaining interstate and international transport requirements of CAA section 110(a)(2)(D) for the 2008 ozone, 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, and 2010 SO_2 NAAQS for California have been addressed in prior State submissions and EPA rulemakings. 81 FR 18766 (April 1, 2016). Specifically, this includes the section 110(a)(2)(D)(i)(II) requirements relating to interference with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4), and the section 110(a)(2)(D)(ii) requirements relating to interstate and international pollution abatement.

neighbor SIPs'' or ''interstate transport SIPs.''

Each of the following NAAQS revisions triggered the requirement for states to submit infrastructure SIPs, including provisions to address interstate transport prongs 1 and 2. On September 21, 2006, the EPA revised the primary and secondary 24-hour NAAQS for $PM_{2.5}$ to 35 micrograms per cubic meter (μg/m³) and retained the primary and secondary annual NAAQS for $PM_{2.5}$ of 15.0 μg/m³.[2] On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards to 0.075 parts per million (ppm).[3] On June 2, 2010, the EPA established a new primary 1-hour SO_2 standard of 75 ppb.[4] Finally, on December 14, 2012, the EPA revised the primary annual $PM_{2.5}$ standard by lowering the level to 12.0 μg/m³ and retained the secondary annual $PM_{2.5}$ standard of 15.0 μg/m³ and the primary and secondary 24-hour $PM_{2.5}$ standards of 35 μg/m³.[5]

The EPA has issued several guidance documents and informational memos that inform the states' development and the EPA's evaluation of interstate transport SIPs for section 110(a)(2)(D)(i)(I). These include the following memos relating to the NAAQS at issue in this proposed rule:

- Information on interstate transport SIP requirements for the 2008 ozone NAAQS (''Ozone Transport Memo''),[6]
- Cross-State Air Pollution Rule (CSAPR) Update ozone transport modeling (''CSAPR Update Modeling''),[7]
- Supplemental information on interstate transport SIP requirements for the 2008 ozone NAAQS (''Supplemental Ozone Transport Memo''),[8]
- Guidance on infrastructure SIP requirements for the 2006 $PM_{2.5}$ NAAQS (''2006 $PM_{2.5}$ NAAQS Transport Guidance''),[9] and
- Information on interstate transport SIP requirements for the 2012 $PM_{2.5}$ NAAQS (''2012 $PM_{2.5}$ NAAQS Transport Memo'').[10]

For the 2006 $PM_{2.5}$ and 2008 ozone NAAQS, the EPA previously found that California failed to submit the required SIP revisions addressing interstate transport prongs 1 and 2 by certain dates.[11] Those actions triggered the obligation for the EPA to promulgate a federal implementation plan (FIP) for these requirements unless the State submits and the EPA approves a SIP submission that addresses the two prongs. As discussed further in this notice, the EPA proposes that California's interstate transport SIP submission adequately addresses these requirements for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS, as well as the 2012 $PM_{2.5}$ and 2010 SO_2 NAAQS, for which the EPA has not made a finding of failure to submit.

B. California's Submission

The California Air Resources Board (CARB) submitted the ''California Infrastructure State Implementation Plan (SIP) Revision, Clean Air Act Section 110(a)(2)(D)'' on January 19, 2016 (''California Transport Plan'' or ''Plan'').[12] We are proposing action on the California Transport Plan, which addresses interstate transport for the 2008 ozone, 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, and 2010 SO_2 NAAQS. We find that this submission meets the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102.

The California Transport Plan outlines the CAA interstate transport requirements, describes the State's and, to some degree, the local air districts' emission limits and other control measures, and presents its methodology for analyzing ozone, $PM_{2.5}$, and SO_2 transport and conclusions for each. It includes appendices with CARB's analysis for each of the NAAQS addressed in the SIP submission, $PM_{2.5}$ data and graphics from selected Interagency Monitoring of Protected Visual Environments (IMPROVE) monitors[13] near areas in other western states with elevated levels of ambient $PM_{2.5}$, emissions data from the 70 facilities closest to each $PM_{2.5}$ receptor, and a list of CARB control measures for mobile sources of air pollution.

II. Interstate Transport Evaluation

A. The EPA's General Evaluation Approach

We review the state's submission to see how it evaluates the transport of air pollution to other states for a given air pollutant, the types of information the state used in its analysis, how that analysis compares with prior EPA rulemaking, modeling, and guidance, and the conclusions drawn by the state. Taking stock of the state's submission, the EPA generally evaluates the interstate transport of a given pollutant through a stepwise process. The following discussion addresses the EPA's approach to evaluating interstate transport for regional pollutants such as ozone and $PM_{2.5}$. Our evaluation approach for interstate transport of SO_2 is described in section II.D.1 of this proposed rule.

Typically, for assessing interstate transport for regional pollutants, such as $PM_{2.5}$ or ozone, we first identify the areas that may have problems attaining or maintaining attainment of the NAAQS. We refer to regulatory monitors that are expected to exceed the NAAQS under average conditions as ''nonattainment receptors'' (*i.e.,* not expected to attain) and those that may have difficulty maintaining the NAAQS as ''maintenance receptors.''[14] Such receptors may include regulatory monitors operated by states, tribes, or local air agencies.[15]

In some cases, we have identified these receptors by modeling air quality in a future year that is relevant to CAA attainment deadlines for a given NAAQS. This type of modeling has been

[2] 71 FR 61144 (October 17, 2006). Regarding the annual $PM_{2.5}$ standards, we note that the EPA previously approved a California SIP submission for the 1997 $PM_{2.5}$ NAAQS (and the 1997 ozone NAAQS) for interstate transport prongs 1 and 2. 76 FR 34872 (June 15, 2011).

[3] 73 FR 16436 (March 27, 2008).

[4] 75 FR 35520 (June 22, 2010).

[5] 78 FR 3086 (January 15, 2013).

[6] Memorandum from Stephen D. Page, Director, OAQPS, EPA, ''Information on Interstate Transport ''Good Neighbor'' Provision for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) under Clean Air Act (CAA) Section 110(a)(2)(D)(i)(I),'' January 22, 2015.

[7] The EPA updated its ozone transport modeling through the CSAPR Update rulemaking. 81 FR 74504 (October 26, 2016). The modeling results are found in the ''Ozone Transport Policy Analysis Final Rule TSD,'' EPA, August 2016, and an update to the affiliated final CSAPR Update ozone design value and contributions spreadsheet that includes additional analysis by EPA Region IX (''CSAPR Update Modeling Results and EPA Region IX Analysis'').

[8] Memorandum from Stephen D. Page, Director, OAQPS, EPA, ''Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I),'' October 27, 2017.

[9] Memorandum from William T. Harnett, Director, Air Quality Policy Division, OAQPS, EPA, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standards,'' September 25, 2009.

[10] Memorandum from Stephen D. Page, Director, OAQPS, EPA, ''Information on Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I),'' March 17, 2016.

[11] 79 FR 63536 (October 24, 2014) for the 2006 $PM_{2.5}$ NAAQS and 80 FR 39961 (July 13, 2015) for the 2008 ozone NAAQS.

[12] Letter from Richard W. Corey, Executive Officer, CARB to Jared Blumenfeld, Regional Administrator, Region 9, EPA, January 19, 2016.

[13] IMPROVE monitors are located in national parks and wilderness areas to monitor air pollutants that impair visibility.

[14] Regulatory monitoring sites are those that meet certain siting and data quality requirements such that they may be used as a basis for regulatory decisions with respect to a given NAAQS.

[15] In California, there are two federally-recognized tribes that operate regulatory monitors for ozone or $PM_{2.5}$: The Morongo Band of Mission Indians operates a regulatory ozone monitor and the Pechanga Band of Luiseño Indians operates regulatory monitors for both ozone and $PM_{2.5}$.

based on air quality data, emissions inventories, existing and planned air pollution control measures, and other information. For purposes of this proposed rule, such modeling is available for western states [16] for the 2008 ozone and 2012 $PM_{2.5}$ NAAQS; in each case the EPA modeled air quality in the 48 contiguous states of the continental U.S.[17] When such modeling is not available, the EPA has considered available relevant information, including recent air quality data. An interstate transport SIP can rely on modeling when an appropriate technical analysis is available, but the EPA does not believe that modeling is necessarily required if other available information is sufficient to evaluate the presence or degree of interstate transport. Further, the EPA believes it is appropriate to identify areas that violate the NAAQS or have the potential to violate the NAAQS within a geographic scope that reflects the potential dispersion of certain air pollutants. In the context of this proposed rule, this concept applies to the 2006 $PM_{2.5}$ NAAQS, where we focused on air quality data in 10 western states outside of California, and the 2010 SO_2 NAAQS, where we reviewed air quality data in the California's three neighboring states (*i.e.,* Arizona, Nevada, and Oregon).[18] Identifying such receptors or areas helps to focus analytical efforts by the states and the EPA on the areas where transported air pollution is more likely to adversely affect air quality.

After identifying potential receptors, the EPA's second step for regional pollutants such as $PM_{2.5}$ or ozone is to assess how much the upwind state of interest (*i.e.,* California) may contribute to air pollution at each of the identified receptors or areas in other states. The EPA has conducted contribution modeling for the 2008 ozone NAAQS to estimate the amount of the projected average ozone design value at each receptor that will result from the emissions of each state within the continental U.S., and we have considered this modeling in this proposed rule. The EPA has typically compared that contribution amount (*e.g.,* from California to Colorado) against an air quality threshold, selected based on the level and nature of the contribution from other states, as discussed in section II.B.2 of this proposed rule. We use this information to determine whether further analysis of the emission sources in a state is warranted (*i.e.,* step 3). When the EPA assesses state-to-state contribution, if we conclude that the upwind state contributes only insignificant amounts to all nonattainment and maintenance receptors or areas in other states, the EPA may approve a submission that concludes that the submitting state does not significantly contribute to nonattainment, or interfere with maintenance, of the NAAQS in any other state.

Third, if warranted based on step 2, the EPA analyzes emission sources in the upwind state, including emission levels, state and federal measures, and how well such sources are controlled. We also review whether the applicable control measures are included in the SIP, consistent with CAA section 110(a)(2)(D)(i). For example, for ozone, this analysis has generally focused on the emissions of nitrogen oxides (NO_X), given that prior assessments of ozone control approaches concluded that a NO_X control strategy would be most effective for reducing regional scale ozone transport,[19] and on large stationary sources, such as electricity generating units (EGUs), given their historic potential to produce large, cost-effective emission reductions.[20]

If contribution modeling is not available, we conduct a weight of evidence analysis. This analysis is based on a review of the state's submission and other available information, including air quality trends; topographical, geographical, and meteorological information; local emissions in downwind states and emissions from the upwind state; and existing and planned emission control measures in the state of interest. In CSAPR and for the 2012 $PM_{2.5}$ NAAQS Transport Memo, the EPA did not calculate the portion of any downwind state's predicted $PM_{2.5}$ concentrations that would result from emissions from individual western states, such as California. Accordingly, the EPA considers prong 1 and 2 submissions for states outside the geographic area analyzed to develop CSAPR and the 2012 $PM_{2.5}$ NAAQS Transport Memo to be appropriately evaluated using a weight of evidence analysis of the best available information, such as the information that EPA has recommended in the 2006 $PM_{2.5}$ NAAQS Transport Guidance and 2012 $PM_{2.5}$ NAAQS Transport Memo. For this proposed rule, we conducted weight of evidence analyses to determine whether the emissions from California significantly contribute to nonattainment, or interfere with maintenance, of the NAAQS at each of the identified receptors (for the 2012 $PM_{2.5}$ NAAQS) or identified areas (for the 2006 $PM_{2.5}$ NAAQS and 2010 SO_2 NAAQS).[21] For the 2012 annual $PM_{2.5}$ NAAQS, we consider both annual and 24-hour $PM_{2.5}$ data because, in many cases, the annual average $PM_{2.5}$ levels in the western U.S. are driven by an abundance of high 24-hour average $PM_{2.5}$ levels in winter.

At this point of our analysis, if we conclude that the SIP contains adequate provisions to prohibit sources from emitting air pollutants that significantly contribute to nonattainment, or interfere with maintenance, of a given NAAQS in any other state, the EPA may approve a submission that concludes that the state has sufficient measures to prohibit significant contribution to nonattainment, or interference with maintenance, of the NAAQS in any other state.

If the EPA concludes that that the SIP does not meet the CAA requirements, then the EPA must disapprove the state's submission with respect to that NAAQS, and the disapproval action triggers the obligation for the EPA to promulgate a FIP to address that deficiency. Following such a disapproval, the state has an opportunity to resolve any underlying

[16] For purposes of this proposed rule, ''western states'' refers to the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

[17] The methodology for the EPA's transport modeling for the 2008 ozone and 2012 $PM_{2.5}$ NAAQS is described in the CSAPR Update Rule (81 FR 74504, October 26, 2016) and the EPA's 2012 $PM_{2.5}$ NAAQS Transport Memo, respectively. For the 2008 ozone NAAQS, 2017 is the attainment year for Moderate ozone nonattainment areas. For the 2012 $PM_{2.5}$ NAAQS, 2021 is the attainment year for Moderate $PM_{2.5}$ nonattainment areas. While the EPA's 2016 Transport Modeling projected 24-hour $PM_{2.5}$ concentrations for 2017 and 2025, such data can be used to inform analyses of interstate transport in 2021. The California Transport Plan (pp. 16–17) also discusses the EPA's regulatory framework with respect to ozone transport.

[18] The transport of SO_2 is more analogous to the transport of lead rather than regional pollutants like ozone and $PM_{2.5}$ because its physical properties result in localized pollutant impacts very near the emissions source. For this reason, we have evaluated SO_2 interstate transport for the three, large states that border California, rather than a larger geographic area. For further discussion of the physical properties of SO_2 transport, please see the EPA's proposal on Connecticut's SO_2 transport SIP. 82 FR 21351 at 21352 and 21354 (May 8, 2017).

[19] For discussion of the effectiveness of control strategies for NO_X and volatile organic compounds (VOCs), which are precursors to ozone, to reduce ozone levels in regional versus densely urbanized scales, respectively, please see the EPA's proposal for the Cross-State Air Pollution Rule (CSAPR). 75 FR 45210, 45235–45236 (August 2, 2010).

[20] For background on the EPA's regulatory approach to interstate transport of ozone, beginning with the 1998 NO_X SIP Call and the 2005 Clean Air Interstate Rule, please see the EPA's CSAPR proposal. 75 FR 45210 at 45230–45232 (August 2, 2010).

[21] The California Transport Plan also includes such weight of evidence analyses, though not necessarily to the same set of receptors or areas identified in the EPA's analyses.

deficiency in the SIP. If the state does not address the deficiency, then the CAA requires the EPA to issue a FIP to adequately prohibit such emissions. The EPA has promulgated FIPs via regional interstate transport rules across much of the eastern U.S. for the 1997 ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS (CSAPR) [22] and for the 2008 ozone NAAQS (CSAPR Update).[23] To date, no such FIP has been promulgated with respect to CAA transport prongs 1 and 2 in the western U.S., and we are not proposing any such FIP in this proposed rule.

B. Evaluation for the 2008 8-Hour Ozone NAAQS

1. State's Submission

The California Transport Plan presents a weight of evidence analysis to assess whether emissions within the State contribute significantly to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state. This analysis includes a review of the EPA's photochemical modeling data that were available at the time CARB developed its Plan (*i.e.,* in the Ozone Transport Memo),[24] air quality data, downwind receptor sites, and the science of interstate transport of air pollution in the western U.S. It focuses on potential contributions to receptors in the Denver, Colorado area (four receptors) and in Phoenix, Arizona (one receptor) based on the air pollution linkages identified in the EPA's modeling.[25]

CARB states that the EPA's Ozone Transport Memo considered an upwind state to be linked to a downwind state if the upwind state's projected contribution was over one percent of the NAAQS (*i.e.,* one percent is a 0.75 ppb contribution to an 8-hour average ozone concentration).[26] CARB also highlights a statement in the EPA's Ozone Transport Memo that ozone transport in western states should be evaluated on a case-by-case basis.[27] The California Transport Plan contrasts ozone levels and emission sources in the eastern versus the western U.S. For states subject to CSAPR in the East, the Plan asserts that emissions from upwind states overwhelm downwind local emission contributions (*i.e.,* local contributions are smaller than transported contributions by an average ratio of 1:2) and multiple upwind states affect a given downwind receptor. The Plan states that ozone levels in the West are primarily driven by local emissions (*i.e.,* by an average ratio of 8:1), with a much smaller portion being attributed to interstate transport, and that western states have widespread complex terrain and are relatively larger on average than eastern states. The Plan describes this contrast in further detail by discussing modeling uncertainties.

While acknowledging the possibility of some limited transport of ozone or its precursor pollutants, CARB believes that there are significant uncertainties in photochemical modeling of ozone transport in the western U.S.[28] CARB summarizes certain comments it made in response to the EPA's August 2015 notice of data availability (NODA) regarding ozone transport modeling.[29] Those comments discuss the challenge of modeling interstate transport of ozone in the western U.S. due to complex terrain, wildfire effects, and the limited monitoring data available to validate the modeling. CARB states that complex terrain can enhance vertical mixing of air, serve as a barrier to transported air pollution, enhance accumulation of local emissions in basins and valleys, and influence air flows up, down, and across valleys.[30] Regarding wildfires, the Plan states that the size and number of wildfires in the western U.S. have significantly increased in recent decades and that wildfires can significantly increase ozone levels in adjacent and downwind areas. CARB asserts that the EPA's treatment of wildfire emissions in the Ozone Transport Memo modeling has the potential to overestimate ozone concentrations in 2017 and to underestimate the benefit of controlling anthropogenic emission sources.[31] CARB states that further analysis would be required to quantify California's contribution with confidence.[32]

Aside from the asserted modeling uncertainties, the Plan provides analyses of California's potential impacts and information regarding the Denver area and Phoenix receptors. For the Denver area nonattainment and maintenance receptors identified in the EPA's Ozone Transport Memo, CARB found it extremely unlikely that California emission sources would affect such receptors on high ozone days.[33] CARB describes distance (more than 600 miles, or 1,000 kilometers (km), from California to Denver), topography (Denver is bounded by mountains to the west and south) and meteorology (local wind flow patterns driven by terrain and heat differentials) that would favor local ozone formation and includes trajectory analyses of ozone concentrations at the applicable receptors.[34] This includes a description of the location and topography at each nonattainment monitor (Air Quality System (AQS) monitor ID 08–059–0006, Rocky Flats North; and 08–035–0004, Chatfield State Park) and maintenance monitor (08–059–0011, National Renewable Energy Laboratory (NREL); and 08–005–0002, Highland Reservoir). CARB notes that the Chatfield nonattainment receptor and the NREL maintenance receptor are 300–800 feet higher than the elevation of Denver, away from sources whose emissions might scavenge ozone,[35] and west-southwest of Denver—an area to which winds push emissions on days when meteorology is conducive to ozone formation.[36]

Regarding its trajectory analysis, CARB examined the potential for ozone or ozone precursor pollutants to travel from California to Colorado using the Hybrid Single Particle Lagrangian Integrated Trajectory model.[37] CARB input ozone data from June and July in 2011 and 2012 as the months with the most high-ozone days and identified only 11 of 447 back trajectories where pollution in the mixed layer of air in Colorado went back to the mixed layer in California. CARB then conducted forward trajectories for these 11 cases and found only one where pollution in California's mixed layer reached the mixed layer at a Colorado receptor. CARB concluded that the complex physical environment between California and Colorado limits the reproducibility of modeled transport of

[22] 76 FR 48208 (August 8, 2011).

[23] 81 FR 74504 (October 26, 2016).

[24] 80 FR 46271 (August 4, 2015). This notice of data availability (NODA) for the EPA's updated ozone transport modeling data included the projected 2017 ozone design values at each regulatory ozone monitor in the 48 continental U.S. states and Washington, DC and the modeled linkages between upwind and downwind states. Based on input received in response to the NODA and through the EPA's CSAPR Update rulemaking, which was completed after the California Transport Plan submission of January 19, 2016, the EPA further updated the ozone transport modeling data. 81 FR 74504 (October 26, 2016).

[25] California Transport Plan, pp. 15, 18–19.

[26] *Id.,* p. 18 and App. D, pp. D–3 to D–7.

[27] *See* Ozone Transport Memo, p. 4.

[28] California Transport Plan, p. 15.

[29] *Id.,* pp. 15–16. *See also,* comment letter from K. Magliano, Chief, Air Quality Planning and Science Division, CARB to the docket of the EPA's NODA. 80 FR 46271 (August 4, 2015).

[30] California Transport Plan, App. D, pp. D–1 to D–2.

[31] California Transport Plan, p. 24.

[32] *Id.*

[33] *Id.,* pp. 23–24 and App. D, p. D–25.

[34] *Id.,* App. D, pp. D–19 to D–31.

[35] Ozone scavenging refers to a process where a molecule such as nitric oxide strips an oxygen atom from ozone, thereby reducing the amount of ozone in the atmosphere. For example, ozone concentrations typically fall at night in urban areas due to scavenging of ozone by NO_X and other compounds. 73 FR 16436, 16490 (March 27, 2008).

[36] *Id.,* p. D–23.

[37] *Id.,* pp. D–23 to D–25.

air pollution. The Plan also describes a vertical cross-section profile from the back trajectories and states that the air at the surface (in California and/or Colorado) was almost always decoupled from the air higher in the atmosphere, thus limiting the effect of transported air pollution.

With respect to wildfires, CARB found an overall downward trend in ozone concentrations at the four Colorado receptors from 2003 to 2010 followed by increases in 2011–2013, which coincide with large increases in the acreage of wildland burned per year in Colorado (*e.g.,* about 75,000 acres burned/year in 2009–2010 and about 190,000–255,000 acres burned/year in 2011–2013).[38] CARB states that the EPA's Ozone Transport Memo modeling estimated 0.32–0.74 ppb of ozone was due to wildfire at the four Colorado receptors, but that this estimate was attributed only to ozone formed from the interaction of NO_X and volatile organic compounds (VOCs) emitted by such wildfires, and not additional interactions of NO_X and VOCs from wildfires with NO_X and VOCs from anthropogenic sources. CARB asserts that this would underestimate the effect of wildfires on ozone levels in 2011–2013, which in turn meant that the EPA's modeling overestimated the predicted ozone concentrations at the Denver area receptors in 2017.[39] CARB states that this would affect both the weighted design values (of 2009–2013) used to identify 2017 nonattainment receptors and contributions thereto and the highest design value (*e.g.,* 2011–2013) used to identify 2017 maintenance receptors and contributions thereto.[40] CARB suggests that a case-by-case approach may be needed to adjust the weighting of years for base-year design values.

CARB concludes that physical and chemical processes occurring over the complex terrain and the long distance from California to these receptors would significantly affect any air pollution traveling between the two states.[41] Based on its analysis, CARB concludes that California does not significantly contribute to nonattainment, or interfere with maintenance, of the 2008 ozone NAAQS at the Denver area receptors.

For the Phoenix, Arizona receptor, CARB states that, while the relatively shorter distance makes transport a possibility from southern California, high ozone days in Phoenix are predominantly driven by local contributions. CARB describes topography (*e.g.,* Phoenix is in a large bowl), meteorology (*e.g.,* monsoon rains in July and August reduce ozone levels, and highest ozone levels are observed in June), and a low correspondence between modeled and measured high ozone concentrations to support its assertion that high ozone days are driven by local contributions.[42] CARB asserts that California does not interfere with maintenance of the 2008 ozone NAAQS at this maintenance receptor and that CARB's on-going control programs will ensure that California does not interfere with Phoenix maintaining the 2008 ozone NAAQS.

In addition, the California Transport Plan states that California has responded to each successive ozone NAAQS with increasingly stringent control measures and that CARB and other agencies' aggressive emission control programs will continue to benefit air quality in California and other states.[43] The Plan states that CARB and local air districts implement comprehensive rules to address emissions from all source sectors.[44] These programs and rules include measures on mobile sources, the State's largest emission source sector, local air district measures on stationary and area sources, and CARB regulations on consumer products. CARB states that the EPA's Ozone Transport Memo modeling takes into account many of California's existing measures and shows that California emission reductions from 2011 to 2017 are 445 tons per day (tpd) of NO_X and 277 tpd of reactive organic gases (ROG).[45]

CARB highlights how its mobile source measures have often served as models for federal mobile source control elements and that California's legacy programs continue to provide current and future emission reductions from vehicles within California and elsewhere. Where California and federal rules have been harmonized, CARB has implemented rules to accelerate deployment of the cleanest available control technologies for heavy-duty trucks, buses, and construction equipment to achieve emission reductions more quickly. Appendix G of the California Transport Plan presents a list of regulatory actions taken since 1985 to reduce mobile source emissions. CARB also describes efforts underway to transition to near-zero vehicle emissions technologies and to review the state's goods movement (*e.g.,* via the State's Sustainable Freight Action Plan, issued in July 2016). With respect to stationary and area emission sources, the California Transport Plan includes a table of 29 measures adopted by local air districts and approved into the California SIP by the EPA.[46] CARB claims that these measures were not taken into account in the EPA's Ozone Transport Memo modeling.

The Plan concludes that neither the EPA's modeling, given CARB's concerns about wildfire and model performance, nor CARB's weight of evidence analysis indicates that California significantly contributes to nonattainment, or interferes with maintenance, of the 2008 ozone NAAQS in any other state. Therefore, CARB concludes that California meets the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

2. Introduction to the EPA's Ozone Evaluation

The EPA agrees with the conclusion that California meets the CAA requirements for interstate transport prongs 1 and 2 for the 2008 ozone NAAQS. However, our rationale differs from that presented in the California Transport Plan, as discussed below. First, we address CARB's assertions regarding ozone transport modeling uncertainties for identifying nonattainment and maintenance receptors in 2017 and linkages to California. We then discuss the EPA's CSAPR Update Modeling,[47] which both decreased the number of receptors to which California is linked relative to the EPA's Ozone Transport Memo modeling and adjusted the estimates of California's contribution to each projected 2017 receptor. We also discuss the contrast that CARB draws between ozone transport in the eastern versus western U.S. These components are important to the first two steps of our evaluation: (1) To identify potential

[38] *Id.,* pp. D–26 to D–30.

[39] *Id.,* pp. D–30 to D–31.

[40] For the primary and secondary ozone NAAQS, the design value at each site is the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration. 40 CFR part 50 App. I, section 3.

[41] California Transport Plan, pp. D–31 to D–32.

[42] *Id.,* pp. D–13 to D–19.

[43] *Id.,* pp. 15, 24–25.

[44] *Id.,* pp. D–7 to D–9.

[45] CARB typically refers to reactive organic gases in its ozone-related submissions since VOCs in general can include both reactive and unreactive gases. However, since ROG and VOC inventories pertain to common chemical species (*e.g.,* benzene, xylene, *etc.*) we refer to this set of gases as VOCs in this proposed rule.

[46] California Transport Plan App. D, Table D–2, pp. D–9 to D–12.

[47] As noted previously, the EPA updated its ozone transport modeling through the CSAPR Update rulemaking. 81 FR 74504 (October 26, 2016). The modeling results are found in the ''Ozone Transport Policy Analysis Final Rule TSD,'' EPA, August 2016, and an update to the affiliated final CSAPR Update ozone design value and contributions spreadsheet that includes additional analysis by EPA Region IX (''CSAPR Update Modeling Results and EPA Region 9 Analysis'').

nonattainment and maintenance receptors, and (2) to estimate interstate contributions to those receptors. Based on that analysis, we propose to find that California is not linked to any receptor in Arizona and linked only to maintenance receptors in the Denver area in Colorado.

With respect to California's linkage to those maintenance receptors in Denver, we then present a general assessment of the emission sources in California, including mobile and stationary emission sources. We propose to find that control measures in the California SIP for mobile sources, large EGUs, and large non-EGU sources (*e.g.,* cement plants and oil refineries), adequately prohibit the emission of air pollution in amounts that will interfere with maintenance of the 2008 ozone NAAQS at the identified receptors in the Denver area.

Given the role of regulatory monitoring data in the EPA's analysis of interstate transport, the regulatory monitoring performed by the Morongo Band of Mission Indians (Morongo) and the Pechanga Band of Luiseño Indians (Pechanga), as well as comments from Morongo and Pechanga during the EPA's rulemaking on California's interstate transport SIP for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS,[48] we have also considered transport to Morongo and Pechanga reservations. Based on our review of the ambient air quality data of Morongo and Pechanga and the emission control regimes of California's South Coast Air Quality Management District (AQMD) for stationary sources and of CARB for mobile sources, as described in the EPA's memo to the docket,[49] the EPA proposes to find that California adequately prohibits the emission of air pollutants in amounts that will significantly contribute to nonattainment, or interfere with maintenance, of the 2008 ozone NAAQS in the Morongo or Pechanga reservations.

3. Evaluation of CARB's Modeling Concerns

The California Transport Plan asserts that uncertainty in the EPA's Ozone Transport Memo modeling derives from issues of complex terrain, wildfires, and model performance, and presents trajectory analyses to supplement these uncertainties. We consider each of these factors because they are important to the adequacy of the EPA's modeling data with respect to ozone transport in the western U.S.

We agree with CARB that the terrain in the western U.S. is complex and can enhance vertical mixing of air, serve as a barrier to transported air pollution, enhance accumulation of local emissions in basins and valleys, and influence air flows up, down, and across valleys. It is also true that California is a long distance (about 1,000 km) from the receptors identified in Colorado. The EPA used the CSAPR Update Modeling in a relative sense to project measured design values to 2017 and to quantify contributions from statewide 2017 anthropogenic emissions of NO_X and VOC on a broad regional basis.[50] As such, it was important to use a large regional scale modeling domain to adequately capture multi-day regional transport of ozone and precursor pollutants over long distances. The EPA selected the Comprehensive Air Quality Model with Extensions to perform such modeling given its utility in regional photochemical dispersion modeling and in developing quantitative contributions for evaluation of the magnitude of ozone transport from upwind states. We believe the EPA's CSAPR Update Modeling adequately accounts for the complex terrain and distance.

The EPA responded to CARB's comments regarding potential wildfire influences on modeling in our response to comments document for the CSAPR Update final rule (''CSAPR Update RTC'').[51] We acknowledge that wildfires could influence downwind pollutant concentrations and that it is likely that wildfires would occur in 2017 and future years. However, there is no way to accurately forecast the timing, location, and extent of fires across a future three-year period that would be used to calculate ozone design values. In the EPA's CSAPR Update Modeling, the EPA held the meteorological data and the fire and biogenic emissions constant at base year levels in the future year modeling, as those emissions are highly-correlated with the meteorological conditions in the base year.

Regarding model performance, CARB states that there are limited monitoring data available to validate the EPA's ozone transport modeling. We discuss our ozone transport modeling platform in section V.A of the CSAPR Update, including our model performance assessment using measured ozone concentrations.[52] We compared the 8-hour daily maximum ozone concentrations during the May through September ''ozone season'' to the corresponding measured concentrations, generally following the approach described in the EPA's draft modeling guidance for ozone attainment.[53] We found that the predicted 8-hour daily maximum ozone concentrations reflect the corresponding measured concentrations in the modeling domain in terms of magnitude, temporal fluctuations, and spatial differences. The ozone model performance results were within the range found in other recent peer-reviewed and regulatory applications. We note that any problem posed by imperfect model performance on individual days is expected to be reduced when using a relative approach (*i.e.,* using base year data to project relative changes in a future year ozone design value), as was the case in the EPA's CSAPR Update Modeling. In brief, we disagree with CARB's perspective with respect to model performance.

CARB states that the complex physical environment between California and Colorado limits the reproducibility of modeled transport of air pollution and that further analysis would be required to quantify California's contribution with confidence. We agree that such research could prove valuable, particularly with respect to implementing the more stringent 2015 ozone NAAQS.[54] However, the prospect of future research does not itself undermine the technical adequacy of the EPA's current modeling for the 2008 ozone NAAQS.

Having considered the effects of complex terrain, wildfires, and any model performance in the EPA's ozone transport modeling for ozone levels throughout the continental U.S. (*i.e.,* not just the Denver area receptors), we assert the EPA's approach to forecasting interstate transport for the 2008 ozone NAAQS to be a reasonable means for identifying nonattainment and maintenance receptors and for estimating the state contributions to

[48] 76 FR 34872 (June 15, 2011). In their comments, Morongo and Pechanga called for an analysis of any potential ozone or $PM_{2.5}$ transport to their reservations and for consultation with the EPA.

[49] Memorandum from Rory Mays, Air Planning Office, Air Division, Region IX, EPA, ''Interstate Transport for the 2008 ozone, 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, and 2010 SO_2 NAAQS and the Morongo Band of Mission Indians and the Pechanga Band of Luiseño Indians,'' January 2018.

[50] ''Cross State Air Pollution Update Rule—Response to Comments'' (CSAPR Update RTC), EPA, October 2016, p. 66.

[51] CSAPR Update RTC, pp. 25 and 27.

[52] 81 FR 74504, 74526–74527 (October 26, 2016).

[53] ''Draft Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' EPA, December 3, 2014.

[54] The EPA recently issued a NODA with our preliminary interstate transport data for the 2015 ozone NAAQS, which projects that California will have several nonattainment receptors, and California and Colorado will have several maintenance receptors, in 2023. 82 FR 1733 (January 6, 2017).

those receptors. Thus, we turn to summarizing changes between the EPA's Ozone Transport Memo modeling and CSAPR Update Modeling results as they pertain to California's contribution to nonattainment and maintenance receptors in other states.

4. Identification of Receptors and Estimation of California Contribution

The EPA noted in the CSAPR Update that there may be specific geographic factors in western states to consider in evaluating interstate transport and, given the near-term 2017 implementation timeframe, the EPA focused the CSAPR Update on eastern states.[55] Consistent with our statements in the CSAPR Update and other transport actions in western states,[56] the EPA intends to address western states on a case-by-case basis.

As described in the California Transport Plan, the EPA's Ozone Transport Memo identified two nonattainment and two maintenance receptors in the Denver area and one maintenance receptor in Phoenix. Based on input received in response to our Ozone Transport Memo NODA and the CSAPR Update proposal, the EPA updated the ozone transport modeling to reflect the latest data and analysis (*e.g.,* emission reductions from additional NO_X control measures). In each modeling exercise, we used the same definition for nonattainment receptors: Regulatory ozone monitors where 2017 ozone design values are projected to exceed the 2008 ozone NAAQS based on the average design value of three overlapping periods (2009–2011, 2010–2012, and 2011–2013) and where the monitor indicated nonattainment at the time of the analysis for the CSAPR Update. Similarly, we used the same CSAPR Update definition for maintenance receptors: Regulatory ozone monitors where 2017 ozone design values do not exceed the NAAQS based on the projected average design values, but exceed the 2008 ozone NAAQS based on the projected maximum design value of any period within the three overlapping periods. In addition, monitoring sites that are projected to have average design values above the NAAQS but currently have measured design values below the NAAQS are also considered maintenance receptors.

The EPA's CSAPR Update Modeling projects that for the western U.S. in 2017 (outside of California), there are no nonattainment receptors and only three maintenance receptors located in the Denver, Colorado area. Notably, that modeling projects that Phoenix, Arizona will not have any receptors.[57] California emissions are projected to contribute above one percent of the 2008 ozone NAAQS at each of the three Denver area maintenance receptors, as shown in Table 1.

TABLE 1—2017 OZONE MAINTENANCE RECEPTORS IN COLORADO BASED ON THE EPA'S CSAPR UPDATE MODELING

AQS monitor ID	County	2017 base case maximum design value (ppb)	California contribution (ppb)	California % of 2008 ozone NAAQS	Contribution by other states (ppb) [a]	Other states % of 2017 base case maximum design value	Colorado contribution (ppb)	All remaining sources (ppb)	Number of states contributing over 1% of NAAQS
08–035–0004	Douglas	77.6	1.18	1.6	7.29	9.4	26.10	41.90	3
08–059–0006	Jefferson	78.2	1.96	2.6	7.16	9.2	21.16	47.17	2
08–059–0011	Jefferson	78.0	0.79	1.1	7.29	9.3	29.32	38.13	4

[a] Contribution by other States includes contribution from states and tribes in the continental U.S., including California, that are outside of Colorado.

The modeling shows that other states also contribute above one percent of the NAAQS to these maintenance receptors. The EPA found that the average interstate contribution to ozone concentrations from all states upwind of these receptors ranged from 9.2 to 9.4 percent of the projected ozone design values.[58] Thus, the collective contribution of emissions from upwind states represent a considerable portion of the ozone concentrations at the maintenance receptors in the Denver area.

The EPA has historically found that the one percent threshold is appropriate for identifying interstate transport linkages for states collectively contributing to downwind ozone nonattainment or maintenance problems because that threshold captures a high percentage of the total pollution transport affecting downwind receptors.[59] The EPA believes a contribution from an individual state equal to or above one percent of the NAAQS could be considered significant where the collective contribution of emissions from one or more upwind states is responsible for a considerable portion of the downwind air quality problem regardless of where the receptor is geographically located. In this case, combinations of two, three, or four states contribute greater than or equal to one percent of the 2008 ozone NAAQS at each of these three maintenance receptors, as shown in Table 1.

Regarding CARB's comparison of the average ratio of local to transported emissions in the East (1:2) versus the average ratio in the West (8:1), while we did not quantitatively evaluate the ratios presented in the California Transport Plan, we generally agree that there could be substantial differences in such *average* ratios. However, the value of comparing average ratios is somewhat limited given that states within a particular region could have a wide variation of contributions to other states. For example, the EPA's CSAPR Update Modeling indicates that, excluding Texas, states collectively contribute 9.4 percent to 16.2 percent of the projected 2017 base case maximum ozone design values at each of three maintenance receptors in Denton County (Dallas-Fort Worth area) and Harris County

[55] 81 FR 74504, 74523 (October 26, 2016).

[56] *See, e.g.,* the EPA's proposed rule on Arizona's interstate transport for the 2008 ozone NAAQS. 81 FR 15200 (March 22, 2016).

[57] The EPA's 2016 Ozone Transport Modeling projects that the 2017 maximum base case design value in Maricopa County, Arizona (AQS ID 40–013–1004) will be 75.7 ppb (*i.e.,* 0.0757 ppm), which is attaining the 2008 ozone NAAQS, per the data handling convention for computing 8-hour ozone averages (*i.e.,* truncating digits to the right of the third decimal place of values presented in ppm). 40 CFR part 50, Appendix P, section 2.1.

[58] CSAPR Update Modeling Results and EPA Region 9 Analysis.

[59] *See, e.g.,* 75 FR 45210, 45237 (August 2, 2010) and 76 FR 48208, 48238 (August 8, 2011) (CSAPR proposed and final rules); and 80 FR 75706, 75714 (December 3, 2015) and 81 FR 74504, 74518–74519 (October 26, 2016) (CSAPR Update proposed and final rules). *See also, e.g.,* 81 FR 15200, 15202–15203 (March 22, 2016) (proposed rule on Arizona transport SIP, including prongs 1 and 2 for the 2008 ozone NAAQS); 81 FR 71991, 71992 (October 19, 2016) (final rule on Utah transport SIPs, including prong 2 for the 2008 ozone NAAQS); and 82 FR 9142, 9143 (February 3, 2017) (final rule on Wyoming transport SIPs, including prongs 1 and 2 for the 2008 ozone NAAQS).

(Houston), Texas.[60] For each Texas receptor, two or three states each contribute over one percent of the NAAQS. In comparison, we find that two to four states each contribute over one percent of the NAAQS to each of the Colorado maintenance receptors, which is similar to the Texas scenario.

Given these data and comparisons, the EPA is proposing that the one percent threshold is also appropriate as an air quality threshold to determine whether California is ''linked'' to the three maintenance receptors in the Denver area for the 2008 ozone NAAQS.

The EPA is not necessarily determining that one percent of the NAAQS is always an appropriate threshold for identifying interstate transport linkages for all states in the West. For example, the EPA recently evaluated the impact of emissions from Arizona on two projected nonattainment receptors identified in California and concluded that, even though Arizona's modeled contribution was greater than one percent of the 2008 ozone NAAQS, Arizona did not significantly contribute to nonattainment, or interfere with maintenance, at those receptors.[61] Accordingly, where the facts and circumstances support a different conclusion, the EPA has not always applied the one percent threshold to identify states that may significantly contribute to nonattainment, or interfere with maintenance, of the 2008 ozone NAAQS in other states.

Likewise, the EPA is not determining that because California contributes above the one percent threshold, it is necessarily making a significant contribution that warrants further reductions in emissions. As noted above, the one percent threshold identifies a state as ''linked,'' prompting further inquiry into whether the contributions are significant and whether there are cost-effective controls that can be employed to reduce emissions (*i.e.,* the third step in our evaluation).

The EPA also notes that recent modeling shows that by the 2023 ozone season the receptors identified in Denver are projected to be ''clean,'' *i.e.,* both the average and maximum design values are projected to be below the level of the 2008 ozone NAAQS.[62]

5. Evaluation of California Control Measures

Based on the 2011 National Emissions Inventory (NEI) and the EPA's CSAPR Update Modeling, California's anthropogenic NO_X emissions in 2011 were 1,944 tpd and its VOC emissions were 2,274 tpd. These emissions came from mobile sources (*i.e.,* on-road motor vehicles, such as passenger cars, trucks, buses, and nonroad vehicles, such as construction equipment, locomotives, ships, and aircraft), stationary sources (*e.g.,* EGU, non-EGU point, and oil and gas point and non-point sources), and area sources (*e.g.,* residential wood combustion). Based on the EPA's CSAPR Update Modeling, California's anthropogenic NO_X emissions in 2017 were projected to be 1,409 tpd (a decrease of 535 tpd, or 28 percent, from 2011), and its VOC emissions were projected to be 1,972 tpd (a decrease of 302 tpd, or 13 percent, from 2011). Table 2 shows the percentage of California NO_X and VOC emissions that came from mobile, stationary, and area sources, based on the 2011 NEI and the 2017 emission projections.[63]

TABLE 2—CALIFORNIA EMISSIONS FROM THE 2011 NEI AND 2017 PROJECTED EMISSIONS FROM THE EPA'S CSAPR UPDATE MODELING

	NO_X			VOCs		
	Mobile (%)	Stationary (%)	Area (%)	Mobile (%)	Stationary (%)	Area (%)
2011 NEI Emissions (% of annual emissions)	78.4	11.2	10.4	34.8	6.5	58.7
2017 Projected Emissions (% of annual emissions)	69.8	15.1	15.1	25.7	7.4	67.0

Both NO_X and VOCs are precursors to ozone but, as noted above, given that assessments of ozone control approaches concluded that a NO_X control strategy would be most effective for reducing regional scale ozone transport, and consistent with the CSAPR Update and prior interstate transport rulemakings, we have focused our control measure review on sources of NO_X.

CARB identified numerous State mobile source measures and examples of local air district stationary measures that control NO_X and VOCs emissions and have been approved into the California SIP, and CARB stated that these measures are part of how California addresses the CAA interstate transport requirements for the 2008 ozone NAAQS.[64] Below, we discuss our evaluation of California's mobile source measures, for which CARB has unique authority under State law, and stationary source measures, which are adopted and implemented by California's 35 local air districts. For the latter, beyond the measures described in the California Transport Plan, we have also considered stationary source control measures for EGUs, consistent with the controls analysis for CSAPR, and examples of stationary source control measures for the largest non-EGU sources in the State.

As noted above, the mobile source sector is the largest source of NO_X in California and accounts for approximately 70 percent of the projected 2017 NO_X emissions. As a general matter, the CAA assigns mobile source regulation to the EPA through

[60] CSAPR Update Modeling Results and EPA Region IX Analysis.

[61] Final rule, 81 FR 31513 (May 19, 2016). *See also* proposed rule, 81 FR 15200, 15203 (March 22, 2016). The EPA evaluated the nature of the ozone nonattainment problem at the California receptors and determined that, unlike the receptors identified in the eastern U.S. and unlike the maintenance receptors in Colorado, only one state (Arizona) contributed above the one percent threshold to the California receptors and that the total contribution from all states linked to the receptors (2.5 to 4.4%) was negligible. Considering this information, along with emissions inventories and emissions projections showing Arizona emissions decreasing over time, the EPA determined that Arizona had satisfied the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS.

[62] Supplemental Ozone Transport Memo, Attachment A, pp. A–7 to A–8.

[63] Summary of 2017 projected California NO_X and VOC emissions workbooks, EPA, included in the docket to this proposed rule as ''California—2017ek_cb6v2_v6_11g_state_sector_totals.xlsx.'' We note that the EPA estimated that California's NO_X and VOC emission reductions from 2011 to 2017 would be larger than the 445 tpd of NO_X and 227 tpd of VOC emission reductions that the State projected in the California Transport Plan.

[64] California Transport Plan, App. G (state measures) and App. D, pp. D–7 to D–12 (discussion of California emission control programs, including recent local measures).

title II of the Act and, in so doing, preempts various types of state regulation of mobile sources.[65] However, for certain types of mobile source emission standards, the State of California may request a waiver (for new motor vehicles and new motor vehicle engines) or authorization (for new and in-use nonroad engines and vehicles) for standards relating to the control of emissions and accompanying enforcement procedures, under CAA sections 209(b) and 209(e)(2), respectively.

Pursuant to CAA section 209(b) and (e)(2), CARB has requested, and the EPA has approved, numerous waivers and authorizations over the years, allowing CARB to establish a comprehensive program to control and reduce mobile source emissions within the state. Once the underlying regulations establishing the mobile source emissions standards are waived or authorized by the EPA, CARB submits the regulations to the EPA as revisions to the California SIP. In recent years, the EPA has approved many such mobile source regulations as part of the California SIP, including regulations establishing standards and other requirements relating to emissions from cars, light- and medium-duty trucks, heavy-duty trucks, commercial harbor craft, mobile cargo handling equipment, marine engines and boats, and off-highway recreational vehicles.[66] To support and enhance these emissions standards, CARB has also established specific gasoline and diesel fuel requirements, and the California Bureau of Automotive Repair has established a vehicle emissions and inspection (*i.e.,* ''smog check'') program.[67]

Originally, CARB's mobile source control program focused on new engines and vehicles. The emissions reductions from increasingly stringent emissions standards for new engines and vehicles occur over time as new, cleaner vehicles replace old, more polluting models in a foreseeable process referred to as ''fleet turnover.'' In more recent years, CARB has recognized that emissions reductions from the mobile source sector due to fleet turnover would not occur quickly enough to meet attainment deadlines established under the CAA. As a result, CARB has expanded its program to address the emissions from in-use vehicles (referred to as the ''legacy'' fleet) by establishing, for example, retrofit or replacement requirements for certain types of heavy-duty trucks and certain fleets of nonroad equipment.[68]

With respect to stationary and area emission sources, the California Transport Plan states that local air districts implement comprehensive rules to address emissions from all sectors.[69] The California SIP has hundreds of prohibitory rules that limit the emission of NO_X and VOCs.[70] Many of these rules were developed by local air districts to reduce ozone concentrations in the numerous areas that were designated nonattainment for the 1979 1-hour ozone and 1997 8-hour ozone NAAQS, including Severe (*i.e.,* Coachella Valley, Sacramento Metro, and Western Mojave Desert for both NAAQS, and Ventura County for the 1-hour ozone NAAQS) and Extreme (*i.e.,* Los Angeles-South Coast and San Joaquin Valley) nonattainment areas.[71] Generally, the planning requirements associated with the numerous California ozone nonattainment areas, coupled with the increased control requirement stringency for areas classified Severe and above (*e.g.,* lower major source thresholds and increasing permit offset ratios), have served to limit emissions of NO_X and VOCs from California that might affect other states.

The California Transport Plan includes a table of 29 measures recently adopted by local air districts and approved into the California SIP by the EPA. These measures are representative of the wide array of NO_X and VOC control measures employed by the local air districts. For example, Ventura County Air Pollution Control District (APCD) adopted rules limiting NO_X emissions from boilers, water heaters, and process heaters, and Santa Barbara County APCD and South Coast AQMD adopted rules limiting NO_X emissions from certain types of central furnaces and water heaters. San Joaquin Valley APCD adopted a rule to limit VOC emissions from composting operations, and Sacramento Metropolitan AQMD adopted a rule to limit VOC emissions from automotive and related equipment coatings and solvents.

In addition to the numerous SIP-approved state and local regulations cited in the California Transport Plan, we also considered California's control measures for NO_X emissions from EGUs, consistent with our approach for evaluating control measures in the CSAPR Update and other interstate transport rulemakings, and other large stationary sources in the state. For EGUs producing greater than 25 megawatts of electricity, including non-fossil fuel EGUs, the state-wide NO_X emissions rate in California is projected to be 0.0097 pounds of NO_X per million British thermal units (lb/MMBtu) in 2018.[72] Thus, California ranks as the 47th lowest out of the 48 contiguous states and Washington, DC, for which the EPA performed power sector modeling in the context of the CSAPR Update.

Furthermore, considering facility-level emissions and operations, 2016 emissions monitoring data indicate that 242 of the 244 EGUs in California that reported ozone season NO_X emissions to EPA emitted NO_X at rates less than or equal to 0.061 lb/MMBtu.[73] Two EGUs, Greenleaf One unit 1 and Redondo Beach unit 7, emitted at rates higher than 0.061 lb/MMBtu. Greenleaf One unit 1 emitted less than 11 tons of NO_X in the 2016 ozone season and is therefore unlikely to have significant cost-effective emission reduction opportunities. Applied Energy Services (AES) plans to retire its Redondo Beach units, including unit 7, no later than December 31, 2019, to comply with California regulations on the use of cooling water in certain power plant operations.[74] In aggregate, these

[65] For further background on CAA title II authorities, including the waiver and authorization process, particularly as they apply to approval of CARB mobile source measures into the California SIP, please see the EPA's proposed and final rules approving numerous such measures. 80 FR 69915 (November 12, 2015) and 81 FR 39424 (June 16, 2016).

[66] 81 FR 39424 (June 16, 2016) and 82 FR 1446 (March 21, 2017).

[67] 75 FR 26653 (May 12, 2010) (revisions to California on-road reformulated gasoline and diesel fuel regulations), and 75 FR 38023 (July 1, 2010) (revisions to California motor vehicle inspection and maintenance program).

[68] 77 FR 20308 (April 4, 2012) (EPA approval of in-use truck and bus regulation) and 81 FR 39424 (June 16, 2016) (EPA approval of in-use off-road diesel-fueled fleets regulation).

[69] California Transport Plan, App. D, p. D–7.

[70] For VOCs, these include rules limiting emissions from the largest area, mobile, and stationary source categories such as consumer products, farming operations, architectural coatings/solvents, off-road equipment, light-duty passenger vehicles, recreational boats, petroleum marketing, and coatings/process solvents.

[71] Based on 2010 U.S. Census data, the total population in the nonattainment areas for the 1997 ozone NAAQS was 34.7 million people, including 23.1 million people in areas classified severe or extreme. *See https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ca_areabypoll.html#ozone-8hr_1997_.*

[72] Ranking of NO_X emission rate by state and related spreadsheets, EPA, included in the docket to this proposed rule as ''5.15_OS_NO_X_AQM_Base_Case RPE File CA analysis (2018 data).xlsx.''

[73] 2016 ozone season NO_X emissions and heat rate data for California EGUs, EPA Air Markets Program Data, included in the docket to this rulemaking and entitled ''2016 AMPD Ozone Season NO_X Emissions Heat Rate from California EGUs.xlsx.''

[74] ''Once-Through Cooling Phase-Out,'' California Energy Commission, last updated March 8, 2017, Table 3, p. 6. Available at *http://www.energy.ca.gov/renewables/tracking_progress/documents/once_through_cooling.pdf.* AES plans to retire Redondo Beach unit 7 by December 31, 2019, and units 5, 6, and 8 by December 31, 2020.

assessments indicate that California produces electricity very efficiently in terms of NO_X emissions and is therefore unlikely to have significant, further NO_X reductions available from the EGU sector at reasonable cost.

The largest collection of EGU facilities emitting over 100 tons per year (tpy) of NO_X, per the 2011 NEI, are found in the San Joaquin Valley, Bay Area, and South Coast air districts.[75] These sources are subject to district rules limiting NO_X emissions that have been approved into the California SIP.[76] At least two of these facilities in the San Joaquin Valley APCD have shut down since 2011.[77] Otherwise, the largest NO_X-emitting EGU facility in 2011 was the ACE Cogeneration coal-fired power plant in Trona (Mojave Desert AQMD). It emitted 620 tpy of NO_X and was the only EGU facility in California that emitted more than 250 tpy of NO_X. However, as discussed in the ACE Cogeneration Company's 2014 petition to the California Energy Commission to decommission this facility, the company had signed an agreement with Southern California Edison (the regional utility) to terminate operation of the facility in December 2014 and, in fact, ceased operation on October 2, 2014.[78]

To investigate the potential for further NO_X emission reductions from EGUs, the EPA assessed the cost effectiveness of reducing NO_X emissions from fossil fuel-fired EGUs in each of the 48 contiguous states by estimating the amount of NO_X that would be emitted at certain levels of NO_X control stringency, represented by uniform regional cost thresholds from $800 per ton of NO_X removed up to $6,400 per ton.[79] The CSAPR Update finalized EGU emission budgets for 22 eastern states based on a cost threshold of $1,400 per ton since that level of cost-effective control would achieve sufficient reductions to partially address ozone transport in the eastern U.S. The NO_X emission level for California is flat at 1,905 tons across the cost threshold scenarios until the $5,000 per ton scenario, where the California ozone season NO_X emission level would be reduced to 1,810 tons. In other words, additional NO_X reductions from EGUs in California would cost more than three times the amount that the EPA determined to be cost-effective to partially address ozone transport obligations in the eastern U.S. under the CSAPR Update.

Non-EGU stationary sources emitted 6.7 times more NO_X (61,074 tpy) than EGUs (9,159 tpy) in California, per the 2011 NEI, and largely fall under the regulatory authority of California's local air districts. Of these non-EGU stationary sources, 19 sources emitted over 500 tpy of NO_X, per the 2011 NEI.[80] These sources (and the associated air districts) include: Six Portland cement plants (Kern County, Mojave Desert, and Bay Area),[81] nine petroleum refineries (Bay Area and South Coast),[82] and several other source types, including a mineral processing plant (Mojave Desert), a natural gas compressor station (Mojave Desert), a glass plant (San Joaquin Valley),[83] and a calcined pet coke plant (Bay Area).[84] These 19 sources represent 67 percent of the NO_X emissions from California stationary sources that emitted over 100 tpy in 2011 and represent 5.2 percent of the total 2011 NO_X inventory for California. Overall, these sources are subject to rules that limit NO_X emissions and have been approved into the California SIP, as cited in the various footnotes of this paragraph. In light of the overall control of such sources, for the small number of large non-EGU sources that are either subject to NO_X control measures that have not been submitted for approval into the California SIP, or fall outside the geographic jurisdiction of the applicable district rules, our analysis finds that further emission controls would be unlikely to reduce any potential impact on downwind states' air quality because such sources comprise no more than 0.8 percent of the total NO_X emitted in California in 2011.[85]

On the strength of CARB and the local air districts' emission control programs, especially for mobile and stationary sources of NO_X, we propose that the California SIP, as explained in the California Transport Plan and our evaluation above, adequately prohibits the emission of air pollutants in amounts that will significantly contribute to nonattainment, or interfere with maintenance, of the 2008 ozone NAAQS in any other state. We agree with CARB that California meets the requirements of CAA section

[75] 2011 NEI California emission inventory spreadsheet of stationary sources emitting over 100 tpy NO_X (''2011 NEI CA NO_X Spreadsheet''), included in the docket to this rulemaking and entitled ''AIR17025—2011 NEI NO_X sources by CA air district—RIX Analysis.xlsx.'' The total emissions from such sources in 2011 were 686 tpd in San Joaquin Valley APCD (five facilities in Kern County), 474 tpd in Bay Area AQMD (four facilities in Contra Costa County), and 394 tpd in South Coast AQMD (one facility in each of Los Angeles, Riverside, and San Bernardino Counties).

[76] For San Joaquin Valley APCD, *see, e.g.,* Rule 4301 (''Fuel Burning Equipment,'' amended December 17, 1992), 64 FR 26876 (May 18, 1999); Rule 4352 (''Solid Fuel Fired Boilers,'' amended December 15, 2011), 77 FR 66548 (November 6, 2012); Rule 4702 (''Internal Combustion Engines,'' amended November 14, 2013), 81 FR 24029 (April 25, 2016); and Rule 4703 (''Stationary Gas Turbines,'' amended September 20, 2007) 74 FR 53888 (October 21, 2009). For Bay Area AQMD, *see e.g.,* Regulation 9, Rule 11 (''Nitrogen Oxides and Carbon Monoxide from Electric Power Generating Steam Boilers,'' amended May 17, 2000), 67 FR 35435 (May 20, 2002). For South Coast AQMD, *see e.g.,* Regulation 20 series rules for the Regional Clean Air Incentives Market (RECLAIM) program. RECLAIM information is available at: *http://www.aqmd.gov/home/programs/business/business-detail?title=reclaim.*

[77] The Rio Bravo Jasmin and Rio Bravo Poso biomass plants in Bakersfield have closed and the San Joaquin Valley APCD has issued emission reduction credit certificates for doing so on January 19, 2016. *See http://www.valleyair.org/notices/Docs/2016/01-19-16_(S-1153637)/S-1153637.pdf* and *http://www.valleyair.org/notices/Docs/2016/01-19-16_(S-1154416)/S-1154416.pdf,* respectively.

[78] ''ACE Decommissioning Plan,'' ACE Cogeneration Company, November 25, 2014, p. 1–1.

[79] ''Ozone Transport Policy Analysis Final Rule TSD,'' U.S. EPA, August 2016, Table C–1, p. 15.

[80] 2011 NEI CA NO_X Spreadsheet. Other sources in California emitting over 500 tpy of NO_X include the Los Angeles, San Francisco, San Diego, and other airports and the U.S. Army National Training Center (Fort Irwin) and U.S. Marine Corps Twentynine Palms military bases, whose NO_X emissions from aircraft are outside the regulatory authority of the State of California. Separately, we do not count two Southern California Edison substations in Antelope Valley AQMD among the sources listed as emitting more than 500 tpy NO_X., as we believe their NO_X emissions were recorded in error. They subsequently do not appear in the 2014 NEI California emission inventory spreadsheet of stationary sources emitting over 100 tpy NO_X (''2014 NEI CA NO_X Spreadsheet''), which is included in the docket to this rulemaking and entitled ''AIR17025—2014 NEI NO_X sources by CA air district—RIX Analysis.xlsx.''

[81] Kern County APCD Rule 425.3 (''Portland Cement Kilns (Oxides of Nitrogen),'' amended October 13, 1994), 64 FR 38832 (July 20, 1999); Mojave Desert AQMD Rule 1161 (''Portland Cement Kilns,'' amended March 25, 2002), 68 FR 9015 (February 27, 2003); and Bay Area AQMD Regulation 9, Rule 13 (''Nitrogen Oxides, Particulate Matter, and Toxic Air Contaminants from Portland Cement Manufacturing,'' amended October 19, 2016). The latter has not been submitted by the Bay Area AQMD and CARB as a revision to the California SIP.

[82] Bay Area AQMD Regulation 9, Rule 10 (''Nitrogen oxides and Carbon Monoxide from Boilers, Steam Generators and Process Heaters in Petroleum Refineries,'' amended July 17, 2002), 73 FR 17897 (April 2, 2008); and South Coast AQMD RECLAIM program, whose rules have been approved into the California SIP, as noted above.

[83] San Joaquin Valley Rule 4354 (''Glass Melting Furnaces,'' amended May 19, 2011). Notably, the parent company of the Pilkington North America, Inc. glass plant in Lathrop announced that the plant was to be closed by January 1, 2014. *http://www.recordnet.com/article/20131113/A_BIZ/311130312.* Consistent with closure, it does not appear in the 2014 NEI CA NO_X Spreadsheet.

[84] Bay Area AQMD Regulation 9, Rule 10 (''Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators, and Process Heaters in Petroleum Refineries'', amended July 17, 2002), 73 FR 17897 (April 2, 2008). This rule applies to some (*e.g.,* process heaters), but not all (*e.g.,* the plant's coker unit), of the applicable calcined petroleum coke plant's equipment.

[85] 2011 NEI CA NO_X Spreadsheet.

110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS, but we differ as to the rationale for that conclusion. California's analysis relies primarily on its conclusion that the ozone transport linkages are uncertain and therefore no significant contribution of interference with maintenance has been demonstrated. The EPA's evaluation finds that the transport linkages are adequately quantified (and uncertainties sufficiently addressed) and that California's emission control programs adequately address the transport requirements.

C. Evaluation for the 2006 $PM_{2.5}$ and 2012 $PM_{2.5}$ NAAQS

1. State's Submission

The California Transport Plan presents a weight of evidence analysis to assess whether the state contributes significantly to nonattainment or interferes with maintenance of the 2006 24-hour $PM_{2.5}$ and 2012 annual $PM_{2.5}$ NAAQS in any other state. This analysis includes a review of air quality data for California and other states, including daily 24-hour $PM_{2.5}$ concentrations at potential downwind receptors and $PM_{2.5}$ design value concentrations at IMPROVE monitoring sites; local emissions near, distance to, and changes in population and vehicle miles traveled (VMT) in areas near downwind receptors; California emissions and rules and regulations to reduce such emissions; and other information available from the EPA and other states' technical support documents (TSDs) for various CAA requirements.[86]

Regarding air quality data, CARB reviewed $PM_{2.5}$ design values in western states from the EPA's air trends website for three overlapping periods between 2010–2014.[87] For the purpose of identifying potential receptors, CARB defined nonattainment receptors as monitors violating the 2006 24-hour $PM_{2.5}$ NAAQS (35 μg/m^3) or the 2012 annual $PM_{2.5}$ NAAQS (12.0 μg/m^3) in 2012–2014 and maintenance receptors as those that attained the NAAQS in that period, but violated the NAAQS in either of the two preceding periods (2010–2012 or 2011–2013).

For the 24-hour $PM_{2.5}$ standard, CARB identified 17 nonattainment receptors, with design values ranging from 36–61 μg/m^3, across the following five states listed by the receptors' counties: Arizona (Pinal), Idaho (Lemhi and Shoshone), Montana (Ravalli and Silver Bow), Oregon (Crook, Jackson, Lake, and Lane), and Utah (Box Elder, Cache, Davis, Salt Lake, and Utah).[88] CARB also identified four maintenance receptors, with design values ranging from 36–39 μg/m^3 in either the 2010–2012 or 2011–2013 periods, across three states listed by the receptors' counties: Montana (Lewis and Clark, and Missoula), Oregon (Klamath), and Utah (Weber).

For the annual $PM_{2.5}$ standard, CARB identified two nonattainment receptors (*i.e.,* having design values over 12.0 μg/m^3), with design values of 12.1 and 13.1 μg/m^3, respectively, and no maintenance receptors, in just one state listed by the receptors' counties: Idaho (Lemhi and Shoshone).

The California Transport Plan discusses California emissions from mobile, stationary, and area sources and applicable regulatory programs. CARB highlights the authority granted by Congress in the 1970 CAA for California to adopt mobile source emission control standards in certain situations. Within the California Health and Safety Code, CARB highlights the authority granted to CARB to adopt and implement controls on mobile sources and their fuels, as well as consumer products, and to the state's 35 local air districts to adopt and implement stationary and area source controls.[89] For mobile sources, CARB states that it has adopted and implemented: ''fleet rules'' for heavy-duty trucks, buses, and construction equipment; light-duty vehicle and fuel regulations, such as the LEV III program and the 2012 Advanced Clean Car regulation; and inspection and maintenance programs for light duty (*i.e.,* smog check) and heavy-duty vehicles; among other measures. For stationary and area sources, CARB states that local air district rules, in combination, are among the most stringent in the U.S. and cover a wide range of sources such as refineries, manufacturing facilities, cement plants, refinishing operations, electricity generation and biomass facilities, boilers, and generators.

The California Transport Plan includes a sample list of State and local air district rules that have been approved into the California SIP and a graph of how California state-wide emissions of $PM_{2.5}$, and $PM_{2.5}$ precursor pollutants, such as NO_X, VOC, and sulfur oxides (SO_X), have decreased significantly from 2001 (~7,000 tpd) to 2011 (~4,300 tpd) and are expected to continue to decrease to 2021 (projected to be ~3,100 tpd).[90] For example, the list includes CARB regulations for heavy-duty trucks and buses and light- and medium-duty vehicles, and air district regulations for open burning, agricultural burning, and fugitive dust as example of regulations that limit the emission of particulate matter. CARB states that these state and local programs have reduced and will continue to reduce the potential for California emissions to contribute to violations, or interfere with maintenance, of the federal standards.

We have further summarized the California Transport Plan in terms of California's emissions and the State and local regulatory programs in sections II.B and II.D of this proposed rule. These sections describe CARB's statements with respect to NO_X and VOC emissions (for the 2008 ozone NAAQS) and SO_X emissions (for the 2010 SO_2 NAAQS) and are relevant, as precursors to $PM_{2.5}$, to interstate transport for the 2006 $PM_{2.5}$ and 2012 $PM_{2.5}$ NAAQS. For example, CARB states that NO_X and VOC emissions have been reduced by 445 tpd and 277 tpd, respectively, from 2011 to 2017 due to California's regulatory programs.[91] Similarly, from 2000 to 2015, CARB estimates that CARB and the air districts achieved the following SO_X emission reductions: Stationary sources (59 percent), mobile sources (88 percent), and area sources (33 percent).[92]

Regarding assessment of the causes of the $PM_{2.5}$ concentrations at each receptor, CARB presents its analysis for each county or $PM_{2.5}$ nonattainment area (*e.g.,* the Salt Lake City nonattainment area for the 2006 $PM_{2.5}$ NAAQS, which includes the receptors in Box Elder, Davis, and Salt Lake Counties). CARB's receptor analyses focus on local emission sources, the distance between California and each receptor, long-term $PM_{2.5}$ trends and daily $PM_{2.5}$ data (as opposed to design values), population, and VMT. These analyses appear in Appendix A of the California Transport Plan for the 2006 24-hour $PM_{2.5}$ NAAQS and in Appendix B for the 2012 annual $PM_{2.5}$ NAAQS. CARB includes additional analyses of air quality data at IMPROVE sites that are located between California and the receptor counties in Appendix E and uses these data as an indicator of whether elevated $PM_{2.5}$ levels are observed regionally. We discuss the

[86] California Transport Plan, pp. 11–12.

[87] *Id.,* p. 10. The EPA's air trends website is available at: *https://www.epa.gov/air-trends.*

[88] *Id.,* p. 11, Tables III.1 and III.2.

[89] *Id.,* pp. 5–6. As noted in section II.B.1 of this proposed rule, Appendix G of the California Transport Plan presents a list of CARB regulatory actions taken since 1985 to reduction mobile source emissions.

[90] *Id.,* pp. 7–9, Table II.1 and Figure II.1. CARB's analysis of California SO_2 emissions in based on SO_X because CARB estimates that SO_2 comprises 97% of the state-wide SO_X inventory. California Transport Plan, App. C, p. C–10.

[91] *Id.,* App. D, p. D–8.

[92] *Id.,* App. C, p. C–3.

State's analysis of each receptor area in greater detail as part of our evaluation for each $PM_{2.5}$ NAAQS, below.

For the 2006 24-hour $PM_{2.5}$ NAAQS, CARB relies in part on technical documents from applicable states and the EPA (*e.g.,* TSDs for the 2006 $PM_{2.5}$ NAAQS nonattainment area designations) in concluding that most exceedances at each nonattainment or maintenance receptor are due to emissions from local sources, especially during winter-time inversions.[93] CARB further concludes that California emissions from stationary sources are subject to stringent limits for $PM_{2.5}$ and its precursors, such as those for NO_X and SO_X, and that California has a long history of reducing emissions through motor vehicle and fuel standards. CARB also finds that monitors in western states generally have valid design values well below 35 μg/m^3, except for the 17 receptors identified in CARB's analysis. Based on these analyses, CARB states that California does not contribute to, or interfere with maintenance of, the 2006 $PM_{2.5}$ NAAQS in neighboring or nearby states.

For the 2012 annual $PM_{2.5}$ NAAQS, CARB draws similar conclusions as those for its 24-hour $PM_{2.5}$ analyses: That most of the high, annual $PM_{2.5}$ concentrations are due to local emissions, especially during winter-time inversions; that California's stationary and mobile sources are well regulated; and that monitors in western states generally have valid design values well below 12.0 μg/m^3, except for the two receptors identified in CARB's analysis.[94] CARB concludes that California does not contribute to, or interfere with maintenance of, the 2012 $PM_{2.5}$ NAAQS in neighboring or nearby states.

2. Introduction to the EPA's $PM_{2.5}$ Evaluation

The EPA agrees with CARB's conclusions that California meets the CAA requirements for interstate transport prongs 1 and 2 for the 2006 $PM_{2.5}$ and 2012 $PM_{2.5}$ NAAQS, as discussed below. First, we discuss our evaluation of CARB's identification of nonattainment and maintenance receptors in western states based on data presented in the California Transport Plan as well as the EPA's analysis of 2009–2013 24-hour and annual $PM_{2.5}$ design values. Based on this analysis, we present modified lists of such receptors (*i.e.,* step one) that largely follow the lists of receptors in the California Transport Plan, as presented in Table 3 (for the 2006 $PM_{2.5}$ NAAQS) and Table 4 (for the 2012 $PM_{2.5}$ NAAQS) of this proposed rule. We include data on the most recent, valid design values (*e.g.,* 2014–2016) for each receptor. We then discuss California emissions of $PM_{2.5}$ and its precursors, California's regulations to limit such emissions, and the emission trends resulting from such regulations.

Building on the identification of potential nonattainment and maintenance receptors and our discussion of California emissions, we present our own weight of evidence analysis for addressing the CAA requirements. This analysis affirms CARB's weight of evidence analysis for the 2006 24-hour $PM_{2.5}$ and 2012 annual $PM_{2.5}$ NAAQS. Like the analytical approach used in the California Transport Plan, for each potential receptor area we summarize our analyses of air quality data at the applicable receptors, daily 24-hour $PM_{2.5}$ concentrations at the receptors, $PM_{2.5}$ design value concentrations at IMPROVE monitoring sites,[95] local emissions and other local factors, and California's emission control programs. We prepared a TSD containing our more detailed analysis of interstate transport for the 2006 24-hour $PM_{2.5}$ NAAQS (''EPA's $PM_{2.5}$ Transport TSD''), which is also relevant for our evaluation of the 2012 annual $PM_{2.5}$ NAAQS, and it is included in the docket of this proposed rule.[96]

Given the role of regulatory monitoring data in the EPA's analysis of interstate transport, the $PM_{2.5}$ regulatory monitoring performed by Pechanga, as well as comments from the Morongo and Pechanga during the EPA's rulemaking on California's interstate transport SIP for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS,[97] we have also considered transport to the Morongo and Pechanga reservations. Based on our review of such ambient air quality data, as described in the EPA's memo to the docket referenced here,[98] the EPA proposes to find that the 24-hour and annual $PM_{2.5}$ design value concentrations at the Pechanga monitor and at monitors nearest to the Morongo reservation fall below the levels of the 2006 24-hour $PM_{2.5}$ NAAQS and the 2012 annual $PM_{2.5}$ NAAQS, and thus do not warrant further analysis with respect to interstate transport under CAA section 110(a)(2)(D)(i)(I) for any potential $PM_{2.5}$ air quality impacts in the Morongo or Pechanga reservations.

3. Identification of Receptors

The EPA's 2012 $PM_{2.5}$ NAAQS Transport Memo was released on March 17, 2016, and presented air quality modeling that identified potential nonattainment and maintenance receptors.[99] The EPA's analysis used ambient $PM_{2.5}$ data from 2009–2013, emissions inventory data from the 2011 NEI, photochemical modeling for a 2011 base year and 2017 and 2025 future years, and other information to project annual $PM_{2.5}$ design values for 2017 and 2025. As identified in the 2012 $PM_{2.5}$ NAAQS Transport Memo, it may be appropriate to use this information to help evaluate projected air quality in 2021, which is the attainment deadline for 2012 $PM_{2.5}$ NAAQS nonattainment areas classified as Moderate. Because modeling results are only available for 2017 and 2025, one way to assess potential receptors for 2021 is to assume that receptors projected to have average and/or maximum design values above the NAAQS in both 2017 and 2025 are also likely to be either nonattainment or maintenance receptors in 2021. Similarly, it may be reasonable to assume that receptors that are projected to attain the NAAQS in both 2017 and 2025 are not likely to have nonattainment or maintenance problems in 2021.

Where available, we rely on this kind of modeling for interstate transport because it accounts for the effect of emission reductions from planned federal, state, and local measures, as well as input from state, local, industry, and community entities, to project where violations, or potential violations, of the NAAQS will occur. By aligning the overlapping design value periods (2009–2013) with the 2011 NEI, we can establish an improved understanding of the relationship between emissions of $PM_{2.5}$ and its precursors to ambient $PM_{2.5}$ concentrations. We have also considered the recent 2014–2016 design values at the potential nonattainment

[93] *Id.,* p. 22.

[94] *Id.,* p. 22–23.

[95] Air quality data from IMPROVE monitoring sites may provide an indication of rural background $PM_{2.5}$ concentrations. Low $PM_{2.5}$ concentrations at IMPROVE sites that coincide temporally with high $PM_{2.5}$ concentrations at nearby $PM_{2.5}$ receptors may indicate a relatively localized pollution impact, whereas high $PM_{2.5}$ concentrations at IMPROVE sites may indicate a more regional pollution impact.

[96] ''EPA Evaluation of the California Interstate Transport Plan (2006 $PM_{2.5}$ NAAQS), Technical Support Document,'' EPA, Region 9, January 2018.

[97] 76 FR 34872 (June 15, 2011). In their comments, Morongo and Pechanga called for an analysis of any potential ozone or $PM_{2.5}$ transport to their reservations and for consultation with the EPA.

[98] Memorandum from Rory Mays, Air Planning Office, Air Division, Region XI, EPA, ''Interstate Transport for the 2008 ozone, 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, and 2010 SO_2 NAAQS and the Morongo Band of Mission Indians and the Pechanga Band of Luiseño Indians,'' January 2018.

[99] 2012 $PM_{2.5}$ NAAQS Transport Memo, Table 1, p. 5.

and maintenance receptors identified in the EPA's 2012 $PM_{2.5}$ NAAQS Transport Memo.

We note that CARB's adoption of the California Transport Plan on December 17, 2015, preceded the release of the EPA's 2012 $PM_{2.5}$ NAAQS Transport Memo. CARB analyzed the overlapping design value periods of 2010–2014, albeit without projecting those values forward. Given the utility of the EPA's modeling for the reasons described above, we have used the list of receptors from the EPA's 2012 $PM_{2.5}$ NAAQS Transport Memo as the primary basis for our evaluation, while also considering the differences in CARB's list of receptors. In addition, we present the 2014–2016 design value data at each identified receptor to indicate current air quality. The EPA's list of receptors for the 2012 $PM_{2.5}$ NAAQS appears in Table 4.

For the 2006 $PM_{2.5}$ NAAQS we have derived a list of receptors using 2009–2013 design values as the primary basis for our evaluation, while considering the differences in CARB's list of receptors, as well as the most recent, valid design values (2014–2016, where available). We selected this approach to provide a common base of ambient air quality and emissions information for $PM_{2.5}$ for both the 24-hour and annual standards. Because neither the EPA nor CARB modeled future 24-hour $PM_{2.5}$ design values, we use the same conceptual definition for 24-hour $PM_{2.5}$ receptors from the California Transport Plan—nonattainment receptors are those that violate the 2006 24-hour $PM_{2.5}$ NAAQS in the last of three overlapping design value periods (2011–2013); and maintenance receptors are those that attain the 2006 24-hour $PM_{2.5}$ NAAQS in the latest period, but violate the standard in either of the preceding two design value periods (2009–2011 or 2010–2012). As with the annual standard, we also present the 2014–2016 24-hour $PM_{2.5}$ design values at each identified receptor. The EPA's list of receptors for the 2006 $PM_{2.5}$ NAAQS appears in Table 3.[100]

TABLE 3—EPA LIST OF POTENTIAL NONATTAINMENT AND MAINTENANCE RECEPTORS FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS

State	County	Nonattainment area for 2006 $PM_{2.5}$ NAAQS [a]	AQS ID	CARB receptor type (2010–2014 data)	EPA receptor type (2009–2013 data)	Most recent valid design value (μg/m³) (2014–2016, except as noted)
Arizona	Pinal	West Central Pinal.	04–021–3013	Nonattainment	(Nonattainment) [b]	30
Idaho	Ada		16–001–0010	Not discussed	Nonattainment	19 (2008–2010)
Idaho	Franklin	Logan	16–041–0001	Discussed with Cache County, Utah.	Nonattainment	46 (2008–2010)
Idaho	Lemhi		16–059–0004	Nonattainment	Nonattainment	41
Idaho	Shoshone	West Silver Valley (2012 $PM_{2.5}$ NAAQS).	16–079–0017	Nonattainment	Nonattainment	39
Montana	Silver Bow		30–093–0005	Nonattainment	Nonattainment	33
Oregon	Crook		41–013–0100	Nonattainment	Nonattainment	38
Oregon	Lake		41–037–0001	Nonattainment	Nonattainment	56 (2013–2015)
Oregon	Lane	Oakridge	41–039–2013	Nonattainment	Nonattainment	31
Oregon	Klamath	Klamath Falls	41–035–0004	Maintenance	Nonattainment	27
Utah	Box Elder	Salt Lake City	49–003–0003	Nonattainment	Nonattainment	31
Utah	Cache	Logan	49–005–0004	Nonattainment	Nonattainment	45 (2013–2015)
Utah	Salt Lake	Salt Lake City	49–035–3006	Nonattainment	Nonattainment	38
Utah	Salt Lake	Salt Lake City	49–035–3010	Nonattainment	Nonattainment	42
Utah	Utah	Provo	49–049–0002	Nonattainment	Nonattainment	29
Utah	Utah	Provo	49–049–4001	Nonattainment	Nonattainment	43 (2013–2015)
Utah	Utah	Provo	49–049–5010	Nonattainment	Nonattainment	27
Utah	Weber	Salt Lake City	49–057–0002	Maintenance	Nonattainment	37 (2013–2015)
Montana	Lewis and Clark		30–049–0026	Maintenance	Maintenance	37
Utah	Davis	Salt Lake City	49–011–0004	Nonattainment	Maintenance	34
Utah	Weber	Salt Lake City	49–057–1003	Not discussed	Maintenance	35 (2011–2013)

[a] A blank cell in the column for nonattainment area indicates that the monitor is not located in an area currently designated nonattainment for the 2006 $PM_{2.5}$ NAAQS.

[b] Although EPA's 2012 $PM_{2.5}$ Transport Memo did not identify the Pinal County, Arizona monitor as either a nonattainment or maintenance receptor in the 2009–2013 data, we are evaluating it here as a nonattainment receptor because it was identified as such in the California Transport Plan.

TABLE 4—EPA LIST OF POTENTIAL MAINTENANCE RECEPTORS FOR THE 2012 ANNUAL $PM_{2.5}$ NAAQS

State	County	AQS site ID	CARB receptor type (2012–2014 data)	EPA receptor type (2017 projection)	EPA receptor type (2025 projection)	2014–2016 design value (μg/m³)
Idaho [a]	Shoshone	16–079–0017	Nonattainment (13.1 μg/m³).	Maintenance (Avg. 12.43 μg/m³).	Maintenance (Max. 12.22 μg/m³).	11.9

[100] Consistent with prior western interstate transport actions, we have excluded from this list the receptors in Ravalli, Montana (AQS ID 30–081–0007), Missoula, Montana (AQS ID 30–063–0024), and Jackson, Oregon (AQS ID 41–029–0133) with design values that may have been affected by wildfires. *See, e.g.,* 80 FR 9423 (February 23, 2015), ''Technical Support Document—Idaho [SIP] and Interstate Transport Requirements for the 2006 24-hour [$PM_{2.5}$ NAAQS],'' EPA, Region X, January 22, 2015, p. 12.

TABLE 4—EPA LIST OF POTENTIAL MAINTENANCE RECEPTORS FOR THE 2012 ANNUAL $PM_{2.5}$ NAAQS—Continued

State	County	AQS site ID	CARB receptor type (2012–2014 data)	EPA receptor type (2017 projection)	EPA receptor type (2025 projection)	2014–2016 design value (μg/m³)
Pennsylvania	Allegheny	42–003–0064	Not discussed	Maintenance (Max. 12.16 μg/m³).	Attainment (Max. 11.65 μg/m³).	12.8

[a] CARB identified the monitor in Lemhi County, Idaho (AQS ID 16–059–0004) as a nonattainment receptor based on a 2012–2014 design value of 12.1 μg/m³. The EPA's modeling for the 2012 $PM_{2.5}$ NAAQS Transport Memo projects this monitor to be attaining and maintaining the NAAQS in both 2017 (maximum design value of 11.79 μg/m³) and 2025 (maximum design value of 11.65 μg/m³). Its 2014–2016 design value is 12.4 μg/m³.

4. Evaluation of California Control Measures

We discuss California's control measures before presenting our analysis for transport prongs 1 and 2 for each NAAQS because such discussion provides a common basis for evaluating the California emissions component of CARB's weight of evidence analysis. Also, for three precursors, we incorporate our evaluation of California's emissions and regulatory programs in sections II.B and II.D of this proposed rule for NO_X and VOC (for the 2008 ozone NAAQS) and SO_X (for the 2010 SO_2 NAAQS), respectively, given their roles as precursors to ambient $PM_{2.5}$.

We agree with CARB's general conclusions: That California emissions from stationary sources are subject to stringent limits for $PM_{2.5}$ and its precursors, such as those for NO_X and SO_X; that California has a long history of reducing emissions through motor vehicle and fuel standards; and that California's State and local measures will continue to reduce the potential for California emissions to contribute significantly to nonattainment, or interfere with maintenance, of the 2006 24-hour $PM_{2.5}$ or 2012 annual $PM_{2.5}$ NAAQS in any other state. This is based on our review of the state and local measures cited in the California Transport Plan that limit the emissions of $PM_{2.5}$ and its precursor pollutants and of the applicable California emission trends, which are generally decreasing.

For direct $PM_{2.5}$ emissions, the California Transport Plan cites examples of State and local rules that limit the emission of particulate matter (PM), which includes direct $PM_{2.5}$, and cites to the EPA actions approving such measures into the SIP.[101] These include emission standards and test procedures for heavy-duty engines and vehicles, passenger cars, light duty trucks, and medium duty vehicles; in-use diesel standards for heavy-duty trucks, buses, drayage trucks, and off-road vehicles; and inspection and maintenance programs. We affirm that these measures limit the emission of PM and have been approved into the California SIP.[102]

The California Transport Plan also includes examples of air district measures for area sources such as those for open burning in South Coast and Imperial County, agricultural burning in Sacramento Metro and Imperial County, fugitive dust in Mojave Desert, and agricultural sources in San Joaquin Valley. We similarly affirm that these measures limit the emission of PM and have been approved into the California SIP.[103] More broadly, the California Transport Plan refers to control measures that apply to a range of pollutants emitted by refineries, manufacturing facilities, cement plants, refinishing operations, electricity generation and biomass facilities, boilers, and generators.[104] As a general matter, we affirm that there are many SIP-approved rules for such sources that limit the emission of PM and its precursors.

Per our review of the EPA's emissions trends data, from 2000 to 2016, total statewide $PM_{2.5}$ emissions, excluding wildfires and prescribed fires, decreased by 75 percent, resulting in 2016 emissions of 99,016 tpy.[105] As discussed in section II.B.5 of this proposed rule, we estimate that California emissions will be reduced from 2011 to 2017 by 535 tpd of NO_X (28 percent decrease from 2011) and 302 tpd of VOC (13 percent decrease from 2011). On a longer timeline, from 2000 to 2016, California NO_X and VOC emissions have decreased by 66 percent and 54 percent, respectively. For SO_2, total statewide emissions have decreased by 75 percent from 2000 to 2016. Thus, emissions of each of these pollutants has decreased substantially in response to California State and local control measures, as well as federal measures for sources outside California's regulatory authority.

5. Evaluation for the 2006 24-Hour $PM_{2.5}$ NAAQS

We summarize our evaluation of the areas encompassing the 18 nonattainment receptors identified in Table 3 and group them into three geographic bins (*i.e.,* Arizona, the Northern Rocky Mountains, and Utah) based on the nature of the emission sources affecting the receptors. We then summarize our evaluation of the areas encompassing the three maintenance receptors identified in Table 3 and group them by the two relevant states. The EPA's $PM_{2.5}$ Transport TSD in the docket for this proposed rule contains our more detailed analyses for interstate transport prongs 1 and 2.

i. Evaluation for Significant Contribution to Nonattainment (Prong 1)

CARB discussed the Pinal County, Arizona receptor, which is known as the Cowtown monitor. This receptor is in the West Central Pinal $PM_{2.5}$ nonattainment area, approximately 240 km east of the California border. The Cowtown area is surrounded by mountain ranges with open-ended valleys that could allow transport of air pollution from the west. The area's population has grown by 40 percent from 2005 to 2014 and the VMT has grown by 10 percent between 2005 and 2011. Most of the exceedances of the 2006 24-hour $PM_{2.5}$ NAAQS at the Cowtown monitor did not occur during high wind conditions, indicating that they were likely due to local rather than transported sources, particularly local feedlots and geologic soil, based on speciated ambient $PM_{2.5}$ data. The 24-hour $PM_{2.5}$ concentrations at this receptor were the highest in Arizona, yet the $PM_{2.5}$ monitor in Yuma, Arizona, along the California border, recorded

[101] California Transport Plan, p. 8.

[102] *See,* for example, 77 FR 20308 (April 4, 2012), approving Title 13 of the California Code of Regulations (CCR) section 2025, commonly referred to as CARB's Truck and Bus Rule, into the California SIP.

[103] *See,* for example, 66 FR 36170 (July 11, 2001), approving Imperial County APCD Rule 421 (''Open Burning,'' amended September 14, 1999) into the California SIP.

[104] California Transport Plan, p. 6.

[105] 1990–2016 emission inventory spreadsheets of statewide emission trends, included in the docket to this rulemaking and entitled ''1990–2016 State Tier 1 Annual Average Emission Trends—RIX Analysis.xls.'' Additional emissions trends data are available at: *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data.*

lower concentrations of 15–19 μg/m³—well below 35 μg/m³.

For the Northern Rocky Mountains, which herein includes nonattainment receptors in Idaho, Montana, Oregon, and the Cache County portion of Utah, we evaluated nine nonattainment receptors. The receptors in Idaho and Montana are 360–740 km from California while those in Oregon are 25–255 km from California. All nine are separated from California by various mountain ranges. Locally, the receptors are surrounded by mountains that in some cases rise several thousand feet above the mountain basins, forming a topographical barrier to $PM_{2.5}$ transport and often trapping $PM_{2.5}$ pollution near the surface during wintertime temperature inversions. For example, the receptors in Franklin County, Idaho and Cache County, Utah are surrounded by the Wasatch-Cache, Bear River, Monte Cristo, and Wellsville mountain ranges that rise 3,000 to 5,000 feet above the valley floor. These areas tend to have small populations with VMT increases or decreases of 20 percent or less from 2005 to 2011.

The highest 24-hour $PM_{2.5}$ concentrations in each area are generally observed in winter, with certain receptors, representing counties in Idaho (Lemhi and Shoshone), Montana (Silver Bow), and Oregon (Lake and Lane), that appear to have been affected by wildfire in summer or fall. The $PM_{2.5}$ concentrations at IMPROVE monitors nearest each of these receptors, including IMPROVE monitors between California and the receptors, were generally low when elevated $PM_{2.5}$ concentrations were recorded at the receptors, in winter. Where available, limited chemical speciation and meteorological data during cold $PM_{2.5}$ episodes indicate that transport of air pollution from the periphery of such areas is limited and that $PM_{2.5}$ is formed from local emission sources through secondary formation of $PM_{2.5}$. Residential wood burning, especially during winter inversions, is considered the primary contributor to 24-hour $PM_{2.5}$ exceedances. Additional sources contributing to such exceedances vary by area and may include mobile sources and agricultural activities (*e.g.,* open burning).

For Utah, we evaluated seven nonattainment receptors that are either in the Salt Lake City or Provo nonattainment area for the 2006 $PM_{2.5}$ NAAQS. Both areas are valleys bordered to the east by the Wasatch Mountains, to the west by the Stansbury and Promontory Mountains and the Great Salt Lake for Salt Lake City, and by the Oquirrh Mountains and Utah Lake for Provo. While they are designated separately, the EPA has determined that the two areas share an airshed. These areas are about 700 km from the California border and separated from California by the Sierra Nevada mountain range and the Great Basin, a large area comprised of depressions and flats scattered between smaller mountain ranges in Nevada and Utah. Approximately 80 percent of the population of Utah resides in the counties with nonattainment receptors identified in CARB's and the EPA's analyses, with county population increases ranging from 11–26 percent from 2005 to 2014 and county VMT changes ranging from a 62 percent decrease in Weber County to a 116 percent increase in Box Elder County from 2005 to 2011.

The highest 24-hour $PM_{2.5}$ concentrations in these two nonattainment areas primarily occur during winter, with occasional spikes in other seasons. IMPROVE monitors between California and the Salt Lake City and Provo nonattainment areas, including Bryce Canyon and Zion National Parks in Utah and Jarbidge Wilderness Area in Nevada, recorded their highest 24-hour $PM_{2.5}$ concentrations in summer, and their concentrations were generally low when elevated $PM_{2.5}$ concentrations were recorded at the Salt Lake City and Provo receptors, in winter.[106] Most of the ambient $PM_{2.5}$ in the urban portions of these nonattainment areas is generated locally and trapped during winter inversions. Transport between the Salt Lake City and Provo areas can occur during these inversions, as there is a gap in the mountains separating these areas below their average inversion heights.

We have reviewed the information compiled and presented in the California Transport Plan, including distance of relevant receptors from California; intervening terrain; potential wildfire effects; chemical speciation data; local topography; the effect of local emission sources, particularly residential wood burning and, in certain cases, other sources (*e.g.,* mobile sources, agricultural activities), on wintertime exceedances; and regional background levels represented by IMPROVE data. We have reviewed California's emissions and emission control programs for $PM_{2.5}$ and its precursors, especially for NO_X and SO_X, and conclude that California has an extensive and effective program for limiting emissions of such pollutants. Thus, we propose that California will not significantly contribute to nonattainment of the 2006 24-hour $PM_{2.5}$ NAAQS in any western state.

The California Transport Plan did not evaluate $PM_{2.5}$ transport to states farther east than Montana, Wyoming, Colorado, and New Mexico. To evaluate the potential for transport of $PM_{2.5}$ and its precursors to states farther east, we have reviewed modeling data from the CSAPR and recent air quality data to identify the westernmost area in the East[107] with a potential nonattainment receptor. We then compared California's likely contributions to those of states in the East that may significantly contribute to nonattainment at that receptor, considering several pieces of evidence.

CSAPR identified nonattainment receptors for the 2006 $PM_{2.5}$ NAAQS in numerous eastern states using a 2012 base case and projected forward to 2014.[108] The westernmost of these was in Madison County, Illinois (AQS ID 171191007), which is across the Mississippi River from St. Louis, Missouri. We looked at the westernmost of these states because its relative position with respect to California might help to determine whether the EPA should evaluate $PM_{2.5}$ transport to any state farther east. In reviewing recent air quality data, including 2014–2016 24-hour $PM_{2.5}$ design values, very few of those receptors recorded ambient 24-hour $PM_{2.5}$ concentrations above 35 μg/m³ (*e.g.,* Allegheny County (Pittsburgh), Pennsylvania).[109] Notwithstanding, we further examined the Madison receptor as the westernmost potential nonattainment receptor in the East.

The westernmost states that were linked (*i.e.,* contributing over one

[106] States' contributions to the best and worst visibility days at IMPROVE monitors were modeled to address requirements of the EPA's regional haze rule. 64 FR 35714 (July 1, 1999), and later revised at 82 FR 3078 (January 10, 2017). The California Transport Plan notes that while the percentage of contributions from California are highest for the worst visibility days at these IMPROVE monitors, these days occurred during summer months and would not, therefore, affect winter exceedances at the receptors in Utah. California Transport Plan, p. A–54 and Appendix E.1. The modeling data are available at: *http://vista.cira.colostate.edu/TSS/Results/HazePlanning.aspx.*

[107] For purposes of the $PM_{2.5}$ evaluation in this notice, ''the East'' refers to the 37 states and Washington, DC that lie east of the states of Montana, Wyoming, Colorado, and New Mexico. The EPA modeled the contribution of states within the East to each receptor for CSAPR, but did not model the contribution of any state further west, such as California.

[108] 76 FR 48208 at 48242–48243 (August 8, 2011), Table V.D–5.

[109] EPA 2016 Design Value Reports, spreadsheet entitled ''Table 6, Site DV History,'' July 14, 2017, available at: *https://www.epa.gov/air-trends/air-quality-design-values#report.* We note that data quality issues in Illinois and four counties in Florida prevent the calculation of valid design values for recent years.

percent (0.35 μg/m³) of the 2006 24-hour $PM_{2.5}$ NAAQS) to the Madison receptor in CSAPR were Kansas and Texas, which were each projected to contribute 0.37 μg/m³ to this receptor and are about 385 km and 680 km, respectively, from this receptor.[110] The other states situated along a similar western longitude, including North Dakota, South Dakota, Nebraska, and Oklahoma, were not linked to the receptor. Because Kansas and Texas were among the westernmost states analyzed within CSAPR, we compared their emissions with those of California. In the CSAPR 2014 base case, Kansas was projected to emit 248,692 tpy of NO_X and 117,050 tpy of SO_2, and Texas was projected to emit 1,372,735 tpy of NO_X and 704,311 tpy of SO_2.[111]

By comparison, California is about 2,215 km from the Madison receptor and is separated from Illinois by the Rocky Mountains and the Great Plains. California's projected 2014 base case emissions were 942,254 tpy of NO_X and 119,268 tpy of SO_2. Thus, California's NO_X emissions were between those of Kansas (26 percent of California's) and Texas (146 percent of California's) and its SO_2 emissions were comparable to those of Kansas (98 percent of California's) and much less than those of Texas (591 percent of California's). California is also much farther away (5.7 times the distance from Kansas to the receptor and 3.3 times the distance from Texas to the receptor).

As summarized in section II.C.5 of this proposed rule, in response to California State and local control measures, as well as federal measures for sources outside California's regulatory authority, from 2000 to 2016 California's total statewide emissions, excluding wildfires and prescribed fires, decreased by 75 percent for $PM_{2.5}$, 66 percent for NO_X, 54 percent for VOCs, and 75 percent for SO_2. For NO_X and VOCs, these reductions are consistent with the EPA's projection that California emissions will be reduced by 28 percent for NO_X and 13 percent for VOCs from 2011 to 2017. We reviewed the 24-hour $PM_{2.5}$ design value history over the last decade for the Madison receptor and found that it has decreased from 39 μg/m³ for 2005–2007 to 29 μg/m³ for 2008–2010, with subsequent design values being invalid due to data quality issues.[112]

We conclude that California emission sources will not significantly contribute to nonattainment of the 2006 $PM_{2.5}$ NAAQS at this site. This is based on the generally improved air quality in the East since the EPA's analysis in 2011 for CSAPR, which reduced the number of potential nonattainment receptors; the distance of the Madison County, Illinois receptor from California; intervening terrain; our analysis of the westernmost states linked to the Madison receptor and comparison of California emissions; the large reductions in emissions of $PM_{2.5}$ and its precursors in California; and the trend of decreasing 24-hour $PM_{2.5}$ concentrations at the Madison receptor. As the distance from California to the other potential eastern nonattainment receptors is even greater, the expected contribution from California to 24-hour $PM_{2.5}$ concentrations at such receptors would be even smaller.

ii. Evaluation for Interference With Maintenance (Prong 2)

The Lewis and Clark County maintenance receptor is in the Helena Valley of Montana and is surrounded by mountain ranges, including the Lewis Range to the north, the Absaroka Range to the south, and the Bitterroot Mountains to the west. It is about 800 km from the northeast corner of California, is separated from California by the Sierra Nevada, Blue, and Bitterroot mountain ranges, and its population has increased by 13 percent from 2005 to 2014 while its VMT has decreased by almost 60 percent. The highest 24-hour $PM_{2.5}$ concentrations generally occur in winter, consistent with the area's wintertime cold pool inversions, with lower concentrations in summer. The site has generally recorded 24-hour $PM_{2.5}$ concentrations well below 35 μg/m³, except for 2011 and 2012, which appear to have been affected by wildfire and whose corresponding design values (*e.g.,* for 2009–2011, 2010–2012, and 2011–2013) exceeded the 2006 $PM_{2.5}$ NAAQS. During the months when exceedances were recorded at the Helena receptor, $PM_{2.5}$ concentrations recorded at the IMPROVE monitor at the nearby Gate of the Mountains Wilderness Area were generally low. The EPA has concluded that emissions from residential wood burning were the largest source of $PM_{2.5}$ emissions in the area.

The Davis and Weber Counties maintenance receptors are in the northern part of the Salt Lake City nonattainment area for the 2006 $PM_{2.5}$ NAAQS. As noted above, this area is bordered to the east by the Wasatch Mountains and to the west by the Stansbury and Promontory Mountains and the Great Salt Lake. These receptors are about 700 km from the California border and are separated from California by the Sierra Nevada mountain range and the Great Basin. The populations for Davis and Weber Counties, which are largely concentrated in the urban areas of the Wasatch Front, have increased by 23 percent and 14 percent, respectively, from 2005 to 2014, while VMT has decreased by 23 percent and 62 percent, respectively, from 2005 to 2011. Over the last decade, 24-hour $PM_{2.5}$ concentrations have generally remained above the 2006 $PM_{2.5}$ NAAQS and the highest concentrations primarily occur during winter, with occasional spikes in other seasons. Most of the ambient $PM_{2.5}$ in the urban area is generated locally and trapped during winter inversions, with some transport to and from the adjacent Provo, Utah nonattainment area. IMPROVE monitors between California and Davis and Weber Counties, Utah, including Bryce Canyon and Zion National Parks in Utah and Jarbidge Wilderness Area in Nevada, recorded their highest 24-hour $PM_{2.5}$ concentrations in summer, and were generally low when elevated $PM_{2.5}$ concentrations were recorded at the Davis and Weber Counties' receptors, in winter.

We have reviewed the information compiled and presented in the California Transport Plan, including distance of these receptors from California; intervening terrain; potential wildfire effects; local topography; the effect of local emission sources on wintertime exceedances; and rural background levels represented by IMPROVE data. We have reviewed California's emissions and emission control programs for $PM_{2.5}$, and its precursors, especially for NO_X and SO_X, and conclude that California has an extensive and effective program for limiting emissions of such pollutants. Thus, we propose that California will not interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in any western state.

The California Transport Plan did not evaluate $PM_{2.5}$ transport to states farther east than Montana, Wyoming, Colorado, and New Mexico. As with our evaluation for prong 1, above, to evaluate the potential for transport of $PM_{2.5}$ and its precursors to eastern states, we have reviewed modeling data from CSAPR and recent air quality data to identify the westernmost area in the east with a potential maintenance

[110] "Air Quality Modeling Final Rule [TSD]" for the CSAPR final rule, EPA, June 2011, pp. D–11 to D–12.

[111] "Emissions Inventory Final Rule [TSD]" for the CSAPR final rule, EPA, June 28, 2011, Tables 7–1 and 7–2.

[112] EPA 2016 Design Value Reports, spreadsheet entitled "Table 6, Site DV History," July 14, 2017, available at: *https://www.epa.gov/air-trends/air-quality-design-values#report.*

receptor.[113] We then compared California's likely contributions to those of states in the east that may interfere with maintenance at that receptor, considering several pieces of evidence.

CSAPR identified maintenance receptors for the 2006 $PM_{2.5}$ NAAQS in numerous eastern states using a 2012 base case and projected forward to 2014.[114] The westernmost of these was in Madison County, Illinois (AQS ID 171190023).[115] As with our analysis for prong 1, we looked at the westernmost of these states because its relative position with respect to California might help to determine whether the EPA should evaluate $PM_{2.5}$ transport to any state farther east. In reviewing recent air quality data, including 2014–2016 24-hour $PM_{2.5}$ design values, many of those receptors recorded ambient 24-hour $PM_{2.5}$ concentrations consistently below 35 μg/m^3.[116] Notwithstanding, we further examined this Madison receptor as the westernmost potential maintenance receptor in the East.

The westernmost states that were linked to this Madison receptor (*i.e.,* contributing over one percent (0.35 μg/m^3) of the 2006 24-hour $PM_{2.5}$ NAAQS) were Iowa and Missouri, which each share a border with Illinois. Iowa was projected to contribute 0.40 μg/m^3 and is about 220 km from this receptor, while Missouri was projected to contribute 3.71 μg/m^3 and is about 5 km from this receptor.[117] The six states that were analyzed within CSAPR and are situated west of Iowa and Missouri, including North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, were not linked to the Madison receptor. As discussed in our evaluation for prong 1, above, we compared the 2014 base case NO_X and SO_2 emissions of Kansas and Texas to those of California. Because these states are not linked to the potential Madison maintenance receptor, and because California is even farther (about 2,215 km) from the receptor and is separated from this receptor by the Rocky Mountains and Great Plains, it would be even less likely for California to interfere with maintenance at this site than Kansas and Texas.

Furthermore, as summarized in the section II.C.5 of this proposed rule, in response to California and local control measures, as well as federal measures for sources outside California's regulatory authority, from 2000 to 2016 California's total statewide emissions, excluding wildfires and prescribed fires, decreased by 75 percent for $PM_{2.5}$, 66 percent for NO_X, 54 percent for VOCs, and 75 percent for SO_2. For NO_X and VOCs, these reductions are consistent with the EPA's projection that California emissions will be reduced by 28 percent for NO_X and 13% for VOCs from 2011 to 2017.

We conclude that California emission sources will not interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS at this site. This is based on the generally improved air quality in the East since the EPA's analysis in 2011 for CSAPR, which identified fewer potential maintenance receptors; the distance of the potential Madison County, Illinois maintenance receptor from California; intervening terrain; our analysis of the westernmost states linked, and not linked, to the Madison receptor and comparison of California emissions; and the large reductions in emissions of $PM_{2.5}$ and its precursors in California. As the distance from California to the other potential eastern maintenance receptors is even greater, the expected contribution from California to 24-hour $PM_{2.5}$ concentrations at such receptors would be even smaller. Thus, we propose that California will not interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in any state farther east than Montana, Wyoming, Colorado, and New Mexico.

6. Evaluation for the 2012 Annual $PM_{2.5}$ NAAQS

We agree with CARB that California does not significantly contribute to nonattainment, or interfere with maintenance, of the 2012 annual $PM_{2.5}$ NAAQS in any other state. However, there were some differences between the receptors identified by CARB and those identified by the EPA that affects which areas we evaluated for interstate transport. CARB identified two monitors in Idaho (Lemhi and Shoshone Counties) as nonattainment receptors, *i.e.,* they exceeded the 2012 $PM_{2.5}$ NAAQS (12.0 μg/m^3) in the most recent period available at the time the SIP was developed (2012–2014). CARB looked to identify maintenance receptors as monitors that exceeded the standard in either the 2010–2012 or 2011–2013 design value periods, but not in 2012–2014, and found none.[118] This method is consistent with past EPA practice for the 2006 $PM_{2.5}$ NAAQS in the western U.S. because CARB adopted the California Transport Plan before the EPA released the 2012 $PM_{2.5}$ NAAQS Transport Memo.

As discussed above, the EPA's modeling used ambient $PM_{2.5}$ data from 2009–2013, emissions inventory data from the 2011 NEI, and other information to project annual $PM_{2.5}$ design values for 2017 and 2025. We rely on this modeling for the 2012 $PM_{2.5}$ NAAQS because it accounts for the effect of emission reductions from planned federal, state, and local measures, as well as input from state, local, industry, and community entities, to project where violations, or potential violations, of the NAAQS will occur. In other words, the modeling provides a more accurate accounting of the areas that warrant further analysis for interstate transport. In addition, where projected design values for 2017 and 2025 differ with respect to identification of receptors, we have evaluated what the projected air quality may be in 2021, as noted in section II.C.3 of this proposed rule.

The EPA's 2012 $PM_{2.5}$ NAAQS Transport Memo did not identify any potential nonattainment receptors outside of California for the 2012 annual $PM_{2.5}$ NAAQS, but did identify a potential maintenance receptor in Shoshone County, Idaho and a potential maintenance receptor in Allegheny County, Pennsylvania. Accordingly, we have evaluated CARB's weight of evidence for Shoshone County as a maintenance receptor rather than a nonattainment receptor.

For Lemhi County, the receptor was not identified in the EPA's modeling but was identified as a nonattainment receptor by CARB. Thus, while we have not included the Lemhi County monitor as either a nonattainment or maintenance receptor for the 2012 $PM_{2.5}$ NAAQS, we include discussion of Lemhi County alongside our discussion of Shoshone County, given their similar characteristics with respect to $PM_{2.5}$ air pollution and its similar location relative to California. While we have not prepared a separate TSD for our evaluation of interstate transport for the 2012 $PM_{2.5}$ NAAQS, we do rely, in part, on the information presented in the EPA's $PM_{2.5}$ Transport TSD (for the 2006 24-hour $PM_{2.5}$ NAAQS) given the importance of generally higher winter $PM_{2.5}$ concentrations to the annual

[113] The EPA modeled the contribution of states within the East to each receptor for CSAPR, but did not model the contribution of any state further west, such as California.

[114] 76 FR 48208 at 48243–48244 (August 8, 2011), Table V.D–6.

[115] Note that this monitor is distinct from the monitor discussed for prong 1 (AQS ID 171191007), although both are in Madison County, Illinois.

[116] EPA 2016 Design Value Reports, spreadsheet entitled ''Table 6, Site DV History,'' July 14, 2017, available at: *https://www.epa.gov/air-trends/air-quality-design-values#report.* We note that data quality issues in Illinois and four counties in Florida prevent the calculation of valid design values for recent years.

[117] ''Air Quality Modeling Final Rule [TSD]'' for the CSAPR final rule, EPA, June 2011, pp. D–13 to D–14.

[118] California Transport Plan, App. B, p. B–2.

concentrations, particularly at the Idaho receptors.

In addition, we include our own weight of evidence analysis with respect to Allegheny County because the California Transport Plan did not evaluate $PM_{2.5}$ transport to states farther east than Montana, Wyoming, Colorado, and New Mexico.

i. Evaluation for Interference With Maintenance (Prong 2)

For Lemhi and Shoshone Counties, as described in our analysis for the 2006 24-hour $PM_{2.5}$ NAAQS above, CARB notes that both counties are largely mountainous and the monitors are located in valleys that lie approximately 3,000 feet below surrounding mountain peaks, which limit the transport of air pollution.[119] The receptors are about 610 and 685 km, respectively, from the northeast corner of California and are separated from California by the Sierra Nevada, Cascade, and Bitterroot mountain ranges. Both areas are rural with small, decreasing populations and decreasing VMT. The receptor in Shoshone County is within the West Silver Valley nonattainment area for the 2006 $PM_{2.5}$ NAAQS.

CARB states that the IMPROVE monitors at the Craters of the Moon National Park and Sawtooth National Forest in Idaho recorded single-year annual $PM_{2.5}$ concentrations that are well below the annual standard (*i.e.,* in the range of 2–7 μg/m^3), that the highest 24-hour $PM_{2.5}$ concentrations at these monitors are directly linked to western wildfires, and that weighted emission potential (WEP) analyses indicate that the worst visibility days are the result of more localized regional influences.[120] CARB asserts that the IMPROVE data and WEP analyses indicate that even on the worst days, there are only minor impacts from California and that California's contributions occur most often during the days with the best visibility.

CARB notes that highest 24-hour $PM_{2.5}$ concentrations are observed in winter, that the lowest concentrations are generally observed in summer, and that wildfire impacts occurred in August–September 2012 when such concentrations exceeded 200 μg/m^3.[121] CARB states that residential wood burning, especially during winter inversions, is the primary contributor to exceedances of both the 24-hour and annual $PM_{2.5}$ NAAQS at the Lemhi and Shoshone Counties monitors, aside from the 2012 wildfire effects. For the Shoshone receptor, motor vehicles were also identified as a primary contributor, as well as open burning and slash burning.

We have reviewed the information compiled and presented in the California Transport Plan, including distance of these monitors from California; intervening terrain; wildfire effects; local topography; the effect of local emission sources on wintertime exceedances of the 24-hour NAAQS and the effect of those exceedances on annual $PM_{2.5}$ concentrations; and rural background levels represented by IMPROVE data. We have reviewed California's emissions and emission control programs for $PM_{2.5}$, and its precursors, especially for NO_X and SO_X, and conclude that California has an extensive and effective program for limiting emissions of such pollutants. Thus, we propose that California will not interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in Idaho or any other western state.

To evaluate the potential for transport of $PM_{2.5}$ and its precursors to Allegheny County, Pennsylvania, we first examined whether this monitor should in fact be a maintenance receptor given that the EPA's 2012 $PM_{2.5}$ NAAQS Transport Memo indicates that the monitor is projected to exceed the annual $PM_{2.5}$ standard of 12.0 μg/m^3 in 2017, but be below it in 2025.[122] Areas initially designated as Moderate nonattainment areas for the 2012 $PM_{2.5}$ NAAQS, such as Allegheny County, must attain the NAAQS by December 31, 2021. A simple linear interpolation between the 2017 and 2025 projected design values leads to a projected 2021 average design value of 11.42 μg/m^3 and a 2021 maximum design value of 11.91 μg/m^3, which are both below the 2012 $PM_{2.5}$ NAAQS.

The Allegheny receptor is about 3,100 km from the California border and is separated from California by the Rocky Mountains, the Great Plains, and the Ohio Valley. Even with the generally westerly wind direction from California, this large distance and the intervening mountainous terrain serve as barriers to $PM_{2.5}$ transport to Allegheny County. In EPA modeling for the 2006 $PM_{2.5}$ NAAQS in the CSAPR final rule, the receptor in Allegheny County was linked to interference with maintenance from other states.[123] While California was not analyzed in that modeling, some conclusions can be drawn from the results. First, Illinois was the most westward and distant state linked to the Allegheny receptor and it is about 650 km from the receptor, or about one-fifth of the distance from California to the receptor. Second, states farther west than Illinois, such as Arkansas, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and Texas, were all included in the modeling and were not linked to Allegheny County, *i.e.,* the contribution of these states to the Allegheny County receptor was below the one percent contribution threshold used in CSAPR for the 2006 24-hour $PM_{2.5}$ NAAQS. These states are each closer to Allegheny County than California and, in the case of Texas, emitted larger amounts of NO_X and SO_2.[124]

Consistent with our guidance, we have also considered additional information about emissions and air quality trends. As summarized in section II.C.5 of this proposed rule, in response to California State and local control measures, as well as federal measures for sources outside California's regulatory authority, from 2000 to 2016 California's total statewide emissions, excluding wildfires and prescribed fires, decreased by 75 percent for $PM_{2.5}$, 66 percent for NO_X, 54 percent for VOCs, and 75 percent for SO_2. For NO_X and VOCs, these reductions are consistent with the EPA's projection that California emissions will be reduced by 28 percent for NO_X and 13 percent for VOCs from 2011 to 2017. We reviewed the annual $PM_{2.5}$ design value history over the last decade for the Allegheny receptor and found that it has decreased steadily from 19.8 μg/m^3 for 2005–2007 to 12.6 μg/m^3 for 2013–2015, with a slight increase to 12.8 μg/m^3 for 2016.[125]

We conclude that California emission sources will not interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS at this site. This is based on our interpolated projection that the Allegheny monitor will likely be attaining the annual $PM_{2.5}$ NAAQS in 2021; the distance of this receptor from California; intervening terrain; the contribution modeling performed for

[119] California Transport Plan, App. B.

[120] *Id.,* App. B, pp. B–4 to B–5.

[121] *Id.,* App. B, pp. B–7 to B–8 for Lemhi County and pp. B–10 to B–11 for Shoshone County.

[122] 2012 $PM_{2.5}$ NAAQS Transport Memo, Table A–3, p. 7. Average design values, which represent nonattainment receptors, are projected to be 11.67 μg/m^3 in 2017 and 11.18 μg/m^3 in 2025 at the Allegheny County receptor. Maximum design values, which represent maintenance receptors, are projected to be 12.15 μg/m^3 in 2017 and 11.65 μg/m^3 in 2025.

[123] 76 FR 48207, 48241 (August 8, 2011), Table V.D–3.

[124] ''Emissions Inventory Final Rule [TSD]'' for the CSAPR final rule, EPA, June 28, 2011, Tables 7–1 and 7–2. The 2014 (base case) total annual emissions for California and Texas were as follows: California (942,254 tpy NO_X and 199,268 tpy SO_2); Texas (1,372,735 tpy NO_X and 704,311 tpy SO_2).

[125] EPA 2016 Design Value Reports, spreadsheet entitled ''Table 6, Site DV History,'' July 14, 2017, available at: *https://www.epa.gov/air-trends/air-quality-design-values#report.*

CSAPR; the large reductions in emissions of $PM_{2.5}$ and its precursors in California; and the general trend of decreasing annual $PM_{2.5}$ concentrations at the Allegheny receptor.

Based on our analysis that there are no nonattainment receptors outside of California for the 2012 $PM_{2.5}$ NAAQS, and our analysis presented above for the sole maintenance receptors in Idaho and Pennsylvania, we propose that California will not significantly contribute to nonattainment, or interfere with maintenance, of the 2012 $PM_{2.5}$ NAAQS in any other state.

D. Evaluation for the 2010 1-Hour SO_2 NAAQS

1. The EPA's SO_2 Evaluation Approach

As noted in section II.A of this proposed rule, the EPA first reviewed the California Transport Plan to assess how the State evaluated the transport of SO_2 to other states, the types of information California used in its analysis, how that analysis compares with prior EPA rulemaking, modeling, and guidance, and the conclusions drawn by California. The EPA then conducted a weight of evidence analysis, including review of the State's submission and other available information, including air quality, emission sources, and emission trends in the states bordering California, and California's air quality, emissions sources, control measures, and emission trends.

Although SO_2 is emitted from a similar universe of point and nonpoint sources, interstate transport of SO_2 is unlike the transport of $PM_{2.5}$ or ozone because SO_2 is not a regional pollutant and does not commonly contribute to widespread nonattainment over a large (and often multi-state) area. The transport of SO_2 is more analogous to the transport of lead (Pb) because its physical properties result in localized pollutant impacts very near the emissions source. However, ambient concentrations of SO_2 do not decrease as quickly with distance from the source as Pb because of the physical properties and release height of SO_2. Emissions of SO_2 travel farther and have wider ranging impacts than emissions of Pb but do not travel far enough to be treated in a manner similar to ozone or $PM_{2.5}$. The approaches that the EPA has adopted for ozone or $PM_{2.5}$ transport are too regionally focused and the approach for Pb transport is too tightly circumscribed to the source. SO_2 transport is therefore a unique case and requires a different approach. The EPA's evaluation of whether California has met its transport obligations was accomplished in several discrete steps, as described in section II.D.3 of this proposed rule.

2. State's Submission

The California Transport Plan presents a weight of evidence analysis to examine whether SO_2 emissions from California adversely affect attainment or maintenance of the 2010 SO_2 NAAQS in other states. In contrast to its ozone and $PM_{2.5}$ analyses, CARB states that ambient SO_2 is mainly derived from a single source or group of sources, that the highest concentrations are localized, and that the EPA has identified SO_2 as a near-source pollutant.[126] CARB finds that ambient SO_2 monitoring in neighboring states (Arizona, Nevada, and Oregon) is limited and that, except for sites adjacent to large copper smelters in Arizona, 1-hour SO_2 concentrations measured in these three states and California are well below the level of the 2010 SO_2 NAAQS, *i.e.,* 75 ppb. Therefore, CARB's weight of evidence analysis focused on the location and emissions of facilities in California, Arizona, Nevada, and Oregon; the ambient SO_2 levels measured in each of these states; ambient SO_2 trends in California; and the distance between facilities in California and the nearest state border.[127] CARB concludes that California does not contribute to nonattainment, or interfere with maintenance, of the 2010 SO_2 NAAQS in neighboring states.[128]

The California Transport Plan identified 31 facilities in California that emit more than 100 tpy of SO_X, based on CARB's 2013 Facility Emissions Inventory.[129] Of these, CARB explains that those emitting over 300 tpy of SO_X are located more than 160 miles (257 km) from the nearest state border—well beyond the one- to two-mile radius within which CARB expects maximum SO_2 concentrations to occur.[130] These facilities include petroleum refineries in the Bay Area and South Coast air districts, and cement plants in the Bay Area and Kern County air districts. Of these, only two emitted more than 1,000 tpy: Shell Martinez Refinery (1,230 tpy) and Phillips 66 Carbon Plant (1,242 tpy), a calcined petroleum coke plant, which are both located in Contra Costa County in the San Francisco Bay Area. CARB also notes that no facility in California emits more than the 2,000 tpy threshold required for characterization per the EPA's Data Requirements Rule for the 2010 SO_2 NAAQS (''SO_2 Data Requirements Rule'').[131]

More broadly, CARB contrasts the larger SO_2 emissions in the eastern U.S., which include electric generation facilities that emit in the tens to hundreds of thousands of tons of SO_2, with the smaller SO_2 emissions from California, where the largest facility emitted 1,242 tpy in 2013.[132] CARB further explains that the latter source (the Phillips 66 Carbon Plant) is 587 miles (945 km), 177 miles (285 km), and 361 miles (581 km) from the borders with Arizona, Nevada, and Oregon, respectively.[133]

Regarding ambient SO_2 measurements, CARB found the 1-hour SO_2 design value concentrations in Arizona, Nevada, and Oregon to be well below 75 ppb, with two exceptions: Monitoring sites around two copper smelters in eastern Arizona (Gila and Pinal Counties). Overall, CARB states that Arizona operated nine SO_2 monitors for the 2012–2014 period and those with complete data had 1-hour SO_2 design values ranging from 6 to 282 ppb, with violations of the 75 ppb standard occurring in the nonattainment areas surrounding the two copper smelters.[134] CARB references Arizona's designations recommendation letter to the EPA, which noted that these smelters were the primary emission sources likely to contribute to the violations of the 2010 SO_2 NAAQS.[135]

[126] California Transport Plan, pp. 1, 12–13. CARB further explains that SO_2 is a highly reactive gas and is deposited locally through wet and dry deposition processes. California Transport Plan, App. C, p. C–10.

[127] California Transport Plan, pp. 12–14.

[128] *Id.,* p. 23.

[129] *Id.,* App. C, p. C–6. CARB's Facility Emission Inventory is available at: *http://www.arb.ca.gov/app/emsinv/facinfo/facinfo.php.*

[130] *Id.,* App. C, p. C–10. As noted previously in this proposed rule, CARB's analysis of California SO_2 emissions in based on SO_X because CARB estimates that SO_2 comprises 97% of the state-wide SO_X inventory. California Transport Plan, App. C, p. C–1. The EPA notes that the presence of maximum SO_2 concentrations within a narrow radius of a source does not automatically preclude the possibility of the source contributing to SO_2 concentrations further afield.

[131] 80 FR 51052 (August 21, 2015). The EPA's SO_2 Data Requirements Rule required states to characterize air quality in areas around sources emitting over 2,000 tpy SO_2 since the existing nationwide monitoring network had certain limitations and approximately two-thirds of the monitors were not located to characterize maximum 1-hour SO_2 concentration impacts from emission sources. We also note that, while CARB found that no facility in California emitting more than 2,000 tpy SO_2, there is a cluster of three sources in Contra Costa County that cumulatively emitted over this threshold and was subsequently characterized using monitoring. We have evaluated this cluster of sources as part of our SO_2 interstate transport analysis.

[132] California Transport Plan, App. C, pp. C–1 to C–2.

[133] *Id.,* App. C, p. C–4.

[134] *Id.,* App. C, p. C–7.

[135] *Id.,* App. C, p. C–6.

CARB included 2014 design values of 6 ppb and 8 ppb at the two Nevada monitors [136] and included the 2014 design value of 5 ppb for the Oregon SO_2 monitoring site.

The California Transport Plan states that the 1-hour SO_2 design values for 2012–2014 at 34 regulatory monitors in California ranged from 1 to 39 ppb—well below the 2010 SO_2 NAAQS.[137] Based on data from these monitors and an additional 21 special purpose monitors operated by facilities in the Bay Area AQMD and South Coast AQMD, CARB recommended that California be designated attainment.[138] Fifteen of the special purpose monitors are operated by refineries, as required by Bay Area AQMD operating permit regulations, and they recorded 2014 design values of 5 to 50 ppb. The remaining six special purpose monitors are operated by the Ports of Long Beach and Los Angeles, as part of the San Pedro Bay Clean Air Action Plan, and they recorded 2014 design values of 12 to 74 ppb.

CARB studied the trend of SO_2 design values at regulatory SO_2 monitors in California with a data record spanning 15 years, which included six sites each in the Bay Area and South Coast air districts.[139] In 1990, 1-hour SO_2 concentrations ranged from 20 to 47 ppb and 13 to 47 ppb, respectively, for the Bay Area and South Coast air districts. By 2014, 1-hour SO_2 concentrations ranged from 3 to 12 ppb and 5 to 14 ppb, respectively, and the design value at each district's highest concentration site had decreased by more than 1 ppb per year.

CARB asserts that the decline in SO_2 concentrations at the highest sites in the State were the result of emission reductions achieved by California's control programs.[140] From 2000 to 2015, CARB estimates that the following emission reductions were achieved: Stationary sources (59 percent), mobile sources (88 percent), and area sources (33 percent). CARB states that these reductions were achieved by improving emission controls and applying increasingly stringent permit requirements for stationary sources; lowering sulfur content requirements for diesel fuel for mobile sources, including on- and off-road vehicles, railroad locomotives, and marine vessels; and reducing area source emissions through rules for residential fuel combustion and managed burning and disposal.[141] CARB projected that in 2015, SO_2 will be emitted in the following amounts: Stationary sources (54 tpd: 68 percent of statewide total), mobile sources (19 tpd: 24 percent of total), and area sources (6 tpd: 8 percent of total). CARB states that California SO_X emissions continue to decline and SO_2 concentrations measured at regulatory monitoring site remain well below the 2010 SO_2 NAAQS.[142]

3. The EPA's SO_2 Evaluation

The EPA proposes to find that California meets the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS, as discussed below. First, we address the air quality, emission sources, and emission trends in the states bordering California, *i.e.,* Arizona, Nevada, and Oregon. Then we discuss California's air quality, emissions sources, control measures, and emission trends with respect to interstate transport prong 1, followed by discussion of additional California air quality trends and emission trends with respect to interstate transport prong 2. Based on that analysis, we propose to find that California will not significantly contribute to nonattainment, or interfere with maintenance, of the 2010 SO_2 NAAQS in any other state.

For the first step of our SO_2 transport evaluation, we assessed the areas of Arizona, Nevada, and Oregon that may exceed or have the potential to exceed the 2010 SO_2 NAAQS. Consistent with CARB's approach in the California Transport Plan, we focused on these three states given that the physical properties of SO_2 result in relatively localized pollutant impacts very near the emissions source. We selected the ''urban scale''—a spatial scale with dimensions from 4 to 50 kilometers (km) from point sources—given the usefulness of that range in assessing trends in both area-wide air quality and the effectiveness of large-scale pollution control strategies at such point sources.[143] We reviewed the location of sources emitting more than 2,000 tpy (*i.e.,* SO_2 Data Requirements Rule sources) in these states and assessed whether there is any source in these states emitting more than 100 tpy of SO_2 and located within 50 km of the California state border, because elevated levels of SO_2, to which SO_2 emitted in California may have a downwind impact, are most likely to be found near such sources.

We reviewed the 2014 design value concentrations for Arizona, Nevada, and Oregon that were presented in the California Transport Plan and find them to be accurate. In addition, to assess how air quality has changed over time we also reviewed AQS data for the design value periods ending in years 2011 through 2016. We present the range of SO_2 design values in Table 5 and specific SO_2 design values at selected monitoring sites in Table 6.[144] We include California data for purposes of subsequent discussion in this proposed rule.

TABLE 5—RANGE OF SO_2 1-HOUR DESIGN VALUE CONCENTRATIONS AT REGULATORY MONITORS IN ARIZONA, NEVADA, OREGON, AND CALIFORNIA

State/area	Number of monitors with valid design values	2009–2011 Design values (ppb)	2010–2012 Design values (ppb)	2011–2013 Design values (ppb)	2012–2014 Design values (ppb)	2013–2015 Design values (ppb)	2014–2016 Design values (ppb)
Arizona (Hayden, Miami areas only)	2–4	111–259	107–285	105–266	122–282	145–246	146–280

[136] *Id.,* App. C, p. C–7.

[137] *Id.,* p. 23.

[138] *Id.,* App. C, pp. C–6 to C–7.

[139] *Id.,* App. C, p. C–9.

[140] *Id.,* App. C, p. C–3.

[141] For mobile sources, CARB gives examples of state regulations that have reduced SO_X emissions in California, including the state's regulations for reformulated gasoline (13 CCR 2250–2297) and for the sulfur content of diesel fuel (13 CCR 2281). These have been approved into the California SIP. 60 FR 43379 (August 21, 1995) and 75 FR 26653 (May 12, 2010).

[142] California Transport Plan, App. C, p. C–4.

[143] For the definition of spatial scales for SO_2, please see 40 CFR part 58, Appendix D, section 4.4 (''Sulfur Dioxide (SO_2) Design Criteria''). For further discussion on how the EPA is applying these definitions with respect to interstate transport of SO_2, *see* the EPA's proposal on Connecticut's SO_2 transport SIP. 82 FR 21351, 21352, 21354 (May 8, 2017).

[144] 2011–2016 AQS Design Value Report, AMP480, June 12, 2017. The EPA's Air Quality System (AQS) contains ambient air pollution data collected by federal, state, local, and tribal air pollution control agencies from thousands of monitors. More information is available at: *https://www.epa.gov/aqs.* For a map of SO_2 monitors and emission sources in California and its bordering states, we have included a map in the docket of this rulemaking entitled ''DRR Sources, Monitoring Sites and 2014 NEI Facilities Emitting SO_2 Within 50km of Region 9 States,'' September 11, 2017.

TABLE 5—RANGE OF SO_2 1-HOUR DESIGN VALUE CONCENTRATIONS AT REGULATORY MONITORS IN ARIZONA, NEVADA, OREGON, AND CALIFORNIA—Continued

State/area	Number of monitors with valid design values	2009–2011 Design values (ppb)	2010–2012 Design values (ppb)	2011–2013 Design values (ppb)	2012–2014 Design values (ppb)	2013–2015 Design values (ppb)	2014–2016 Design values (ppb)
Arizona (excluding Hayden, Miami areas)	1–4	9	9	6–9	6–9	5–9	4–8
Nevada	0–2	[a] (Invalid)	[a] (Invalid)	6–8	6–8	6–7	5–7
Oregon	1	9	7	6	5	4	3
California	19–28	2–17	2–25	2–36	1–39	1–20	1–18

[a] SO_2 design values are valid only when they meet the data completeness and/or data substitution test criteria codified at 40 CFR part 50, Appendix T, section 3.

TABLE 6—SO_2 1-HOUR DESIGN VALUE CONCENTRATIONS AT SELECTED REGULATORY MONITORS IN ARIZONA, NEVADA, AND CALIFORNIA [a]

State/area	AQS ID	2009–2011 Design values (ppb)	2010–2012 Design values (ppb)	2011–2013 Design values (ppb)	2012–2014 Design values (ppb)	2013–2015 Design values (ppb)	2014–2016 Design values (ppb)
Arizona/Phoenix	04–013–9812			9	9	9	8
Nevada/Reno	32–031–0016			6	6	6	5
Nevada/Las Vegas	32–003–0540			8	8	7	7
California/Sacramento	06–067–0006	2	2	2	3	5	7
California/Fresno	06–019–0011				6	5	6
California/Trona (San Bernardino Co.)	06–071–1234	9				8	6
California/Victorville (San Bernardino Co.).	06–071–0306	8	8	5	4	15	18
California/Rubidoux (Riverside Co.)	06–065–8001	7	5	3	3	3	2
California/Calexico (Imperial Co.)	06–025–0005	8	7				8

[a] These monitors were selected as being the westernmost monitors in Arizona and Nevada (*i.e.,* nearest to California), and easternmost monitors in northern, central, and southern California (*i.e.,* nearest to Arizona or Nevada), with at least three valid 1-hour design values in the last six years. A blank cell in this table indicates that the data were invalid for the applicable design value period.

These data were consistent with the assertion in the California Transport Plan that, except for Arizona's Hayden and Miami nonattainment areas, the 1-hour SO_2 levels measured in Arizona, Nevada, and Oregon are 89–96 percent below 75 ppb. Thus, at the areas represented by these monitors, there were no violations of the 2010 SO_2 NAAQS that indicate potential concern for interstate transport. Indeed, there have been slight decreases in 1-hour SO_2 levels at these monitors from already low concentrations.

To date, the only areas that have been designated nonattainment in the states bordering California are the Hayden and Miami nonattainment areas in Arizona, respectively, based on 2009–2011 monitoring data.[145] These nonattainment areas are approximately 325 km and 320 km, respectively, from the California border, which is a large distance relative to the localized range of potential 1-hour SO_2 impacts from SO_2 sources in California.

Additional sources that were evaluated under the SO_2 Data Requirements Rule include six sources across Arizona (including the portion of the Navajo Nation geographically located in Arizona), Nevada, and Oregon, listed in Table 7. These sources range from 240–460 km from California—a similarly large distance relative to the localized range of potential 1-hour SO_2 impacts from SO_2 sources in California.[146]

TABLE 7—SO_2 DATA REQUIREMENTS RULE SOURCES IN STATES BORDERING CALIFORNIA

State/tribe	Facility	Approximate distance to California (km)	2014 NEI annual emissions (tpy)
Arizona	Tucson Electric Power—Springerville Generating Station	460	6,221.0
Arizona	Arizona Electric Power Cooperative—Apache Generating Station	450	4,811.9
Arizona	Arizona Public Service—Cholla Power Plant	365	3,806.6
Navajo Nation	Navajo Generating Station	360	5,665.6
Nevada	North Valmy Generating Station	240	7,429.9
Oregon	Portland General Electric Company—Boardman Power Plant	400	7,438.6

[145] 78 FR 47191 (August 5, 2013) and 83 FR 1098 (January 9, 2018).

[146] For further discussion of the localized nature of 1-hour SO_2 impacts, and the selection of air quality models to estimate SO_2 concentrations around such sources, please see the draft "SO_2 NAAQS Designations Modeling Technical Assistance Document," EPA, August 2016, pp. 5–6, available at *https://www.epa.gov/sites/production/files/2016-06/documents/so2modelingtad.pdf.* We also note that the EPA recently designated areas surrounding these sources as Attainment/Unclassifiable or, in the case of the area near Navajo Generating Station, as Unclassifiable. 83 FR 1098 (January 9, 2018).

Based on the SO_2 emissions data of the 2014 NEI, we did not find any source in Arizona, Nevada, or Oregon that emitted more than 100 tpy of SO_2 and was located within 50 km of the California border.[147] The closest source of this type is McCarran International Airport in Las Vegas, Nevada, which emitted 265.3 tpy of SO_2 in 2014 and is located just over 50 km from the California border. More broadly, the statewide SO_2 emissions from these three states have decreased substantially, per our review of the EPA's emissions trends data.[148] From 2000 to 2016, total statewide SO_2 emissions decreased by the following proportions, resulting in the total 2016 emissions listed for each state: Arizona (38 percent decrease to 8,298 tpy); Nevada (86 percent decrease to 8,729 tpy); and Oregon (90 percent decrease to 5,469 tpy).

In summary, we find that monitored 1-hour SO_2 levels are generally well below 75 ppb; that sources emitting over 2,000 tpy of SO_2 are located at a distance well beyond a 50-km buffer from California's borders where emissions from California sources might be expected to have downwind impacts on air quality; and that the downward SO_2 emission trends in each state reduce the likelihood of SO_2 nonattainment or maintenance issues appearing in the future.[149] We now turn to our analyses of California's air quality and trends, emissions sources and trends, and control measures to assess whether California significantly contributes to nonattainment, or interferes with maintenance, of the 2010 SO_2 NAAQS in other states.

i. Evaluation for Significant Contribution to Nonattainment (Prong 1)

The EPA reviewed ambient air quality data in California to see whether there were any monitoring sites, particularly near the California border, with elevated SO_2 concentrations that might warrant further investigation with respect to interstate transport of SO_2 from emission sources near any given monitor. Over the period of 2011 through 2016, CARB and local air districts operated 34–40 regulatory SO_2 monitors, of which 20–28 have data sufficient to produce valid 1-hour SO_2 design values.[150] As described in the California Transport Plan, in 2014 the monitors operating in California produced valid design values ranging from 1–39 ppb. As in our data review for Arizona, Nevada, and Oregon, we also reviewed AQS data for the design value periods ending in years 2011 through 2016 to assess how air quality has changed over time. Based on the data presented in Tables 5 and 6, above, we find that California's more extensive network of SO_2 monitors indicate that 1-hour SO_2 levels in California are 76–99 percent below 75 ppb. The high design value of 39 ppb presented in the California Transport Plan for 2014 is the highest among the series of six design value periods, and the highest 2015 and 2016 design values were lower at 20 ppb and 18 ppb, respectively. Thus, these air quality data do not, by themselves, indicate any particular location that would warrant further investigation with respect to SO_2 emission sources that might significantly contribute to nonattainment in the bordering states.

While the 21 special purpose monitors operated by facilities in the Bay Area and South Coast air districts measured 1-hour SO_2 design values up to 50 ppb and 74 ppb, respectively, for 2012–2014, these concentrations are below the 2010 SO_2 NAAQS of 75 ppb and represent air quality at locations that are over 200 km from the California border with other states. Based on SO_2 air quality in California, we have not found any area that would warrant further investigation with respect to interstate transport of SO_2. However, because the monitoring network is not necessarily designed to find all locations of high SO_2 concentrations, this observation indicates an absence of evidence of impact but is not sufficient evidence by itself of an absence of impact. We have therefore also conducted a source-oriented analysis.

Regarding the largest sources of SO_2 emissions in California, we agree with CARB that no individual facility emitted more than 2,000 tpy of SO_2 in 2014. However, a cluster of three sources in or near Martinez, California, including the Shell petroleum refinery (1,369.0 tpy), the Tesoro petroleum refinery (647.8 tpy), and the Rhodia USA, Inc. chemical plant (382.7 tpy, now operated by Eco Services Operations Corp.), collectively emitted 2,399.5 tpy of SO_2 in 2014.[151] The air quality around this cluster of sources was characterized according to the monitoring pathway, under the requirements of the SO_2 Data Requirements Rule.[152]

The regulatory SO_2 monitor near these sources is located at 521 Jones St. in Martinez (AQS ID 06–013–2001). The 1-hour SO_2 design values at this monitor were 14 ppb for 2015 and 13 ppb for 2016—below the 2010 SO_2 NAAQS. As noted in the California Transport Plan, we find that these sources are a large distance from California's borders—approximately 700 km from Arizona, 220 km from Nevada, and 440 km from Oregon, which is a large distance to these other states' borders relative to the localized range of potential 1-hour SO_2 impacts from SO_2 sources in California. Furthermore, these sources are subject to SO_2 emission limits under Bay Area AQMD Regulation 9, Rule 1, which has been approved into the California SIP.[153]

As further support of our proposal that California SO_2 emissions are

[147] For a map of SO_2 emission sources in states bordering California, and within California, please see ''DRR Sources, Monitoring Sites and 2014 NEI Facilities Emitting SO_2 Within 50 km of Region 9 States,'' September 11, 2017, in the docket for this rulemaking. The EPA also sought to assess more recent data for California sources emitting over 100 tpy of SO_2 in the EPA's Emission Inventory System Gateway, available at: *https://www.epa.gov/air-emissions-inventories/emissions-inventory-system-eis-gateway.* Since data for all such sources were not available for years after 2014, we have relied on the data of the 2014 NEI.

[148] 1990–2016 emission inventory spreadsheets of statewide emission trends, included in the docket to this rulemaking and entitled ''1990–2016 State Tier 1 Annual Average Emission Trends—RIX Analysis.xls.'' Additional emissions trends data are available at: *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data.*

[149] This proposed approval of the California Transport Plan for the 2010 SO_2 NAAQS under CAA section 110(a)(2)(D)(i)(I) is based on the information contained in the administrative record for this action, and does not prejudge any other future EPA action that may make other determinations regarding California's air quality status. Any such future actions, such as area designations under any NAAQS, will be based on their own administrative records and the EPA's analyses of information that becomes available at those times. Future available information may include, and is not limited to, monitoring data and modeling analyses conducted pursuant to the SO_2 EPAs Data Requirements Rule (80 FR 51052, August 21, 2015) and information submitted to the EPA by states, air agencies, and third party stakeholders such as citizen groups and industry representatives.

[150] 2011–2016 AQS Design Value Report, AMP480, June 12, 2017.

[151] 2014 NEI California emission inventory spreadsheet of stationary sources emitting over 100 tpy SO_2 (''2014 NEI CA SO_2 Spreadsheet''), included in the docket to this rulemaking and entitled ''AIR17025—2014 NEI SO_2 sources by CA air district—RIX analysis.xlsx.'' We note that the emissions amounts differ slightly from CARB's 2013 Facility Emissions Inventory, though both underscore a similar magnitude of emissions (*e.g.,* hundreds or thousands of tpy).

[152] Letter from Deborah Jordan, Acting Regional Administrator, Region IX, EPA to Governor Brown of California and affiliated TSD, Chapter 6 (California), section 3 (''Technical Analysis for the San Francisco Bay Area''). The SO_2 Data Requirements Rule notes that clusters of multiple smaller sources in close proximity can cause as much impact as a single larger source and should be evaluated on a case-by-case basis, as was done for the cluster of sources in or near Martinez, California. 80 FR 51052, 51060–51062 (August 21, 2015).

[153] Bay Area AQMD Regulation 9, Rule 1 (''Sulfur Dioxide,'' amended May 20, 1992), 64 FR 30396 (June 8, 1999). With respect to petroleum refineries, this rule includes limitations on ground level SO_2 concentrations and a general emissions limitation, as well as specific emission limits for certain types of equipment.

sufficiently low to avoid an ambient impact at downwind areas in violation of the good neighbor provision, California has reduced SO_2 emissions from mobile and stationary sources, as described in the California Transport Plan, by adopting and implementing rules to limit the sulfur content of fuels. CARB mobile source rules have reduced SO_2 emissions by limiting the sulfur content of Phase 2 and Phase 3 reformulated gasoline and of diesel fuel used statewide.[154] Also, SO_2 emission reductions from industrial sources in South Coast AQMD have been reduced by air district rules for fuels used at industrial sources such as power plants, refineries, landfills, and sewage digesters.[155] Such measures will continue to limit the sulfur content of fuels that are combusted in California, thereby limiting SO_2 emissions from mobile sources statewide and stationary sources in South Coast AQMD, where a large proportion of the biggest SO_2 sources operate.

We agree with CARB that sources that emit more than 300 tpy are far from the California borders with Arizona, Nevada, and Oregon. CARB identified 10 stationary sources that emitted over 300 tpy of SO_2 based on its 2013 Facility Emissions Inventory, and we identified 12 such stationary sources based on the 2014 NEI, most of which are located near the California coast in the Bay Area and South Coast air districts.[156] As with the cluster of SO_2 sources in the area of Martinez, California, most of these sources are subject to SO_2 emission limits under air district rules of the Bay Area (petroleum refineries, calcined petroleum coke plant), Kern County (cement plant), and South Coast (petroleum refineries, calcined petroleum coke plant) that have been approved into the California SIP.[157] One of these sources, the Lehigh Southwest Cement Company plant in Cupertino, is about 260 km from the nearest bordering state, Nevada, and emitted 854 tpy of SO_2 in 2014, which is about 3.5 percent of the total SO_2 emitted in California in 2014. This source is subject to a Bay Area AQMD rule that limits NO_X emissions but does not appear to be subject to rules limiting SO_2 emissions. However, the facility's distance from Nevada and other states limit the potential for interstate 1-hour SO_2 impacts from this source.

More broadly, there were no sources in 2014 that emitted over 100 tpy of SO_2 and were within 50 km of the state's border.[158] Additionally, the statewide SO_2 emissions from all sources in California have decreased substantially, as described in the California Transport Plan and per our review of the EPA's emissions trends data.[159] From 2000 to 2016, total statewide SO_2 emissions, excluding wildfires and prescribed fires, decreased by 75 percent resulting in 2016 statewide emissions of 21,422 tpy.

In conclusion, for interstate transport prong 1, we reviewed ambient SO_2 monitoring data, SO_2 emission sources and controls, including CARB measures for mobile sources and air district measures for large stationary sources, and emission trends in California. As for Arizona, Nevada, and Oregon, monitored 1-hour SO_2 levels in California are low (most often below half the level of the 2010 SO_2 NAAQS); the 29 SO_2 sources in California that emit over 100 tpy of SO_2 are located at a distance well beyond 50 km from California's borders, the distance where emissions from California sources might be expected to have downwind impacts on air quality in bordering states; and California's decreasing SO_2 emission trend each reduce the likelihood of California emitting SO_2 in amounts that would adversely affect other states in the future.

Therefore, based on our analysis of SO_2 air quality and emission sources in Arizona, Nevada, and Oregon and our analysis of SO_2 air quality and emissions in California, we propose that California will not significantly contribute to nonattainment of the 2010 SO_2 NAAQS in any other state, per the requirements of CAA section 110(a)(2)(D)(i)(I).

ii. Evaluation for Interference With Maintenance (Prong 2)

The EPA has reviewed the analysis presented in the California Transport Plan and has considered additional information on California air quality trends and emission trends to evaluate CARB's conclusion that California does not interfere with maintenance of the 2010 SO_2 NAAQS in other states. This evaluation builds on our evaluation of air quality and SO_2 emission sources in Arizona, Nevada, and Oregon, and our evaluation for significant contribution to nonattainment (prong 1) based on the evidence that we reviewed (*i.e.,* low ambient concentrations of SO_2, large distance of SO_2 sources from the California border, decreasing SO_2 emissions, and the existence of SIP-approved California control measures).

Complementing the 75 percent reduction in California SO_2 emissions from 2000 to 2015, we reviewed regional trends in the 99th percentile of the daily maximum 1-hour average SO_2 measurements, which are used to calculate 1-hour SO_2 design values.[160] For the western U.S. region, which includes California and Nevada, the mean of the 99th percentile ambient SO_2 concentrations decreased 46 percent from 2000 to 2015. For sources emitting over 300 tpy of SO_2 based on a combination of the 2014 NEI and the facilities identified in the California Transport Plan, we have also reviewed the trend of emissions from each such source at five year increments from 2000 thru 2015, as shown in Table 8.[161] Because the total SO_2 emissions from these facilities have decreased substantially from 2000 to 2015, coupled with their distance from the California border and the generally low SO_2 concentrations in bordering states, this trend further reduces the likelihood

[154] 13 CCR 2262 (''The California Reformulated Gasoline Phase 2 and Phase 3 Standards,'' amended December 24, 2002), 13 CCR 2262.3 (''Compliance with the CaRFG Phase 2 and CaRFG Phase 3 Standards for Sulfur, Benzene, Aromatic Hydrocarbons, Olefins, T50 and T90,'' amended August 20, 2001), and 13 CCR 2281 (''Sulfur Content of Diesel,'' amended June 4, 1997), 75 FR 26653 (May 12, 2010).

[155] South Coast AQMD Regulation 4, Rule 431.1 (''Sulfur Content of Gaseous Fuels,'' amended June 12, 1998), 64 FR 67787 (December 3, 1999) and Rule 431.2 (''Sulfur Content of Liquid Fuels,'' amended May 4, 1990), 64 FR 30396 (June 8, 1999).

[156] 2014 NEI CA SO_2 Spreadsheet. Other non-stationary sources in California emitting over 300 tpy of SO_2 include the Los Angeles and San Francisco airports, whose SO_2 emissions from aircraft are outside the regulatory authority of the State of California.

[157] Bay Area AQMD Regulation 9, Rule 1 (''Sulfur Dioxide,'' amended May 20, 1992), 64 FR 30396 (June 8, 1999); Kern County APCD Rule 407 (''Sulfur Compounds,'' adopted April 18, 1972), 37 FR 19812 (September 22, 1972); and South Coast AQMD, *see e.g.,* Regulation 20 series rules for the RECLAIM program. While the Kern County rule applicable to the California Portland Cement Company plant in Mojave, California is old, the facility is about 220 km from the nearest bordering state, Nevada.

[158] Please see the map included in the docket of this rulemaking entitled ''DRR Sources, Monitoring Sites and 2014 NEI Facilities Emitting SO_2 Within 50 km of Region 9 States,'' September 11, 2017.

[159] 1990–2016 emission inventory spreadsheets of statewide emission trends, included in the docket to this rulemaking and entitled ''1990–2016 State Tier 1 Annual Average Emission Trends—RIX Analysis.xls.'' Additional emissions trends data are available at: *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data.*

[160] 2000–2015 1-hour daily maximum SO_2 air quality trend spreadsheet for California and Nevada, included in the docket to this rulemaking and entitled ''2000–2015 SO_2 Trend in Western US (CA–NV).xlsx.'' These and other regional air quality data trends are available at: *https://www.epa.gov/air-trends/sulfur-dioxide-trends.*

[161] This table includes stationary sources that emitted more than 300 tpy of SO_2 as identified in the 2014 NEI CA SO_2 Spreadsheet plus two additional sources cited in the California Transport Plan, App. C, p. C–10 (*i.e.,* California Portland Cement Co. and Solvay USA Inc, listed as Eco Services Operations Corp in the 2015 inventory). These data are from CARB's 2013 Facility Emissions Inventory, available at: *https://www.arb.ca.gov/app/emsinv/facinfo/facinfo.php.*

of California emitting SO_2 in amounts that would interfere with maintenance of the 2010 SO_2 NAAQS in other states.

TABLE 8—EMISSIONS TRENDS FOR CALIFORNIA SOURCES THAT EMITTED OVER 300 tpy OF SO_2 IN 2014

CARB facility ID (2015)	Facility name (2015)	Air district (county)	2000 (tpy)	2005 (tpy)	2010 (tpy)	2015 (tpy)
21360	Phillips 66 Carbon Plant (petroleum coke calciner).	Bay Area (Contra Costa)	1,728	1,212	1,151	1,519
11	Shell Martinez Refinery	Bay Area (Contra Costa)	2,556	1,670	1,208	1,093
17	Lehigh Southwest Cement Company.	Bay Area (Santa Clara)	473	310	492	1,058
14628	Tesoro Refining and Marketing Co. LLC.	Bay Area (Contra Costa)	5,423	2,646	470	962
174655	Tesoro Refining and Marketing Co. LLC.	South Coast (Los Angeles)	1,705	1,221	594	503
9	California Portland Cement Co.	Kern County	1,168	1,136	1,089	472
10	Chevron Products Company	Bay Area (Contra Costa)	1,247	1,566	367	381
21359	Phillips 66 Company—San Francisco Refinery.	Bay Area (Contra Costa)	705	407	414	365
171109	Phillips 66 Company/Los Angeles Refinery.	South Coast (Los Angeles)	587	245	295	340
800089	ExxonMobil Oil Corporation	South Coast (Los Angeles)	725	574	353	333
174591	Tesoro Refining & Marketing Co LLC, (petroleum coke calciner).	South Coast (Los Angeles)	408	178	240	329
800030	Chevron Products Co	South Coast (El Segundo)	1,006	396	425	300
22789	Eco Services Operations Corp.	Bay Area (Contra Costa)	276	240	308	186
178639	Eco Services Operations LLC	South Coast (Los Angeles)	242	390	390	19
Total			18,250	12,193	7,793	7,861

Beyond this important subset of stationary sources, as discussed in our evaluation for significant contribution to maintenance herein, California has reduced SO_2 emissions from mobile and stationary sources, as described in the California Transport Plan, by adopting and implementing rules to limit the sulfur content of fuels. These include CARB mobile source rules limiting the sulfur content of Phase 2 and Phase 3 reformulated gasoline and of diesel fuel used statewide, as well as air district rules limiting SO_2 emissions from industrial sources such as power plants, refineries, landfills, and sewage digesters.

In conclusion, for interstate transport prong 2, we reviewed additional information on California air quality trends and emission trends, as well as the evidence considered for interstate transport prong 1. We find that from 2000 to 2015 both ambient SO_2 concentrations and SO_2 emissions from California's largest stationary sources have decreased substantially; and that state and local measures to limit the sulfur content of fuels and limit SO_2 emissions will continue to limit SO_2 emissions that might adversely affect other states. Accordingly, we propose that California SO_2 emission sources will not interfere with maintenance of the 2010 SO_2 NAAQS in any other state, per the requirements of CAA section 110(a)(2)(D)(i)(I).

III. Proposed Action

We have reviewed the California Transport Plan for the 2008 ozone, 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, and 2010 SO_2 NAAQS using step-wise processes. Based on this review and additional analyses conducted by the EPA to verify and supplement the California Transport Plan, and consistent with CAA section 110(a)(2)(D)(i)(I) and EPA guidance with respect to interstate transport for these NAAQS, we propose that California will not significantly contribute to nonattainment, or interfere with maintenance, of the 2008 ozone, 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, and 2010 SO_2 NAAQS in any other state. Accordingly, we propose to approve California's Transport SIP as satisfying the requirements of CAA section 110(a)(2)(D)(i)(I) for these NAAQS.

We will accept comments from the public on these proposals for the next 30 days and plan to follow with a final action. The deadline and instructions for submission of comments are provided in the ''Date'' and ''Addresses'' sections at the beginning of this proposed rule.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: January 26, 2018.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–02462 Filed 2–6–18; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 83, No. 26
Wednesday, February 7, 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

Office of the Secretary

Improving Customer Service

AGENCY: Office of the Secretary, USDA.

ACTION: Request for information.

SUMMARY: Consistent with Executive Order 13781, ''Comprehensive Plan for Reorganizing the Executive Branch,'' and using the authority of the Secretary to reorganize the Department under section 4(a) of Reorganization Plan No. 2 of 1953, the U.S. Department of Agriculture (USDA) is soliciting public comment on a proposed realignment of the Departmental Administration organization that will improve customer service, better align functions within the organization, and ensure improved strategic decision-making.

DATES: Comments and information are requested on or before March 2, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this notice. All submissions must refer to ''Improving Customer Service'' to ensure proper delivery.

- *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* USDA strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, and ensures timely receipt by USDA. Commenters should follow the instructions provided on that site to submit comments electronically.
- *Submission of Comments by Mail, Hand delivery, or Courier.* Paper, disk, or CD–ROM submissions should be submitted to the Office of the Assistant Secretary for Administration, USDA, Jamie L. Whitten Building, Room 240–W, 1400 Independence Ave. SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Johanna Briscoe, 202–720–291, *Johanna.Briscoe@dm.usda.gov.*

SUPPLEMENTARY INFORMATION: USDA is committed to operating efficiently, effectively, and with integrity, and minimizing the burdens on individuals, businesses, and communities for participation in and compliance with USDA programs. USDA works to support the American agricultural economy to strengthen rural communities; to protect and conserve our natural resources; and to provide a safe, sufficient, and nutritious food supply for the American people. The Department's wide range of programs and responsibilities touches the lives of every American every day.

I. Executive Orders 13781

Executive Order 13781, ''Comprehensive Plan for Reorganizing the Executive Branch'', is intended to improve the efficiency, effectiveness, and accountability of the executive branch. The principles in the Executive Order provide the basis for taking actions to enhance and strengthen the delivery of USDA programs.

II. Reorganization Actions

Secretary Perdue intends to take actions to strengthen customer service and improve efficiencies at USDA by taking the following actions:

- Establishing a Customer Experience Office within the Office of the Assistant Secretary for Administration to coordinate agency actions that will improve customer service across the Department;
- Establishing the Office of Property and Fleet Management, and realigning the property, fleet, and hazardous materials management functions of the Office of Procurement and Property Management (OPPM) into the new office;
- Realigning the workers' compensation and safety program out of OPPM into the Office of Human Resources Management (OHRM);
- Transferring the directives program and records management function from the Office of the Chief Information Officer (OCIO) to the Office of the Executive Secretariat (OES);
- Realigning the classified network management and the controlled unclassified information functions from OCIO to the Office of Homeland Security (OHS); and
- Renaming OPPM the Office of Contracting and Procurement.

III. Request for Information

USDA is seeking public comment on these actions and notes that this notice is issued solely for information and program-planning purposes. While responses to this notice do not bind USDA to any further actions, all submissions will be reviewed by the appropriate program office, and made publicly available on *http://www.regulations.gov.*

Dated: January 31, 2018.

Donald Bice,

Acting Deputy Assistant Secretary for Administration.

[FR Doc. 2018–02388 Filed 2–6–18; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Scientific Advisory Committee (C–SAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. The C–SAC will meet in a plenary session on March 29–30, 2018. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments. Please visit the Census Advisory Committees website for the most current meeting agenda at: *http://www.census.gov/cac/.* The meeting will be available via webcast at: *https://www.census.gov/newsroom/census-live.html.* Topics of discussion will include the following items:

- 2020 Census Systems and Operations
- Updates on Formal and Informal 2017 Outreach Activities
- Internet Self-Response Updates
- Administrative Records Updates
- New Annual Business Survey

- C–SAC Working Groups Progress Reports

DATES: March 29–30, 2018. On Thursday, March 29, the meeting will begin at approximately 8:30 a.m. and end at approximately 5:00 p.m. On Friday, March 30, the meeting will begin at approximately 8:30 a.m. and end at approximately 3:00 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Auditorium, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Tara Dunlop Jackson, Branch Chief for Advisory Committees, Customer Liaison and Marketing Services Office, *tara.dunlop.jackson@census.gov,* Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–5222. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The members of the C–SAC are appointed by the Director, U.S. Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on March 31. However, individuals with extensive questions or statements must submit them in writing to: *census.scientific.advisory.committee@census.gov* (subject line ''March 2018 C–SAC Meeting Public Comment''), or by letter submission to Tara Dunlop Jackson, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233.

If you plan to attend the meeting, please register by Monday, March 26, 2018. You may access the online registration from the following link: *https://www.regonline.com/csac_meeting_mar2018.* Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Due to increased security for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: January 31, 2018.

Ron S. Jarmin,

Associate Director for Economic Programs, Performing the Non-Exclusive Functions and Duties of the Director, Bureau of the Census.

[FR Doc. 2018–02424 Filed 2–6–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–072]

Sodium Gluconate, Gluconic Acid and Derivative Products From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable February 7, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci at (202) 482–2923 or Jonathan Hill at (202) 482–3518, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2017, the Department of Commerce (Commerce) initiated the countervailing duty (CVD) investigation of sodium gluconate, gluconic acid and derivative products from the People's Republic of China.[1] Currently, the preliminary determination is due no later than February 26, 2018.[2]

Postponement of the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1)(A) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if a petitioner makes a timely request for a postponement. Under 19 CFR 351.205(e), a petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reason for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.[3]

On January 23, 2018, PMP Fermentation Products, Inc. (the petitioner) submitted a timely request pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determination. The petitioner stated that the purpose of its request was to provide Commerce with adequate time to solicit information from the respondents and to allow Commerce and interested parties sufficient time to analyze respondents' questionnaire responses.[4]

In accordance with 19 CFR 351.205(e), the petitioner has stated the reason for requesting a postponement of the preliminary determination and the record does not present any compelling reasons to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, and in light of the closure of the Federal Government from January 20 through 22, 2018, Commerce is postponing the deadline for the preliminary determination to May 2, 2018.[5] Pursuant to section 705(a)(l) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(l).

Dated: February 2, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–02444 Filed 2–6–18; 8:45 am]

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[1] *See Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 83 FR 499 (January 4, 2018).

[2] Commerce has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018. *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018 (Tolling Memorandum). Accordingly, all deadlines in this segment of the proceeding have been extended by 3 days.

[3] *See* 19 CFR 351.205(e).

[4] *See* Letter from the petitioner to Commerce, ''Countervailing Duty Investigation of Sodium Gluconate, Gluconic Acid and Derivative Products (GNA Products) from the People's Republic of China: Petitioner's Request to Postpone the Preliminary Determination,'' dated January 23, 2018.

[5] Note that the revised deadline incorporates a 65-day postponement, *i.e.,* to 130 days after the date on which this investigation was initiated, in addition to a 3-day extension due to closure of the Federal Government.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–822–806, A–821–824, A–520–808]

Carbon and Alloy Steel Wire Rod From Belarus, the Russian Federation, and the United Arab Emirates: Notice of Correction to Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Rebecca Janz at (202) 482–2972 (Belarus), Kaitlin Wojnar at (202) 482–3857 (Russia), or Carrie Bethea at (202) 482–1491 (the UAE), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 2018, the Department of Commerce (Commerce) published the antidumping duty orders on carbon and alloy steel wire rod from Belarus, the Russian Federation, and the United Arab Emirates.[1] Commerce made a typographical error in the Appendix to the *Orders.* Specifically, in the scope description, Harmonized Tariff Schedule of the United States (HTSUS) subheading 7213.91.3015 was incorrectly published as HTSUS subheading 213.91.3015.[2]

Correction

Commerce is correcting the *Orders* to clarify that subject merchandise is currently classifiable under, *inter alia,* HTSUS subheading 7213.91.3015. The complete scope of the *Orders,* as it should have appeared in the *Orders,* is included as an Appendix to this notice.

This correction to the *Orders* is published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: February 2, 2018.

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 Orders

The merchandise covered by these orders is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.,* products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to these orders are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[FR Doc. 2018–02446 Filed 2–6–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Carbon and Alloy Steel Wire Rod from Belarus, the Russian Federation, and the United Arab Emirates: Antidumping Duty Orders,* 83 FR 3297 (January 24, 2018) (the *Orders*).

[2] *Id.* at Appendix.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502, A–549–502, A–489–501, C–489–502, A–351–809, A–201–805, A–580–809, A–583–814, and A–583–008]

Certain Welded Carbon Steel Pipes and Tubes From India, Thailand, and Turkey; Certain Circular Welded Non-Alloy Steel Pipe From Brazil, Mexico, the Republic of Korea, and Taiwan, and Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Continuation of Antidumping Duty Orders and Countervailing Duty Order

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 U.S. International Trade Commission (USITC) that revocation of the antidumping duty (AD) orders on certain welded carbon steel pipes and tubes (pipes and tubes) from India, Thailand, and Turkey; certain circular welded non-alloy steel pipe (non-alloy steel pipe) from Brazil, Mexico, the Republic of Korea (Korea), and Taiwan; and certain circular welded carbon steel pipes and tubes (circular pipes and tubes) from Taiwan would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders. Additionally, as a result of the determination by Commerce and the ITC that revocation of the countervailing duty (CVD) order on certain welded carbon steel pipes and tubes from Turkey would likely lead to continuation or recurrence of countervailable subsidies and material injury to an industry in the United States, Commerce is publishing a notice of continuation of this CVD order.

DATES: Applicable February 7, 2018.

FOR FURTHER INFORMATION CONTACT: Joshua Poole at (202) 482–1293 or Jacqueline Arrowsmith at (202) 482–5255, 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 June 2, 2017, Commerce published the notice of initiation of the fourth sunset review of the AD orders on pipes and tubes from India, Thailand and Turkey; non-alloy steel pipe from Brazil, Mexico, Korea and Taiwan; and circular

pipes and tubes from Taiwan (collectively, AD Orders), and the CVD order on pipes and tubes from Turkey (CVD Order) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1] On June 01, 2017, the ITC instituted its reviews of the AD Orders and the CVD Order.[2] Commerce conducted expedited sunset reviews of the AD Orders and the CVD Order.

Commerce determined that revocation of the AD orders on pipes and tubes from India, Thailand, and Turkey would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins of dumping likely to prevail should the orders be revoked.[3] Commerce also determined that revocation of the AD orders on non-alloy steel pipe from Brazil, Mexico, Korea, and Taiwan as well as the AD order on circular pipes and tubes from Taiwan would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of margins of dumping likely to prevail should the orders be revoked.[4] Additionally, Commerce determined that revocation of the CVD order on pipes and tubes from Turkey would likely lead to continuation or recurrence of countervailable subsidies and notified the ITC of the net countervailable subsidy rates likely to prevail should the CVD order be revoked.[5]

On January 24, 2018, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the AD orders on pipes and tubes from India, Thailand, and Turkey; the CVD order on pipes and tubes from Turkey; the AD orders on non-alloy steel pipe from Brazil, Mexico, Korea, and Taiwan; and the AD order on circular pipes and tubes from Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[6]

Scope of the Orders

See the Appendix to this notice.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the AD Orders and the CVD Order would likely lead to 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, Commerce hereby orders the continuation of the AD orders on: (1) Pipes and tubes from India, Thailand, and Turkey; (2) non-alloy steel pipe from Brazil, Mexico, Korea, and Taiwan; (3) circular pipes and tubes from Taiwan; and (4) the CVD order on pipes and tubes from Turkey.

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 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 the orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: January 31, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Antidumping Duty Orders and Countervailing Duty Order

India—Certain Welded Carbon Steel Pipes and Tubes (A–533–502)

The products covered by the order include certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various American Society for Testing Materials (ASTM) specifications, most notably A–53, A–120, or A–135.

The antidumping duty order on certain welded carbon steel standard pipes and tubes from India, published on May 12, 1986, included standard scope language which used the import classification system as defined by Tariff Schedules of the United States, Annotated (TSUSA). The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). *See, e.g., Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of Antidumping Duty Administrative Reviews,* 56 FR 26650, 26651 (June 10, 1991). As a result of this transition, the scope language we used in the 1991 **Federal Register** notice is slightly different from the scope language of the original final determination and antidumping duty order.

Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.[7]

Thailand—Certain Welded Carbon Steel Pipes and Tubes (A–549–502)

The products covered by this order are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing'' are hereinafter designated as ''pipes and tubes.'' The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and purposes of U.S. Customs and Border Protection (CBP), the written description of the merchandise subject to the order is dispositive.[8] [9]

Turkey—Certain Welded Carbon Steel Pipes and Tubes (A–489–501)

The products covered by this order are welded carbon steel standard pipe and tube

[1] *See Initiation of Five-Year (''Sunset'') Reviews,* 82 FR 25599 (June 2, 2017) (*Initiation*).

[2] *See Initiation of Five-Year Reviews,* 82 FR 25328 (June 1, 2017).

[3] *See Certain Welded Carbon Steel Pipes and Tubes from India, Thailand, and Turkey: Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order,* 82 FR 46485 (October 5, 2017).

[4] *See Certain Circular Welded Non-Alloy Steel Pipe from Brazil, Mexico, the Republic of Korea, and Taiwan and Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Final Results of Expedited Fourth Sunset Reviews of the Antidumping Duty Order,* 82 FR 46761 (October 6, 2017).

[5] *See Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Expedited Fourth Sunset Review of Countervailing Duty Order,* 82 FR 46768 (October 6, 2017).

[6] *See Certain Circular Welded Pipe and Tube from Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey; Determination* 83 FR 3366 (January 24, 2018), and ITC Publication titled *Certain Circular Welded Pipe and Tube from Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey: Investigation No.* 731–TA–253 and 731–TA–132, 252, 271, 273, 532–534, and 536 (*Fourth Review*) (January 2018).

[7] *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review,* 75 FR 69626, 69627 (November 15, 2010).

[8] There was one scope ruling in which British Standard light pipe 387/67, Class A–1 was found to be within the scope of the order per remand. *See Scope Rulings,* 58 FR 27542, (May 10, 1993).

[9] *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016* 82 FR 46961 (October 10, 2017).

products with an outside diameter of 0.375 inch or more but not over 16 inches of any wall thickness, and are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090.[10] Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably A–120, A–53 or A–135.

Turkey—Certain Circular Welded Carbon Steel Pipes and Tubes (C–489–502)

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Brazil—Certain Circular Welded Non-Alloy Steel Pipe (A–351–809)

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in this order. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this order. Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Mexico—Certain Circular Welded Non-Alloy Steel Pipe (A–351–809)

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this order. Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Korea—Certain Circular Welded Non-Alloy Steel Pipe (A–580–809)

The merchandise subject to this order is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. unfinished conduit pipe is also included in this order. All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela (61 FR 11608, March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Taiwan—Certain Circular Welded Non-Alloy Steel Pipe (A–583–814)

The products covered by this order are (1) circular welded non-alloy steel pipes and tubes, of circular cross section over 114.3 millimeters (4.5 inches), but not over 406.4 millimeters (16 inches) in outside diameter, with a wall thickness of 1.65 millimeters (0.065 inches) or more, regardless of surface finish (black, galvanized, or painted), or end-finish (plain end, beveled end, threaded, or threaded and coupled); and (2) circular welded non-alloy steel pipes and tubes, of circular cross-section less than 406.4 millimeters (16 inches), with a wall thickness of less than 1.65 millimeters (0.065 inches), regardless of surface finish (black, galvanized, or painted) or end-finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkling systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence-tubing and as structural pipe tubing used for framing and support members for construction, or load-bearing purposes in the construction, shipbuilding, trucking, farm-equipment, and related industries. Unfinished conduit pipe is also included in this order.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished

[10] *See Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products from Turkey,* 51 FR 17784 (May 15, 1986). Note that the HTSUS did not exist at the time the order went into effect, so the references to the HTSUS numbers did not appear in the scope contained in the order.

scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind or used for oil and gas pipelines is also not included in this investigation.

Imports of products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings, 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings, 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Taiwan—Certain Circular Welded Carbon Steel Pipes and Tubes (A–583–008)

The merchandise covered by this order is certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: Welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter, currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.[11]

[FR Doc. 2018–02316 Filed 2–6–18; 8:45 am]

BILLING CODE 3510–DS–P

[11] The original order predated the HTSUS, and was accompanied by the following TSUSA numbers: 610.3231, 610.3232, 610.3241, and 610.3244.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Nucor Corporation (Nucor), the Department of Commerce (Commerce) is initiating an anti-circumvention inquiry to determine whether certain imports of carbon and certain alloy steel wire rod from Mexico with actual diameters that are less than 4.75 millimeters (mm) produced and/or exported to the United States by Deacero S.A.P.I. de C.V. (Deacero) is circumventing the antidumping duty (AD) order on carbon and certain alloy steel wire rod from Mexico.

DATES: Applicable February 7, 2018.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska or Eric B. Greynolds, 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) 482–8362 and (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2017, Nucor, a domestic interested party, requested that Commerce initiate an anti-circumvention inquiry with regard to carbon and certain alloy steel wire rod from Mexico with actual diameters that are less than 4.75 mm (hereinafter referred to as narrow-gauge wire rod) that are produced and/or exported to the United States by Deacero.[1] Nucor alleges that such narrow-gauge wire rod constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the order on wire rod from Mexico pursuant to 781(c) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.225(i) and, thus, falls within the scope of the *Order.*[2] In its November 30, 2017, submission, Deacero opposed Nucor's request for an initiation of an anti-circumvention proceeding.[3] On December 6, 2017, Nucor submitted a surrebuttal to Deacero's Rebuttal Comments.[4] On December 13, 2017, Commerce determined that it required additional time beyond the regulatory 45-day time limit to initiate a circumvention inquiry and, therefore, Commerce extended the time-period for issuing the initiation decision until January 29, 2018.[5] On December 15, 2017, Commerce officials discussed via telephone Nucor's request that the Department initiate a minor alteration anti-circumvention inquiry on wire rod produced and/or exported by Deacero regardless of minimum diameter. During the conversation, counsel indicated that Nucor would consider supplementing its allegation with a discussion of how wire rod with diameters that are less than 4.4 mm constitute circumvention via minor alteration.[6] On January 23, 2018, Nucor submitted supplemental information regarding the Circumvention Allegation.[7] Also, on January 23, 2018, Commerce uniformly tolled all Enforcement and Compliance deadlines to account for the three-day closure of the Federal Government that occurred from January 20 through January 22, 2018.[8] As a result, the deadline for Commerce to determine whether to initiate on Nucor's circumvention allegation was extended to January 31, 2018. On January 30, 2018, Deacero objected to Nucor's request for Commerce to include wire rod produced and/or exported by Deacero with actual diameters less than 4.4 mm in the parameters of its circumvention inquiry and requested that Commerce exercise its discretion to extend the deadline to determine whether to initiate a circumvention inquiry to afford interested parties sufficient time to file comments regarding Nucor's allegations of circumvention.[9]

Scope of the Order

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high

[1] *See* Nucor's Letter, ''Carbon and Certain Alloy Steel Wire Rod from Mexico: Request for Circumvention Ruling,'' dated October 27, 2017 (Circumvention Allegation). The request was not filed in its entirety until after close of business on October 27, 2017. Thus, the date of acceptance of this request was October 30, 2017.

[2] *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002) (*Order*).

[3] *See* Deacero's Letter, ''Carbon and Certain Wire Rod from Mexico—Opposition to Circumvention Inquiry,'' dated November 30, 2017 (Deacero's Rebuttal Comments).

[4] *See* Nucor's Letter, ''Carbon and Certain Alloy Steel Wire Rod from Mexico: Response to Deacero's Opposition to Circumvention Inquiry,'' dated December 6, 2017 (Nucor's Surrebuttal Comments).

[5] *See* Memorandum to the File, ''Extension of Time to Determine Whether to Initiate,'' dated December 13, 2017.

[6] *See* Memorandum to the File, ''Telephone Discussion with Counsel to Nucor Corporation (Nucor),'' dated December 18, 2017.

[7] *See* Nucor's Letter, ''Carbon and Certain Alloy Steel Wire Rod from Mexico: Supplemental Information for Anti-Circumvention Ruling Request,'' dated January 23, 2018 (Supplemental Circumvention Allegation).

[8] *See* Memorandum to the File, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018.

[9] *See* Deacero's Letter, ''Carbon and Certain Wire Rod from Mexico—Request Regarding Nucor's Request for Anti-Circumvention Inquiry,'' dated January 30, 2018.

nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.,* products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products within the scope of this order are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Prior Anti-Circumvention Determination

On September 24, 2012, Commerce issued an affirmative final circumvention determination in which it determined that, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), wire rod with an actual diameter of 4.75 mm to 5.0 mm produced and/or exported by Deacero constituted a circumventing minor alteration of the *Order* and, as such, was covered by the scope of the *Order.*[10] Commerce's finding was subsequently affirmed by the Court of Appeals for the Federal Circuit.[11]

Initiation of Minor Alteration Anti-Circumvention Proceeding

Section 781(c) of the Act provides that Commerce may find circumvention of an AD order when products which are of the class or kind of merchandise subject to an AD order have been ''altered in form or appearance in minor respects * * * whether or not included in the same tariff classification.'' Section 781(c)(2) of the Act provides an exception that ''{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the AD order.''

While the statute is silent as to what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates that there are certain factors which should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon ''such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.''[12] Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), Commerce examines such factors as: (1) Overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.[13]

[10] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 77 FR 59892 (October 1, 2012) (*4.75 Wire Rod from Mexico*) and accompanying Issues and Decision Memorandum (IDM) at 18.

[11] *See Deacero S.A. de C.V.* v. *United States,* 817 F.3d 1332 (Fed. Cir. 2016) (*Deacero*).

[12] *See* S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987) (''In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article.'').

[13] *See, e.g., Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People's Republic of China,* 74 FR 33991, 33992 (July 14, 2009) (*CTL Plate from China Preliminary Scope Ruling*), unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 74 FR 40565 (August 12, 2009) (*CTL Plate from China Final Scope Ruling*); *see also 4.75 mm Wire Rod from Mexico* IDM at Comment 1; *see also Deacero,* 817 F.3d at 1337.

Analysis

After analyzing the information in the Circumvention Allegation and Supplemental Circumvention Allegation, we determine that Nucor has satisfied the criteria listed above to warrant an initiation of a formal anti-circumvention inquiry, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), to determine whether wire rod with actual diameters that are less than 4.75 mm produced and/or exported to the United States by Deacero constitutes merchandise altered in form or appearance in such minor respects that should be included within the scope of the *Order.* For a summary of the proprietary comments received from interested parties and further discussion of Commerce's basis for initiating this minor alteration inquiry, *see* the Initiation Decision Memorandum, dated concurrently with this notice and hereby adopted by this notice.[14] The Initiation Decision Memorandum is a business proprietary document, of which a public version is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. The signed Initiation Decision Memorandum and the electronic version of the Initiation Decision Memorandum are identical in content.

Merchandise Subject to the Anti-Circumvention Inquiry

This minor alternation anti-circumvention inquiry covers wire rod with actual diameters that are less than 4.75 mm produced and/or exported to the United States by Deacero.

Commerce will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties on the merchandise.

Following consultation with interested parties, Commerce will establish a schedule for questionnaires and comments on the issues related to the *Order.* In accordance with section 781(f) of the Act, Commerce intends to issue its final determinations within 300 days of the date of publication of this initiation.

This notice is published in accordance with sections 781(c) of the Act and 19 CFR 351.225(i).

Dated: January 31, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–02445 Filed 2–6–18; 8:45 am]

BILLING CODE 3510–DS–P

[14] *See* Memorandum, ''Initiation of Minor Alteration Circumvention Inquiry on Wire Rod With Actual Diameters That Are Less Than 4.75 Millimeters,'' dated concurrently with this notice (Initiation Decision Memorandum).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG005

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of telephonic meeting.

SUMMARY: The North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will meet in February, in Anchorage, AK.

DATES: The meeting will be held on Wednesday February 21, 2018, from 10 a.m. to 5 p.m. PST.

ADDRESSES: The meeting will be held telephonically. Telephone number is 1–800–920–7487, passcode is 7941749#.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Sarah Marrinan, Council staff; telephone: (907) 271–2809, or Lance Farr, Committee Chair; telephone: (206) 669–7163.

SUPPLEMENTARY INFORMATION:

Agenda

Wednesday February 21, 2018

The Committee will discuss harvest strategies for BSS of harvesting dark shell crab, cost recovery of the observer program and Tanner Crab harvest strategy. The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: February 1, 2018.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–02372 Filed 2–6–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG006

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Scallop Plan Team will meet on February 21, 2018, in Kodiak, AK.

DATES: The meeting will be held on Wednesday, February 21, 2018, from 9 a.m. to 5 p.m. Alaska Time.

ADDRESSES: The meeting will be held at the Alaska Department of Fish and Game Office, 351 Research Ct., Kodiak, AK 99615.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Jim Armstrong, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Wednesday, February 21, 2018

The Council's Scallop Plan Team will update the status of the Statewide Scallop Stocks and Stock Assessment and Fishery Evaluation (SAFE) report, including catch specification recommendations for the 2018 fishing year. Additionally, there will be discussion of a scallop age-structured model, scallop fishery economics and the federal license limitation program, the scallop assessment program, survey plans for 2018, potential State regulatory changes for the scallop fishery, and a review and update of scallop research priorities. The agenda is subject to change and will be posted at *http://www.npfmc.org/.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: February 1, 2018.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–02387 Filed 2–6–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Notice of Intent To Prepare an Environmental Impact Statement for F–35 Operational Beddown—Air National Guard

AGENCY: Department of Defense, Department of the Air Force, National Guard Bureau.

ACTION: Notice of intent.

SUMMARY: The Air Force is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement for the beddown of two F–35A Air National Guard squadrons at two of five alternative installations. The Environmental Impact Statement will assess the potential environmental consequences of each alternative in support of the operational beddown.

Each squadron would consist of 18 Primary Aircraft Authorized and 2 Backup Aircraft Inventory. The proposed basing alternatives include: Truax Field in Madison, Wisconsin, Gowen Field in Boise, Idaho, Jacksonville International Airport in Jacksonville, Florida, Selfridge Air National Guard Base in Harrison Township, Michigan, and Dannelly Field in Montgomery, Alabama.

DATES: The Air National Guard will hold scoping meetings from 5:00 p.m. to 8:00 p.m. in the following communities on the following dates in February and March, 2018:

1. Wednesday, February 21, L'Anse Creuse Public Schools Wheeler Community Center, 24076 Frederick V. Pankow Blvd., Clinton Township, Michigan.
2. Tuesday, February 27, Wyndham Garden Boise Airport Hotel Convention Center, 3300 S. Vista Ave., Boise, Idaho.
3. Thursday, March 1, Montgomery Regional Airport First Floor Rotunda and Conference Room, 4445 Selma Highway, Montgomery, Alabama.
4. Thursday, March 8, Crowne Plaza Madison Hotel, 4402 E Washington Ave., Madison, Wisconsin.
5. Tuesday, March 13, DoubleTree Hotel, Jacksonville Airport Aviation Ballroom, 2101 Dixie Clipper Dr., Jacksonville, Florida.

ADDRESSES: Scoping Comments may also be submitted to: Ms. Christel Johnson, National Guard Bureau, NGB/A4AM, Shepperd Hall, 3501 Fetchet Avenue, Joint Base Andrews, MD 20762–5157. You may also submit comments via the project website at *www.ANGF35EIS.com.*

SUPPLEMENTARY INFORMATION: The F–35A is being acquired in support of the Air National Guard mission. The F–35A would replace the legacy fighter aircraft at the selected installations (A–10, F–15, F–16). The project website provides more information on the Environmental Impact Analysis Process and can also be used to submit scoping comments. Though the Air National Guard will continue to accept comments until publication of the Draft Environmental Impact Statement, scoping comments should be submitted no later than April 6, 2018 to ensure the Air National Guard has sufficient time to consider comments submitted.

Scoping: The Air National Guard will hold scoping meetings to solicit comments and concerns about the proposal and to effectively define the full range of issues and concerns to be evaluated in the Environmental Impact Statement. Scoping meetings will be held in the local communities near the alternative installations. The scheduled dates, times, locations, and addresses for the meetings are concurrently being published in local media.

Henry Williams,

Acting Air Force Federal Register Officer.

[FR Doc. 2018–02468 Filed 2–6–18; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2018–0003; OMB Control Number 0704–0533]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DFARS Subpart 249, Termination of Contracts, and a Related Clause at DFARS 252.249–7002

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through July 31, 2018. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by April 9, 2018.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0533, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0533 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Instructions: Search for ''Docket Number: DARS–2018–0003.'' Select ''Comment Now'' and follow the instructions provided to submit a comment. All submissions received must include the agency name and docket number for this notice. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except

allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 571–372–6106.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 249, Termination of Contracts, and a Related Clause at DFARS 252.249–7002, Notification of Anticipated Contract termination or Reduction; OMB Control Number 0704–0533.

Needs and Uses: Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.249–7002, Notification of Anticipated Contract termination or Reduction, is used in all contracts under a major defense program. The purpose of this requirement is to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by contract termination or substantial reductions under major defense programs.

Type of Collection: Renewal of a currently approved collection.

Obligation to Respond: Required to obtain or retain benefits.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Number of Respondents: 42.

Responses per Respondent: 6.19, approximately.

Annual Responses: 260.

Average Burden per Response: .74 hours.

Annual Burden Hours: 193.

Frequency: On Occasion.

Summary of Information Collection

DFARS Clause 252.249–7002, Notification of Anticipated Contract termination or Reduction, is used in all contracts under a major defense program. This clause requires contractors, within 60 days after receipt of notice from the contracting officer of anticipated termination or substantial reduction, to provide notice of the anticipated termination or substantial reduction to first-tier subcontractors with a subcontract of $700,000 or more and requires flowdown to lower-tier subcontractors with a subcontract of $150,000 or more.

Jennifer L. Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2018–02449 Filed 2–6–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Publication of Housing Price Inflation Adjustment

AGENCY: Office of the Under Secretary (Personnel and Readiness), DoD.

ACTION: Notice of housing price inflation adjustment.

SUMMARY: The Department of Defense is announcing the 2018 rent threshold under the Servicemembers Civil Relief Act.

DATES: This notice is valid January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Reggie D. Yager, Office of the Under Secretary of Defense for Personnel and Readiness, (703) 571–9301.

SUPPLEMENTARY INFORMATION: The Servicemembers Civil Relief Act, as codified at 50 U.S.C. App. 3951, prohibits a landlord from evicting a Service member (or the Service member's family) from a residence during a period of military service except by court order. The law as originally passed by Congress applied to dwellings with monthly rents of $2,400 or less. The law requires the Department of Defense to adjust this amount annually to reflect inflation and to publish the new amount in the **Federal Register**. Applying the inflation adjustment for 2017, the maximum monthly rental amount for 50 U.S.C. App. 3951 (a)(1)(A)(ii) as of January 1, 2018, will be $3,716.73.

Dated: February 1, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–02390 Filed 2–6–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Termination of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

AGENCY: Department of Defense.

ACTION: Termination of Federal Advisory Committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is terminating the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel, effective January 26, 2018.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee is being terminated under the provisions of Section 576(c)(2)(C) of the National Defense Authorization Act for Fiscal Year 2013, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), 41 CFR 102–3.55, and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), effective January 26, 2018.

Dated: February 2, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–02447 Filed 2–6–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors National Defense University; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Chairman Joint Chiefs of Staff, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Visitors National Defense University will take place. This meeting will be open to the public.

DATES: Wednesday, February 21, 2018 from 12:00 p.m. to 5:00 p.m. and Thursday, February 22, 2018 from 8:30 a.m. to 12:00 p.m.

ADDRESSES: Marshall Hall, Building 62, Room 155B, the National Defense University, 300 5th Avenue SW, Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: Richard Cabrey, (202) 685–0821 (Voice), (202) 685–3920 (Facsimile), *richard.m.cabrey.civ@mail.mil; richard.cabrey@ndu.edu; joycelyn.a.stevens.civ@mail.mil; stevensj7@ndu.edu* (Email). Mailing address is National Defense University, Fort McNair Washington, DC 20319–5066. Website: *http://www.ndu.edu/About/Board-of-Visitors/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of

1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

Purpose of the Meeting: The purpose of the meeting will include discussion on accreditation compliance, organizational management, strategic planning, resource management, and other matters of interest to the National Defense University.

Agenda: Wednesday, February 21, 2018 from 12:00 p.m. to 5:00 p.m.: Welcome and Administrative Notes; State of the University Address; Middles States Commission on Higher Education Update; NDU Strategic Plan-Progress Update on the Current Plan (AY 2012–2013 to AY 2017–2018) and an Overview of the Planning Process for the New Plan (AY 2018–2019 to AY 2023–2024); New NDU Strategic Plan Line of Effort 1-Student Experience; New NDU Strategic Plan Line of Effort 2-Quality Workforce; New NDU Strategic Plan Line of Effort 3-Stable Foundation.

Thursday, February 22, 2018 from 8:30 a.m. to 12:00 p.m.: Information Technology Update; New Initiatives at the Eisenhower School; Board Member Feedback; Wrap-up and Closing Remarks.

Meeting Accessibility: Limited space made available for observers will be allocated on a first come, first served basis. Meeting location is handicap accessible.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, written statements to the committee may be submitted to the committee at any time or in response to a stated planned meeting agenda by FAX or email to Ms. Joycelyn Stevens at (202) 685–0079, Fax (202) 685–3920 or *StevensJ7@ndu.edu.*

Dated: February 2, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–02434 Filed 2–6–18; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting February 14 and March 14, 2018

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 14, 2018. A business meeting will be held the following month on Wednesday, March 14, 2018. The hearing and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania.

Public Hearing. The public hearing on February 14, 2018 will begin at 1:30 p.m. Hearing items subject to the Commission's review will include draft dockets for withdrawals, discharges, and other water-related projects, as well as resolutions: (a) To adopt the fiscal year 2018–2020 Water Resources Program; (b) to clarify and restate the Commission's policy for the replacement of water consumptively used by electric generating or cogenerating facilities during critical hydrologic conditions; and (c) to reauthorize the Regulated Flow Advisory Committee's (RFAC) Subcommittee on Ecological Flows (SEF).

The list of projects scheduled for hearing, including project descriptions, and the text of the proposed resolutions will be posted on the Commission's website, *www.drbc.net,* in a long form of this notice at least ten days before the hearing date.

Written comments on matters scheduled for hearing on February 14 will be accepted through 5:00 p.m. on February 20.

The public is advised to check the Commission's website periodically prior to the hearing date, as items scheduled for hearing may be postponed if additional time is deemed necessary to complete the Commission's review, and items may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is also asked to be aware that project details commonly change in the course of the Commission's review, which is ongoing.

Public Meeting. The public business meeting on March 14, 2018 will begin at 10:30 a.m. and will include: adoption of the Minutes of the Commission's December 13, 2017 Business Meeting, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, and consideration of any items for which a hearing has been completed or is not required. The latter are expected to include a resolution authorizing the Commission to procure janitorial services based on a competitive bidding process.

After all scheduled business has been completed and as time allows, the Business Meeting will be followed by up to one hour of Open Public Comment, an opportunity to address the Commission on any topic concerning management of the basin's water resources, outside the context of a duly noticed, on-the-record public hearing.

There will be no opportunity for additional public comment for the record at the March 14 Business Meeting on items for which a hearing was completed on February 14 or a previous date. Commission consideration on March 14 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Sign-Up for Oral Comment. Individuals who wish to comment on the record during the public hearing on February 14 or to address the Commissioners informally during the Open Public Comment portion of the meeting on March 14 as time allows, are asked to sign-up in advance through EventBrite, the online registration process recently introduced by the Commission. Links to EventBrite for the Public Hearing and the Business Meeting are available at drbc.net. For assistance, please contact Ms. Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.nj.gov.*

Addresses for Written Comment. Written comment on items scheduled for hearing may be made through SmartComment, the web-based comment system recently introduced by the Commission, a link to which is posted at drbc.net. Although use of SmartComment is strongly preferred, comments may also be delivered by hand at the public hearing; or by hand, U.S. Mail or private carrier to Commission Secretary, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628. For assistance, please contact Paula Schmitt at *paula.schmitt@drbc.nj.gov.*

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Additional Information, Contacts. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Carol Adamovic, 609–883–9500, ext. 249. For other questions concerning hearing items, please contact Judith Scharite, Project Review Section assistant at 609–883–9500, ext. 216.

Dated: January 30, 2018.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2018–02369 Filed 2–6–18; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2018–ICCD–0010]

Agency Information Collection Activities; Comment Request; Application for Flexibility for Equitable Per-Pupil Funding

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new information collection.

DATES: Approval by the OMB has been requested by 2/7/2018. A regular clearance process is also hereby being initiated. Interested persons are invited to submit comments on or before April 9, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0010. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 216–44, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jessica McKinney, 202–401–1960.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Flexibility for Equitable Per-pupil Funding.

OMB Control Number: 1810–NEW.

Type of Review: New collection (Request for a new OMB Control Number).

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 1,120.

Abstract: This is a request for emergency clearance to collect critical information for the Application for Flexibility for Equitable Per-pupil Funding, the instrument through which local educational agencies (LEAs) apply for flexibility to consolidate eligible Federal funds and State and local education funding based on weighted per-pupil allocations for low-income and otherwise disadvantaged students. This program allows LEAs to consolidate funds under the Elementary and Secondary Education of 1965 Federal education programs.

These Federal education programs were reauthorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). The ESSA added a new program to the ESEA, the Flexibility for Equitable Per-pupil Funding under section 1501. This discretionary flexibility allows the U.S. Department of Education (Department) to offer an LEA the opportunity to consolidate funds under the above-listed programs to support the LEA in creating a single school funding system based on weighted per-pupil allocations for low-income and otherwise disadvantaged students, with attendant flexibility in using those funds. For the initial three-year period, the Department may approve this flexibility for up to 50 LEAs.

Given the priority of an orderly transition, the earliest available time to award flexibility related to the use of federal funding was School Year 2018–2019, which mostly takes place during FY 2019. This aligns with States' transition to ''full'' compliance, as all provisions of the law will be effective by FY 2019, including those that were otherwise delayed under orderly transition authority. This timeframe also aligns with the implementation of the other pilot program provided in ESSA, the Innovative Assessment Demonstration Authority (IADA).

Although an approximate timeframe was established, by necessity, the planning for a new and potentially far-reaching program could not begin in earnest until new political leadership had been appointed. This planning began in mid-2017 following the appointment of Secretary DeVos and other political leadership.

The scope of work for the development of the application was significant. The program is entirely new and involves broad authority for the Secretary to waive provisions of the ESEA, although only after a successful applicant meets several dozen precise and technical requirements related to the allocation, use and reporting of funds. Given that the program is new and highly technical, affects the use of federal funds, waives other federal requirements, and involves a potential applicant pool of thousands of school districts, the development of an application required significant legal and policy analysis, which lasted several months.

Lastly, between enactment of ESSA and the present date, there were also several major anticipated and unanticipated events, including a change in Presidential and Secretarial administration, Congressional action that eliminated certain implementing regulations of the law, and significant

turnover in staff related to both the change in administration and natural attrition over a period of multiple years. These events impact the capacity, decision-making structure, and institutional knowledge of the Department, causing it to be less agile and to move at a slower velocity for some period. Fortunately in recent months that has changed. However, due to these events, including some that were unforeseen, as well as the other conditions described in the paragraphs above, the development of the application was affected.

The end result remains that a traditional paperwork clearance would have resulted in applicants being unable to use the awarded flexibility until the 2019–2020 school year, which would delay a program that Congress intended to equitably allocate resources to educationally disadvantaged students. Therefore, the Department is seeking emergency clearance.

Dated: February 2, 2018.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer (OCPO), Office of Management.

[FR Doc. 2018–02421 Filed 2–6–18; 8:45 am]

BILLING CODE 4000–01–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: ER10–2881–031; ER10–2882–033; ER10–2883–031; ER10–2884–031; ER10–2885–031; ER10–2641–030; ER10–2663–031; ER10–1874–005; EL18–21–000.

Applicants: Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Oleander Power Project, LP, Southern Company-Florida LLC, Mankato Energy Center, LLC.

Description: Sensitivity Analysis for Simultaneous Import Limit Study of Southern Company Services, Inc.

Filed Date: 1/16/18.

Accession Number: 20180116–5147.

Comments Due: 5 p.m. ET 2/6/18.

Docket Numbers: ER18–748–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Cost Recovery Filing on Behalf of American Electric Power Service Corp. to be effective 4/1/2018.

Filed Date: 1/30/18.

Accession Number: 20180130–5230.

Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: ER18–749–000.

Applicants: NSTAR Electric Company.

Description: Compliance filing: Succeeded Documents Refiled to be effective 3/31/2018.

Filed Date: 1/30/18.

Accession Number: 20180130–5286.

Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: ER18–750–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Tariff Revisions re: Transmission Service Planning Studies to be effective 4/1/2018.

Filed Date: 1/30/18.

Accession Number: 20180130–5296.

Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: ER18–751–000.

Applicants: Western Massachusetts Electric Company.

Description: Tariff Cancellation: Cancellation of WMECO Tariff Database to be effective 3/31/2018.

Filed Date: 1/30/18.

Accession Number: 20180130–5297.

Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: ER18–752–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: Amendments to SCPSA and CEPCI NITSA and Metering Agreements to be effective 1/1/2018.

Filed Date: 1/30/18.

Accession Number: 20180130–5304.

Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: ER18–753–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1148R23 American Electric Power NITSA NOA to be effective 1/1/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5044.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–754–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3391 Kansas City Board of Public Utilities PTP Agreement to be effective 1/1/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5046.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–755–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 4911; Queue No. AC2–071 to be effective 1/26/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5053.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–756–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 4913; Queue No. AC2–113 to be effective 1/26/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5061.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–757–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Close Gaming Issue Related to Regulation Deployment Adjustment to be effective 5/1/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5078.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–758–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 2975; Queue No. W1–082 to be effective 1/30/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5080.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–759–000.

Applicants: Imperial Valley Solar 1, LLC.

Description: § 205(d) Rate Filing: COC LGIA Co-Tenancy to be effective 2/1/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5124.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–760–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement No. 362, City of Williams NITS to be effective 1/1/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5127.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–761–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: 4th Quarter 2017 Revisions to OA, Sch. 12 and RAA, Sch. 17 Member Lists to be effective 12/31/2017.

Filed Date: 1/31/18.

Accession Number: 20180131–5132.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–762–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3396 Otter Tail Power Company NITSA and NOA to be effective 1/1/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5139.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–763–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3397 Otter Tail Power Company NITSA and NOA to be effective 1/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5171.
Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–764–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: O'Neal Solar LGIA Filing to be effective 1/17/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5188.
Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–765–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: § 205(d) Rate Filing: Filing of A&R Letter Agreement re O&M with Holland BPW to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5198.
Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–766–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Small Generator Interconnection Agreement No. 364 of Pacific Gas and Electric Company.
Filed Date: 1/31/18.
Accession Number: 20180131–5200.
Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–767–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: Feb 2018 Membership Filing to be effective 1/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5209.
Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–768–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Q4 2017 Quarterly Filing of City and County of San Francisco's WDT SA (SA 275) to be effective 12/31/2017.
Filed Date: 1/31/18.
Accession Number: 20180131–5229.
Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–769–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Charges in NITS for Deliveries of Federal Power-Southwestern in Pricing Zone 10 to be effective 4/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5246.
Comments Due: 5 p.m. ET 2/21/18.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES18–23–000.
Applicants: AEP Appalachian Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Southwestern Transmission Company, Inc., AEP West Virginia Transmission Company, Inc.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Appalachian Transmission Company, Inc., et al.
Filed Date: 1/30/18.
Accession Number: 20180130–5335.
Comments Due: 5 p.m. ET 2/20/18.

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: January 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–02383 Filed 2–6–18; 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: RP17–972–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Report Filing: Refund Report under Docket Nos. RP17–972 and RP17–302.
Filed Date: 1/31/18.
Accession Number: 20180131–5043.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–383–000.
Applicants: Nautilus Pipeline Company, L.L.C.
Description: Tariff Cancellation: Nautilus Cancellation of Sheet-Based Tariff to be effective 3/15/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5018.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–384–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Norwich to Direct Energy—795741 to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5020.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–385–000.
Applicants: KPC Pipeline, LLC.
Description: § 4(d) Rate Filing: Proposed Revision to Rate Schedule PAL to be effective 3/4/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5021.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–386–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—BP Energy k911483 to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5030.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–387–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Falcon Release to Twin Eagle to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5031.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–388–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: Compliance filing Penalty Refund Report on 1–31–18.
Filed Date: 1/31/18.
Accession Number: 20180131–5045.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–389–000.
Applicants: Sierrita Gas Pipeline LLC.
Description: Compliance filing Sierrita Cost and Revenue Study under Docket No. CP13–73–000.
Filed Date: 1/31/18.
Accession Number: 20180131–5052.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–390–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2018–01–31 BP(2),CP, Encana to be effective 2/1/2018.
Filed Date: 1/31/18.

Accession Number: 20180131–5079.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–391–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Plymouth Rock to Twin Eagle releases to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5081.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–392–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update Filing (TGS Feb 2018) to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5082.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–393–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Clean Up Tariff Sheet Effective Dates—2017 to be effective 11/1/2017.
Filed Date: 1/31/18.
Accession Number: 20180131–5108.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–394–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (RE Gas 35433,34955 to BP 36880,36881) to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5141.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–395–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Newfield 18 to Tenaska 1943) to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5144.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–396–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 013118 Negotiated Rates—ENI Trading & Shipping Inc. R–7825–03 to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5157.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–397–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta 8438 to various eff 2–1–2018) to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5160.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–398–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (PH 41455 to BP 48966) to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5165.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–399–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (PH 41455 to Sequent 48967) to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5167.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–400–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Negotiated Rate Agmts (Coastal Bend Interim Agmts) to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5168.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–401–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (PH 41455 to Texla 48954) to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5169.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–402–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—Neg Rate Agmt—Centerpoint Energy Entex SP45306 to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5202.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–403–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amended Negotiated Rate Agreement-La Frontera Holdings, LLC to be effective 2/1/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5204.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–404–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2018–01–31 Triad Hunter (2) to be effective 1/31/2018.
Filed Date: 1/31/18.
Accession Number: 20180131–5282.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP17–197–000.
Applicants: Dominion Cove Point LNG, LP.
Description: Report Filing: DECP—RP17–197 Refund Report.
Filed Date: 2/1/18.
Accession Number: 20180201–5021.
Comments Due: 5 p.m. ET 2/13/18.

Docket Numbers: RP18–405–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2018–1–31 EQT, Freepoint, JAron to be effective 2/1/2018.
Filed Date: 2/1/18.
Accession Number: 20180201–5000.
Comments Due: 5 p.m. ET 2/13/18.

Docket Numbers: RP18–406–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amended Negotiated Rate Agreement-Tenaska Marketing Ventures to be effective 2/1/2018.
Filed Date: 2/1/18.
Accession Number: 20180201–5001.
Comments Due: 5 p.m. ET 2/13/18.

Docket Numbers: RP18–407–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—2/1/2018 to be effective 2/1/2018.
Filed Date: 2/1/18.
Accession Number: 20180201–5002.
Comments Due: 5 p.m. ET 2/13/18.

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: February 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–02406 Filed 2–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11834–066]

Brookfield White Pine Hydro, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Amendment of Project License.

b. *Project No:* 11834–066.

c. *Date Filed:* September 18, 2017 and January 31, 2018.

d. *Applicant:* Brookfield White Pine Hydro, LLC (licensee).

e. *Name of Project:* Upper and Middle Dams Storage Hydroelectric Project.

f. *Location:* The project is located on the Rapid River in Oxford and Franklin counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kelly Maloney, License Compliance Manager, Brookfield White Pine Hydro, LLC, 150 Main Street Lewiston, ME 04240. *kelly.maloney@brookfieldrenewable.com.*

i. *FERC Contact:* Michael Calloway at 202–502–8041, or *michael.calloway@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–11834–066.

k. *Description of Request:* The licensee requests that the Commission amend the project license to change the Angler Use Survey schedule and include a new Water Quality Certificate issued by the State of Maine on the January 31, 2018. The Water Quality Certificate was amended to reflect the change in the Angler Use Survey schedule. Under the proposal, Lake Angler Surveys at Richardson and Mooselookmeguntic Lakes will be conducted in 2019, then next in 2024 and every five years thereafter. The River Surveys at Upper Dam Pool, Rapid River, and Magalloway River will be conducted in 2021, and again in 2026, and every five years thereafter.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS''; ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: February 1, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–02410 Filed 2–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–772–000]

New Mexico Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding New Mexico Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket

authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 21, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the 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.

Dated: February 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–02407 Filed 2–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC18–9–000]

Commission Information Collection Activities (Ferc–725x); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725X (Mandatory Reliability Standards: Voltage and Reactive (VAR) Standards).

DATES: Comments on the collection of information are due April 9, 2018.

ADDRESSES: You may submit comments (identified by Docket No. IC18–9–000) by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: *Title:* FERC–725X, Mandatory Reliability Standards: Voltage and Reactive (VAR) Standards.

OMB Control No.: 1902–0278.

Type of Request: Three-year extension of the FERC–725X information collection requirements with no changes to the current reporting requirements.

Abstract: Pursuant to Section 215 of the Federal Power Act (FPA), NERC established the Voltage and Reactive (''VAR'') group of Reliability Standards, which consists of two continent-wide Reliability Standards, VAR–001–4 and VAR–002–3. These two standards were designed to maintain voltage stability on the Bulk-Power System, protect transmission, generation, distribution, and customer equipment, and support the reliable operation of the Bulk-Power System. Voltage stability is the ability of a power system to maintain acceptable voltage levels throughout the system under normal operating conditions and following a disturbance. Failure to maintain acceptable voltage levels (*i.e.,* voltage levels become too high or too low) may cause violations of System Operating Limits (''SOLs'') and Interconnection Reliability Operating Limits (''IROLs''), result in damage to Bulk-Power System equipment, and thereby threaten the reliable operation of the Bulk-Power System.

Reliability Standard VAR–001–4 [1]

- Specify a system-wide voltage schedule (which is either a range or a target value with an associated tolerance band) as part of its plan to operate within SOLs and IROLs, and to provide the voltage schedule to its Reliability Coordinator and adjacent Transmission Operators upon request (Requirement R1);
- Schedule sufficient reactive resources to regulate voltage levels (Requirement R2);
- Operate or direct the operation of devices to regulate transmission voltage and reactive flows (Requirement R3);
- Develop a set of criteria to exempt generators from certain requirements under Reliability Standard VAR–002–3 related to voltage or Reactive Power schedules, automatic voltage regulations, and notification (Requirement R4);
- Specify a voltage or Reactive Power schedule (which is either a range or a target value with an associated tolerance band) for generators at either the high or low voltage side of the generator step-up transformer, provide the schedule to the associated Generator Operator, direct the Generator Operator to comply with that schedule in automatic voltage control mode, provide the Generator Operator the notification requirements for deviating from the schedule, and, if requested, provide the Generator Operator the criteria used to develop the schedule (Requirement R5); and
- Communicate step-up transformer tap changes, the time frame for completion, and the justification for these changes to Generator Owners (Requirement R6).

Reliability Standard VAR–002–3 [2]

- Operate each of its generators connected to the interconnected transmission system in automatic voltage control mode or in a different control mode as instructed by the Transmission Operator, unless the Generator Operator (1) is exempted pursuant to the criteria developed under VAR–001–4, Requirement R4, or (2) makes certain notifications to the Transmission Operator specifying the reasons it cannot so operate (Requirement R1);
- Maintain the Transmission Operator's generator voltage or Reactive Power schedule, unless the Generator Operator (1) is exempted pursuant to the criteria developed under VAR–001–4,

[1] Applies to transmission operators only.

[2] Applies to transmission operators only.

Requirement R4, or (2) complies with the notification requirements for deviations as established by the Transmission Owner pursuant to VAR–001–4, Requirement R5 (Requirement R2);

• Notify the Transmission Operator of a change in status of its voltage controlling device within 30 minutes, unless the status is restored within that time period (Requirement R3); and

• Notify the Transmission Operator of a change in reactive capability due to factors other than those described in VAR–002–3, Requirement R3 within 30 minutes unless the capability has been restored during that time period (Requirement R4).

• Provide information on its step-up transformers and auxiliary transformers within 30 days of a request from the Transmission Operator or Transmission Planner (Requirement R5); and

• Comply with the Transmission Operator's step-up transformer tap change directives unless compliance would violate safety, an equipment rating, or applicable laws, rules or regulations (Requirement R6).

Type of Respondents: Generator owners and transmission operators.

Estimate of Annual Burden [3]: The Commission estimates the annual public reporting burden for the information collection as:

FERC–725X, MANDATORY RELIABILITY STANDARDS: VOLTAGE AND REACTIVE (VAR) STANDARDS

	Number of respondents [4]	Annual number of responses per respondent	Total number of responses	Average burden and cost per response [5]	Total annual burden hours and total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
VAR–001–4 (Requirement R1)	181 (TOP)	1	181	160 hrs.; $10,899.20	28,960 hrs.; $1,972,755	$10,899.20
VAR–002–3 (Requirement R1)	944 (GOP)	1	944	80 hrs.; 5,449.60	75,520 hrs.; 5,144,422	5,449.60
VAR–002–3 (Requirement R2)	944 (GOP)	1	944	120 hrs.; 8,174.40	113,280 hrs.; 7,716,634	8,174.40
Total		1,932		217,760 hrs.; 14,833,811	.	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: February 1, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–02408 Filed 2–6–18; 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 Number: PR18–26–000.
Applicants: Southern California Gas Company.
Description: Tariff filing per 284.123(b),(e)+(g): OSHD Rate Revision Filing to be effective 1/1/2018.
Filed Date: 1/30/18.
Accession Number: 201801305012.
Comments Due: 5 p.m. ET 2/20/18.
284.123(g) Protests Due: 5 p.m. ET 4/2/18.

Docket Number: PR17–60–001.
Applicants: Atmos Pipeline-Texas.
Description: Tariff filing per 284.123(b),(e)/: Amendment to Non Statutory Filing Jan 2018.
Filed Date: 1/25/18.
Accession Number: 201801255005.
Comments/Protests Due: 5 p.m. ET 2/15/18.

Docket Number: PR17–60–002.
Applicants: Atmos Pipeline-Texas.
Description: Tariff filing per 284.123(b),(e)/: Amendment to Non Statutory Filing Jan 2018 to be effective 9/1/2017.
Filed Date: 1/25/18.
Accession Number: 201801255165.
Comments/Protests Due: 5 p.m. ET 2/15/18.

Docket Numbers: RP18–374–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Compliance filing Second Compliance Filing in Docket No. CP15–517–000 to be effective 2/1/2018.
Filed Date: 1/30/18.
Accession Number: 20180130–5009.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–375–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2018–01–30 Antero to be effective 2/1/2018.
Filed Date: 1/30/18.
Accession Number: 20180130–5155.
Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–376–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amended Negotiated Rate Agreement-

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[4] TOP = transmission operator; GOP = generator operators.

[5] The estimate for hourly cost is $68.12/hour. This figure is the average salary plus benefits for an electrical engineer (Occupation Code: 17–2071) from the Bureau of Labor Statistics at *https://www.bls.gov/oes/current/naics2_22.htm.*

DTE Energy Trading, Inc. to be effective 2/1/2018.

Filed Date: 1/30/18.

Accession Number: 20180130–5220.

Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–377–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Amended Negotiated Rate Agreement-Oklahoma Natural Gas Company to be effective 2/1/2018.

Filed Date: 1/30/18.

Accession Number: 20180130–5221.

Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–378–000.

Applicants: Dominion Energy Carolina Gas Transmission.

Description: § 4(d) Rate Filing: DECG—Transco to Charleston Project (CP16–98) Transport Service & Neg Rates to be effective 3/1/2018.

Filed Date: 1/30/18.

Accession Number: 20180130–5238.

Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–379–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Feb 2018 to be effective 2/1/2018.

Filed Date: 1/30/18.

Accession Number: 20180130–5274.

Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–380–000.

Applicants: Columbia Gulf Transmission, LLC.

Description: § 4(d) Rate Filing: CAP Neg Rate/NC Agmt Filing to be effective 3/1/2018.

Filed Date: 1/30/18.

Accession Number: 20180130–5282.

Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–381–000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: Negotiated Rate PAL Agreement—Twin Eagle Resource Management to be effective 1/31/2018.

Filed Date: 1/30/18.

Accession Number: 20180130–5295.

Comments Due: 5 p.m. ET 2/12/18.

Docket Numbers: RP18–382–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Removal of Negotiated Rate Agreements City of Salem, IL to be effective 3/1/2018.

Filed Date: 1/30/18.

Accession Number: 20180130–5298.

Comments Due: 5 p.m. ET 2/12/18.

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 date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 31, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–02384 Filed 2–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC18–8–000]

Commission Information Collection Activities (FERC–716); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, [FERC–716, Good Faith Requests for Transmission Service and Good Faith Responses by Transmitting Utilities Under Sections 211(a) and 213(a) of the Federal Power Act (FPA)].

DATES: Comments on the collection of information are due April 9, 2018.

ADDRESSES: You may submit comments (identified by Docket No. IC18–8–000) by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: *Title:* FERC–716, Good Faith Requests for Transmission Service and Good Faith Responses by Transmitting Utilities Under Sections 211(a) and 213(a) of the Federal Power Act (FPA).

OMB Control No.: 1902–0170.

Type of Request: Three-year extension of the FERC–716 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission uses the information collected under the requirements of FERC–716 to implement the statutory provisions of Sections 211 and Section 213 of the Federal Power Act as amended and added by the Energy Policy Act 1992. FERC–716 also includes the requirement to file a Section 211 request if the negotiations between the transmission requestor and the transmitting utility are unsuccessful. For the initial process, the information is not filed with the Commission. However, the request and response may be analyzed as a part of a Section 211 action. The Commission may order transmission services under the authority of FPA 211.

The Commission's regulations in the Code of Federal Regulations (CFR), 18 CFR 2.20, provide standards by which the Commission determines if and when a valid good faith request for transmission has been made under section 211 of the FPA. By developing the standards, the Commission sought to encourage an open exchange of data with a reasonable degree of specificity and completeness between the party requesting transmission services and the transmitting utility. As a result, 18 CFR 2.20 identifies 12 components of a good faith estimate and 5 components of a reply to a good faith request.

Type of Respondents: Transmission Requestors and Transmitting Utilities.

Estimate of Annual Burden [1]*:* The Commission estimates the annual public

[1] The Commission defines burden as the total time, effort, or financial resources expended by

reporting burden for the information collection as:

FERC–716 (GOOD FAITH REQUESTS FOR TRANSMISSION SERVICE AND GOOD FAITH RESPONSES BY TRANSMITTING UTILITIES UNDER SECTIONS 211(a) AND 213(a) OF THE FEDERAL POWER ACT (FPA))

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response [2] (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Information exchange between parties.	3	1	3	100 hrs.; $7650	300 hrs.; $22,950	7,650
Application submitted to FERC if parties' negotiations are unsuccessful.	3	1	3	2.5 hrs.; $191.25	7.5 hrs.; $573.75	191.25
Total			6		307.5 hrs.; $23,523.75	7,841.25

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: February 1, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–02409 Filed 2–6–18; 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: ER10–2432–014.

Applicants: Bayonne Plant Holding, L.L.C.

Description: Report Filing: TEM, et al. Refund Report (EL16–116) to be effective N/A.

Filed Date: 1/31/18.

Accession Number: 20180131–5258.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER10–2435–014.

Applicants: Camden Plant Holding, L.L.C.

Description: Report Filing: TEM, et al. Refund Report (EL16–116) to be effective N/A.

Filed Date: 1/31/18.

Accession Number: 20180131–5262.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER10–2442–012.

Applicants: Elmwood Park Power, LLC.

Description: Report Filing: TEM, et al. Refund Report (EL16–116) to be effective N/A.

Filed Date: 1/31/18.

Accession Number: 20180131–5266.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER10–2444–014.

Applicants: Newark Bay Cogeneration Partnership, L.P.

Description: Report Filing: TEM, et al. Refund Report (EL16–116) to be effective N/A.

Filed Date: 1/31/18.

Accession Number: 20180131–5267.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER10–2449–012.

Applicants: York Generation Company LLC.

Description: Report Filing: TEM, et al. Refund Report (EL16–116) to be effective N/A.

Filed Date: 1/31/18.

Accession Number: 20180131–5274.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER10–3272–004.

Applicants: Lower Mount Bethel Energy, LLC.

Description: Report Filing: TEM, et al. Refund Report (EL16–116) to be effective N/A.

Filed Date: 1/31/18.

Accession Number: 20180131–5268.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER15–506–002.

Applicants: DeSoto County Generating Company, LLC.

Description: Report Filing: Refund Report—Informational Filing to be effective N/A.

Filed Date: 1/31/18.

Accession Number: 20180131–5250.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER16–277–008.

Applicants: Talen Energy Marketing, LLC.

Description: Report Filing: TEM, et al. Refund Report (EL16–116) to be effective N/A.

Filed Date: 1/31/18.

Accession Number: 20180131–5249.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER16–1456–009.

Applicants: Talen Energy Marketing, LLC.

Description: Report Filing: TEM Refund Report (EL16–116) to be effective N/A.

Filed Date: 1/31/18.

Accession Number: 20180131–5256.

persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $76.50 per Hour = Average Cost per Response. The cost per hour figure is the FERC average salary plus benefits. Subject matter experts found that industry employment costs closely resemble FERC's regarding the FERC–716 information collection.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER16–2438–002.

Applicants: Pedricktown Cogeneration Company LP.

Description: Report Filing: TEM, et al. Refund Report (EL16–116) to be effective N/A.

Filed Date: 1/31/18.

Accession Number: 20180131–5280.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER16–2439–002.

Applicants: H.A. Wagner LLC.

Description: Report Filing: TEM, et al. Refund Report (EL16–116) to be effective N/A.

Filed Date: 1/31/18.

Accession Number: 20180131–5277.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER16–2440–002.

Applicants: Brandon Shores LLC.

Description: Report Filing: TEM, et al. Refund Report (EL16–116) to be effective N/A.

Filed Date: 1/31/18.

Accession Number: 20180131–5281.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–754–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3391 Municipal Energy Agency of Nebraska PTP Agreement to be effective 1/1/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5241.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–770–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3334R1 Associated Electric Cooperative NITSA and NOA to be effective 1/1/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5265.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–771–000.

Applicants: DeSoto County Generating Company, LLC.

Description: Tariff Cancellation: Notice of Termination for Rate Schedule FERC No. 1 to be effective 2/1/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5278.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–772–000.

Applicants: New Mexico Wind, LLC.

Description: Baseline eTariff Filing: New Mexico Wind, LLC Application for Market-Based Rates to be effective 3/15/2018.

Filed Date: 1/31/18.

Accession Number: 20180131–5279.

Comments Due: 5 p.m. ET 2/21/18.

Docket Numbers: ER18–773–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2018–02–01_SA 3028 Ameren IL-Prairie Power Project#10 Velma to be effective 1/23/2018.

Filed Date: 2/1/18.

Accession Number: 20180201–5033.

Comments Due: 5 p.m. ET 2/22/18.

Docket Numbers: ER18–774–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2018–02–01_SA 3028 Ameren IL-Prairie Power Project#11 Woodland to be effective 1/23/2018.

Filed Date: 2/1/18.

Accession Number: 20180201–5038.

Comments Due: 5 p.m. ET 2/22/18.

Docket Numbers: ER18–775–000.

Applicants: All American Power and Gas, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 2/2/2018.

Filed Date: 2/1/18.

Accession Number: 20180201–5072.

Comments Due: 5 p.m. ET 2/22/18.

Docket Numbers: ER18–776–000.

Applicants: United Energy Trading, LLC.

Description: Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff to be effective 2/2/2018.

Filed Date: 2/1/18.

Accession Number: 20180201–5073.

Comments Due: 5 p.m. ET 2/22/18.

Docket Numbers: ER18–777–000.

Applicants: Iridium Energy, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 2/2/2018.

Filed Date: 2/1/18.

Accession Number: 20180201–5075.

Comments Due: 5 p.m. ET 2/22/18.

Docket Numbers: ER18–778–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 810—Agreement with Powder River Energy Corporation to be effective 2/2/2018.

Filed Date: 2/1/18.

Accession Number: 20180201–5087.

Comments Due: 5 p.m. ET 2/22/18.

Docket Numbers: ER18–779–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: 2018–02–01 MKPC Fac Const Agrmt-Lake Park SS–0.0.0 to be effective 2/2/2018.

Filed Date: 2/1/18.

Accession Number: 20180201–5100.

Comments Due: 5 p.m. ET 2/22/18.

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: February 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–02405 Filed 2–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD17–8–000]

Commission Information Collection Activities (FERC–725HH); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC–725HH (RF Reliability Standards) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (82 FR 53489, 11/16/2017) requesting public comments. The Commission received no comments on the FERC–725HH information collection and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by March 9, 2018.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0256, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.*

Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–0710.

A copy of the comments should also be sent to the Commission, in Docket No. RD17–8–000, by either of the following methods:

• *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*

• *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725HH, RF Reliability Standards.

OMB Control No.: 1902–0256.

Type of Request: Three-year approval of the FERC–725HH information collection requirements, as modified by Docket No. RD17–8–000.

Abstract: The information collected by the FERC–725HH is required to implement the statutory provisions of section 215 of the Federal Power Act (FPA) (16 U.S.C. 824o). Section 215 of the FPA buttresses the Commission's efforts to strengthen the reliability of the interstate grid through the grant of new authority by providing for a system of mandatory Reliability Standards developed by the Electric Reliability Organization (ERO). In July 2006, the Commission certified the North American Electric Reliability Corporation (NERC) as the ERO.[1] Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are proposed to the ERO by a Regional Entity.[2] A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO.[3] On March 17, 2011, the Commission approved a regional Reliability Standard submitted by the ERO that was developed by the ReliabilityFirst Corporation (RF).[4]

RF promotes bulk electric system reliability in the Eastern Interconnection. RF is the Regional Entity responsible for compliance monitoring and enforcement in the RF region. In addition, RF provides an environment for the development of Reliability Standards and the coordination of the operating and planning activities of its members as set forth in the RF bylaws.

There is one regional Reliability Standard in the RF region. The regional Reliability Standard requires planning coordinators within the RF geographical footprint to analyze, assess and document resource adequacy for load in the RF footprint annually, to utilize a ''one day in ten years'' loss of load criterion, and to document and post load and resource capability in each area or transmission-constrained sub-area identified.

• BAL–502–RFC–02 (Planning Resource Adequacy Analysis, Assessment and Documentation)[5] establishes common criteria, based on ''one day in ten year'' loss of load expectation principles, for the analysis, assessment, and documentation of resource adequacy for load in the RF region.

The Commission's request to OMB reflects the following:

• Implementing the regional Reliability Standard BAL–502–RF–03 and the retirement of regional Reliability Standard BAL–502–RFC–02[6] which is discussed below.

On September 7, 2017, NERC and RF filed a joint petition in Docket No. RD17–8–000[7] requesting Commission approval of: (a) Regional Reliability Standard BAL–502–RF–03 (Planning Resource Adequacy Analysis, Assessment and Documentation), and (b) the retirement of regional Reliability Standard BAL–502–RFC–02.[6] The petition states: ''Proposed regional Reliability Standard BAL–502–RF–03 establishes common criteria, based on ''one day in ten year'' loss of Load expectation principles, for the analysis, assessment, and documentation of Resource Adequacy for Load in the ReliabilityFirst region.'' NERC's and RF's joint filing was noticed on September 8, 2017, with interventions, comments and protests due on or before October 10, 2017. In this document, we provide estimates of the burden and cost related to those revisions to FERC–725HH.

Type of Respondents: Planning coordinators.

Estimate of Annual Burden:[8] Details follow on the changes related to Docket No. RD17–8–000.

Estimate of Changes to Burden Due to Docket No. RD17–8: The joint petition requested Commission approval of regional Reliability Standard BAL–502–RF–03 and retirement of regional Reliability Standard BAL–502–RFC–02. The estimated effects on burden and cost[9] are as follows:

[1] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (DC Cir. 2009).

[2] 16 U.S.C. 824o(e)(4).

[3] 16 U.S.C. 824o(a)(7) and (e)(4).

[4] *Planning Resource Adequacy Assessment Reliability Standard,* Order No. 747, 134 FERC ¶ 61,212 (2011).

[5] BAL–50–RFC–02 is included in the OMB-approved inventory for FERC–725H.

[6] Burden associated with BAL–502–RF–02 Reliability Standard was once contained in FERC–725H information collection (OMB Control No. 1902–0256). FERC–725H was discontinued on 3/6/2014. However, the requirements of BAL–502–RF–02 were still imposed on NERC entities. Those requirements are now being retired with no removal of burden (any associated burden was removed concurrent with the discontinuance).

[7] The joint petition and exhibits are posted in the Commission's eLibrary system in Docket No. RD17–8–000.

[8] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[9] For BAL–502–RF–03, the hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics for three positions involved in the reporting and recordkeeping requirements. These figures include salary (*http://bls.gov/oes/current/naics2_22.htm*) and benefits (*http://www.bls.gov/news.release/ecec.nr0.htm*) and are:

• Manager (Occupation Code 11–0000): $81.52/hour

• Engineer (Occupation Code 17–2071): $68.12/hour

• File Clerk (Occupation Code 43–4071): $32.74/hour

The hourly cost for the reporting requirements ($60.79) is an average of the cost of a manager, an engineer, and a file clerk.

FERC–725HH, RF RELIABILITY STANDARDS, CHANGES IN DOCKET NO. RD17–8–000

Entity	Number of respondents [10]	Annual number of responses per respondent	Annual number of responses	Average burden hrs. & cost per response ($)	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
Proposed Regional Reliability Standard BAL–502–RF–03						
Planning Coordinators	2	1	2	16 hrs.; $973	32 hrs.; $1,945	$973

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: February 1, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–02411 Filed 2–6–18; 8:45 am]

BILLING CODE 6717–01–P

[10] The number of respondents is derived from the NERC Compliance Registry as of October 2, 2017 for the burden associated with the proposed regional Reliability Standard BAL–502–RF–03.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9974–04–OAR]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2016 is available for public review. EPA requests recommendations for improving the overall quality of the inventory report to be finalized in April 2018, as well as subsequent inventory reports.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments by March 9, 2018. However, comments received after that date will still be welcomed and considered for the next edition of this report.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2017–0729, to the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. Do not submit electronically any information you consider to be Confidential Business Information (CBI). Comments can also be submitted in hardcopy to GHG Inventory at: Environmental Protection Agency, Climate Change Division (6207A), 1200 Pennsylvania Ave. NW, Washington, DC 20460, Fax: (202) 343–2338. You are welcome and encouraged to send an email with your comments to *GHGInventory@epa.gov.* EPA may publish any comment received to its public docket, submitted in hardcopy or sent via email. For additional submission methods, the full EPA public comment policy, information about CBI, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ms. Mausami Desai, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Climate Change Division, (202) 343–9381, *GHGInventory@epa.gov.*

SUPPLEMENTARY INFORMATION: Annual U.S. emissions for the period of time from 1990 through 2016 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), sulfur hexafluoride (SF_6), and nitrogen trifluoride (NF_3) emissions. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC), and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines.

The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2016 is the latest in a series of annual, policy-neutral U.S. submissions to the Secretariat of the UNFCCC. EPA requests recommendations for improving the overall quality of the inventory report to be finalized in April 2018, as well as subsequent inventory reports.

The draft report is available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks.*

Sarah Dunham,

Director, Office of Atmospheric Programs.

[FR Doc. 2018–02546 Filed 2–6–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0120, 3060–0716, 3060–0754 and 3060–1053]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected;

ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before March 9, 2018.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the Title as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of Commission ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the Commission's submission to OMB will be displayed.

OMB Control Number: 3060–0120.

Type of Review: Extension of a currently approved collection.

Title: Broadcast EEO Program Model Report, FCC Form 396–A.

Form Number: FCC Form 396–A.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 5,000 respondents; 5,000 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Total Annual Burden: 5,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The Broadcast Equal Employment Opportunity (EEO) Model Program Report, FCC Form 396–A, is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction permit or license and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station.

OMB Control Number: 3060–0716.

Title: Sections 73.88, 73.318 and 73.685, Blanketing Interference.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents and Responses: 21,000 respondents; 21,000 responses.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: Third party disclosure requirement.

Total Annual Burden: 41,000 hours.

Total Annual Cost: None.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The information collection requirements approved under this collection are contained under the following rule sections:

47 CFR 73.88 states that the licensee of each broadcast station is required to satisfy all reasonable complaints of blanketing interference within the 1V/m contour.

47 CFR 73.318(b) states that after January 1, 1985, permittees or licensees who either (1) commence program tests, (2) replace the antennas, or (3) request facilities modifications and are issued a new construction permit must satisfy all complaints of blanketing interference which are received by the station during a one year period.

47 CFR 73.318(c) states that a permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1985, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year.

Under 47 CFR 73.88, and 73.685(d), the license is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a license is only required to provide technical assistance to determine the cause of interference.

OMB Control Number: 3060–0754.

Title: Form Number: FCC Form 2100, Schedule H.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents and Responses: 2,176 respondents; 8,704 responses.

Estimated Time per Response: 12 hours.

Frequency of Response: Recordkeeping requirement; Quarterly reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 104,448 hours.

Total Annual Cost: $5,222,400.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Commercial full-power and Class A television broadcast stations are required to file FCC Form 2100, Schedule H (Formerly FCC Form 398) (Children's Television Programming Report) each calendar quarter. FCC Form 2100, Schedule H is a standardized form that:

(a) Provides a consistent format for reporting the children's educational television programming aired by licensees to meet their obligation under the Children's Television Act of 1990 (CTA), and

(b) facilitates efforts by the public and the FCC to monitor compliance with the CTA. Commercial full-power and Class A television stations are required to complete FCC Form 2100, Schedule H each calendar quarter and file the form

with the Commission. The Commission places the form in the station's online public inspection file maintained on the Commission's database (*www.fcc.gov*). Stations use FCC Form 2100, Schedule H to report, among other things, the core children's educational and informational programs the station aired the previous calendar quarter and the core programs they plan to air in the upcoming calendar quarter. FCC Form 2100, Schedule H also includes a ''Preemption Report'' that must be completed for each core program that was preempted during the quarter. This ''Preemption Report'' requests information on the date of each preemption, the reason for the preemption and, if the program was rescheduled, the date and time the program was re-aired.

OMB Control Number: 3060–1053.

Title: Captioned Telephone Declaratory Ruling; Two-Line Captioned Telephone Order; IP CTS Declaratory Ruling; and IP CTS Reform Order, CG Docket Nos. 13–24 and 03–123.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 60,010 respondents; 180,012 responses.

Estimated Time per Response: 0.25 hours (15 minutes) to 8 hours.

Frequency of Response: Annual, every five years, monthly, and ongoing reporting requirements; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found at Sec. 225 [*47 U.S.C. 225*] Telecommunications Services for Hearing-Impaired Individuals; The Americans with Disabilities Act of 1990, (ADA), *Public Law 101–336, 104 Stat. 327,* 366–69, was enacted on July 26, 1990.

Total Annual Burden: 105,088 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information by the FCC from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On August 1, 2003, the Commission released Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, Declaratory Ruling, 68 FR 55898, September 28, 2003, clarifying that one-line captioned telephone voice carry over (VCO) service is a type of telecommunications relay service (TRS) and that eligible providers of such services are eligible to recover their costs from the Interstate TRS Fund (Fund) in accordance with section 225 of the Communications Act.

On July 19, 2005, the Commission released Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67 and CG Docket No. 03–123, Order, 70 FR 54294, September 14, 2005, clarifying that two-line captioned telephone VCO service, like one-line captioned telephone VCO service, is a type of TRS eligible for compensation from the Fund.

On January 11, 2007, the Commission released Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, Declaratory Ruling, 72 FR 6960, February 14, 2007, granting a request for clarification that internet Protocol (IP) captioned telephone relay service (IP CTS) is a type of TRS eligible for compensation from the Fund.

On August 26, 2013, the Commission issued Misuse of internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 13–24 and 03–123, Report and Order, 78 FR 53684, August 30, 2013, to regulate practices relating to the marketing of IP CTS, impose certain requirements for the provision of this service, and mandate registration and certification of IP CTS users. This notice and request for comments pertains to the extension of the currently approved information collection requirements for one-line and two-line captioned telephone service (CTS) and internet Protocol captioned telephone service (IP CTS) rules and update the estimates of existing burdens that were included in the January 2015 Paperwork Reduction Act (PRA) submission to the Office of Management and Budget (OMB).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–02470 Filed 2–6–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 11–43; DA 18–42]

Video Description: Preliminary Nonbroadcast Network Rankings

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: FCC announces the top national nonbroadcast network rankings from the 2016–2017 ratings year, and gives networks the opportunity to seek exemption from the July 1, 2018 update to the Commission's video description requirements.

DATES: Published January 12, 2018. Exemption requests are due March 9, 2018.

ADDRESSES: Filings should be submitted electronically in MB Docket No. 11–43 by accessing the Commission's Electronic Comment Filing System (ECFS) at *https://www.fcc.gov/ecfs/.* Filers should follow the instructions provided on the website for submitting filings. The full text of this public notice is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. To request these documents in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: For further information, contact Lyle Elder (202–418–2120; *Lyle.Elder@fcc.gov*).

SUPPLEMENTARY INFORMATION: Video description makes video programming accessible to individuals who are blind or visually impaired through ''[t]he insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.'' As of July 1, 2018, the Commission's video description rules will require multichannel video programming distributor (''MVPD'') systems that serve 50,000 or more subscribers to provide 87.5 hours of video description per

calendar quarter on channels carrying each of the top five national nonbroadcast networks. The rule requires that 50 hours per calendar quarter be provided in prime-time or during children's programming, while the additional 37.5 hours may be provided at any time between 6 a.m. and 11:59 p.m. local time. The top five national nonbroadcast networks are defined by an average of the national audience share during prime time of nonbroadcast networks that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under the video description rules. The nonbroadcast networks currently subject to the video description requirements are USA, TNT, TBS, History, and the Disney Channel.

In accordance with the Commission's rules, the list of top five nonbroadcast networks will update at three year intervals to account for changes in ratings, and the second triennial update will occur on July 1, 2018, based on the 2016 to 2017 ratings year. According to data provided by the Nielsen Company, the top ten nonbroadcast networks for the 2016 to 2017 ratings year are: Fox News, ESPN, USA, MSNBC, HGTV, TBS, Discovery, History, Hallmark, and TNT.

If a program network believes it should be excluded from the list of top five networks covered by the video description requirements because it does not air at least 50 hours of prime time programming that is not live or near-live or is otherwise exempt, it must seek an exemption no later than 30 days after publication of this Public Notice in the **Federal Register**. The Media Bureau will promptly evaluate requests for exemption and will provide notice of any resulting revisions to the list.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2018–02471 Filed 2–6–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 27, 2018.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Julie Watkins Pourciau and Wayne Michael Pourciau both of New Iberia, Louisiana;* to retain voting shares of Community First Bancshares, Inc., and thereby retain shares of Community First Bank, both of New Iberia, Louisiana.

Board of Governors of the Federal Reserve System, February 2, 2018.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–02454 Filed 2–6–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 2018.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Allegiant United Holdings, LLC, and Nano Financial Holdings, Inc. both of Irvine, California;* to become bank holding companies by acquiring 100 percent of the voting shares of Commerce Bank of Temecula Valley, Murrieta, California.

Board of Governors of the Federal Reserve System, February 2, 2018.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018–02455 Filed 2–6–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10417]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 9, 2018.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10417 Medicare Fee-for-Service Early Review of Medical Records

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicare Fee-for-Service Early Review of Medical Records; *Use:* The Medical Review program is designed to prevent improper payments in the Medicare FFS program. Whenever possible, MACs are encouraged to automate this process; however it may require the evaluation of medical records and related documents to determine whether Medicare claims were billed in compliance with coverage, coding, payment, and billing policies.

The information required under this collection is requested by Medicare contractors to determine proper payment, or if there is a suspicion of fraud. Medicare contractors request the information from providers/suppliers submitting claims for payment when data analysis indicates aberrant billing patterns or other information which may present a vulnerability to the Medicare program. Extensive instructions to CMS contractors on medical review processes and procedures are contained in CMS' Program Integrity Manual, 100–08 which can be found at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/internet-Only-Manuals-IOMs-Items/CMS019033.html. Form Number:* CMS–10417 (OMB control number: 0938–0969); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits; Not-for-profit institutions; *Number of Respondents:* 2,410,278; *Total Annual Responses:* 2,410,278; *Total Annual Hours:* 1,197,189. (For policy questions regarding this collection contact Daniel Schwartz at 410–786–4197.)

Dated: February 2, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–02466 Filed 2–6–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10421]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by March 9, 2018.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Fee-for-Service Recovery Audit Prepayment Review Demonstration and Prior Authorization Demonstration; *Use:* The Office of Management and Budget approved the collections required for two demonstrations of prepayment review and prior authorization. The first demonstration allows Medicare Recovery Auditors to review claims on a pre-payment basis in certain States. The second demonstration established a prior authorization program for Power Mobility Device claims in certain States. The first demonstration has ended, so we are only extending the collection of information for the second demonstration, prior authorization of power mobility devices.

For the Prior Authorization of Power Mobility Devices (PMDs) Demonstration, we are piloting prior authorization for PMDs. Prior authorization will allow the applicable documentation that supports a claim to be submitted before the item is delivered. For prior authorization, relevant documentation for review is submitted before the item is delivered or the service is rendered. CMS will conduct this demonstration in California, Florida, Illinois, Michigan, New York, North Carolina, Texas, Pennsylvania, Ohio, Louisiana, Missouri, Maryland, New Jersey, Indiana, Kentucky, Georgia, Tennessee, Washington, and Arizona based on beneficiary address as reported to the Social Security Administration and recorded in the Common Working File (CWF). For the demonstration, a prior authorization request can be completed by the (ordering) physician or treating practitioner and submitted to the appropriate Durable Medical Equipment Medicare Administrative Contractor (DME MAC) for an initial decision. The supplier may also submit the request on behalf of the physician or treating practitioner. The physician, treating practitioner or supplier who submits the request on behalf of the physician or treating practitioner, is referred to as the ''submitter.'' Under this demonstration, the submitter will submit to the DME MAC a request for prior authorization and all relevant documentation to support Medicare coverage of the PMD item. *Form Number:* CMS–10421 (OMB control number: 0938–1169); *Frequency:* Occasionally; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 50,500; *Total Annual Responses:* 50,500; *Total Annual Hours:* 25,125. (For policy questions regarding this collection contact Daniel Schwartz at 410–786–4197.)

Dated: February 2, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–02467 Filed 2–6–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10453 and CMS–1856]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 9, 2018.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement

and associated materials (see **ADDRESSES**).

CMS–10453 The Medicare Advantage and Prescription Drug Program: Part C Explanation of Benefits and Supporting Regulations

CMS–1856 Request for Certification in the Medicare/Medicaid Program for Providers of Outpatient Physical Therapy and/or Speech-Language Pathology

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* The Medicare Advantage and Prescription Drug Program: Part C Explanation of Benefits and Supporting Regulations; *Use:* The Medicare Advantage disclosure requirements in 42 CFR 422.111(b) sets out the authority for CMS to require that Medicare Advantage Organizations (MAOs) furnish a written explanation of benefits (EOB) directly to enrollees, in a manner specified by CMS and in a form easily understandable to enrollees, when benefits are provided under part 422. In § 422.216(d)(1), all Medicare Advantage plan types that offer an M+C fee-for-service plan must provide to plan enrollees, for each claim filed by the enrollee or the provider that furnished the service, an appropriate explanation of benefits. The explanation must include a clear statement of the enrollee's liability for deductibles, coinsurance, copayment, and balance billing. Plans must disclose the information specified in § 422.111(b), as specified in § 422.111(a)(3), at the time of enrollment and at least annually thereafter, 15 days before the annual coordinated election period. *Form Number:* CMS–10453 (OMB control number: 0938–1228); *Frequency:* On occasion; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 468; *Number of Responses:* 5,616; *Total Annual Hours:* 74,880. (For policy questions regarding this collection contact Natalie Albright at 410–786–1671.)

2. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Request for Certification in the Medicare/Medicaid Program for Providers of Outpatient Physical Therapy and/or Speech-Language Pathology; *Use:* The form is used as an application to be completed by providers of outpatient physical therapy and/or speech-language pathology services requesting participation in the Medicare and Medicaid programs. This form initiates the process for obtaining a decision as to whether the conditions of participation are met as a provider of outpatient physical therapy, speech-language pathology services, or both. It is used by the State agencies to enter new providers into the Automated Survey Process Environment (ASPEN). *Form Number:* CMS–1856 (OMB control number: 0938–0065); *Frequency:* Annually, occasionally; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 350; *Total Annual Response*s: 350; *Total Annual Hours:* 88. (For policy questions regarding this collection contact Peter Ajuonuma at 410–786–3580.)

Dated: February 2, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–02433 Filed 2–6–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0575]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Expedited Programs for Serious Conditions—Drugs and Biologics

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 9, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0389. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: ''Expedited Programs for Serious Conditions—Drugs and Biologics''

OMB Control Numbers 0910–0389 and 0910–0765—Revision

This information collection supports the previous captioned Agency guidance. The guidance provides a single resource for information on FDA's policies and procedures related to the following expedited programs for serious conditions: (1) Fast track designation, (2) breakthrough therapy designation, (3) accelerated approval, and (4) priority review designation. The guidance describes threshold criteria generally applicable to expedited programs, including what is meant by serious condition, unmet medical need, and available therapy. The guidance addresses the applicability of expedited programs to rare diseases, clarification on available therapy, and additional detail on possible flexibility in manufacturing and product quality. The guidance also clarifies the qualifying criteria for breakthrough therapy designation and provides examples of surrogate endpoints and intermediate clinical endpoints used to support accelerated approval.

In the **Federal Register** of November 8, 2017 (82 FR 51846), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. No comments were received. We therefore estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance for industry: Expedited programs for serious conditions—Drugs and biologics	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Priority review designation request (0765)	48	1.7	82	30	2,400
Breakthrough therapy designation request (0765)	87	1.29	113	70	7,910
Fast track designation request (0389)	140	1.33	187	60	11,220
Fast track premeeting packages (0389)	107	1.23	132	100	13,200
Total					34,730

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The information collection elements regarding priority review designation and breakthrough therapy designation requests are reflected in rows 1 and 2 of table 1 and are currently approved under OMB control number 0910–0765. Meanwhile, fast track designation requests and premeeting packages are currently approved under OMB Control No. 0910–0389. We are therefore revising OMB control number 0910–0389 to include all four collection elements. Information collection burden for accelerated approval requests is currently approved under OMB control numbers 0910–0001 (drugs) and 0910–0338 (biologics). The estimates provided are based on our experience with the respective collection elements over the past 3 years.

A sponsor or applicant who seeks fast track designation is required to submit a request to the Agency showing that the drug product: (1) Is intended for a serious or life-threatening condition, and (2) has the potential to address an unmet medical need. The Agency expects that most information to support a designation request will have been gathered under existing requirements for preparing an investigational new drug (IND), new drug application (NDA), or biologics license application (BLA). If such information has already been submitted to the Agency, the information may be summarized in the fast track designation request. A designation request should include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the Agency makes a fast track designation, a sponsor or applicant may submit a premeeting package that may include additional information supporting a request to participate in certain fast track programs. The premeeting package serves as background information for the meeting and should support the intended objectives of the meeting. As with the request for fast track designation, the Agency expects that most sponsors or applicants will have gathered such information to meet existing requirements for preparing an IND, NDA, or BLA. These may include descriptions of clinical safety and efficacy trials not conducted under an IND (*e.g.,* foreign studies) and information to support a request for accelerated approval. If such information has already been submitted to FDA, the information may be summarized in the premeeting package.

The Agency estimates the total annual number of respondents submitting requests for fast track designation is approximately 140, and the number of requests received is approximately 187 annually. FDA estimates that the number of hours needed to prepare a request for fast track designation is approximately 60 hours per request (row 3 in table 1).

Of the requests for fast track designation made per year, the Agency granted approximately 132 requests from 107 respondents, and for each of these granted requests, a premeeting package was submitted to the Agency. FDA estimates that the preparation hours are approximately 100 hours per premeeting package (row 4 in table 1). The total burden hours for fast track designation and fast track meetings has increased due to increased requests; however, the hours per request have remained the same.

Dated: February 1, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02415 Filed 2–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–1240]

Determination of Regulatory Review Period for Purposes of Patent Extension; SEDASYS SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined the regulatory review period for SEDASYS SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 9, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 6, 2018. See ''Petitions'' in the

SUPPLEMENTARY INFORMATION section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 9, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 9, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–E–1240 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; SEDASYS SYSTEM.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device SEDASYS SYSTEM. SEDASYS SYSTEM is indicated for intravenous administration of 1 percent propofol injectable emulsion for the initiation and maintenance of minimal to moderate sedation, as defined by the American Society of Anesthesiologists (ASA) Continuum of Depth of Sedation in ASA physical status I and II patients. Subsequent to this approval, the USPTO received a patent term restoration application for SEDASYS SYSTEM (U.S. Patent No. 6,807,965) from Scott Laboratories, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 3, 2015, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of SEDASYS SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for SEDASYS SYSTEM is 2,816 days. Of this time, 950 days occurred during the testing phase of the regulatory review period, while 1,866 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* August 19, 2005. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on November 30, 2005. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on August 19, 2005, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* March 25, 2008. FDA has verified the applicant's claim that the premarket approval application (PMA) for SEDASYS SYSTEM (PMA P080009) was initially submitted March 25, 2008.

3. *The date the application was approved:* May 3, 2013. FDA has verified the applicant's claim that PMA P080009 was approved on May 3, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2,283 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 31, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02432 Filed 2–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2016–E–2179 and FDA–2016–E–2180]

Determination of Regulatory Review Period for Purposes of Patent Extension; GENVOYA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for GENVOYA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 9, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 6, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 9, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 9, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2016–E–2179 and FDA–2016–E–2180 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; GENVOYA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at

https://www.regulations.gov or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product GENVOYA (cobicistat, emtricitabine, elvitegravir, and tenofovir alafenamide fumarate). GENVOYA is indicated as a complete regimen for the treatment of HIV–1 infection in adults and pediatric patients 12 years of age and older who have no antiretroviral treatment history or to replace the current antiretroviral regimen in those who are virologically-suppressed (HIV–1 RNA less than 50 copies per mL) on a stable antiretroviral regimen for at least 6 months with no history of treatment failure and no known substitutions associated with resistance to the individual components of GENVOYA. Subsequent to this approval, the USPTO received patent term restoration applications for GENVOYA (U.S. Patent Nos. 7,390,791 and 7,803,788) from Gilead Sciences, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated August 26, 2016, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of GENVOYA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for GENVOYA is 5,031 days. Of this time, 4,665 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* January 28, 2002. The applicant claims January 25, 2002, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 28, 2002, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* November 5, 2014. FDA has verified the applicant's claim that the new drug application (NDA) for GENVOYA (NDA 207561) was initially submitted on November 5, 2014.

3. *The date the application was approved:* November 5, 2015. FDA has verified the applicant's claim that NDA 207561 was approved on November 5, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,116 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent

applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 31, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02403 Filed 2–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0547]

Agency Information Collection Activities; Proposed Collection; Comment Request; Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Retail and Foodservice Facility Types

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Retail and Foodservice Facility Types.''

DATES: Submit either electronic or written comments on the collection of information by April 9, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 9, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 9, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2012–N–0547 for ''Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Retail and Foodservice Facility Types.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each

proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Retail and Foodservice Facility Types

OMB Control Number 0910–0744—Extension

I. Background

From 1998 to 2008, FDA's National Retail Food Team conducted a study to measure trends in the occurrence of foodborne illness risk factors, preparation practices, and employee behaviors most commonly reported to the Centers for Disease Control and Prevention as contributing factors to foodborne illness outbreaks at the retail level. Specifically, data was collected by FDA Specialists in retail and foodservice establishments at 5-year intervals (1998, 2003, and 2008) to observe and document trends in the occurrence of the following foodborne illness risk factors:

- Food from Unsafe Sources,
- Poor Personal Hygiene,
- Inadequate Cooking,
- Improper Holding/Time and Temperature, and
- Contaminated Equipment/Cross-Contamination.

FDA developed reports summarizing the findings for each of the three data collection periods (1998, 2003, and 2008) (Refs. 1 to 3). Data from all three data collection periods were analyzed to detect trends in improvement or regression over time and to determine whether progress had been made toward the goal of reducing the occurrence of foodborne illness risk factors in selected retail and foodservice facility types (Ref. 4).

Using this 10-year survey as a foundation, in 2013–2014, FDA initiated a new study in full service and fast food restaurants. This study will span 10 years with a data collection currently being conducted in 2017–2018 and another data collection planned for 2021–2022 (the subject of this information collection request extension).

TABLE 1—DESCRIPTION OF THE FACILITY TYPES INCLUDED IN THE SURVEY

Facility type	Description
Full Service Restaurants	A restaurant where customers place their order at their table, are served their meal at the table, receive the service of the wait staff, and pay at the end of the meal.
Fast Food Restaurants	A restaurant that is not a full service restaurant. This includes restaurants commonly referred to as quick service restaurants and fast casual restaurants.

The purpose of the study is to:

- Assist FDA with developing retail food safety initiatives and policies focused on the control of foodborne illness risk factors;
- Identify retail food safety work plan priorities and allocate resources to enhance retail food safety nationwide;
- Track changes in the occurrence of foodborne illness risk factors in retail and foodservice establishments over time; and
- Inform recommendations to the retail and foodservice industry and State, local, tribal, and territorial regulatory professionals on reducing the occurrence of foodborne illness risk factors.

The statutory basis for FDA conducting this study is derived from the Public Health Service Act (PHS Act) (42 U.S.C. 243, section 311(a)). Responsibility for carrying out the provisions of the PHS Act relative to food protection was transferred to the Commissioner of Food and Drugs in 1968 (21 CFR 5.10(a)(2) and (4)). Additionally, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) and the Economy Act (31 U.S.C. 1535) require FDA to provide assistance to other Federal, State, and local government bodies.

The objectives of the study are to:

- Identify the least and most often occurring foodborne illness risk factors and food safety behaviors/practices in retail and foodservice facility types during each data collection period;
- Track improvement and/or regression trends in the occurrence of foodborne illness risk factors during the 10-year study period;
- Examine potential correlations between operational characteristics of food establishments and the control of foodborne illness risk factors;
- Examine potential correlations between elements within regulatory retail food protection programs and the control of foodborne illness risk factors; and
- Determine the extent to which food safety management systems and the presence of a certified food protection manager impact the occurrence of foodborne illness risk factors.

The methodology to be used for this information collection is described as follows. To obtain a sufficient number of observations to conduct statistically significant analysis, FDA will conduct approximately 400 data collections in each facility type. This sample size has been calculated to provide for sufficient observations to be 95 percent confident that the compliance percentage is within 5 percent of the true compliance percentage.

A geographical information system database containing a listing of businesses throughout the United States provides the establishment inventory for the data collections. FDA samples establishments from the inventory based on the descriptions in table 1. FDA does not intend to sample operations that handle only prepackaged food items or conduct low-risk food preparation activities. The ''FDA Food Code'' contains a grouping of establishments by risk, based on the type of food preparation that is normally conducted within the operation (Ref. 5). The intent is to sample establishments that fall under risk categories 2 through 4.

FDA has approximately 25 Retail Food Specialists (Specialists) who serve as the data collectors for the 10-year study. The Specialists are geographically dispersed throughout the

United States and possess technical expertise in retail food safety and a solid understanding of the operations within each of the facility types to be surveyed. The Specialists are also standardized by FDA's Center for Food Safety and Applied Nutrition personnel in the application and interpretation of the FDA Food Code (Ref. 5).

Sampling zones have been established that are equal to the 150-mile radius around a Specialist's home location. The sample is selected randomly from among all eligible establishments located within these sampling zones. The Specialists are generally located in major metropolitan areas (*i.e.,* population centers) across the contiguous United States. Population centers usually contain a large concentration of the establishments FDA intends to sample. Sampling from the 150-mile radius sampling zones around the Specialists' home locations provides three advantages to the study:

1. It provides a cross section of urban and rural areas from which to sample the eligible establishments.
2. It represents a mix of small, medium, and large regulatory entities having jurisdiction over the eligible establishments.
3. It reduces overnight travel and therefore reduces travel costs incurred by the Agency to collect data.

The sample for each data collection period is evenly distributed among Specialists. Given that participation in the study by industry is voluntary and the status of any given randomly selected establishment is subject to change, substitute establishments have been selected for each Specialist for cases where the restaurant facility is misclassified, closed, or otherwise unavailable, unable, or unwilling to participate.

Prior to conducting the data collection, Specialists contact the State or local jurisdiction that has regulatory responsibility for conducting retail food inspections for the selected establishment. The Specialist verifies with the jurisdiction that the facility has been properly classified for the purposes of the study and is still in operation. The Specialist ascertains whether the selected facility is under legal notice from the State or local regulatory authority. If the selected facility is under legal notice, the Specialist will not conduct a data collection, and a substitute establishment will be used. An invitation is extended to the State or local regulatory authority to accompany the Specialist on the data collection visit.

A standard form is used by the Specialists during each data collection. The form is divided into three sections: Section 1—''Establishment Information''; Section 2—''Regulatory Authority Information''; and Section 3—''Foodborne Illness Risk Factor and Food Safety Management System Assessment.'' The information in Section 1—''Establishment Information'' of the form is obtained during an interview with the establishment owner or person in charge by the Specialist and includes a standard set of questions.

The information in Section 2—''Regulatory Authority Information'' is obtained during an interview with the program director of the State or local jurisdiction that has regulatory responsibility for conducting inspections for the selected establishment. Section 3 includes three parts: Part A for tabulating the Specialists' observations of the food employees' behaviors and practices in limiting contamination, proliferation, and survival of food safety hazards; Part B for assessing the food safety management system being implemented by the facility; and Part C for assessing the frequency and extent of food employee hand washing. The information in Part A is collected from the Specialists' direct observations of food employee behaviors and practices. Infrequent, nonstandard questions may be asked by the Specialists if clarification is needed on the food safety procedure or practice being observed. The information in Part B is collected by making direct observations and asking follow up questions of facility management to obtain information on the extent to which the food establishment has developed and implemented food safety management systems. The information in Part C is collected by making direct observations of food employee hand washing. No questions are asked in the completion of Section 3, Part C of the form.

FDA collects the following information associated with the establishment's identity: Establishment name, street address, city, state, zip code, county, industry segment, and facility type. The establishment identifying information is collected to ensure the data collections are not duplicative. Other information related to the nature of the operation, such as seating capacity and number of employees per shift, is also collected. Data will be consolidated and reported in a manner that does not reveal the identity of any establishment included in the study.

FDA has collaborated with the Food Protection and Defense Institute to develop a web-based platform in FoodSHIELD to collect, store, and analyze data for the Retail Risk Factor Study. This platform is accessible to State, local, territorial, and tribal regulatory jurisdictions to collect data relevant to their own risk factor studies. For the 2015–2016 data collection, FDA piloted the use of hand-held technology for capturing the data onsite during the data collection visits. The tablets that were made available for the data collections were part of a broader Agency initiative focused on internal uses of hand-held technology. The tablets provided for the data collection presented several technical and logistical challenges and increased the time burden associated with the data collection as compared to the manual entry of data collections. FDA continues to assess the feasibility for fully incorporating use of hand-held technology in subsequent data collections during the 10-year study period.

When a data collector is assigned a specific establishment, he or she conducts the data collection and enters the information into the web-based data platform. The interface will support the manual entering of data, as well as the ability to directly enter information in the database via a web browser.

The burden for the 2021–2022 data collection is as follows. For each data collection, the respondents will include: (1) The person in charge of the selected facility (whether it be a fast food or full service restaurant) and (2) the program director (or designated individual) of the respective regulatory authority. To provide the sufficient number of observations needed to conduct a statistically significant analysis of the data, FDA has determined that 400 data collections will be required in each of the two restaurant facility types. Therefore, the total number of responses will be 1,600 (400 data collections × 2 facility types × 2 respondents per data collection).

The burden associated with the completion of Sections 1 and 3 of the form is specific to the persons in charge of the selected facilities. It includes the time it will take the person in charge to accompany the data collector during the site visit and answer the data collector's questions. The burden related to the completion of Section 2 of the form is specific to the program directors (or designated individuals) of the respective regulatory authorities. It includes the time it will take to answer the data collectors' questions and is the same regardless of the facility type.

To calculate the estimate of the hours per response, FDA will use the average

data collection duration for the same facility types during the 2013–2014 data collection. FDA estimates that it will take the persons in charge of full service restaurants and fast food restaurants 104 minutes (1.73 hours) and 82 minutes (1.36 hours), respectively, to accompany the data collectors while they complete Sections 1 and 3 of the form. In comparison, for the 2013–2014 data collection, the burden estimate was 106 minutes (1.76 hours) in full service restaurants and 73 minutes (1.21 hours) in fast food restaurants. FDA estimates that it will take the program director (or designated individual) of the respective regulatory authority 30 minutes (0.5 hours) to answer the questions related to Section 2 of the form. This burden estimate is unchanged from the last data collection. Hence, the total burden estimate for a data collection in a full service restaurant, including the responses of both the program director and the person in charge, is 134 minutes (104 + 30) (2.23 hours). The total burden estimate for a data collection in a fast food restaurant, including the responses of both the program director and the person in charge, is 112 minutes (82 + 30) (1.86 hours).

Based on the number of entry refusals from the 2013–2014 baseline data collection, we estimate a refusal rate of 2 percent for the data collections within restaurant facility types. The estimate of the time per non-respondent is 5 minutes (0.08 hours) for the person in charge to listen to the purpose of the visit and provide a verbal refusal of entry.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Number of non-respondents	Number of responses per non-respondent	Total annual non-responses	Average burden per response	Total hours
2021–2022 Data Collection (Fast Food Restaurants)—Completion of Sections 1 and 3.	400	1	400				1.36	544
2021–2022 Data Collection (Full Service Restaurants)—Completion of Sections 1 and 3.	400	1	400				1.73	692
2021–2022 Data Collection-Completion of Section 2—All Facility Types.	800	1	800				0.5 (30 minutes)	400
2021–2022 Data Collection-Entry Refusals—All Facility Types.	–	–	–	16	1	16	0.08 (5 minutes)	1.28
Total Hours								1,637.28

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden for this information collection has not changed since the last OMB approval.

II. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday, they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. ''Report of the FDA Retail Food Program Database of Foodborne Illness Risk Factors'' (2000). Available at: *https://wayback.archive-it.org/7993/20170406023019/https://www.fda.gov/downloads/Food/GuidanceRegulation/UCM123546.pdf.*

2. ''FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (2004).'' Available at: *https://wayback.archive-it.org/7993/20170406023011/https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FoodborneIllnessRiskFactorReduction/UCM423850.pdf.*

3. ''FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (2009).'' Available at: *https://wayback.archive-it.org/7993/20170406023004/https://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodborneIllnessRiskFactorReduction/ucm224321.htm.*

4. FDA National Retail Food Team. ''FDA Trend Analysis Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (1998–2008).'' Available at: *https://wayback.archive-it.org/7993/20170406022950/https://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodborneIllnessRiskFactorReduction/ucm223293.htm.*

5. ''FDA Food Code.'' Available at: *https://www.fda.gov/FoodCode.*

Dated: January 31, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02414 Filed 2–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2015–E–0857 and FDA–2015–E–0858]

Determination of Regulatory Review Period for Purposes of Patent Extension; FARXIGA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for FARXIGA and is publishing this

notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 9, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 9, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 9, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 6, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2015–E–0857 and FDA–2015–E–0858 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; FARXIGA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product FARXIGA (dapagliflozin). FARXIGA is indicated as an adjunct to diet and exercise to

improve glycemic control in adults with type 2 diabetes mellitus. Subsequent to this approval, the USPTO received patent term restoration applications for FARXIGA (U.S. Patent Nos. 6,414,126 and 6,515,117) from AstraZeneca AB, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated October 19, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of FARXIGA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for FARXIGA is 3,673 days. Of this time, 2,565 days occurred during the testing phase of the regulatory review period, while 1,108 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* December 21, 2003. FDA has verified the AstraZeneca AB claim that the date the investigational new drug application became effective was on December 21, 2003.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 28, 2010. The applicant claims December 27, 2010, as the date the new drug application (NDA) for FARXIGA (NDA 202293) was initially submitted. However, FDA records indicate that NDA 202293 was submitted on December 28, 2010.

3. *The date the application was approved:* January 8, 2014. FDA has verified the applicant's claim that NDA 202293 was approved on January 8, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,825 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 31, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02418 Filed 2–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0074]

Agency Information Collection Activities; Proposed Collection; Comment Request; State Enforcement Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements contained in existing FDA regulations governing State enforcement notifications.

DATES: Submit either electronic or written comments on the collection of information by April 9, 2018.

ADDRESSES: You may submit comments as follows: Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 9, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 9, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–0074 for ''State Enforcement

Notifications.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

State Enforcement Notifications—21 CFR 100.2(d)

OMB Control Number 0910–0275—Extension

This information collection supports Agency regulations. Specifically, section 310(b) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 337(b)) authorizes a State to enforce certain sections of the FD&C Act in their own name and within their own jurisdiction. However, before doing so, a State must provide notice to FDA according to 21 CFR 100.2. The information required in a letter of notification under § 100.2(d) enables us to identify the food against which a State intends to take action and to advise that State whether Federal enforcement action against the food has been taken or is in process. With certain narrow exceptions, Federal enforcement action precludes State action under the FD&C Act.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondents	Total annual responses	Average burden per response
100.2(d)	1	1	1	10

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated burden for this information collection has not changed since the last OMB approval.

The estimated reporting burden for § 100.2(d) is minimal because enforcement notifications are seldom used by States. During the last 3 years, we have not received any new enforcement notifications; therefore, we estimate that one or fewer notifications will be submitted annually. Although we have not received any new enforcement notifications in the last 3 years, we believe these information collection provisions should be extended to provide for the potential future need of a State government to submit enforcement notifications informing us when it intends to take enforcement action under the FD&C Act against a particular food located in the State.

Dated: January 31, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02417 Filed 2–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA 2015–E–3854 and FDA–2015–E–3855]

Determination of Regulatory Review Period for Purposes of Patent Extension; BLINCYTO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for BLINCYTO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 9, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 6, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 9, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 9, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA 2015–E–3854 and FDA–2015–E–3855 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; BLINCYTO.'' Received comments, those filed in a timely manner (see **ADDRESSES**) will be placed in the dockets and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological

product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product BLINCYTO (blinatumomab). BLINCYTO is indicated for the treatment of Philadelphia chromosome-negative relapsed or refractory B-cell precuror acute lymphoblastic leukemia. This indication is approved under accelerated approval. Continued approval for this indication may be contingent upon verification of clinical benefit in subsequent trials. Subsequent to this approval, the USPTO received patent term restoration applications for BLINCYTO (U.S. Patent Nos. 7,112,324 and 8,007,796) from Amgen Research (Munich) GMBH, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 30, 2015, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of BLINCYTO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BLINCYTO is 2,850 days. Of this time, 2,774 days occurred during the testing phase of the regulatory review period, while 76 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* February 15, 2007. FDA has verified the applicant's claims that the date the investigational new drug application became effective was on February 15, 2007.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* September 19, 2014. FDA has verified the applicant's claim that the biologics license application (BLA) for BLINCYTO (BLA 125557) was initially submitted on September 19, 2014.

3. *The date the application was approved:* December 3, 2014. FDA has verified the applicant's claim that BLA 125557 was approved on December 3, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,462 or 432 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: January 31, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02419 Filed 2–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0270]

Agency Information Collection Activities; Proposed Collection; Comment Request; Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the ''Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types.''

DATES: Submit either electronic or written comments on the collection of information by April 9, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 9, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 9, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any

confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–0270 for ''Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types

OMB Control Number 0910–0799—Reinstatement

I. Background

From 1998 to 2008, FDA's National Retail Food Team conducted a study to measure trends in the occurrence of foodborne illness risk factors, preparation practices, and employee behaviors most commonly reported to the Centers for Disease Control and Prevention as contributing factors to foodborne illness outbreaks at the retail level. Specifically, data was collected by FDA specialists in retail and foodservice establishments at 5-year intervals (1998, 2003, and 2008) to observe and document trends in the occurrence of the following foodborne illness risk factors:

• Food from Unsafe Sources,
• Poor Personal Hygiene,
• Inadequate Cooking,
• Improper Holding/Time and Temperature, and
• Contaminated Equipment/Cross-Contamination.

FDA developed reports summarizing the findings for each of the three data collection periods (1998, 2003, and 2008) (Refs. 1 to 3). Data from all three data collection periods were analyzed to detect trends in improvement or regression over time and to determine whether progress had been made toward the goal of reducing the occurrence of foodborne illness risk factors in selected retail and foodservice facility types (Ref. 4).

Using this 10-year survey as a foundation, in 2013–2014, FDA initiated a new study in full service and fast food restaurants. This study will span 10 years with additional data collections planned for 2017–2018 and 2021–2022.

FDA recently completed the baseline data collection in select health care, school, and retail food store facility types in 2015–2016. This proposed study will also span 10 years with additional data collections planned for 2019–2020 (the subject of this information collection request reinstatement) and 2023–2024 (which

will be posted in the **Federal Register** at the next renewal).

TABLE 1—DESCRIPTION OF THE FACILITY TYPES INCLUDED IN THE SURVEY

Facility type	Description
Health Care Facilities	Hospitals and long-term care facilities foodservice operations that prepare meals for highly susceptible populations as defined as follows: • Hospitals—A foodservice operation that provides for the nutritional needs of inpatients by preparing meals and transporting them to the patient's room and/or serving meals in a cafeteria setting (meals in the cafeteria may also be served to hospital staff and visitors). • Long-term care facilities—A foodservice operation that prepares meals for the residents in a group care living setting such as nursing homes and assisted living facilities. **Note:** For the purposes of this study, health care facilities that do not prepare or serve food to a highly susceptible population, such as mental health care facilities, are not included in this facility type category.
Schools (K–12)	Foodservice operations that have the primary function of preparing and serving meals for students in one or more grade levels from kindergarten through grade 12. A school foodservice may be part of a public or private institution.

Retail Food Stores	Supermarkets and grocery stores that have a deli department/operation as described as follows:
	• Deli department/operation—Areas in a retail food store where foods, such as luncheon meats and cheeses, are sliced for the customers and where sandwiches and salads are prepared onsite or received from a commissary in bulk containers, portioned, and displayed. Parts of deli operations may include:
	  • Salad bars, pizza stations, and other food bars managed by the deli department manager.
	  • Areas where other foods are cooked or prepared and offered for sale as ready-to-eat and are managed by the deli department manager.
	Data will also be collected in the following areas of a supermarket or grocery store, if present:
	• Seafood department/operation—Areas in a retail food store where seafood is cut, prepared, stored, or displayed for sale to the consumer. In retail food stores where the seafood department is combined with another department (e.g. meat), the data collector will only assess the procedures and practices associated with the processing of seafood.
	• Produce department/operation—Areas in a retail food store where produce is cut, prepared, stored, or displayed for sale to the consumer. A produce operation may include salad bars or juice stations that are managed by the produce manager.

The purpose of the study is to:

• Assist FDA with developing retail food safety initiatives and policies focused on the control of foodborne illness risk factors;

• Identify retail food safety work plan priorities and allocate resources to enhance retail food safety nationwide;

• Track changes in the occurrence of foodborne illness risk factors in retail and foodservice establishments over time; and

• Inform recommendations to the retail and foodservice industry and State, local, tribal, and territorial regulatory professionals on reducing the occurrence of foodborne illness risk factors.

The statutory basis for FDA conducting this study is derived from the Public Health Service Act (PHS Act) (42 U.S.C. 243, section 311(a)). Responsibility for carrying out the provisions of the PHS Act relative to food protection was transferred to the Commissioner of Food and Drugs in 1968 (21 CFR 5.10(a)(2) and (4)). Additionally, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) and the Economy Act (31 U.S.C. 1535) require FDA to provide assistance to other Federal, State, and local government bodies.

The objectives of the study are to:

• Identify the least and most often occurring foodborne illness risk factors and food safety behaviors/practices in health care, school, restaurant, and retail food store facility types during each data collection period;

• Track improvement and/or regression trends in the occurrence of foodborne illness risk factors during the 10-year study period;

• Examine potential correlations between operational characteristics of food establishments and the control of foodborne illness risk factors;

• Examine potential correlations between elements within regulatory retail food protection programs and the control of foodborne illness risk factors; and

• Determine the extent to which food safety management systems and the presence of a certified food protection manager impact the occurrence of foodborne illness risk factors.

The methodology to be used for this information collection is described as follows. To obtain a sufficient number of observations to conduct statistically significant analysis, FDA will conduct approximately 400 data collections in each facility type. This sample size has been calculated to provide for sufficient observations to be 95 percent confident that the compliance percentage is within 5 percent of the true compliance percentage.

A geographical information system database containing a listing of businesses throughout the United States provides the establishment inventory for the data collections. FDA samples establishments from the inventory based on the descriptions in table 1. FDA does not intend to sample operations that handle only prepackaged food items or conduct low-risk food preparation activities. The ''FDA Food Code'' contains a grouping of establishments by risk, based on the type of food preparation that is normally conducted within the operation (Ref. 5). The intent is to sample establishments that fall under risk categories 2 through 4.

FDA has approximately 25 Regional Retail Food Specialists (Specialists) who serve as the data collectors for the 10-year study. The Specialists are geographically dispersed throughout the United States and possess technical expertise in retail food safety and a solid understanding of the operations within each of the facility types to be surveyed. The Specialists are also standardized by FDA's Center for Food Safety and Applied Nutrition personnel in the application and interpretation of the FDA Food Code (Ref. 5).

Sampling zones have been established that are equal to the 150-mile radius

around a Specialist's home location. The sample is selected randomly from among all eligible establishments located within these sampling zones. The Specialists are generally located in major metropolitan areas (*i.e.,* population centers) across the contiguous United States. Population centers usually contain a large concentration of the establishments FDA intends to sample. Sampling from the 150-mile radius sampling zones around the Specialists' home locations provides three advantages to the study:

1. It provides a cross-section of urban and rural areas from which to sample the eligible establishments.
2. It represents a mix of small, medium, and large regulatory entities having jurisdiction over the eligible establishments.
3. It reduces overnight travel and therefore reduces travel costs incurred by the Agency to collect data.

The sample for each data collection period is evenly distributed among Specialists. Given that participation in the study by industry is voluntary and the status of any given randomly selected establishment is subject to change, substitute establishments have been selected for each Specialist for cases where the institutional foodservice, school, or retail food store facility is misclassified, closed, or otherwise unavailable, unable, or unwilling to participate.

Prior to conducting the data collection, Specialists contact the State or local jurisdiction that has regulatory responsibility for conducting retail food inspections for the selected establishment. The Specialist verifies with the jurisdiction that the facility has been properly classified for the purposes of the study and is still in operation. The Specialist ascertains whether the selected facility is under legal notice from the State or local regulatory authority. If the selected facility is under legal notice, the Specialist will not conduct a data collection, and a substitute establishment will be used. An invitation is extended to the State or local regulatory authority to accompany the Specialist on the data collection visit.

A standard form is used by the Specialists during each data collection. The form is divided into three sections: Section 1—''Establishment Information''; Section 2—''Regulatory Authority Information''; and Section 3—''Foodborne Illness Risk Factor and Food Safety Management System Assessment''. The information in Section 1—''Establishment Information'' of the form is obtained during an interview with the establishment owner or person in charge by the Specialist and includes a standard set of questions.

The information in Section 2—''Regulatory Authority Information'' is obtained during an interview with the program director of the State or local jurisdiction that has regulatory responsibility for conducting inspections for the selected establishment. Section 3 includes three parts: Part A for tabulating the Specialists' observations of the food employees' behaviors and practices in limiting contamination, proliferation, and survival of food safety hazards; Part B for assessing the food safety management system being implemented by the facility; and Part C for assessing the frequency and extent of food employee hand washing. The information in Part A is collected from the Specialists' direct observations of food employee behaviors and practices. Infrequent, nonstandard questions may be asked by the Specialists if clarification is needed on the food safety procedure or practice being observed. The information in Part B is collected by making direct observations and asking follow up questions of facility management to obtain information on the extent to which the food establishment has developed and implemented food safety management systems. The information in Part C is collected by making direct observations of food employee hand washing. No questions are asked in the completion of Section 3, Part C of the form.

FDA collects the following information associated with the establishment's identity: Establishment name, street address, city, state, ZIP code, county, industry segment, and facility type. The establishment identifying information is collected to ensure the data collections are not duplicative. Other information related to the nature of the operation, such as seating capacity and number of employees per shift, is also collected. Data will be consolidated and reported in a manner that does not reveal the identity of any establishment included in the study.

FDA has collaborated with the Food Protection and Defense Institute to develop a web-based platform in FoodSHIELD to collect, store, and analyze data for the Retail Risk Factor Study. This platform is accessible to State, local, territorial, and tribal regulatory jurisdictions to collect data relevant to their own risk factor studies. For the 2015–2016 data collection, FDA piloted the use of hand-held technology for capturing the data onsite during the data collection visits. The tablets that were made available for the data collections were part of a broader Agency initiative focused on internal uses of hand-held technology. The tablets provided for the data collection presented several technical and logistical challenges and increased the time burden associated with the data collection as compared to the manual entry of data collections. FDA continues to assess the feasibility for fully incorporating use of hand-held technology in subsequent data collections during the 10-year study period.

When a data collector is assigned a specific establishment, he or she conducts the data collection and enters the information into the web-based data platform. The interface will support the manual entering of data, as well as the ability to directly enter information in the database via a web browser.

The burden for the 2019–2020 data collection is as follows. For each data collection, the respondents will include: (1) The person in charge of the selected facility (whether it be a health care facility, school, or supermarket/grocery store) and (2) the program director (or designated individual) of the respective regulatory authority. To provide the sufficient number of observations needed to conduct a statistically significant analysis of the data, FDA has determined that 400 data collections will be required in each of the three facility types. Therefore, the total number of responses will be 2,400 (400 data collections × 3 facility types × 2 respondents per data collection).

The burden associated with the completion of Sections 1 and 3 of the form is specific to the persons in charge of the selected facilities. It includes the time it will take the person in charge to accompany the data collector during the site visit and answer the data collector's questions. The burden related to the completion of Section 2 of the form is specific to the program directors (or designated individuals) of the respective regulatory authorities. It includes the time it will take to answer the data collectors' questions and is the same regardless of the facility type.

To calculate the estimate of the hours per response, FDA uses the average data collection duration for similar facility types during the FDA's 2008 Risk Factor Study (Ref. 3) plus an additional 30 minutes (0.5 hours) for the information related to Section 3, Part B of the form. FDA estimates that it will take the persons in charge of health care facility types, schools, and retail food stores 150 minutes (2.5 hours), 120 minutes (2 hours), and 180 minutes (3 hours), respectively, to accompany the data

collectors while they complete Sections 1 and 3 of the form. FDA estimates that it will take the program director (or designated individual) of the respective regulatory authority 30 minutes (0.5 hours) to answer the questions related to Section 2 of the form. This burden estimate is unchanged from the last data collection. Hence, the total burden estimate for a data collection in health care facility types is 180 minutes (150 + 30) (3 hours), in schools is 150 minutes (120 + 30) (2.5 hours), and retail food stores is 210 minutes (180 + 30) (3.5 hours).

Based on the number of entry refusals from the 2015–2016 baseline data collection, we estimate a refusal rate of 2 percent for the data collections within health care, school, and retail food store facility types. The estimate of the time per non-respondent is 5 minutes (0.08 hours) for the person in charge to listen to the purpose of the visit and provide a verbal refusal of entry.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Number of non-respondents	Number of responses per non-respondent	Total annual non-responses	Average burden per response	Total hours
2019–2020 Data Collection (Health Care Facilities)—Completion of Sections 1 and 3.	400	1	400	.....	.....	.....	2.5	1,000
2019–2020 Data Collection (Schools)—Completion of Sections 1 and 3.	400	1	400	.....	.....	.....	2	800
2019–2020 Data Collection (Retail Food Stores)—Completion of Sections 1 and 3.	400	1	400	.....	.....	.....	3	1,200
2019–2020 Data Collection-Completion of Section 2—All Facility Types.	1,200	1	1,200	.....	.....	.....	.5 (30 minutes)	600
2019–2020 Data Collection-Entry Refusals—All Facility Types.	.....	.....	.....	24	1	24	.08 (5 minutes)	1.92
Total	.....	.....	.....	.....	.....	.....	.....	3,601.92

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden for this information collection has not changed since the last OMB approval.

II. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov*. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. ''Report of the FDA Retail Food Program Database of Foodborne Illness Risk Factors'' (2000). Available at: *https://wayback.archive-it.org/7993/20170406023019/https://www.fda.gov/downloads/Food/GuidanceRegulation/UCM123546.pdf*.
2. ''FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types'' (2004). Available at: *https://wayback.archive-it.org/7993/20170406023011/https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/Foodborne IllnessRiskFactorReduction/UCM423850.pdf*.
3. ''FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types'' (2009). Available at: *https://wayback.archive-it.org/7993/20170406023004/https://www.fda.gov/Food/GuidanceRegulation/RetailFood Protection/FoodborneIllnessRiskFactor Reduction/ucm224321.htm*.
4. FDA National Retail Food Team. ''FDA Trend Analysis Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (1998–2008).'' Available at: *https://wayback.archive-it.org/7993/20170406022950/https://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/Foodborne IllnessRiskFactorReduction/ucm223293.htm*.
5. ''FDA Food Code.'' Available at: *https://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/default.htm*.

Dated: January 31, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02413 Filed 2–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee.

Date: March 1–2, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3E72A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–934, (240) 669–5023, *fdesilva@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: February 1, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02368 Filed 2–6–18; 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; Novel Genomic Technology Development.

Date: February 28, 2018.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20892, 301.326.9721, *Lorangd@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Infectious Diseases and Microbiology AREA Review.

Date: March 5, 2018.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Digestive Sciences.

Date: March 7, 2018.

Time: 8:00 a.m. to 8:00 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: Martha Garcia, Ph.D., Scientific Reviewer Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Musculoskeletal, Oral, Skin, Rheumatology and Rehab Sciences AREA (R15) Review.

Date: March 7, 2018.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; The Blood-Brain Barrier, Neurovascular System and CNS Therapeutics.

Date: March 7, 2018.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–537–9986, *macarthurlh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biomedical Computing and Health Informatics Study.

Date: March 7, 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 Owens Ferguson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, Bethesda, MD 20892, 301–827–3689, *fergusonyo@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: February 1, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02365 Filed 2–6–18; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA Central Biorepository-Data Coordination and Systems Management.

Date: March 5, 2018.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, 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: February 1, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02389 Filed 2–6–18; 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 contract proposals and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA Central Biorepository—Biological Specimens Storage.

Date: March 5, 2018.

Time: 11:00 a.m. to 1:45 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, 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: February 1, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02367 Filed 2–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0033; OMB No. 1660–0086]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Flood Insurance Program—Mortgage Portfolio Protection Program (MPPP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a reinstatement, without change, of a previously approved information collection for which approval has expired. FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before March 9, 2018.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Kelly Bronowicz, Industry Management Branch Chief, FIMA, FEMA, 202–557–9488, *Kelly.Bronowicz@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Federal lenders and federally regulated or sponsored lending institutions may not make, increase, extend, or renew any loan secured by improved real property located in a special flood hazard area (SFHA) unless the building and any personal property securing the loan is covered by flood insurance for the life of the loan. *See* Flood Disaster Protection Act of 1973 (FDPA) § 102 (Pub. L. 93–234; 42 U.S.C. 4012a). The Administrator of the Federal Emergency Management Agency (FEMA) carries out the National Flood Insurance Program (NFIP) to enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real or personal property arising from flood in the United States. *See* National Flood Insurance Act of 1968 (NFIA) (Pub. L. 90–448, title XIII; 42 U.S.C. 4001 *et seq.*).

In general, individual mortgagees subject to the requirements of the FDPA obtain and maintain flood insurance for their individual properties. When individual mortgagees to not obtain required flood insurance, the NFIP's Mortgage Portfolio Protection program (MPPP) allows covered lenders to ensure compliance with the requirements of FDPA by selling making available special coverage for the lender's entire mortgage portfolio. *See* 44 CFR 62.23(l). In order sell MPPP policies, private insurance companies participating in the NFIP's Write Your Own (WYO) Program must apply for and annually renew their election to voluntarily participate in the MPPP.

This proposed information collection previously published in the **Federal Register** on October 24, 2017 at 82 FR 49222 with a 60 day public comment period. FEMA received one anonymous public comment that was not relevant to the information collection. This information collection expired on December 31, 2016. FEMA is requesting a reinstatement, without change. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: National Flood Insurance Program—Mortgage Portfolio Protection Program (MPPP).

Type of information collection: Reinstatement, without change, of a previously approved information collection for which approval has expired.

OMB Number: 1660–0086.

Form Titles and Numbers: None.

Abstract: FEMA needs the information to ensure that private insurance companies that join the NFIP's WYO Program meet all state and federal requirements for insurance companies. Requirements include a good business record and satisfactory rating in their field. There is no other way to obtain this information because it is specific to each company that applies to join the NFIP.

Affected Public: Business or other non-profits.

Estimated Number of Respondents: 341.

Estimated Number of Responses: 341.

Estimated Total Annual Burden Hours: 171 hours.

Estimated Total Annual Respondent Cost: $9,309.47.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $27,468.05.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of

the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: January 26, 2018.

William H. Holzerland,

Senior Director for Information Management, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–02374 Filed 2–6–18; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2017–0032; OMB No. 1660–0039]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Fire Academy Long-Term Evaluation Form for Supervisors and National Fire Academy Long-Term Evaluation Form for Students/Trainees

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before March 9, 2018.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Dawn Long, Statistician, FEMA, National Fire Academy at (301) 447–1488.

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on October 24, 2017 at 82 FR 49225 with a 60 day public comment period. FEMA received 36 anonymous public comments that were not relevant to the information collection. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: National Fire Academy Long-Term Evaluation Form for Supervisors and National Fire Academy Long-Term Evaluation Form for Students/Trainees.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0039.

Form Titles and Numbers: FEMA Form 078–0–2, National Fire Academy Long-Term Evaluation Form for Supervisors; FEMA Form 078–0–2A, National Fire Academy Long-Term Evaluation Form for Students/Trainees.

Abstract: The National Fire Academy Long-Term Evaluation Forms will be used to evaluate all National Fire Academy (NFA) on-campus resident training courses. Course graduates and their supervisors will be asked to evaluate the impact of the training on both individual job performance and the performance of the fire and emergency response department where the student works. The data provided by students and supervisors is used to update existing NFA course materials and to develop new courses that reflect the emerging issues and needs of the Nation's fire service.

Affected Public: State, local or Tribal Government.

Estimated Number of Respondents: 3,000.

Estimated Number of Responses: 3,000.

Estimated Total Annual Burden Hours: 405 hours.

Estimated Total Annual Respondent Cost: $17,154.30.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $44,786.65.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: January 26, 2018.

William H. Holzerland,

Senior Director for Information Management, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–02373 Filed 2–6–18; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2007–0008]

National Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee management; notice of open Federal Advisory Committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) National Advisory Council (NAC) will meet in person and remotely via teleconference on Friday, February 23, 2018, in Washington, DC. The meeting will be open to the public.

DATES: The NAC will meet Friday, February 23, 2018, from 1:00 p.m. to 3:00 p.m. Eastern Time (ET). Please note that the meeting may close early if the NAC has completed its business.

ADDRESSES: The meeting will be held at the Federal Emergency Management Agency, 400 C St SW, Washington, DC 20472 in Conference Room A on the ground floor. It is recommended that attendees register with FEMA prior to the meeting by providing their name, telephone number, email address, title, and organization to the person listed in **FOR FURTHER INFORMATION CONTACT** below by February 16, 2018.

For information on facilities or services for people with disabilities and others with access and functional needs, or to request assistance at the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT** below as soon as possible.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the NAC. The ''Agenda'' section below outlines these issues. The full agenda and any related documents for this meeting will be posted by Friday, February 16, 2018, on the NAC website at *http://www.fema.gov/national-advisory-council.* Written comments must be submitted and received by 5:00 p.m. ET on February 16, 2018, identified by Docket ID FEMA–2007–0008, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FEMA-RULES@fema.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (540) 504–2331. Please include a cover sheet addressing the fax to ATTN: Deana Platt.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW, Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received, including any personal information provided, will be posted without alteration at *http://www.regulations.gov.*

Docket: For access to the docket to read comments received by the NAC, go to *http://www.regulations.gov,* and search for Docket ID FEMA–2007–0008.

A public comment period will be held on Friday, February 23, 2018, from 1:20 p.m. to 1:30 p.m. ET. All speakers must limit their comments to 5 minutes. Comments should be addressed to the NAC. Any comments not related to the agenda topics will not be considered by the NAC. To register to make remarks during the public comment period, contact the individual listed in **FOR FURTHER INFORMATION CONTACT** by February 16, 2018. Please note that the public comment period may end before the time indicated, following the last call for comments.

FOR FURTHER INFORMATION CONTACT: Deana Platt, Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472–3184, telephone (202) 646–2700, fax (540) 504–2331, and email *FEMA-NAC@fema.dhs.gov.* The NAC website is: *http://www.fema.gov/national-advisory-council.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

The NAC advises the FEMA Administrator on all aspects of emergency management. The NAC incorporates state, local, and tribal government, and private sector input in the development and revision of FEMA plans and strategies. The NAC includes a cross-section of officials, emergency managers, and emergency response providers from state, local, and tribal governments, the private sector, and nongovernmental organizations.

Agenda: On Friday, February 23, 2018, the NAC will consider RESPONSE Act Subcommittee recommendations made at the previous meeting in November 2017. Members of the NAC may also make and vote on other recommendations to the full group based on the Administrator's guidance given during the November 2017 meeting.

The full agenda and any related documents for this meeting will be posted by Friday, February 16, 2018, on the NAC website at *http://www.fema.gov/national-advisory-council.*

Dated: January 30, 2018.

William B. ''Brock'' Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–02378 Filed 2–6–18; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0001]

Notice of Adjustment of Statewide Per Capita Indicator for Recommending a Cost Share Adjustment

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the statewide per capita indicator for recommending cost share adjustments for major disasters declared on or after January 1, 2018, through December 31, 2018, is $143.

DATES: This notice applies to major disasters declared on or after January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Christopher Logan, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR 206.47, the statewide per capita indicator that is used to recommend an increase of the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and emergency work under section 403 and section 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act is adjusted annually. The adjustment to the indicator is based on the Consumer Price Index for All Urban Consumers published annually by the U.S. Department of Labor. For disasters declared on January 1, 2018, through December 31, 2018, the qualifying indicator is $143 per capita of state or tribal population.

This adjustment is based on an increase of 2.1 percent in the Consumer Price Index for All Urban Consumers for the 12-month period that ended December 2017. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on January 12, 2018.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–02377 Filed 2–6–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0029; OMB No. 1660–0130]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before March 9, 2018.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Sherina Greene, Management and Program Analyst, FEMA Office of the Chief Administrative Officer, Information Management Division, at (202) 646–4343.

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on September 13, 2017 at 82 FR 43035 with a 60 day public comment period. FEMA received 4 anonymous public comments that were not relevant to the information collection. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Type of information collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0130.

Form Titles and Numbers: None.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 1,075,000.

Estimated Number of Responses: 1,075,000.

Estimated Total Annual Burden Hours: 181,995 hours.

Estimated Total Annual Respondent Cost: $6,340,705.80.

Estimated Respondents' Operation and Maintenance Costs: None.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: $2,079,000.95.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: January 26, 2018.

William H. Holzerland,

Senior Director for Information Management, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–02376 Filed 2–6–18; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1803]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 18, 2018.

Roy E. Wright,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arkansas:						
Lowell	City of Lowell (17–06–1806P).	The Honorable Eldon Long, Mayor, City of Lowell, 216 North Lincoln Street, Lowell, AR 72745.	City Hall, 216 North Lincoln Street, Lowell, AR 72745.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 26, 2018	050342
Colorado:						
Jefferson	City of Westminster (17–08–0650P).	The Honorable Herb Atchison, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	City Hall, 4800 West 92nd Avenue, Westminster, CO 80031.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2018	080008
Connecticut:						
Fairfield	City of Bridgeport (17–01–1059P).	The Honorable Joseph P. Ganim, Mayor, City of Bridgeport, 999 Broad Street, Bridgeport, CT 06604.	City Hall, 45 Lyon Terrace, Bridgeport, CT 06604.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 12, 2018	090002

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Fairfield	Town of Greenwich (17–01–2058P).	The Honorable Peter Tesei, First Selectman, Town of Greenwich Board of Selectmen, 101 Field Point Road, Greenwich, CT 06830.	Planning and Zoning Department, 101 Field Point Road, Greenwich, CT 06830.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 9, 2018	090008
Florida:						
Brevard	City of Cocoa Beach (17–04–7481P).	The Honorable Ben Malik, Mayor, City of Cocoa Beach, P.O. Box 322430, Cocoa Beach, FL 32932.	Development Services Department, 2 South Orlando Avenue, Cocoa Beach, FL 32931.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 5, 2018	125097
DeSoto	Unincorporated areas of DeSoto County (17–04–5738P).	The Honorable Elton Langford, Chairman, DeSoto County Board of Commissioners, 201 East Oak Street, Suite 201, Arcadia, FL 34266.	DeSoto County Planning and Zoning Department, 201 East Oak Street, Suite 204, Arcadia, FL 34266.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 23, 2018	120072
Hillsborough	Unincorporated areas of Hillsborough County (17–04–1127P).	The Honorable Stacy White, Chairman, Hillsborough County Board of Commissioners, 601 East Kennedy Boulevard, Tampa, FL 33602.	Hillsborough County Development Services Department, 601 East Kennedy Boulevard, Tampa, FL 33602.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 4, 2018	120112
Lake	Unincorporated areas of Lake County (17–04–3997P).	The Honorable Timothy I. Sullivan, Chairman, Lake County Board of Commissioners, P.O. Box 7800, Tavares, FL 32778.	Lake County Public Works Department, 437 Ardice Avenue, Eustis, FL 32726.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 29, 2018	120421
Lee	Unincorporated areas of Lee County (17–04–7100P).	The Honorable Mr. John Manning, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 3, 2018	125124
Okaloosa	City of Destin (17–04–5431P).	Ms. Carisse LeJeune, Manager, City of Destin, 4200 Indian Bayou Trail, Destin, FL 32541.	Public Services Department, 4200 Indian Bayou Trail, Destin, FL 32541.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 20, 2018	125158
Okaloosa	Unincorporated areas of Okaloosa County (17–04–5431P).	The Honorable Carolyn Ketchel, Chair, Okaloosa County Board of Commissioners, 1250 North Eglin Parkway, Suite 100, Shalimar, FL 32579.	Okaloosa County Information Technology Department, GIS Division, 1250 North Eglin Parkway, Suite 303, Shalimar, FL 32579.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 20, 2018	125173
Georgia:						
Cobb	City of Powder Springs (17–04–7207P).	The Honorable Al Thurman, Mayor, City of Powder Springs, P.O. Box 46, Powder Springs, GA 30127.	Community Development Department, 4488 Pineview Drive, Powder Springs, GA 30127.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2018	130056
Cobb	Unincorporated areas of Cobb County (17–04–7207P).	The Honorable Mike Boyce, Chairman, Cobb County Board of Commissioners, 100 Cherokee Street, Marietta, GA 30090.	Cobb County Stormwater Management Division, 680 South Cobb Drive, Marietta, GA 30060.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2018	130052
Jackson	Town of Braselton (17–04–4117P).	The Honorable Bill Orr, Mayor, Town of Braselton, 4986 Highway 53, Braselton, GA 30517.	Public Works Department, 4986 Highway 53, Braselton, GA 30517.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 15, 2018	130343
Jackson	Unincorporated areas of Jackson County (17–04–4117P).	The Honorable Tom Crow, Chairman, Jackson County Board of Commissioners, 67 Athens Street, Jefferson, GA 30549.	Jackson County Public Development Department, 67 Athens Street, Jefferson, GA 30549.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 15, 2018	130345
Louisiana:						
Madison	Unincorporated areas of Madison Parish (17–06–1514P).	The Honorable Robert Fortenberry, President, Madison Parish, 100 North Cedar Street, Tallulah, LA 71282.	Madison Parish Courthouse, 100 North Cedar Street, Tallulah, LA 71282.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 16, 2018	220122
New Mexico:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Bernalillo	City of Albuquerque (17–06–4036X).	The Honorable Richard J. Berry, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Development Review Services Division, 600 2nd Street Northwest, Albuquerque, NM 87103.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 5, 2018	350002
New York:						
Erie	City of Lackawanna (17–02–1965P).	The Honorable Geoffrey M. Szymanski, Mayor, City of Lackawanna, 714 Ridge Road, Lackawanna, NY 14218.	City Hall, 714 Ridge Road, Lackawanna, NY 14218.	*https://msc.fema.gov/portal/advanceSearch.*	May 2, 2018	360247
Erie	Town of Hamburg (17–02–1965P).	The Honorable Steven J. Walters, Chairman, Town of Hamburg Board of Supervisors, 6100 South Park Avenue, Hamburg, NY 14075.	Town Hall, 6100 South Park Avenue, Hamburg, NY 14075.	*https://msc.fema.gov/portal/advanceSearch.*	May 2, 2018	360244
Erie	Town of West Seneca (17–02–1965P).	The Honorable Sheila M. Meegan, Chair, Town of West Seneca Board of Supervisors, 1250 Union Road, West Seneca, NY 14224.	Town Hall, 1250 Union Road, West Seneca, NY 14224.	*https://msc.fema.gov/portal/advanceSearch.*	May 2, 2018	360262
North Carolina:						
Orange	Town of Chapel Hill (17–04–3137P).	The Honorable Pam Hemminger, Mayor, Town of Chapel Hill, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.	Stormwater Management Program Office, 208 North Columbia Street, Chapel Hill, NC 27514.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 13, 2018	370180
South Carolina:						
Greenville	City of Greenville (17–04–4211P).	The Honorable Knox White, Mayor, City of Greenville, P.O. Box 2207, Greenville, SC 29602.	Engineering Division, 206 South Main Street, 8th Floor, Greenville, SC 29601.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 2, 2018	450091
Greenville	Unincorporated areas of Greenville County (17–04–4211P).	The Honorable H. G. (Butch) Kirven, Jr., Chairman, Greenville County Council, 301 University Ridge, Suite 2400, Greenville, SC 29601.	Greenville County Planning and Code Compliance Division, 301 University Ridge, Suite 4100, Greenville, SC 29601.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 2, 2018	450089
Tennessee:						
Williamson	City of Brentwood (17–04–1261P).	The Honorable Jill Burgin, Mayor, City of Brentwood, 1211 Knox Valley Drive, Brentwood, TN 37027.	City Hall, 5211 Maryland Way, Brentwood, TN 37027.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 26, 2018	470205
Wilson	City of Mt. Juliet (17–04–6333P).	The Honorable Ed Hagerty, Mayor, City of Mt. Juliet, 2425 North Mt. Juliet Road, Mt. Juliet, TN 37122.	City Hall, 2425 North Mt. Juliet Road, Mt. Juliet, TN 37122.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 15, 2018	470290
Texas:						
Bexar	City of San Antonio (17–06–2000P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78284.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 30, 2018	480045
Collin	City of Frisco (17–06–3743P).	The Honorable Jeff Cheney, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	Engineering Services Department, 11300 Research Road, Frisco, TX 75033.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2018	480134
Collin	City of McKinney (17–06–2726P).	The Honorable George Fuller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 2, 2018	480135
Collin	City of McKinney (17–06–3589P).	The Honorable George Fuller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 26, 2018	480135
Denton	Town of Prosper (17–06–2975P).	The Honorable Ray Smith, Mayor, Town of Prosper, P.O. Box 307, Prosper, TX 75078.	Engineering Department, 407 East 1st Street, Prosper, TX 75078.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 29, 2018	480141

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Harris	Unincorporated areas of Harris County (17–06–3082P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 2, 2018	480287
Johnson	City of Burleson (17–06–2604P).	The Honorable Ken Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	Public Works Department, 725 Southeast John Jones Drive, Burleson, TX 76028.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2018	485459
Montgomery	Unincorporated areas of Montgomery County (17–06–0698P).	The Honorable Craig B. Doyal, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Commissioners Court Building, 501 North Thompson, Suite 103, Conroe, TX 77301.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 16, 2018	480483
Tarrant	City of Fort Worth (17–06–2140P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 23, 2018	480596
Virginia:						
Fauquier	Unincorporated areas of Fauquier County (17–03–1541P).	The Honorable Richard R. Gerhardt, Chairman, Fauquier County Board of Supervisors, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	Fauquier County Circuit Court, 29 Ashby Street, 3rd Floor, Warrenton, VA 20186.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 5, 2018	510055
Louisa	Unincorporated areas of Louisa County (17–03–2337P).	Mr. Christian Goodwin, Louisa County Administrator, P.O. Box 160, Louisa, VA 23093.	Louisa County Department of Community Development, 1 Woolfolk Avenue, Louisa, VA 23093.	*https://msc.fema.gov/portal/advanceSearch.*	May 14, 2018	510092
Orange	Unincorporated areas of Orange County (17–03–2377P).	Mr. R. Bryan David, Orange County Administrator, P.O. Box 111, Orange, VA 22960.	Orange County Department of Planning and Zoning, 128 West Main Street, Orange, VA 22960.	*https://msc.fema.gov/portal/advanceSearch.*	May 14, 2018	510203
Spotsylvania	Unincorporated areas of Spotsylvania County (17–03–2377P).	Mr. Mark B. Taylor, Spotsylvania County Administrator, 9104 Courthouse Road, Spotsylvania, VA 22553.	Spotsylvania County Zoning Department, 9019 Old Battlefield Boulevard, Suite 300, Spotsylvania, VA 22553.	*https://msc.fema.gov/portal/advanceSearch.*	May 14, 2018	510308

[FR Doc. 2018–02380 Filed 2–6–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: EngageDHS

AGENCY: Office of the Chief Procurement Officer, Department of Homeland Security (DHS).

ACTION: 30–Day Notice and request for comments; New Collection, 1601–NEW.

SUMMARY: The DHS Office of the Chief Procurement Officer, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. DHS previously published this information collection requests (ICR) in the **Federal Register** on Tuesday, October 17, 2017 at 82 FR 48236 for a 60-day public comment period. Zero comments were received by DHS. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until March 9, 2018. This process is conducted in accordance with 5 CFR 1320.1.

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. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Mike Villano, (202) 447–5446, *Mike.Villano@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Under 41 U.S.C. 3306, agencies are required to use advance procurement planning and conduct market research. Advance planning and market research is a means of developing the agency's acquisition requirements. As part of this process, companies frequently ask to meet with DHS representatives for numerous reasons including: Sharing information on technologies and company capabilities or to ask how to do business with DHS. DHS needs the information being collected to prepare for productive meetings, share information across the enterprise about touchpoints the company has had at DHS, and to better track the frequency and number of meetings between DHS and companies. No personal information is being collected.

This is a means of improving the procurement process that is used to support the DHS mission. The above statute is implemented by 48 CFR (FAR) Part 10, Market Research. The information collection method the agency requests is not specifically mentioned in the regulation but it is nonetheless permissible because it reasonable and does not request more information than is necessary. Under 48 CFR (FAR) 1.102–4(e), Role of the Acquisition Team, agencies are allowed to implement a policy, procedure, strategy or practice if it is in the interest of the Government and is not otherwise prohibit.

The information is being used by DHS to help determine the department personnel who should be attending the meetings. It is also used by DHS

representatives to better prepare for the meeting, so that it is productive for both DHS and the companies It is helpful for DHS to know background information about the company as well as whether they have met with DHS before and whether they currently support the Department. DHS also receives inquiries from oversight bodies, such as Congress, regarding with how many companies DHS has met with as well as whether DHS has met with specific companies. The meeting information provides source data for answering those inquiries in an accurate and timely manner. EngageDHS is a fillable form that will be used to collect vendor/industry meetings with DHS.

Upon a request for a meeting, DHS will ask companies to complete a request form and submit via email to the DHS Industry Liaison mailbox at *DHSIndustryLiaison@hq.dhs.gov.* Once it is received by DHS, this form could be electronically loaded into DHS' system, called EngageDHS. (EngageDHS is DHS' implementation of Microsoft Dynamics CRM.) This process makes it easier and faster for companies to send in the form (email versus paper mail). It also reduces the burden on DHS employees as they do not need to manually input the information into EngageDHS. Performing data collection as discussed above would also reduce the burden on the companies requesting meetings with DHS as they would only have to fill out the form at the time of their first meeting request. So for example, if a company over time meets with representatives from multiple DHS Components (*e.g.,* Transportation Security Administration, Federal Emergency Management Agency, Coast Guard, Immigration and Customs Enforcement, etc.), the company would only have to fill out the form once.

There is no assurance of confidentiality provided to the respondents for the collection of this information. The collection of information is covered by

DHS/ALL/PIA–006 DHS General Contact Lists

DHS/ALL–021 Department of Homeland Security Contractors and Consultants, October 23, 2008, 73 FR 63179

This is a new information collection. OMB is particularly interested in comments which:

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.

Analysis

Agency: Office of the Chief Procurement Officer, DHS.

Title: Agency Information Collection Activities: EngageDHS.

OMB Number: 1601–NEW.

Frequency: Annually.

Affected Public: Private and Public Sector.

Number of Respondents: 750.

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 187.5.

Melissa Bruce,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2018–02457 Filed 2–6–18; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6001–N–40]

60-Day Notice of Proposed Information Collection: Energy Efficient Mortgages (EEMs)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* April 9, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Kevin Stevens, Director, Home Mortgage Insurance Division/451 7th Street SW, Washington, DC 20410; or email *Kevin.L.Stevens@hud.gov;* or telephone 202–708–2121. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Energy Efficient Mortgages.

OMB Approval Number: 2502–0561.

Type of Request: Extension of currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: Lenders provide the required information to determine the eligibility of a mortgage to be insured under Section 513 of the Housing and Community Development Act of 1992 (Section 106 of the Energy Policy Act of 1992). Section 2123 of the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, approved July 30, 2008) amended Section 106 of the Energy Policy Act of 1992 by revising the maximum dollar amount that can be added to an FHA-insured mortgage for energy efficient improvements.

Respondents (*i.e.* affected public): Business or other for-profit (lenders).

Estimated Number of Respondents: 50.

Estimated Number of Responses: 420.

Frequency of Response: On occasion.

Average Hours per Response: 4.25.

Total Estimated Burdens: 1,785 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of

the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 18, 2018.

Dana Wade,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2018–02452 Filed 2–6–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR- 7005–N–01]

60-Day Notice of Proposed Information Collection: Use Restriction Agreement Monitoring and Compliance

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* April 9, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Name, Title, Division, Email, Phone Number: Harry Messner; Office of Asset Management and Portfolio Oversight; Department of Housing and Urban Development; 451 7th Street, SW, Washington, DC 20410; email harry.messner@*hud.gov* or telephone 202–402–2626. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Use Restriction Agreement Monitoring and Compliance.

OMB Approval Number: 2502–0577.

Type of Request: Extension of currently approved collection.

Form Number: HUD–90075.

Description of the need for the information and proposed use: This information is necessary for HUD to ensure that owners of certain multifamily housing projects comply with use restriction requirements after the mortgage agreement has terminated. This information is also used to monitor owner compliance with unique provisions of the Use Agreement contract.

Respondents: Non-profit institutions; owners prepaying HUD insured loans.

Estimated Number of Respondents: 659.

Estimated Number of Responses: 200.

Frequency of Response: Annually.

Average Hours per Response: 2 hours.

Total Estimated Burden: 400 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 24, 2018.

Dana T. Wade,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2018–02451 Filed 2–6–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/ A0A501010.999900 253G]

Indian Trust Asset Reform Act, Title II—Indian Trust Asset Management Demonstration Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) will host three Tribal consultation sessions on the development of the Indian Trust Asset Management Demonstration Project authorized by the Indian Trust Asset Management Reform Act (ITARA), Public Law 114–178.

DATES: Written comments must be received by March 15 2018. Please see the **SUPPLEMENTARY INFORMATION** section of this document for dates of Tribal consultation sessions.

ADDRESSES: You may submit comments by one of the following methods:

- *Email: consultation@bia.gov.*
- *By hard copy:* Submit by U.S. mail or hand delivery to: Ms. Elizabeth Appel, Office of Regulatory Affairs and Collaborative Action, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4660–MIB, Washington, DC 20240. Please note: If you provide comments by email, there is no need to provide a duplicate hard copy.

Please see the **SUPPLEMENTARY INFORMATION** section of this notice for information on the Tribal consultation sessions.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Lords, Deputy Bureau Director, Bureau of Indian Affairs, Office of Trust

Services, (505) 563–3787, or email at *douglas.lords@bia.gov.*

SUPPLEMENTARY INFORMATION: The ITARA became law on June 22, 2016. Title II of ITARA authorizes the Secretary of the Interior (Secretary) to establish and carry out an Indian trust asset management demonstration project (demonstration project or project). The demonstration project will allow participating Tribes to enter into, approve, and carry out surface leasing transaction or forest land management activity without approval of the Secretary if certain conditions are met.

Once the demonstration project is established, eligible Tribes may request to participate by submitting to the Secretary a complete application package. Applications must include a copy of a resolution or other appropriate action by the governing body of the Indian Tribe in support of or authorizing the application and state that the Indian Tribe is requesting to participate in the demonstration project. The Secretary will provide a written notice to each Tribe approved to participate in the project.

Tribes that have been selected to participate in the project may submit to the Secretary a proposed Indian trust asset management plan. Under section 204(a)(2) of ITARA, Indian trust asset management plans must:

(A) Identify the trust assets that will be subject to the plan;

(B) Establish trust asset management objectives and priorities for Indian trust assets that are located within the reservation, or otherwise subject to the jurisdiction, of the Indian Tribe;

(C) Allocate trust asset management funding that is available for the Indian trust assets subject to the plan in order to meet the trust asset management objectives and priorities;

(D) Identify functions or activities that are being or will be performed by the Indian Tribe under contract, compacts, or other agreements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 *et seq.*), which may include any of the surface leasing or forest land management activities authorized by the proposed management plan and describe the practices and procedures that the Indian Tribe will follow;

(E) Establish procedures for nonbinding mediation or resolution of any dispute between the Indian Tribe and the United States relating to the trust asset management plan;

(F) Include a process for the Indian Tribe and the Federal agencies affected by the trust asset management plan to conduct evaluations to ensure that trust assets are being managed in accordance with the plan; and

(G) Identify any Federal regulations that will be superseded by the plan.

Further, in accordance with section 204(c), an Indian trust asset management plan, and any activity carried out under the plan, shall not be approved unless the proposed plan is consistent with any treaties, statutes, and executive orders that are applicable to the trust assets, or the management of the trust assets, identified in the plan.

The Secretary may approve an Indian trust asset management plan that includes a provision authorizing the Tribe to enter into, approve, and carry out a surface leasing transaction or forest management activity without approval of the Secretary, regardless of whether the surface leasing transaction or forest land management activity would require such an approval under otherwise applicable law (including regulations), under certain conditions described in section 205. Under section 204(b), the Secretary has 120 days to approve or disapprove a Tribe's proposed management plan.

A draft template of an Indian trust asset management plan is available at the following website: *https://www.bia.gov/as-ia/raca/regulations-and-other-documents-in-development*.

Tribal Consultation Sessions

The BIA will host two on-site Tribal consultations sessions and one telephonic consultation as follows:

Date	Time	Location
Tuesday, February 27, 2018	1:00 p.m.–4:00 p.m. Local Time	Mystic Lake Casino Hotel, 2400 Mystic Lake Boulevard, Prior Lake, MN 55372.
Thursday, March 1, 2018	1:00 p.m–4:00 p.m., Local Time	Portland, OR—please check website above for venue.
Thursday, March 8, 2018	1:00 p.m.–4:00 p.m. Eastern Time	Teleconference, Call-in number: (888) 324–7176, Passcode: 3730875.

Dated: January 24, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2018–02436 Filed 2–6–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14400000.BJ0000.LXSSF2210000.241A; 13–08807; MO#4500118046 TAS: 14X1109]

Filing of Plats of Survey; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: Unless otherwise stated filing takes effect at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Michael O. Harmening, Chief Cadastral Surveyor for Nevada, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV 89502–7147, phone: 775–861–6490. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

1. The Amended Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on October 25, 2016:

The amended plat, in one sheet, representing a correction to the plat accepted on September 1, 2016 and officially filed on September 12, 2016, in Township 19 South, Range 62 East, Mount Diablo Meridian, Nevada, under Group No. 959, was accepted on October 17, 2016.

2. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on February 15, 2017:

The plat, in five sheets, representing the dependent resurvey of portions of the 1893–1899 U.S. Coast and Geodetic Survey California-Nevada oblique boundary line, the second standard parallel north through a portion of range 21 east, portions of the east boundary and a portion of the subdivisional lines, and the subdivision of certain sections, Township 10 North, Range 21 East, Mount Diablo Meridian, Nevada under Group No. 871, was accepted on January 31, 2017.

3. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on February 15, 2017:

The plat, in six sheets, representing the dependent resurvey of the 1893–1899 U.S. Coast and Geodetic Survey California-Nevada oblique boundary line between the 19+1/2 mile corner and the 20+1 mile corner, the second standard parallel north through a portion of range 21 east, portions of the east and north boundaries and a portion of the subdivisional lines, and the subdivision of certain sections, Township 11 North, Range 21 East, Mount Diablo Meridian, Nevada, under Group No. 901, was accepted on February 2, 2017.

4. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on March 22, 2017:

The plat, in one sheet, representing the dependent resurvey and the corrective dependent resurvey of a portion of the north boundary and the dependent resurvey of a portion of the subdivisional lines, the subdivision of the section 5, and a metes-and-bounds survey in section 5, Township 15 South, Range 66 East, Mount Diablo Meridian, Nevada, under Group No. 955, was accepted on March 21, 2017. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

5. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on March 30, 2017:

The plat, in one sheet, representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and Mineral Survey No. 37B, and the subdivision of section 32, Township 45 North, Range 56 East, Mount Diablo Meridian, Nevada, under Group No. 964, was accepted on March 29, 2017. This survey was executed to meet certain administrative needs of the United States Forest Service.

6. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on April 25, 2017:

The plat, in four sheets, representing the dependent resurvey of a portion of the subdivisional lines and portions of certain mineral surveys, the subdivision of sections 22 and 23, and the metes-and-bounds survey of the centerline of Nevada State Route 321 through a portion of the NW¼ of section 22, Township 1 North, Range 67 East, Mount Diablo Meridian, Nevada, under Group No. 935, was accepted on April 19, 2017. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

7. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on April 26, 2017:

The plat, in one sheet representing the dependent resurvey of a portion of the subdivisional lines and portions of the subdivision-of-section lines of section 7, the further subdivision of section 7 and a metes-and-bounds survey in section 7, Township 15 South, Range 66 East, Mount Diablo Meridian, Nevada, under Group No. 966, was accepted on April 20, 2017. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

8. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on May 31, 2017:

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 17, Township 47 North, Range 56 East, Mount Diablo Meridian, Nevada, under Group No. 963, was accepted on May 26, 2017. This survey was executed to meet certain administration needs of the Bureau of Land Management.

9. The Supplemental Plat of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on July 19, 2017:

The supplemental plat, in one sheet, showing amended lotting in section 3, Township 7 South, Range 41 ½ East, Mount Diablo Meridian, Nevada under Group No. 973, was accepted on July 18, 2017. This supplemental plat was prepared to meet certain administration needs of the Bureau of Land Management.

10. The Plats of Survey of the following described lands were officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on September 28, 2017:

A plat, in two sheets, representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and the subdivision of sections 30 and 32, Township 18 South, Range 60 East, Mount Diablo Meridian Nevada, under Group No. 945, was accepted on September 21, 2017. This survey was executed to meet certain administration needs of the Bureau of Land Management and the National Park Service.

A plat, in three sheets, representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, the subdivision-of-section lines of section 1 and portions of the subdivision-of-section lines of section 3 and 4, the subdivision of section 2, the further subdivision of sections 1 and 3, and metes-and-bounds surveys in sections 1, 2, and 4, Township 19 South, Range 60 East, Mount Diablo Meridian, Nevada, under Group No. 945, was accepted September 21, 2017. This survey was executed to meet certain administration needs of the Bureau of Land Management and the National Park Service.

A plat, in two sheets, representing the dependent resurvey of portions of the west and north boundaries, a portion of the subdivisional lines and portions of the subdivision-of-section lines of sections 6 and 7, the subdivision of sections 4, 5, 8, and 10 and metes-and-bounds surveys in sections 4, 5, 6, 7, and 10, Township 19 South, Range 61 East, Mount Diablo Meridian, Nevada, under Group No. 945, was accepted on September 21, 2017. This survey was executed to meet certain administration needs of the Bureau of Land Management and the National Park Service.

11. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on December 21, 2017:

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivision of section 24, the further subdivision of section 24, and a metes-and-bounds survey in section 24, Township 19 South, Range 61 East, Mount Diablo Meridian, Nevada, under Group No. 967, was accepted on December 19, 2017. This survey was executed to meet certain administration needs of the Bureau of Land Management.

12. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on January 11, 2018:

The plat, in twelve sheets, representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines and portions of the subdivision-of-section lines of section 31, the subdivision of sections 4 and 8, and metes-and-bounds surveys of the easterly and westerly right-of-way lines of the Nevada Northern Railway Hiline and Mainline, Township 17, North, Range 64 East, Mount Diablo Meridian, Nevada, under Group No. 853 was accepted on January 10, 2018. This survey was executed to meet certain administration needs of the Bureau of Land Management.

The surveys, amended plats, and supplemental plats listed above are now the basic record for describing the lands for all authorized purposes. These records have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: January 31, 2018.

Michael O. Harmening,

Chief Cadastral Surveyor for Nevada.

[FR Doc. 2018–02469 Filed 2–6–18; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA932000. 17X.L13400000. DP0000.LXSSB0020000 CACA057064]

Cancellation of Withdrawal Application and Withdrawal Proposal and Termination of Environmental Impact Statement for California Desert Conservation Area Withdrawal, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of cancellation.

SUMMARY: The Bureau of Land Management (BLM) has canceled its withdrawal application and the withdrawal proposal relating to 1,337,904 acres of public lands within designated California Desert National Conservation Lands. The BLM has determined that the lands are no longer needed in connection with the proposed withdrawal. This notice terminates the temporary segregation from location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law, as described further below. The BLM has also terminated the preparation of an Environmental Impact Statement evaluating this application and proposal.

DATES: This Notice is applicable on February 7, 2018.

FOR FURTHER INFORMATION CONTACT: Russell Scofield, Desert Renewable Energy Conservation Plan Implementation Lead, phone: 760–833–7139, 1201 Bird Center Drive, Palm Springs, CA 992262–8001; email *ascofiel@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to reach the BLM contact person. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register** (81 FR 95738) on December 28, 2016, of the Department's proposal to withdraw 1,337,904 acres of public lands within designated California Desert National Conservation Lands from location and entry under the United States mining laws, but not from mineral or geothermal leasing or mineral materials laws, subject to valid existing rights. Because the BLM has determined that the lands are no longer needed in connection with the proposed withdrawal, the BLM has canceled the proposed withdrawal and its application in support thereof and has terminated the associated environmental analysis process.

Pursuant to 43 CFR 2310.1–4, the segregative effect for the lands described in 81 FR 95738 is terminated and the lands opened as follows: At 10 a.m. on March 9, 2018, the public lands described will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands under the mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The BLM will not intervene in disputes between rival locators over possessory rights given that Congress has provided for such determinations in local courts.

Jerome E. Perez,

California State Director.

[FR Doc. 2018–02422 Filed 2–6–18; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–585–586 and 731–TA–1383–1384 (Final)]

Stainless Steel Flanges From China and India Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–585–586 and 731–TA–1383–1384 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of stainless steel flanges from China and India, provided for in subheadings 7307.21.10 and 7307.21.50 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be subsidized and sold at less-than-fair-value.

DATES: January 23, 2018.

FOR FURTHER INFORMATION CONTACT: Celia Feldpausch (202–205–2387), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, the Department of

Commerce has defined the subject merchandise as ''certain forged stainless steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless steel flanges). Certain forged stainless steel flanges are generally manufactured to, but not limited to, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications . . . Unfinished stainless steel flanges possess the approximate shape of finished stainless steel flanges and have not yet been machined to final specification after the initial forging or like operations . . . The sizes and descriptions of the flanges within the scope include all pressure classes of ASME B16.5 and range from one-half inch to twenty-four inches nominal pipe size. Specifically excluded from the scope of these orders are cast stainless steel flanges.'' For a complete description of the scope in these investigations, please refer to Appendix I in the following FR notices, 83 FR 3118, January 23, 2018 and 83 FR 3124, January 23, 2018.

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Act (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China and India of stainless steel flanges, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on August 16, 2017, by Core Pipe Products, Inc., Carol Stream, Illinois and Maass Flange Corporation, Houston, Texas.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 28, 2018, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, April 10, 2018, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 4, 2018. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on April 9, 2018, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 3, 2018. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 17, 2018. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before April 17, 2018. On May 3, 2018, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 7, 2018, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's website at *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 2, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–02438 Filed 2–6–18; 8:45 am]

BILLING CODE 7020–02–P

LEGAL SERVICES CORPORATION

Request for Letters of Intent To Apply for 2018 Technology Initiative Grant Funding

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) issues this Notice describing the process for submission of Letters of Intent to Apply for 2018 funding from the LSC Technology Initiative Grant program. This notice and application information are posted at: *https://www.lsc.gov/grants-grantee-resources/our-grant-programs/tig.*

DATES: *Deadline:* Letters of Intent must be completed and submitted into the online system at *http://lscgrants.lsc.gov* no later than 11:59 p.m. EST, Friday, March 9, 2018. The online system may experience technical difficulties due to heavy traffic on the day of the deadline. Applicants are strongly encouraged to complete LOI submissions as early as possible.

LSC will not accept applications submitted after the application deadline unless an extension of the deadline has been approved in advance (see Waiver Authority). Therefore, allow sufficient time for online submission.

LSC will provide confirmation via email upon receipt of the completed electronic submission of each Letter of Intent. Keep this email as verification that the program's LOI was submitted and received. If no confirmation email is received, inquire about the status of your LOI at *Techgrants@lsc.gov.*

ADDRESSES: Letters of Intent must be submitted electronically at *http://lscgrants.lsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information on the status of a current TIG project, contact Eric Mathison, Program Analyst, Telephone: 202–295–1535; Email: *emathison@lsc.gov.*

For questions about projects in CT, IL, IN, ME, MA, MI, NH, NJ, NY, OH, PA, RI, WI, WV, VT, contact David Bonebrake, Program Counsel, Telephone: 202.295.1547; Email: *dbonebrake@lsc.gov.*

For questions about projects in AK, AZ, CA, CO, GU, HI, ID, IA, KS, MP, MN, MT, NE, NV, NH, NM, ND, OK, OR, SD, TX, UT, WA, WY, contact Glenn Rawdon, Senior Program Counsel, Telephone: 202.295.1552; Email: *grawdon@lsc.gov.*

For questions about projects in AL, AR, DC, FL, GA, KY, LA, MD, MS, MO, NC, PR, SC, TN, VI, VA, contact Jane Ribadeneyra, Program Analyst, Telephone: 202.295.1554, Email: *ribadeneyraj@lsc.gov.*

If you have a general question, please email *techgrants@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary

The Legal Services Corporation (LSC) issues this Notice describing the criteria governing submission and processing of Letters of Intent to Apply for Technology Initiative Grants (TIG). Since LSC's TIG program was established in 2000, LSC has made over 700 grants totaling more than $63 million. This grant program funds technology tools that help achieve LSC's goal of increasing the quantity and quality of legal services available to eligible persons. Projects funded under the TIG program develop, test, and replicate innovative technologies that can enable grant recipients and state justice communities to improve low-income persons' access to high-quality legal assistance through an integrated and well managed technology system.

II. General Information

The Legal Services Corporation awards Technology Initiative Grant funds through an open, competitive, and impartial selection process. All prospective applicants for 2018 TIG funds must submit a Letter of Intent to Apply (LOI) prior to submitting a formal application. The format and contents of the LOI should conform to the requirements specified below in Section IV.

Through the LOI process, LSC selects those projects that have a reasonable chance of success in the competitive grant process based on LSC's analysis of the project description and other information provided in the LOI. LSC will solicit full proposals for the selected projects.

LSC Requirements

Technology Initiative Grant funds are subject to all LSC requirements, including the requirements of the Legal Services Corporation Act (LSC Act), any applicable appropriations acts and any other applicable laws, rules, regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation (LSC), including, but not limited to, the LSC Audit Guide for Recipients and Auditors, the Accounting Guide for LSC Recipients, and the CSR Handbook, with any amendments to the foregoing adopted before or during the period of the grant. Before submitting a Letter of Intent to Apply, applicants should be familiar with LSC's subgrant requirements at 45 CFR Part 1627 (see *http://www.lsc.gov/about/laws-regulations/lsc-regulations-cfr-45-part-1600-et-seq*), particularly as they pertain to payments of LSC funds to other entities for programmatic activities.

For additional information and resources regarding TIG compliance, including subgrants, third-party contracting, conflicts of interest, grant modification procedures, and special TIG grant assurances, see LSC's TIG compliance web page.

Eligible Applicants

Only current LSC basic field grant recipients awarded at least a one-year basic field grant term are eligible to apply for TIG.

LSC will not award a TIG to any applicant that is not in good standing on any existing TIG projects. Applicants must be up to date according to the milestone schedule on all existing TIG projects prior to submitting an LOI, or have requested and received an adjustment to the original milestone schedule. LSC will not award a TIG to any applicant that has not made satisfactory progress on prior TIGs. LSC recipients that have had a previous TIG terminated for failure to provide timely reports and submissions are not eligible to receive a TIG for three years after their earlier grant was terminated. This policy does not apply to applicants that worked with LSC to end a TIG early after an unsuccessful project implementation resulting from technology limitations, a failed proof of concept, or other reasons outside of the applicant's control.

Funding Availability

The amount of TIG funding available will depend on the 2018 fiscal year appropriation to the LSC from Congress, which had not been determined by January 31, 2018, the date this notice was issued. The federal government is currently operating under a Continuing Resolution (CR) that expires February 8, 2018. The Continuing Resolution maintains funding at FY 2017 levels, which for TIG is $4 million, but with an across-the-board reduction of 0.6791 percent, or $27,164 for TIG. We anticipate that Congress will pass another CR to continue funding the federal government at FY 2017 levels if they do not pass an FY 2018 budget by midnight February 8th. If not, the federal government will shut down. In 2017, 25 TIG projects received funding

with a median funding amount of $138,905. (See TIG's past awards web page for more information on past grants).

Collaborations

The TIG program encourages applicants to reach out to and include in TIG projects others interested in access to justice—the courts, bar associations, pro bono projects, libraries, and social service agencies. Partnerships can enhance the reach, effectiveness, and sustainability of many projects.

Grant Categories

LSC will accept projects in three application categories:

(1) Innovations and Enhancements
(2) Replication and Adaptation
(3) Technology Improvement Project

Grant Category 1: Innovations and Enhancements

The Innovations and Enhancements Category is designated for projects that: (1) Implement new or innovative approaches for using technology in legal services delivery; or (2) enhance the effectiveness and efficiency of existing technologies so that they may be better used to increase the quality and quantity of services to clients.

LSC recommends a minimum amount for funding requests in this category of $40,000, but projects with lower budgets will be considered. There is no maximum amount for TIG funding requests that are within the total appropriation for TIG. Although there is no funding limit or matching requirement for applications in this category, additional weight is given to projects with strong support from partners. Proposals for initiatives with broad applicability and/or that would have impact throughout the legal services community are strongly encouraged.

Grant Category 2: Replication and Adaptation

The Replication and Adaptation category is for proposals that seek to replicate, adapt, or provide added value to the work of prior technology projects. This includes, but is not limited to, the implementation and improvement of tested methodologies and technologies from previous TIG projects. Applicants may also replicate technology projects funded outside of the TIG program, including sectors outside the legal aid community, such as social services organizations, the broader non-profit community, and the private sector. LSC recommends a minimum amount for funding requests in this category of $40,000, but projects with lower budgets will be considered. There is no maximum amount for TIG funding requests that are within the total appropriation for TIG.

Project proposals in the Replication and Adaptation category may include, but are not limited to:

A. Replication of Previous TIG Projects

LSC requires that any original software developed with TIG funding be available to other legal services programs at little or no cost. Applicants should look to previous successful TIG projects and determine how they could be replicated at a reduced cost from the original project, and/or how they could be expanded and/or enhanced. Projects where original software or content has already been created lend themselves to replication, and LSC encourages programs to look to these projects to see how they could benefit the delivery systems in their state.

B. Automated Form Replication

Law Help Interactive (LHI) is an automated document server powered by HotDocs Server and made available to any LSC funded program at no charge. See *https://lawhelpinteractive.org.* LHI is deployed across the country with thousands of active HotDocs templates and A2J Author modules hosted on the LawHelp Interactive National HotDocs Server at *https://lawhelpinteractive.org.* Despite differences from state to state in the content and format, many of these forms can be edited for use in other jurisdictions with less effort, hence at a lower cost, than developing the form from scratch.

Even if a form differs from one state to another, the information needed to populate a form will, for the most part, be similar. (What are the names of the plaintiff, the defendant, the children, etc.?). This means the interviews are more easily replicated than form templates. These form templates and interviews are available to be modified as needed. Applicants should identify which forms and templates are to be adapted, and then estimate the cost to do this and compare that to the cost of developing them from scratch. LHI has the capacity to support Spanish, Vietnamese, Mandarin and Korean language interviews. In addition, LHI has been integrated with other systems to allow the flow of information between LHI and court e-filing systems and legal aid case management systems. The ''Connect'' feature enables pro bono programs from across a state to use LHI interviews and forms to assign pre-screened pro bono cases and their documents to panel attorneys. For additional information, including examples, best practices, models and training materials, see the LawHelp Interactive Resource Center at *http://www.probono.net/dasupport* (you may need to request a free membership to access this website).

C. Replication of Technology Projects in Other Sectors

In addition to replicating other TIG funded technology projects, LSC encourages replication of proven technologies from non-LSC funded legal aid organizations as well as sectors outside the legal aid community. Ideas for replication may be found through resources and organizations such as the Legal Services National Technology Assistance Project (LSNTAP), the American Bar Association, international legal aid providers such as the Legal Services Society of British Columbia and HiiL's Innovating Justice project, Idealware (see the article on Unleashing Innovation), NTEN, and TechSoup.

Grant Category 3: Technology Improvement Projects

In 2015 LSC updated its publication Technologies That Should Be in Place in a Legal Aid Office Today, often referred to as the LSC Technology Baselines. The updated Baselines demonstrate LSC's commitment to improving the use of technology across its grantee organizations. LSC also recognizes that grantees need to have sufficient technology infrastructure in place before they can take on a more innovative TIG project. Therefore, only LSC grantees that have not had a TIG award in the last five years (since 2013) are eligible to apply for a Technology Improvement Project. The maximum amount for funding requests in this category is $25,000 to conduct a technology assessment, business process improvement and/or a technology planning project.

Many legal aid organizations do not have internal expertise or capacity to take on such projects. An award for a Technology Improvement Project is intended to provide funding for appropriate consulting services to conduct the technology assessment, business process improvement and/or technology planning process. The project should result in a plan for the organization to make the investments needed to improve its use of technology in the delivery of legal services.

III. Area of Interest—Projects That Integrate Artificial Intelligence Into Service Delivery

Artificial intelligence (AI) has become a popular topic in the legal services

community. This area of interest encourages organizations to explore how practical applications of AI can increase operational efficiency and lead to greater access to services within legal aid. Applicants should consider how emerging AI systems can enhance the existing work of advocates. For example, an AI-powered recommendation engine might help intake staff determine how to best route an online intake, or an AI-powered case management tool could provide attorneys a list of similar closed cases to help inform their legal strategy. In both cases, staff would monitor the quality of recommendations and help improve the system over time.

LSC also believes that client-facing apps can incorporate AI to help low-income individuals complete legal tasks. Products such as the DoNotPay chatbot show that people seeking legal assistance are eager to use these tools, and organizations should focus on how they can provide high-quality user experiences that help users get through their legal process.

In both cases, applicants should aim for using accessible systems with open Application Programming Interfaces (API) that allow legal aid providers to collaborate in this emerging area and result in tools that benefit the entire community. Applicants should also explore how large data sets—such as case or website data—can best be leveraged to improve the quality of these systems.

IV. Specific Letter of Intent To Apply Requirements

One Project per Letter of Intent

Applicants may submit multiple LOIs, and a separate LOI should be submitted for each project for which funding is sought.

Letter Requirements and Format

Letters of Intent must be submitted using the online system at *http://lscgrants.lsc.gov.* Additional instructions and information can be found on the TIG website. This system will walk you through the process of creating a simple two-page LOI. You will start by picking the Category in which you are applying from a drop-down list. After that, you will be taken to a form to be submitted. You will start by filling in the amount you are requesting from TIG, followed by two questions concerning whether you also are also applying to PBIF for funds related to the project.

Then, for the categories Innovations and Enhancements and Replication and Adaptation, you will have the following five fields:

1. Description of Project (maximum 2500 characters)—Briefly describe the basic elements of the project, including any specific technologies the project will develop or implement, how they will be developed, how they will operate, the function they will serve within the legal services delivery system, their expected impact, and other similar factors. (Only the impact should be highlighted here; more details about the system's benefits should be provided below).

2. Major Benefits (maximum 2500 characters)—Describe the specific ways in which the project will increase or improve services to clients and/or enhance the effectiveness and efficiency of legal aid organization operations. To the extent feasible, discuss both the qualitative and quantitative aspects of these benefits.

3. Estimated Costs (maximum 1500 characters)—This should include the amount of funding you are seeking from the TIG program, followed by the estimated total project cost, summarizing the anticipated costs of the major components of the project. List anticipated contributions, both in-kind and monetary, from all partners involved in the project.

4. Major Partners (maximum 1500 characters)—Identify organizations that are expected to be important partners. Specify the role(s) each partner will play.

5. Innovation/Replication (maximum 1500 characters)—Identify how and why the proposed project is new and innovative and/or is a replication or adaptation of a previous technology project. Identify how and why the proposed project can significantly benefit and/or be replicated by other legal services providers and/or the legal services community at large.

For the category Technology Improvement Project, you will have these four fields:

1. Description of Project (maximum 2500 characters)—Briefly describe what type of project will be undertaken, such as a technology assessment, business process analysis or technology planning process. Describe how this will lead to a plan for improving the program's operations. Also, discuss who will be responsible for carrying out the activities, such as by internal staff or an outside contractor.

2. Major Benefits (maximum 2500 characters)—Describe the promise that the project has to increase or improve services to clients and/or enhance the effectiveness and efficiency of program operations. To the extent feasible, discuss both the qualitative and quantitative aspects of these benefits.

3. Estimated Costs (maximum 1500 characters)—Start by stating the amount of funding you are seeking from the TIG program, and then give the estimated total project cost, summarizing the anticipated costs of the major components of the project. List anticipated contributions, both in-kind and monetary, of all partners involved in the project.

4. Implementation (maximum 1500 characters)—Discuss the organizations commitment to implement the plan or recommendations that result from the project, including probable financing sources.

Selection Process

LSC will initially review all LOIs to determine whether they conform to the required format and clearly present all of the required elements listed and described above. Failure to meet these requirements may result in rejection of the LOI.

LSC will review each LOI to identify those projects likely to improve access to justice, or to improve the efficiency, effectiveness, and quality of legal services provided by grantees. The LOI will also be reviewed to determine the extent to which the project proposed is clearly described and well thought out, offers major benefits to our targeted client community, is cost-effective, involves all of the parties needed to make it successful and sustainable, and is either innovative or a cost-effective replication of prior successful projects. LSC will invite those applicants that satisfy these criteria to submit full applications.

Next Steps for Successful Applicants

LSC will notify successful applicants by April 20, 2018. Successful applicants will have until 11:59 p.m. EDT, Monday, June 4, 2018, to complete and submit full applications in the online application system.

Waiver Authority

LSC, upon its own initiative or when requested, may waive provisions in this Notice at its sole discretion. Waivers may be granted only for requirements that are discretionary and not mandated by statute or regulation. Any request for a waiver must set forth the reason for the request and be included in the application. LSC will not consider a request to extend the deadline for a Letter of Intent to Apply unless the extension request is received by LSC prior to the deadline.

Dated: February 2, 2018.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs & General Counsel.

[FR Doc. 2018–02435 Filed 2–6–18; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–018]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by March 9, 2018. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Agricultural Research Service (DAA–0310–2018–0001, 2 items, 2 temporary items). Peer review case files consisting of administrative records such as peer review documents, review panel organization and composition, and project review information.

2. Department of Defense, Defense Logistics Agency (DAA–0361–2017–0012, 5 items, 5 temporary items). Records related to product management and distribution.

3. Department of Homeland Security, Transportation Security Administration (DAA–0560–2018–0002, 1 item, 1 temporary item). Requests and authorizations for Federal air marshals to carry personal weapons.

4. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2017–0035, 3 items, 3 temporary items). Disabled veteran leave request case files.

5. Department of Justice, Bureau of Prisons (DAA–0129–2017–0002, 1 item, 1 temporary item). Case files of inmates incarcerated in Federal institutions.

6. Department of Justice, Federal Bureau of Investigation. Administrative correction for incorrect date spans on schedule N1–65–04–04 approved in 2004, covering the FBI's transition to a revised recordkeeping practice in 1988. N1–65–04–04 incorrectly stated that the switch in recordkeeping practices for the Office of Origin occurred in 1995 and for the Auxiliary Office in 1991, when it actually began on a rolling basis in 1988 for both. The error in date spans created an inadvertent gap, resulting in some records created between 1988 and 1995 being unscheduled.

7. Department of Veterans Affairs, Veterans Health Administration (DAA–0015–2018–0001, 3 items, 3 temporary items). Records related to eligibility and

financial responsibility for health care benefits.

8. National Indian Gaming Commission, Division of Public Affairs (DAA–0600–2017–0012, 9 items, 2 temporary items). Non-senior level biographical files and speeches. Proposed for permanent retention are bulletins, press releases, senior official biographical files and speeches, and digital audiUS ovisual records documenting agency programs and activities.

9. Postal Regulatory Commission, Agency-wide (DAA–0458–2018–0001, 37 items, 11 temporary items). Staff records related to internal briefings, draft reports, and protective conditions. Proposed for permanent retention are records related to dockets, required reporting, high level officials, and Commission meetings and hearings.

10. United States International Trade Commission, Office of the General Counsel (DAA–0081–2017–0004, 11 items, 10 temporary items). Administrative or operational related legal memoranda, litigation case files, investigations and summaries of violations to Commission rules, trade policy support files, policy development and review files, and working files. Proposed for permanent retention are historically significant legal memoranda.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2018–02404 Filed 2–6–18; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes; Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on March 7–8, 2018. A sample of agenda items to be discussed during the public session includes: (1) A discussion on medical-related events; (2) an update on the worldwide supply and domestic production of molybdenum-99; (3) a discussion on the resources needed to address the development of emerging medical technologies; and (4) a discussion of staff's evaluation of the ACMUI's recommendations related to medical event reporting under title 10 *Code of Federal Regulations* (10 CFR) 35.3045 and impact on safety culture at medical institutions. The agenda is subject to change. The current agenda and any updates will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2018.html* or by emailing Ms. Sophie Holiday at the contact information below.

Purpose: Discuss issues related to 10 CFR part 35 Medical Use of Byproduct Material.

Date and Time for Open Sessions: March 7, 2018, from 8:30 a.m. to 2:30 p.m. and March 8, 2018, from 8:30 a.m. to 2:45 p.m. Eastern Standard Time.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Room T2–B3, 11545 Rockville Pike, Rockville, Maryland 20852.

Public Participation: Any member of the public who wishes to participate in the meeting in person or via phone should contact Ms. Holiday using the information below. The meeting will also be webcast live at *https://video.nrc.gov/.*

Contact Information: Sophie Holiday, email: *sophie.holiday@nrc.gov,* telephone: (301) 415–7865.

Conduct of the Meeting

Philip O. Alderson, M.D. will chair the meeting. Dr. Alderson will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Holiday using the contact information listed above. All submittals must be received by March 2, 2018, three business days before the meeting, and must pertain to the topics on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The draft transcript and meeting summary will be available on ACMUI's website *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2018.html* on or about April 19, 2018.

4. Persons who require special services, such as those for the hearing impaired, should notify Ms. Holiday of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in 10 CFR part 7.

Dated at Rockville, Maryland this 1st day of February, 2018.

For the Nuclear Regulatory Commission.

Russell E. Chazell,

Advisory Committee Management Officer.

[FR Doc. 2018–02375 Filed 2–6–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Station, Units 3 and 4; Addition of a Residual Heat Removal Suction Relief Valve for Low-Temperature Overpressure Protection

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 104 and 103 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information that is requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemptions and amendments were issued on December 20, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol

Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated July 14, 2017 (ADAMS Accession No. ML17195B047) and supplemented by letter dated October 3, 2017 (ADAMS Accession No. ML17276B537).

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Paul Kallan, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2809; email: *Paul.Kallan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 104 and 103 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The exemptions are required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' Appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee proposes to depart from Tier 2 information in the Updated Final Safety Analysis Report (which includes the plant-specific DCD Tier 2 information) and involves related changes to plant-specific Tier 1 (and associated COL Appendix C) information, and COL Appendix A, Technical Specifications. Specifically, the requested amendment proposes changes to add a second normal residual heat removal system (RNS) suction relief valve in parallel to the current RNS suction relief valve, with the necessary piping changes. Additionally, a change is proposed to Tier 1 Figure 2.2.1–1, for penetration P19, to accurately depict the orientation of the class break of containment isolation valve RNS–PL–V061.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendments were found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17332A521.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML17332A515 and ML17332A516, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML17332A517 and ML17332A519, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to Vogtle Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated July 14, 2017, and supplemented by letter dated October 3, 2017, the licensee requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference 10 CFR part 52, appendix D, ''Design Certification Rule for the AP1000 Design,'' as part of license amendment request (LAR) 17–022, ''Addition of a Residual Heat Removal Suction Relief Valve for Low-Temperature Overpressure Protection.''

For the reasons set forth in Section 3.1, of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML17332A521, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined Licenses as described in the licensee's request dated July 14, 2017, and supplemented by letter dated October 3, 2017. This exemption is related to, and necessary for, the granting of License Amendment Nos. 104 (Unit 3) and 103 (Unit 4), which is being issued concurrently with this exemption.

3. As explained in Section 5.0, ''Environmental Consideration,'' of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17332A521), these exemptions meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. These exemptions are effective as of the date of its issuance.

III. License Amendment Request

By letter dated July 14, 2017, and supplemented by letter dated October 3, 2017, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in

10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on September 12, 2017 (82 FR 42844). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemptions and issued the amendments that the licensee requested on July 14, 2017 and supplemented October 3, 2017.

The exemptions and amendments were issued on December 20, 2017 as part of a combined package to the licensee (ADAMS Accession No. ML17332A513).

Dated at Rockville, Maryland, this 2nd day of February 2018.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2018–02473 Filed 2–6–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; Shield Building Roof Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from elements of the certification information of Tier 1 of the generic AP1000 design control document (DCD) and is issuing License Amendment Nos. 106 and 105 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively referred to as the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on January 11, 2018.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated November 30, 2016, (ADAMS Accession No. ML16335A453) and revised by letters dated June 16 and October 6, 2017, (ADAMS Accession Nos. ML17167A335 and ML17279B086, respectively) designated License Amendment Request (LAR) 16–031.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 106 and 105 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The exemption revises the plant-specific Tier 1 information and corresponding changes to COL Appendix C, and the amendment changes the plant-specific DCD Tier 2* and associated Tier 2 material incorporated into the VEGP Updated Final Safety Analysis Report, by revising the design details for the shield building roof, tension ring, and air inlets and removing tie rods. The exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee proposed changes to plant-specific Tier 1 information and corresponding changes to COL Appendix C, plant-specific DCD Tier 2*, and associated Tier 2 material incorporated into the VEGP Updated Final Safety Analysis Report, by revising the design details for the shield building roof, tension ring, and air inlets and removing tie rods. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17332A154.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML17332A152 and ML17332A153, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos.

ML17332A148 and ML17332A150, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated November 30, 2016, as revised by letters dated June 16, and October 6, 2017, Southern Nuclear Operating Company requested from the Nuclear Regulatory Commission (NRC or Commission) an exemption to allow departures from Tier 1 information in the certified Design Control Document (DCD) incorporated by reference in 10 CFR part 52, appendix D, ''Design Certification Rule for the AP1000 Design,'' as part of license amendment request (LAR) 16–031, ''Shield Building Roof Changes.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation which can be found in (ADAMS Accession No. ML17332A154) the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, allowing changes to the plant-specific DCD Tier 1 with corresponding changes to Appendix C of the Facility Combined License as described in the request dated November 30, 2016, as revised by letters dated June 16, and October 6, 2017. This exemption is related to, and necessary for, the granting of License Amendment No. 106, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17332A154), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated November 30, 2016, (ADAMS Accession No. ML16335A453) and revised by letters dated June 16 and October 6, 2017, (ADAMS Accession Nos. ML17167A335 and ML17279B086, respectively), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on March 8, 2017 (82 FR 13019). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on November 30, 2016, as revised by letters dated June 16, and October 6, 2017.

The exemption and amendment were issued to the licensee on January 11, 2018, as part of a combined package (ADAMS Accession No. ML17332A146).

Dated at Rockville, Maryland, this 2nd day of February 2018.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2018–02472 Filed 2–6–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* February 7, 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 February 2, 2018, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Select Contract 30 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–122, CP2018–165.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–02459 Filed 2–6–18; 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:* February 7, 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 February 2,

2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 74 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–121, CP2018–164.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–02458 Filed 2–6–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82614; File No. SR–CboeBZX–2018–006]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 21.1, Definitions, To Adopt a New Time in Force and To Modify an Existing Time in Force Applicable to the Exchange's Equity Options Platform

February 1, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 21.1 to adopt a new Time in Force and to modify an existing Time in Force applicable to the Exchange's equity options platform (''BZX Options'').

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange propose to adopt a new Time in Force under Rule 21.1, Definitions. Specifically, the Exchange proposes to adopt the Time in Force of ''Good Til Cancelled'', or ''GTC'', which, as proposed shall mean, for an order so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. The Exchange proposes to adopt the Time in Force of GTC in sub-paragraph (f)(4) of Rule 21.1, which is currently reserved. The proposed definition of GTC is based on and identical to Rule 21.1(f)(4) of the Exchange's affiliate, EDGX.

The Exchange also proposes to amend sub-paragraph (f)(1) of Exchange Rule 21.1, to modify the Good Til Day (or ''GTD'') Time in Force. Currently, GTD orders are limited to the specific trading day on which they are entered, as the Exchange does not currently offer any orders that continue to remain on the Exchange for more than a single trading day (*i.e.,* does not carry any orders overnight). Specifically, in connection with the adoption of the Time in Force of GTC, the Exchange proposes to modify the GTD Time in Force to also allow GTD orders to remain in effect past the day on which they were entered, and therefore proposes to remove language that refers to the time of expiration as needing to be ''during such trading day''. In addition, to avoid confusion, the Exchange proposes to modify the name of the GTD Time in Force to ''Good Til Date'', which is more reflective of a Time in Force that can last for more than one trading day.

The Exchange does not believe that offering GTD functionality that allows orders to remain with the Exchange for more than one trading day raises any issues that are not already present with GTC orders. In turn, GTC is a common time in force and is typically implemented to allow orders to remain for more than one trading day.[5] The Exchange simply has not offered such functionality previously and therefore has had specific language reflecting that an expiration time must be during the trading day. The Exchange notes that EDGX recently filed to make the same change to its definition and functionality related to GTD.[6] The Exchange also notes that a GTD modifier providing a Time in Force that could last more than one day has been previously offered by at least one equities exchange not affiliated with the Exchange.[7]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes the proposed amendment will provide additional flexibility to Users that wish to enter an order that will last past the trading day on which it is entered by allowing such Users to either enter an order with the GTC Time in Force, without a specific expiration time, or to use the GTD Time in Force to set a specific expiration time on an order. As noted above, the Exchange proposes to adopt the GTC Time in Force in the near future, which will persist over multiple trading days unless cancelled, and believes that the Time in Force of GTD should similarly be able to persist over multiple trading days. The Exchange believes it could be confusing and inconsistent to offer a GTC Time in Force that can persist for longer than a single trading day and a GTD Time in Force, which commonly means ''Good Til Date'', but that would

[5] *See, e.g.,* C2 Rule 6.10(d)(2).

[6] See SR–CboeEDGX–2018–003, filed January 25, 2018, *available at: https://markets.cboe.com/us/options/regulation/rule_filings/edgx/.*

[7] *See* Securities Exchange Act Release No. 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (SR–NYSEArca–2015–56) (notice of filing by NYSE Arca describing proposed changes in connection with migration of technology to new platform, including retirement of GTD modifier).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

have to expire no later than the end of the trading day on which it was entered. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposal will promote consistency between the Exchange and its affiliated exchange, EDGX Options, by offering the GTC Time in Force. The proposed change to GTD is a minor update to an existing Time in Force, given the update to the Exchange's technology that will allow orders to persist for more than one trading day. The Exchange does not believe that the proposed changes will have any direct impact on competition. Thus, the Exchange does not believe that the proposal creates any significant impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may, as soon as possible, implement the proposed rule change. The Exchange notes that the proposal will promote consistency between the Exchange and its affiliated exchange, EDGX Options. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2018–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2018–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2018–006 and should be submitted on or before February 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02396 Filed 2–6–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82612; File No. SR–ISE–2017–111]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Approving a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program

February 1, 2018.

I. Introduction

On December 21, 2017, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the

Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Nonstandard Expirations Pilot Program. The proposed rule change was published for comment in the **Federal Register** on January 12, 2018.[3] The Commission received no comments on the proposed rule change.

This order approves the proposal for a pilot period of twelve months.

II. Description of the Proposal

The Exchange proposes to permit the listing and trading, on a pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expiration dates for a period of twelve months (the ''Nonstandard Expirations Pilot Program'' or ''Pilot Program'') from the date of approval of this proposed rule change. The Pilot Program would permit both weekly expirations (''Weekly Expirations'') and end of month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value will be based on the index value derived from the closing prices of component stocks. The proposal is substantially similar to Chicago Board Options Exchange (''CBOE'') Rule 24.9(e), Nonstandard Expirations Pilot Program[4] as well as the Nonstandard Expirations Pilot Program of the Exchange's affiliate Nasdaq PHLX LLC (''Phlx'') Rule 1101A.[5]

A. Weekly Expirations

The Exchange proposes to add new Supplementary Material .07(a), Weekly Expirations, to Rule 2009. Under the proposed new rule the Exchange would be permitted to open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations would be subject to all provisions of ISE Rule 2009 and would be treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations would be p.m.-settled. New series in Weekly Expirations could be added up to and including on the expiration date for an expiring Weekly Expiration.

The maximum number of expirations that could be listed for each Weekly Expiration (*i.e.,* a Monday expiration, Wednesday expiration, or Friday expiration, as applicable) in a given class would be the same as the maximum number of expirations permitted for standard options on the same broad-based index. Weekly Expirations would not need to be for consecutive Monday, Wednesday, or Friday expirations as applicable. However, the expiration date of a non-consecutive expiration would not be permitted beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.

Weekly Expirations that are first listed in a given class could expire up to four weeks from the actual listing date. If the last trading day of a month were a Monday, Wednesday, or Friday and the Exchange were to list EOMs and Weekly Expirations as applicable in a given class, the Exchange would list an EOM instead of a Weekly Expiration in the given class. Other expirations in the same class would not be counted as part of the maximum number of Weekly Expirations for a broad-based index class. If the Exchange were not open for business on a respective Monday, the normally Monday expiring Weekly Expirations would expire on the following business day. If the Exchange were not open for business on a respective Wednesday or Friday, the normally Wednesday or Friday expiring Weekly Expirations would expire on the previous business day.

B. EOM Expirations

Under the proposal, the Exchange could open for trading EOMs on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOMs would be subject to all provisions of Rule 2009 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOMs would be p.m.-settled and new series in EOMs could be added up to and including on the expiration date for an expiring EOM.

The maximum number of expirations that could be listed for EOMs in a given class would be the same as the maximum number of expirations permitted for standard options on the same broad-based index. EOM expirations would not need to be for consecutive end of month expirations. However, the expiration date of a non-consecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. EOMs that are first listed in a given class could expire up to four weeks from the actual listing date. Other expirations would not be counted as part of the maximum numbers of EOM expirations for a broad-based index class.

C. Contract Terms and Trading Rules

The Exchange proposes that Weekly Expirations and EOMs would be subject to the same rules that currently govern the trading of standard monthly broad-based index options, including sales practice rules, margin requirements, and floor trading procedures. Contract terms for Weekly Expirations and EOMs would be the same as those for standard monthly broad-based index options, except that the exercise settlement value will be based on the index value derived from the closing prices of component stocks. Since Weekly Expirations and EOMs will be a new type of series, and not a new class, the Exchange proposes that Weekly Expirations and EOMs shall be aggregated for any applicable reporting and other requirements.[6] Pursuant to proposed Supplementary Material .07(d) of Rule 2009, transactions in Weekly Expirations and EOMs could be effected on the Exchange between the hours of 9:30 a.m. (Eastern Time) and 4:15 p.m. (Eastern Time).

The Exchange represents that it has analyzed its capacity and believes that it and the Options Price Reporting Authority have the necessary systems capacity to handle any additional traffic associated with the listing of the maximum number nonstandard expirations permitted under the Pilot Program.

D. Pilot Program Annual Report

As part of the Pilot Program, the Exchange proposes to submit a Pilot Program report to the Commission at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82458 (Jan. 8, 2018), 83 FR 1636.

[4] *See* Securities Exchange Act Release Nos. 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR–CBOE–2016–046) (Order approving expansion of CBOE's Nonstandard Expirations Pilot Program to include Monday Expirations); 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (SR–CBOE–2015–106) (Order approving expansion of CBOE's Nonstandard Expirations Pilot Program to include Wednesday Expirations); 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR–CBOE–2009–075) (Order approving CBOE's Nonstandard Expirations Pilot Program).

[5] *See* Securities Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (Order approving Phlx's Nonstandard Expirations Pilot Program).

[6] *See* Rule 2006(a)(13) which sets forth the reporting requirements for certain market indexes that do not have position limits, including NDX. The Exchange is adding Nonstandard Expirations to Rule 2004(d) to reflect the aggregation requirement. The Exchange notes that the proposed aggregation is consistent with the aggregation requirements for other types of option series (*e.g.* quarterly expiring options) that are listed on the Exchange and which do not expire on the customary ''third Friday''.

least two months prior to the expiration date of the Pilot Program (the ''annual report''). The annual report will contain an analysis of volume, open interest and trading patterns. In addition, for series that exceed certain minimum open interest parameters, the annual report will provide analysis of index price volatility and, if needed, share trading activity. The annual report will be provided to the Commission on a confidential basis.

Analysis of Volume and Open Interest

For all Weekly Expirations and EOM series, the annual report will contain the following volume and open interest data for each broad-based index overlying Weekly Expiration and EOM options:

(1) Monthly volume aggregated for all Weekly Expiration and EOM series,

(2) Volume in Weekly Expiration and EOM series aggregated by expiration date,

(3) Month-end open interest aggregated for all Weekly Expiration and EOM series,

(4) Month-end open interest for EOM series aggregated by expiration date and open interest for Weekly Expiration series aggregated by expiration date,

(5) Ratio of monthly aggregate volume in Weekly Expiration and EOM series to total monthly class volume, and

(6) Ratio of month-end open interest in EOM series to total month-end class open interest and ratio of open interest in each Weekly Expiration series to total class open interest.

In addition, the annual report will contain the information noted above for standard Expiration Friday, a.m.-settled series, if applicable, for the period covered in the annual report as well as for the six-month period prior to the initiation of the Pilot Program.

Upon request by the SEC, the Exchange will provide a data file containing: (1) Weekly Expiration and EOM option volume data aggregated by series, and (2) Weekly Expiration open interest for each expiring series and EOM month-end open interest for expiring series.

Monthly Analysis of Weekly Expiration and EOM Trading Patterns

In the annual report, the Exchange also proposes to identify Weekly Expiration and EOM trading patterns by undertaking a time series analysis of open interest in Weekly Expiration and EOM series aggregated by expiration date compared to open interest in near-term standard Expiration Friday a.m.-settled series in order to determine whether users are shifting positions from standard series to Weekly Expiration and EOM series. In addition, to the extent that data on other weekly or monthly p.m. settled products from other exchanges is publicly available, the annual report will also compare open interest with these options in order to determine whether users are shifting positions from other weekly or monthly p.m.-settled products to the Weekly Expiration and EOM series. Declining open interest in standard series or the weekly or monthly p.m.-settled products of other exchanges accompanied by rising open interest in Weekly Expiration and EOM series would suggest that users are shifting positions.

Provisional Analysis of Index Price Volatility and Share Trading Activity

For each Weekly Expiration and EOM expiration that has open interest that exceeds certain minimum thresholds, the annual report will contain the following analysis related to index price changes and, if needed, underlying share trading volume at the close on expiration dates:

(1) A comparison of index price changes at the close of trading on a given expiration date with comparable price changes from a control sample. The data will include a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by an appropriate index agreed by the Commission and the Exchange, will be provided; and

(2) if needed, a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money Weekly Expiration and EOM expirations. The data, if needed, will include a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for selecting the component securities, and sample periods will be determined by the Exchange and the Commission.

III. Discussion and Commission's Findings

After careful review of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

While the Commission has had concerns about the adverse effects and impact of p.m.-settlement upon market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading, it has approved on a limited basis p.m.-settlement for cash-settled options.[9] More specifically, the Commission approved on a pilot basis CBOE's nearly identical and Phlx's identical Nonstandard Expirations Pilot Programs.[10]

Like Phlx, the Exchange patterns its proposal after CBOE's and includes the same additional data element that Phlx includes in the annual report: An analysis of publicly available data concerning trading patterns with respect to other p.m.-settled products from other exchanges. In all other aspects, the Exchange's proposed and Phlx's and CBOE's existing Nonstandard Expirations Pilot Programs are identical.

The Commission believes that the Exchange's proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series that may burden certain liquidity providers and further stress options

[7] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See, e.g.,* Securities Exchange Act Release Nos. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR–CBOE–92–13) (Order approving CBOE's listing of p.m.-settled, cash-settled options on certain broad-based indexes); 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087) (Order approving CBOE's listing of p.m.-settled FLEX options on a pilot basis); 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR–CBOE–2013–055) (Order approving the addition of p.m.-settled mini-SPX index options to the SPXPM Pilot for p.m.-settled SPX index options); 81293 (August 2, 2017), 82 FR 37138 (August 8, 2017) (SR–Phlx–2017–04) (Order approving Phlx to list and trade of p.m.-settled NASDAQ–100 Index(R) Options on a Pilot Basis).

[10] *See supra* notes 4–5.

quotation and transaction infrastructure. The Exchange's proposed twelve-month Pilot Program will allow for both the Exchange and the Commission to continue monitoring the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities markets, at the expiration of these options.

The Commission notes that the Exchange will provide the Commission with the annual report analyzing volume and open interest of EOMs and Weekly Expirations that will also contain information and analysis of EOMs and Weekly Expirations trading patterns and index price volatility and share trading activity for series that exceed minimum parameters. This information should be useful to the Commission as it evaluates whether allowing p.m.-settlement for EOMs and Weekly Expirations has resulted in increased market and price volatility in the underlying component stocks, particularly at expiration. The Pilot Program information should help the Commission and the Exchange assess the impact on the markets and determine whether changes to these programs are necessary or appropriate. Furthermore, the Exchange's ongoing analysis of the Pilot Program should help it monitor any potential risks from large p.m.-settled positions and take appropriate action, if warranted.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–ISE–2017–111) be approved for a pilot period of twelve months.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02394 Filed 2–6–18; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82611; File No. SR–Phlx–2017–103]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Approving a Proposed Rule Change To Expand the Short Term Option Series Program To Allow Monday Expirations for SPY Options

February 1, 2018.

I. Introduction

On December 6, 2017, the Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 1000 and Commentary .11 to Rule 1012 to expand the Short Term Option Series Program to permit listing and trading of options on the SPDR S&P 500 ETF Trust (''SPY'') with Monday expirations. The proposed rule change was published for comment in the **Federal Register** on December 26, 2017.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Under the terms of the current Short Term Option Series Program, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire on each of the next five Fridays, provided that such Friday is not a Friday in which monthly options series or Quarterly Options Series expire.[4] In addition, the Exchange may open for trading on any Tuesday or Wednesday that is a business day series of options on SPY to expire on up to five consecutive Wednesdays, provided that each such Wednesday is a business day and is not a Wednesday in which Quarterly Options Series expire.[5]

The Exchange proposes to expand the Short Term Option Series to permit Phlx to open for trading, on any Monday or Friday that is a business day, series of options on SPY that expire on any Monday of the month that is a business day and is not a Monday in which Quarterly Options Series expires (''Monday SPY Expirations'').[6] In the case of a series that is listed on a Friday and expires on a Monday, it must be listed one business week and one business day prior to that Monday expiration.[7] If the Monday SPY Expirations falls on a Monday that is not a business day, the series shall expire on the first business day immediately following that Monday.[8] The Exchange also proposes to amend Commentary .11 to Phlx Rule 1012 state that it may list up to five consecutive Monday SPY Expirations at one time, and may have no more than a total of five Monday SPY Expirations (in addition to a maximum of five Short Term Option Series for SPY expiring on Friday and five Wednesday SPY Expirations). In addition, like Wednesday SPY Expirations and unlike other option series in the Short Term Option Series program, Monday SPY Expirations could expire in the same week in which monthly option series in the same class expire.[9] Otherwise, Monday SPY Expirations are subject to the same rules as standard Short Term Option Series.[10]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Commission finds that the proposal is consistent with the requirements of Sections 6(b)(5) of the Act,[12] which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82363 (December 19, 2017), 82 FR 61047 (December 26, 2017) (''Notice'').

[4] *See* Commentary .11 to Phlx Rule 1012.

[5] *See id.*

[6] Under the proposal, the Exchange would expand the definition of ''Short Term Option Series'' in Phlx Rule 1044(b)(44) and add a description of Monday SPY Expirations to Commentary .11 to Phlx Rule 1012. *See* Notice, *supra* note 3, at 61048.

[7] *See* proposed Commentary .11 to Phlx Rule 1012.

[8] *See* proposed Phlx Rule 1000(b)(44).

[9] *See* proposed Commentary .11 to Phlx Rule 1012.

[10] For example, Monday SPY Expirations would be subject to the same series limitations and strike interval rules as standard Short Term Option Series. *See* Notice, *supra* note 3, at 61048.

[11] 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change may provide the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in SPY options, thus allowing them to better manage their risk exposure.

In approving the proposal, the Commission notes that the Exchange has represented that it has an adequate surveillance program in place to detect manipulative trading in Monday SPY Expirations.[13] The Exchange further states that it has the necessary systems capacity to support the new options series.[14]

IV. Conclusion

It is therefore ordered that pursuant to Section 19(b)(2) of the Act [15] that the proposed rule change (SR–Phlx–2017–103) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02393 Filed 2–6–18; 8:45 am]

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[13] *See* Notice, *supra* note 3, at 61049.

[14] *Id.*

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82616; File No. SR–MSRB–2018–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Amendments to Rule G–21, on Advertising, Proposed New Rule G–40, on Advertising by Municipal Advisors, and a Technical Amendment to Rule G–42, on Duties of Non-Solicitor Municipal Advisors

February 1, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 24, 2018 the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule consisting of amendments to MSRB Rule G–21, on advertising (''proposed amended Rule G–21''), proposed new MSRB Rule G–40, on advertising by municipal advisors (''proposed Rule G–40''), and a technical amendment to MSRB Rule G–42, on duties of non-solicitor municipal advisors (''proposed amended Rule G–42,'' together with proposed amended Rule G–21 and proposed Rule G–40, the ''proposed rule change''). The MSRB requests that the proposed rule change become effective nine months from the date of SEC approval.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2018-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

A. Proposed Amended Rule G–21

Rule G–21 is a core fair practice rule of the MSRB. Rule G–21 applies to all advertisements by dealers, as defined by Rule G–21(a)(i).[3] Rule G–21 became effective in 1978, and has been amended several times since then as the MSRB has enhanced its rule book. More recently, in 2012, the MSRB issued a request for comment on its entire rule book.[4] In response, two market participants requested that the MSRB harmonize its advertising rules with FINRA Rule 2210, on communications with the public.[5] Market participants echoed those requests more generally in their latest responses to a 2016 request for comment on the MSRB's strategic priorities.[6] Further, and apart from the MSRB's requests for comment, the MSRB solicited input about possible amendments to Rule G–21 from market participants, including industry groups that represent dealers.[7]

After considering the important suggestions made by market participants, the MSRB prepared proposed amended Rule G–21 to, among other things:

- Enhance the MSRB's fair-dealing provisions by promoting regulatory consistency among Rule G–21 and the advertising rules of other financial regulators; and
- promote regulatory consistency between Rule G–21(a)(ii), the definition of ''form letter,'' and FINRA Rule 2210's definition of ''correspondence.''

Proposed amended Rule G–21 also makes a technical amendment in paragraph (e) to streamline the rule.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An advertisement, as defined by Rule G–21(a)(i): Means any material (other than listings of offerings) published or used in any electronic or other public media, or any written or electronic promotional literature distributed or made generally available to customers or the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the products or services of the broker, dealer or municipal securities dealer, or reprint, or any excerpt of the foregoing or of a published article.

As such, Rule G–21 not only applies to print advertisements, but also applies to an advertisement ''published or used in any electronic or other public media,'' such as a social media post.

[4] MSRB Notice 2012–63, Request for Comment on MSRB Rules and Interpretive Guidance (Dec. 18, 2012).

[5] *See* Letter from David L. Cohen, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, dated February 19, 2013, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board; Letter from Gerald K. Mayfield, Senior Counsel, Wells Fargo & Company Law Department, dated February 19, 2013, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board.

[6] MSRB Notice 2016–25, MSRB Seeks Input on Strategic Priorities (Oct. 12, 2016); *see* Letter from Michael Decker, Managing Director, Securities Industry and Financial Markets Association, dated November 11, 2016, to Ronald W. Smith, Secretary, Municipal Securities Rulemaking Board; Letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, dated November 11, 2016, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board.

[7] *See* MSRB Notice 2017–04, Request for Comment on Draft Amendments to MSRB Rule G–21, on Advertising, and on Draft Rule G–40, on Advertising by Municipal Advisors (Feb. 16, 2017).

Concurrent with its efforts to enhance Rule G–21 and promote regulatory consistency among Rule G–21 and the advertising rules of other financial regulators, the MSRB prepared proposed Rule G–40 to address advertising by municipal advisors.

B. Proposed Rule G–40

In August 2011, in the exercise of its new rulemaking authority over municipal advisors,[8] the MSRB solicited public comment on a proposal to amend Rule G–21 and Rule G–9, on preservation of records, and to issue an interpretive notice under Rule G–17, on conduct of municipal securities activities, to address advertising by municipal advisors.[9] However, the MSRB did not proceed beyond requesting comment. In anticipation of the SEC's adoption of its rules relating to municipal advisor registration, the MSRB determined to withdraw or otherwise re-examine and revisit its then pending rulemaking proposals, including the 2011 request for comment.

On September 20, 2013, the SEC adopted its final rules for municipal advisor registration that the SEC had proposed in 2010 (the ''final rules'').[10] Among other things, the final rules interpreted the statutory definition of the term ''municipal advisor'' under the Exchange Act and the statutory exclusions from that definition.[11] Since September 2013, the MSRB has re-examined and adopted revised proposals addressing many of the issues that were the subject of its previously withdrawn or suspended municipal advisor rulemaking proposals. With the benefit of the final rules and of the MSRB's development of its core regulatory framework for municipal advisors, the MSRB determined to revisit its approach to advertising by municipal advisors.

To inform its approach, the MSRB solicited general input from market participants about the nature of municipal advisor advertising and about how municipal advisors use advertising. That outreach included industry groups that represent non-solicitor and/or solicitor municipal advisors. As a result of that outreach and the valuable input received from market participants, the MSRB developed proposed Rule G–40.

Proposed Rule G–40 would apply to advertising by municipal advisors. Similar to proposed amended Rule G–21, proposed Rule G–40 would:

- Provide general provisions that define the terms ''advertisement'' and ''form letter,'' and would set forth the general standards and content standards for advertisements;
- provide the definition of professional advertisements, and would define the standard for those advertisements; and
- would require the approval by a principal, in writing, before the first use of an advertisement.

Also, proposed Rule G–40, similar to proposed amended Rule G–21,[12] would apply to all advertisements by a municipal advisor, as defined in proposed Rule G–40(a)(i). However, unlike proposed amended Rule G–21, proposed Rule G–40 would contain certain substituted terms that are more relevant to municipal advisors, and proposed Rule G–40 would omit the three provisions in Rule G–21 that concern product advertisements (*i.e.,* product advertisements, new issue product advertisements, and municipal fund securities product advertisements).

C. Technical Amendment to Rule G–42

Rule G–42(f)(iv) defines municipal advisory activities as ''those activities that would cause a person to be a municipal advisor as defined in subsection (f)(iv) of this rule.'' The proposed rule change would provide a technical amendment to Rule G–42(f)(iv) to correct the cross-reference. Proposed amended Rule G–42 would replace the reference to subsection (f)(iv) in Rule G–42(f)(iv) with the intended reference to subsection (f)(iii). Rule G–42(f)(iii) defines the term ''municipal advisor'' for purposes of Rule G–42.

Proposed Amended Rule G–21

A. Enhancement of Fair Dealing Provisions and Promotion of Regulatory Consistency With Certain Standards of Other Financial Regulators

To enhance Rule G–21's fair dealing requirements, as well as to promote regulatory consistency among Rule G–21 and the advertising rules of other financial regulators, proposed amended Rule G–21 would provide more specific content standards. Proposed amended Rule G–21 also would include revisions to the rule's general standards for advertisements.

(i) Content Standards

Proposed amended Rule G–21(a)(iii) would add content standards to make explicit many of the MSRB's fair dealing obligations that follow from the MSRB's requirements set forth in Rule G–21 and Rule G–17, on conduct of municipal securities and municipal advisory activities, and the interpretive guidance the MSRB has provided under those rules, and to specifically address them to advertising.[13] Proposed amended Rule G–21 would enhance Rule G–21's fair dealing provisions by requiring that:

- An advertisement be based on principles of fair dealing and good faith, be fair and balanced and provide a sound basis for evaluating the facts about any particular municipal security or type of municipal security, industry, or service, and that a dealer not omit any material fact or qualification if such omission, in light of the context presented, would cause the advertisement to be misleading;
- an advertisement not contain any false, exaggerated, unwarranted, promissory or misleading statement or claim;
- a dealer limit the types of information placed in a legend or footnote of an advertisement so as to not inhibit a customer's or potential customer's understanding of the advertisement;
- an advertisement provide statements that are clear and not misleading within the context that they are made, that the advertisement provide a balanced treatment of the benefits and risks, and that the advertisement is consistent with the risks inherent to the investment;
- a dealer consider the audience to which the advertisement will be directed and that the advertisement provide details and explanations appropriate to that audience;
- an advertisement not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast;[14] and

[8] Public Law 111–203, 124 Stat. 1376 (2010).

[9] MSRB Notice 2011–41, Request for Comment on Draft Amendments to MSRB Rule G–21 (on Advertising) and Draft Interpretive Notice Concerning the Application of MSRB Rule G–17 (on Fair Dealing) to Certain Communications (Aug. 10, 2011) (''2011 request for comment''). The draft amendments, among other things, would have extended Rule G–21 and its related recordkeeping requirements to municipal advisors. Further, the draft interpretive notice would have reminded dealers and municipal advisors that Rule G–17's fair practice requirements apply to all communications (written and oral), including the content of advertisements, sales or marketing communications and correspondence.

[10] Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468 (Nov. 12, 2013).

[11] Rule 15Ba1–1(d), 17 CFR 240.15Ba1–1(d), under the Exchange Act.

[12] *See supra* note 3.

[13] The proposed rule change would not supplant the MSRB's regulatory guidance provided under Rule G–17.

[14] However, proposed amended Rule G–21(a)(iii)(F) would permit:

(1) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment; and

(2) An investment analysis tool, or a written report produced by an investment analysis tool.

• an advertisement not include a testimonial unless it satisfies certain conditions.[15]

By so doing, proposed amended Rule G–21(a)(iii) would promote regulatory consistency with FINRA Rule 2210(d)(1)'s and FINRA Rule 2210(d)(6)'s content standards for advertisements. The other topics and standards addressed by other provisions of FINRA Rule 2210(d) have not been historically addressed by Rule G–21 and/or may not be relevant to the municipal securities market,[16] and the MSRB did not include those topics in the MSRB's request for comment on draft amendments to Rule G–21.[17]

Proposed amended Rule G–21 also would expand upon the guidance provided by Rule A–12, on registration. Rule A–12(e) permits a dealer to state that it is MSRB registered in its advertising, including on its website. Proposed amended Rule G–21(a)(iii)(H) would continue to permit a dealer to state that it is MSRB registered. However, proposed amended Rule G–21(a)(iii)(H) would provide that a dealer shall only state in an advertisement that it is MSRB registered as long as, among other things, the advertisement complies with the applicable standards of all other MSRB rules and neither states nor implies that the MSRB endorses, indemnifies, or guarantees the dealer's business practices, selling methods, the type of security offered, or the security offered. By so doing, the proposed rule change would promote regulatory consistency with FINRA Rule 2210(e)'s analogous limitations on the use of FINRA's name and any other corporate name owned by FINRA.

(ii) General Standards

Proposed amended Rule G–21(a)(iv), (b)(ii), and (c)(ii) would promote regulatory consistency among Rule G–21's general standard for advertisements, standard for professional advertisements, and standard for product advertisements (collectively, the ''general standards'') and the content standards of FINRA Rule 2210(d). Currently, Rule G–21's general standards prohibit a dealer, in part, from publishing or disseminating material that is ''materially false or misleading.'' Proposed amended Rule G–21 would replace the phrase ''materially false or misleading'' with ''any untrue statement of material fact'' as well as add ''or is otherwise false or misleading.'' The MSRB believes that this harmonization with FINRA Rule 2210(d) would be consistent with Rule G–21's current general standards and would ensure consistent regulation between similar regulated entities.

B. Reconcile the Definition of Form Letter With FINRA Rule 2210 Definition of Correspondence

Currently, Rule G–21(a)(ii) defines a ''form letter,'' in part, as a written letter distributed to 25 *or more* persons. The analogous provision in FINRA's communications with the public rule to Rule G–21(a)(ii) is FINRA Rule 2210's definition of correspondence. FINRA Rule 2210(a)(2)'s definition of correspondence, however, defines ''correspondence,'' in part, as written communications distributed to 25 *or fewer* retail investors. The MSRB understands that the one-person difference between Rule G–21 and FINRA Rule 2210 has created confusion and compliance challenges for dealers. To respond to this concern, proposed amended Rule G–21(a)(ii) would eliminate that one-person difference. Under proposed amended Rule G–21, a form letter, in part, would be defined as a written letter distributed to *more than* 25 persons.[18]

Supplementary Material .03 to proposed amended Rule G–21 would explain the term ''person'' when used in the context of a form letter under Rule G–21(a)(ii). Specifically, Supplementary Material .03 would explain that the number of ''persons'' is determined for the purposes of a response to a request for proposal (''RFP''), request for qualifications (''RFQ'') or similar request at the entity level. Therefore, for example, if a dealer were to respond to an RFP from Big City Water Authority, Big City Water Authority would count as one person, no matter how many persons employed by Big City Water Authority reviewed the dealer's response to the RFP.

C. Technical Amendment

Proposed amended Rule G–21 would contain a technical amendment to Rule G–21(e). To streamline and clarify the MSRB's rules, the proposed rule change would delete references to the Financial Industry Regulatory Authority, Inc. in Rule G–21(e)(ii)(F) and Rule G–21(e)(vi) because, for example, reference to any applicable regulatory body is sufficient and no limitation to any more narrow subset is intended.

Proposed Rule G–40

Proposed Rule G–40, similar to Rule G–21, would set forth general provisions, address professional advertisements and require principal approval in writing for advertisements by municipal advisors before their first use. However, as discussed below, proposed Rule G–40 would not address product advertisements, as that term is defined in Rule G–21.

A. General Provisions

Proposed Rule G–40(a) would define the terms advertisement, form letter and municipal advisory client, and would provide content and general standards for advertisements by a non-solicitor or a solicitor municipal advisor.

(i) Definitions

Advertisement. The term ''advertisement'' in proposed Rule G–40(a)(i) would parallel the term ''advertisement'' in proposed amended Rule G–21(a)(i), but would be tailored for municipal advisors. An advertisement would refer, in part, to any promotional literature distributed or made generally available to municipal entities, obligated persons, municipal advisory clients (discussed below), or the public by a municipal advisor.[19]

[15] Proposed amended Rule G–21(a)(iii)(G) would provide:

(1) If an advertisement contains a testimonial about a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion;

(2) If an advertisement contains a testimonial about the investment advice or investment performance of a broker, dealer or municipal securities dealer or its products, that advertisement must prominently disclose the following:

(a) The fact that the testimonial may be not be representative of the experience of other customers.

(b) The fact that the testimonial is no guarantee of future performance or success.

(c) If more than $100 in value is paid for the testimonial, the fact that it is a paid testimonial.

[16] Those other topics and standards addressed by FINRA Rule 2110(d) relate to: comparisons between investments or services (FINRA Rule 2210(d)(2)); disclosure of the member's name (FINRA Rule 2210(d)(3)); tax considerations (FINRA Rule 2210(d)(4)); disclosure of fees, expenses, and standardized performance relating to non-money market fund open-end investment company performance data (FINRA Rule 2210(d)(5)); recommendations (FINRA Rule 2210(d)(7)); BrokerCheck (FINRA Rule 2210(f)(8)); and prospectuses filed with the SEC (FINRA Rule 2210(d)(9)).

[17] *See* MSRB Notice 2017–04 (Feb. 16, 2017) and discussion of the comments that the MSRB received in response to that request for comment under ''Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.''

[18] Written letters or electronic mail messages distributed to 25 or fewer persons within any period of 90 consecutive days may be subject to the fundamental fair dealing obligations of Rule G–17.

[19] An advertisement, as defined by proposed Rule G–40(a)(i) would mean:

any material (other than listings of offerings) published or used in any electronic or other public media, or any written or electronic promotional literature distributed or made generally available to municipal entities, obligated persons, municipal advisory clients or the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the services of the municipal advisor or the engagement of a municipal advisory client (as

Further, an advertisement would include the promotional literature used by a solicitor municipal advisor [20] to solicit a municipal entity or obligated person on behalf of the solicitor municipal advisor's municipal advisory client.

In addition, similar to proposed amended Rule G–21(a)(i), proposed Rule G–40(a)(i) would exclude certain types of documents from the definition of advertisement. The documents that would be excluded would be preliminary official statements, official statements, preliminary prospectuses, prospectuses, summary prospectuses or registration statements. These exclusions recognize the differences between the role of a dealer under Rule G–21 and the role of a solicitor municipal advisor under proposed Rule G–40. Nonetheless, as with Rule G–21, an abstract or summary of those documents or other such similar documents prepared by the municipal advisor would be considered an advertisement.

For example, a municipal advisor may assist with the preparation of an official statement. An official statement would be excluded from the definition of an advertisement. As such, under proposed Rule G–40(a)(i), the municipal advisor that assists with the preparation of an official statement generally would not be assisting with an advertisement and the municipal advisor's work on the official statement generally would not be subject to the requirements of proposed Rule G–40.

Form letter. The term ''form letter'' in proposed Rule G–40 would be identical to the definition of that term set forth in proposed amended Rule G–21(a)(ii). A form letter would be defined as any written letter or electronic mail message distributed to more than 25 persons within any period of 90 consecutive days.[21]

Similar to proposed amended Rule G–21, proposed Rule G–40 would include Supplementary Material .01 to clarify the number of ''persons'' for a response to an RFP, RFQ or similar request, when used in the context of a form letter under proposed Rule G–40(a)(ii), is determined at the entity level. Therefore, for example, if a municipal advisor were to respond to an RFP from Big City Water Authority, Big City Water Authority would count as one person, no matter how many persons employed by Big City Water Authority reviewed the municipal advisor's response to the RFP.

Municipal advisory client. Proposed Rule G–40(a)(iii), unlike Rule G–21, includes the definition of the term ''municipal advisory client.'' The definition of municipal advisory client would be substantially similar in all material respects to the definition of that term as set forth in the recent amendments to Rule G–8, effective October 13, 2017, to address municipal advisory client complaint recordkeeping.[22] The definition of municipal advisory client would account for differences in the activities of non-solicitor and solicitor municipal advisors.

(ii) Content Standards

Proposed Rule G–40(a)(iv) sets forth content standards for advertisements. Those content standards would be substantially similar in all material respects to the content standards set forth in proposed amended Rule G–21. Nonetheless, proposed Rule G–40 would replace certain terms used in proposed amended Rule G–21 with terms more applicable to municipal advisors. The MSRB believes that incorporating content standards for advertisements into proposed Rule G–40 would ensure consistent regulation between regulated entities in the municipal securities market, as well as promote regulatory consistency between dealer municipal advisors and non-dealer municipal advisors.

Specifically, proposed Rule G–40 would require that:

- An advertisement be based on the principles of fair dealing and good faith, be fair and balanced and provide a sound basis for evaluating the municipal security or type of municipal security, municipal financial product, industry, or service and that a municipal advisor not omit any material fact or qualification if such omission, in light of the context presented, would cause the advertisement to be misleading;
- an advertisement not contain any false, exaggerated, unwarranted, promissory or misleading statement or claim;
- a municipal advisor limit the types of information placed in a legend or footnote of an advertisement so as to not inhibit a municipal advisory client's or potential municipal advisory client's understanding of the advertisement;
- an advertisement provide statements that are clear and not misleading within the context that they are made, that the advertisement provides a balanced treatment of risks and potential benefits, and that the advertisement is consistent with the risks inherent to the municipal financial product or the issuance of the municipal security;
- a municipal advisor consider the audience to which the advertisement will be directed and that the advertisement provide details and explanations appropriate to that audience;
- an advertisement not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; [23] and
- an advertisement not refer, directly or indirectly, to any testimonial of any kind concerning the municipal advisor or concerning the advice, analysis, report or other service of the municipal advisor.

By so doing, proposed Rule G–40's content generally would promote regulatory consistency with proposed amended Rule G–21.

However, unlike proposed amended Rule G–21, proposed Rule G–40 would prohibit a municipal advisor from using a testimonial in an advertisement. This prohibition is based in part on the fiduciary duty that a non-solicitor municipal advisor (as opposed to a dealer) owes its municipal entity clients. The MSRB notes that investment advisers also are subject to fiduciary duty standards.

Similar to the concerns that the Commission has expressed about an

defined in paragraph (a)(iii)(B)), or reprint, or any excerpt of the foregoing or of a published article. The term does not apply to preliminary official statements, official statements, preliminary prospectuses, prospectuses, summary prospectuses or registration statements, but does apply to abstracts or summaries of the foregoing and other such similar documents prepared by municipal advisors.

[20] A ''solicitor municipal advisor,'' is a municipal advisor that engages in a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1–1(n) under the Exchange Act.

[21] *See supra* note 18.

[22] Exchange Act Release No. 79801 (Jan. 13, 2017), 82 FR 7898 (Jan. 23, 2017) (SR–MSRB–2016–15). *See* MSRB Notice 2017–03, SEC Approves Extension of MSRB's Customer Complaint and Related Recordkeeping Rules to Municipal Advisors and the Modernization of Those Rules (Jan. 18, 2017). Specifically, Rule G–8(e)(ii) defines a municipal advisory client to include either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities as defined in Rule G–42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1–1(n), 17 CFR 240.15Ba1–1(n), under the Act.

[23] However, proposed amended Rule G–40(a)(iv)(F) would permit:

(1) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of a municipal financial product; and

(2) An investment analysis tool, or a written report produced by an investment analysis tool.

advertisement by an investment adviser that contains a testimonial,[24] the MSRB believes that a testimonial in an advertisement by a municipal advisor would present significant issues, including the ability to be misleading. The MSRB notes that in adopting Rule 206(4)–1 under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''),[25] the rule that applies to advertisements by registered investment advisers, the SEC found that the use of testimonials in advertisements by an investment adviser was misleading.[26] Thus, Rule 206(4)–1 provides that the use of a testimonial by an investment adviser would constitute a fraudulent, deceptive, or manipulative act, practice, or course of action. To protect municipal entities and obligated persons, to help ensure consistent regulation between analogous regulated entities, and to help ensure a level playing field between municipal advisors/investment advisers and other municipal advisors, proposed Rule G–40 would prohibit the use of testimonials by a municipal advisor.[27]

Apart from the content standards discussed above, proposed Rule G–40(a)(iv)(H), similar to proposed amended Rule G–21(a)(iii)(H), also would expand upon the guidance provided by Rule A–12, on registration. Rule A–12(e) permits a municipal advisor to state that it is MSRB registered in its advertising, including on its website. Proposed Rule G–40(a)(iv)(H) would continue to permit a municipal advisor to state that it is MSRB registered. However, proposed Rule G–40(a)(iv)(H) would provide that a municipal advisor shall only state in an advertisement that it is MSRB registered as long as, among other things, the advertisement complies with the applicable standards of all other MSRB rules and neither states nor implies that the MSRB endorses, indemnifies, or guarantees the municipal advisor's business practices, services, skills, or any specific municipal security or municipal financial product.

(iii) General Standard for Advertisements

Proposed Rule G–40(a)(v) would set forth a general standard with which a municipal advisor must comply for advertisements. That standard would require, in part, that a municipal advisor not publish or disseminate, or cause to be published or disseminated, any advertisement relating to municipal securities or municipal financial products that the municipal advisor knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading. The MSRB believes that the knowledge standard as the general standard for advertisements is appropriate. Thus, proposed Rule G–40 is similar to proposed amended Rule G–21(a)(iv) in all material respects, except proposed Rule G–40 substitutes ''municipal advisor'' for the term ''dealer'' and, consistent with Section 15B(e)(4) of the Exchange Act,[28] applies with regard to municipal financial products in addition to municipal securities.

B. Professional Advertisements

Proposed Rule G–40(b) would define the term ''professional advertisement,'' and would provide the standard for such advertisements. As defined in proposed Rule G–40(b)(i), a professional advertisement would be an advertisement ''concerning the facilities, services or skills with respect to the municipal advisory activities of the municipal advisor or of another municipal advisor.'' Proposed Rule G–40(b)(ii) would provide, in part, that a municipal advisor shall not publish or disseminate any professional advertisement that contains any untrue statement of material fact or is otherwise false or misleading.

The strict liability standard for professional advertisements in proposed Rule G–40(b)(ii) is consistent with the MSRB's long-standing belief that a regulated entity should be strictly liable for an advertisement about its facilities, skills, or services, and that a knowledge standard is not appropriate.[29] The MSRB has held this belief since it developed its advertising rules for dealers over 40 years ago.[30] Thus, proposed Rule G–40(b) would be substantially similar in all material respects to proposed amended Rule G–21(b).

C. Principal Approval

Proposed Rule G–40(c) would require that each advertisement that is subject to proposed Rule G–40 be approved in writing by a municipal advisor principal before its first use.[31] Proposed Rule G–40(c) also would require that the municipal advisor keep a record of all such advertisements. Proposed Rule G–40(c) is similar in all material respects to proposed amended Rule G–21(f). If the SEC approves the proposed rule change, municipal advisors should update their supervisory and compliance procedures required by Rule G–44, on supervisory and compliance obligations of municipal advisors, to address compliance with proposed Rule G–40(c).

D. Product Advertisements

Proposed Rule G–40 would omit the provisions set forth in Rule G–21 regarding product advertisements, new issue product advertisements, and municipal fund security product advertisements. The MSRB believes, at this juncture, that municipal advisors most likely do not prepare such advertisements as the MSRB understands that municipal advisors

[24] *See infra* note 26.

[25] 15 U.S.C. 80b–1.

[26] Advisers Act Rule 206(4)–1, 17 CFR 275.206(4)–1, provides, in part, that it would be a fraudulent, deceptive, or manipulative act or course of business for an investment adviser to publish, circulate, or distribute an advertisement that refers to any testimonial concerning the investment adviser. *See* Advisers Act Release No. 121 (Nov. 2, 1961), 26 FR 10548, 10549 (Nov. 9, 1961) (prohibiting testimonials of any kind and finding that ''such advertisements are misleading; by their very nature they emphasize the comments and activities favorable to the investment adviser and ignore those which are unfavorable. This is true even when the testimonials are unsolicited and are printed in full'').

However, since the rule's adoption, the SEC staff has granted no-action relief on multiple occasions to permit certain communications to be used without those communications being considered testimonials. *See, e.g., DALBAR, Inc.* (publicly avail. Mar. 24, 1998) (providing no-action assurance relating to the use of DALBAR's ratings of investment advisers in advertisements) and *Cambiar Investors, Inc.* (publicly avail. Aug. 28, 1997) (providing no-action assurance relating to the investment adviser providing a list that identifies clients). Further, the SEC has announced that the Division of Investment Management is considering recommending to the Commission amendments to Advisers Act Rule 206(4)–1, 17 CFR 275.206(4)–1, to enhance marketing communications and practices by investment advisers as part of the Commission's long-term regulatory agenda published for the Fall 2017. The regulatory agenda is available at *https://resources.regulations.gov/public/custom/jsp/navigation/main.jsp.* The MSRB will monitor the Commission's action with regard to Advisers Act Rule 206(4)–1. However, at this time, the MSRB is neither providing interpretative guidance relating to the use of testimonials by municipal advisors nor adopting the SEC staff's guidance. *See* discussion under ''Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others—Proposed Rule G–40—Testimonials.''

[27] *See* discussion of testimonials in municipal advisor advertisements under ''Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others,'' below.

[28] 15 U.S.C. 78*o*–4(e)(4).

[29] Notice of Filing of Fair Practice Rules, [1977–1987 Transfer Binder] Municipal Securities Rulemaking Board Manual (CCH) ¶10,030 at 10,376 (Sept. 20, 1977).

[30] *Id.*

[31] MSRB Rule G–3(e)(i), on professional qualifications, defines a municipal advisor principal as:

a natural person associated with a municipal advisor who is qualified as a municipal advisor representative and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.

generally advertise their municipal advisory services and not products.

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act [32] provides that:

> [t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act [33] provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Sections 15B(b)(2) [34] and 15B(b)(2)(C) [35] of the Exchange Act. The proposed rule change would help prevent fraudulent and manipulative practices, promote just and equitable principles of trade, and protect investors, municipal entities, obligated persons and the public interest by enhancing the MSRB's advertising rules that apply to dealers and by establishing advertising rules that apply to municipal advisors.[36]

Rule G–21

The MSRB believes proposed amended Rule G–21, by design, would help prevent fraudulent and manipulative practices. Proposed amended Rule G–21 would require that advertisements be based on the principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for evaluating the facts. A dealer would not be able to omit any material fact or qualification, if the omission, in light of the context of the material presented, would cause the advertisement to be misleading. Furthermore, dealers would be prohibited from making any false, exaggerated, unwarranted, promissory or misleading statement or claim in an advertisement. Dealers would be required to ensure that the statements that they make are clear and not misleading within the context in which they are made and that they provide a balanced treatment of risks and potential benefits. Dealers also would be limited in the types of information that could be placed in a legend or footnote in an advertisement, and dealers only could include a testimonial in an advertisement if certain conditions are met. Dealers would have to consider the nature of the audience to which the advertisement would be directed and would have to provide details and explanations appropriate to the audience. Further, dealers would be prohibited from indicating registration with the MSRB in an advertisement unless the advertisement complies with the applicable standards of all other Board rules and that neither states nor implies that the MSRB endorses dealer's business practices, selling methods, class or type of security offered or any specific security. The prescriptive nature of proposed amended Rule G–21 would provide clear guidelines for dealers to follow that would help prevent fraudulent and manipulative practices.

Moreover, because proposed amended Rule G–21 would promote regulatory consistency with certain of FINRA Rule 2210's content standards, standards to which many dealers are currently subject as FINRA member firms, dealers may more easily understand and comply with proposed amended Rule G–21. In turn, this compliance would help prevent fraudulent and manipulative practices because the requirements of proposed amended Rule G–21 (noted in the paragraph above) are in and of themselves designed to prevent fraudulent and manipulative practices.

Finally, proposed amended Rule G–21 would help prevent fraudulent and manipulative practices because it would promote more efficient inspections of dealer advertisements. Other financial regulators inspect and enforce the MSRB's rules. Proposed amended Rule G–21 would provide clear guidelines as to the content of what may appear in an advertisement which should facilitate an efficient inspection. Further, because Rule G–21 would help promote regulatory consistency with certain of FINRA Rule 2210's content standards, inspections staff may be well familiar with the proposed amended Rule G–21's requirements. *See* discussion under ''Proposed Amended Rule G–21—Enhancement of Fair Dealing Provisions and Promotion of Regulatory Consistency with Certain Standards of Other Financial Regulators—Content Standards'' above. This familiarity with standards, as well as having clear advertising standards, might enable inspections staff to conduct a more efficient inspection of dealer advertisements. More efficient inspections of dealer advertisements, in turn, might result in inspections staff being able to determine whether there are any regulatory irregularities earlier during the inspection process.

Proposed amended Rule G–21, also would help promote just and equitable principles of trade, and would enhance the MSRB's fair dealing requirements. For the same reasons that the design of proposed amended Rule G–21 would help prevent fraudulent and manipulative practices, the prescriptive nature of the design of proposed amended Rule G–21 would provide clear guidelines for dealers to follow that would help promote just and equitable principles of trade.

Proposed amended Rule G–21 also would help protect investors and the public interest. For the same reasons that the design of proposed amended Rule G–21 would help prevent fraudulent and manipulative practices and promote just and equitable principles of trade, the clear, prescriptive requirements of proposed amended Rule G–21 would help ensure that advertisements would present a fair statement of the services, products, or municipal securities advertised. In turn, investors and the public would be able to have more confidence in the accuracy of the services, products, or municipal securities advertised, and perhaps would be more comfortable making decisions based on an advertisement. For municipal entities, for example, this increased confidence in an advertisement may lead to a more efficient underwriter selection process.

Proposed Rule G–40

Proposed Rule G–40, by design, would help prevent fraudulent and manipulative practices. Proposed Rule G–40 would require that advertisements be based on the principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for evaluating the facts. No municipal advisor would be able to omit any material fact or qualification if the

[32] 15 U.S.C. 78*o*–4(b)(2).

[33] 15 U.S.C. 78*o*–4(b)(2)(C).

[34] 15 U.S.C. 78*o*–4(b)(2).

[35] 15 U.S.C. 78*o*–4(b)(2)(C).

[36] The MSRB notes that the technical amendment to proposed amended Rule G–42 will assist municipal advisors by providing a clearer rule that addresses the duties of non-solicitor municipal advisors.

omission, in light of the context of the material present, would cause the advertisement to be misleading. Furthermore, municipal advisors would be prohibited from making any false, exaggerated, unwarranted, promissory or misleading statement or claim in an advertisement. Municipal advisors would be required to ensure that the statements that they make are clear and not misleading within the context in which they are made and that they provide a balanced treatment of risks and potential benefits. Municipal advisors also would be limited in the types of information that could be placed in a legend or footnote in an advertisement, and would not be able to include a testimonial in an advertisement. Municipal advisors would have to consider the nature of the audience to which the advertisement would be directed and would have to provide details and explanations appropriate to the audience. Further, municipal advisors would be prohibited from indicating registration with the MSRB in an advertisement unless the advertisement complies with the applicable standards of all other Board rules and that neither states nor implies that the MSRB endorses the municipal advisor's business practices, services, skills or any specific type of municipal security or municipal financial product. The prescriptive nature of proposed Rule G–40 would provide clear guidelines for municipal advisors to follow that would help prevent fraudulent and manipulative practices.

Proposed Rule G–40 also would help prevent fraudulent and manipulative practices because proposed Rule G–40 would promote efficient inspections of municipal advisor advertisements. Other financial regulators inspect and enforce the MSRB's rules. Proposed Rule G–40 would provide clear guidelines as to the content of what may appear in an advertisement which should facilitate an efficient inspection of municipal advisor advertisements. More efficient inspections of municipal advisor advertisements, in turn, might result in inspections staff being able to more easily and readily determine whether there are any regulatory irregularities earlier during the inspection process.

Proposed Rule G–40 also would help promote just and equitable principles of trade. Proposed Rule G–40 would enhance the MSRB's fair dealing requirements by, for the first time, having specific requirements for municipal advisor advertising. As such, proposed Rule G–40 would promote regulatory consistency in the municipal securities market, and thus would help promote just and equitable principles of trade. Further, for the same reasons that the design of proposed Rule G–40 would help prevent fraudulent and manipulative practices, proposed Rule G–40's prescriptive and clear guidelines would help promote just and equitable principles of trade.

Proposed Rule G–40, also would help protect investors, municipal entities, obligated persons and the public interest. For the same reasons that the design of proposed Rule G–40 would help prevent fraudulent and manipulative practices and promote just and equitable principles of trade, the clear, prescriptive requirements of proposed Rule G–40 would help ensure that advertisements would present a fair statement of the municipal security or type of municipal security, municipal financial product, industry or service advertised. This, in turn, would help protect investors, municipal entities, obligated persons and the public interest. Further, investors, municipal entities, obligated persons and the public would be able to have more confidence in the accuracy of the advertisements, and perhaps would be more comfortable making decisions based, in part, on an advertisement.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act [37] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In accordance with the Board's policy on the use of economic analysis in rulemaking, the Board has reviewed proposed amended Rule G–21 and proposed Rule G–40.[38]

Proposed Amended Rule G–21

The MSRB believes that, through promoting regulatory consistency of certain MSRB advertising standards with those of other financial regulators, proposed amended Rule G–21 may improve efficiency in the form of less unnecessary complexity for dealers and reduced burdens and compliance costs over time since additional regulatory consistency should assist dealers with developing uniform policies and procedures. This may also benefit both retail and institutional investors, where transparency, consistency, truthful and accurate information and ease of comparison of different financial services would be highly valued. The alternative of leaving Rule G–21 in its current state would mean that dealers that are registered both with the MSRB and FINRA would continue to face two sets of compliance requirements with additional costs and regulatory burdens.[39]

Since proposed amended Rule G–21 would establish more stringent and prescriptive advertising standards for dealers than are included in the baseline, which is current existing Rule G–21, the MSRB expects that dealers may experience increased costs because of the new requirements, especially for bank dealers that are not currently registered with FINRA.[40] These costs, however, can be mitigated through careful planning because the proposed rule change, if adopted, would have a nine-month implementation period during which the industry could adjust. The MSRB believes that much of the costs associated with proposed amended Rule G–21 would be up-front costs resulting from sunk investments in advertisements previously developed by dealers that would no longer be compliant upon effectiveness of the proposed rule change, as well as costs from initial compliance development such as updating or rewriting policies and procedures. For those dealers that are also registered with FINRA, those costs should not be significant, as much of proposed amended Rule G–21 would align with FINRA Rule 2210, a rule with which those dealers currently must comply.

On balance, the MSRB believes that proposed amended Rule G–21 would not impose an unreasonable burden on dealers, and the likely benefits, such as reduced unnecessary complexity and compliance standards that are more closely aligned with those of other financial regulators, would justify the associated costs in both the near and long term.

Since dealers currently are subject to advertising standards under the MSRB's rules, the MSRB believes that proposed amended Rule G–21 is unlikely to hinder capital formation. The MSRB

[37] 15 U.S.C. 78*o*–4(b)(2)(C).

[38] Policy on the Use of Economic Analysis in MSRB Rulemaking is available at *http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx.* In evaluating whether there was a burden on competition, the Board was guided by its principles that required the Board to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approaches.

[39] The benefits of alignment with FINRA's rule, however, will not apply to those firms that are not dual-registrants.

[40] In response to comments received by market participants related to the Request for Comment, the MSRB would permit the use of testimonials by dealers in advertisements under the same limitations used in FINRA regulation. *See* ''Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others'' below.

believes that proposed amended Rule G–21 would not harm competition, and may indeed enhance competition by putting all competitors on an equal footing due to a uniform set of advertising standards for dual registrants that is more straightforward for the market and investors.

Proposed Rule G–40

Similar to Rule G–21, proposed Rule G–40 would be a core fair practice rule governing advertising by municipal advisors. As such, proposed Rule G–40 would help protect investors, municipal entities, obligated persons and the general public. Moreover, proposed Rule G–40 would help ensure consistent regulation between regulated entities in the municipal securities market as well as to promote regulatory consistency among dealer municipal advisors, non-dealer municipal advisors and municipal advisors that are also registered as investment advisers with the SEC.[41]

The MSRB believes that one benefit of proposed Rule G–40 may be more accurate information available to clients through advertising by municipal advisors, which, at the margin, may lead to more informed decision-making related to municipal advisor selection.[42] As a result of applying proposed Rule G–40's advertising standards, municipal entities and obligated persons may be able to more easily establish objective criteria to use in selecting municipal advisors and this may increase the likelihood that municipal advisors are hired because of their qualifications as opposed to other reasons. In addition, transparency, consistency, truthful and accurate information in advertising should benefit municipal entities and obligated persons in general and may lead to increased confidence in the municipal market.

The MSRB believes that much of the costs associated with proposed Rule G–40 would be up-front sunk costs resulting from investments in advertisements previously developed by municipal advisors that would no longer be compliant upon effectiveness of the proposed rule,[43] as well as from initial costs to establish compliant policies and procedures, although there would be some ongoing costs associated with principal approval and record-keeping requirements.[44] Since this is the first time that municipal advisors may be subject to such regulation, to ensure compliance with the advertising standards of proposed Rule G–40, municipal advisors may also incur costs by seeking advice from compliance or legal professionals when preparing advertising materials. In particular, regarding proposed Rule G–40's prohibition of municipal advisors use of testimonials in their advertisements, the MSRB believes firms that rely extensively on testimonials as their form of advertising would likely experience more transition costs than firms that presently either do not use testimonials or use testimonials only occasionally. While the MSRB acknowledges that there would be certain increased costs for municipal advisors that presently use testimonials in advertising, the benefits accrued to municipal entities and obligated persons, including increased likelihood of receiving accurate, non-misleading and objective information from advertisements, should exceed the costs over time.

The MSRB believes these costs should not be burdensome for small municipal advisory firms. For some one-time initial compliance costs, the MSRB believes that small municipal advisory firms may incur proportionally larger costs than larger firms. However, for many other ongoing costs, such as costs associated with principal approval and record-keeping requirements, as well as sunk investments in advertisements previously developed but that would no longer be compliant, the costs should be proportionate to the size of the firm, assuming that small firms generally advertise less than larger firms. Thus, it is unlikely that proposed Rule G–40 would have an outsized impact on small firms.

On balance, the MSRB believes that proposed Rule G–40 would not impose an unreasonable burden on municipal advisors,[45] and the potential benefits would justify the associated costs in both the near and long term since the benefits of proposed Rule G–40 should exceed the costs over the long term.

The MSRB considered that the costs associated with proposed Rule G–40 may lead some municipal advisors to curtail their advertising expenditures and compete less aggressively through advertising.[46] On balance, the MSRB believes that the market for municipal advisory services is likely to remain competitive;[47] any potential negative impact on competition as a result of potential curtailment of advertising expenditures should be counteracted by the potential positive impact from improved advertising standards and more transparent and accurate information on municipal advisors.

The MSRB believes that proposed Rule G–40 should not hinder capital formation. As noted above, the better-quality information conveyed by municipal advisors through advertising that meets the standards of proposed Rule G–40 may lead to an improved municipal advisor selection process (as discussed above). One commenter noted that municipal advisors are typically selected through an RFP process rather than via advertising. However, if firms gained no advantage from advertising, it would be irrational and not in their best interest to advertise. Thus, the MSRB expects that advertising can influence the municipal advisor selection process even if only to raise awareness of a firm. If a final municipal advisor selection is determined exclusively via an RFP process, truthful and accurate advertising still could help issuers target

[41] For example, under Rule G–21 dealers are required to keep records of their advertisements and are prohibited from using false or misleading information in advertising.

[42] Acacia indicated that many issuers hire municipal advisors through some type of competitive process and the provision of materials in response to such a solicitation should not be deemed an advertisement and the existing regulatory framework would govern false and misleading statements in those materials. The MSRB agrees that materials submitted as part of a response to an RFP generally would not be considered as advertising; instead, proposed Rule G–40 focuses on materials provided generally to potential clients and the MSRB believes that accurate and truthful advertising would still be meaningful to decisions on selection and retention of municipal advisors. *See* ''Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others'' below.

[43] As elaborated above, these costs can be mitigated through careful planning during the implementation period for the proposed rule change, if adopted, which would give the industry time to adjust.

[44] *See* 3PM letter at 3–4, which describes potential compliance costs for solicitor municipal advisors associated with having a principal pre-approve a form letter prior to allowing their sales professionals to send out the form letter. *See* ''Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others'' below.

[45] Acacia stated that proposed Rule G–40 ''applies a regulatory burden and cost which is not proportional to the MSRB's stated goal of preventing misleading information to investors, issuers or obligated persons,'' but did not offer any quantitative information. *See* ''Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others'' below.

[46] Also, at the margin, some municipal advisors may even determine to consolidate with other municipal advisors to benefit from economies of scale (*e.g.,* by leveraging existing compliance resources of a larger firm) rather than to incur separately the costs associated with proposed Rule G–40. The MSRB, however, is skeptical about this scenario, as the potential costs of compliance with proposed Rule G–40 are not expected to be onerous.

[47] 3PM stated that proposed Rule G–40 would put solicitor municipal advisors at a disadvantage to solicitors who are not registered with the MSRB or working with municipal entities. However, unregistered solicitors are not within the MSRB's jurisdiction, and the rule proposal is intended to ensure fairness and accuracy in advertisements from all municipal advisors who render services to or initiate a solicitation from municipal entities.

their requests for proposals to firms the issuer expects to be sufficiently qualified thereby enhancing the selection process through gains in efficiency.

Finally, transparency, consistency, truthful and accurate information in advertising may increase the willingness of municipal entities and obligated persons to use municipal advisors.[48] This, in turn, may contribute to a more efficient capital formation process as municipal entities and obligated persons may make more informed decisions as to the structure, timing, terms and other similar matters, related to issuances of municipal securities and municipal financial products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The MSRB sought public comment on the draft amendments to Rule G–21 and new draft Rule G–40.[49] In response to that Request for Comment, the MSRB received 11 comment letters.[50] Commenters generally expressed support for the proposed rule change, but also expressed various concerns and suggested certain revisions.

Below, the MSRB discusses the comments received relating to proposed amended Rule G–21. Following that discussion, the MSRB discusses the comments received relating to proposed Rule G–40.

I. Proposed Amended Rule G–21

The MSRB received five comment letters that focused on the draft amendments to Rule G–21 (other than Rule G–21(e)).[51] Commenters focused on harmonization with FINRA Rule 2210, additional exclusions from the definition of an advertisement, hypothetical illustrations, hyperlinks, coordination between self-regulatory organizations (''SROs''), and jurisdictional guidance under Rule G–21 relating to dealer/municipal advisors. The comments ranged from strong support for the draft amendments as set forth in the Request for Comment[52] to the suggestion that the Board should simply incorporate FINRA Rule 2210 by reference into Rule G–21.[53]

A. Harmonization With FINRA Rule 2210

Commenters supported the draft amendment's harmonization with FINRA Rule 2210. In fact, FSI provided its strong support for the draft amendments to Rule G–21, as drafted.[54] Nevertheless, some other commenters suggested that the draft amendments to Rule G–21 could be harmonized more with FINRA Rule 2210 by adopting that rule's (i) definition of communications and the distinctions in FINRA Rule 2210 that follow from that definition[55] and (ii) use of testimonials,[56] or by incorporating FINRA Rule 2210 by reference into Rule G–21.[57] Further, one commenter suggested that because of the harmonization with FINRA Rule 2210, the definitions and product advertisement and professional advertisement sections could be deleted from Rule G–21 and Rule G–40.[58]

(i) Definition of Communications

BDA, SIFMA, and 3PM suggested that the MSRB further harmonize Rule G–21 with FINRA Rule 2210 by adopting FINRA Rule 2210's definition of ''communications'' and the distinctions in the rule that follow from that definition. In particular, commenters favored the harmonization with FINRA Rule 2210's communications definition because institutional communications would no longer be subject to pre-approval by a principal. BDA, SIFMA, and 3PM submitted that, if the MSRB were to do so, dealers then could apply common approval processes for institutional communications across all asset classes.[59]

However, FINRA's regulation of advertising differs significantly from the MSRB's advertising regulation. FINRA Rule 2210 defines ''communications'' as consisting of correspondence, retail communications, and institutional communications.[60] Based on the type of communication, FINRA Rule 2210 then may require pre-approval by a principal before the communication's first use and the filing of the communication with FINRA's advertising regulation department for review either a certain number of days before or within a certain number of days after first use.[61]

[48] The MSRB is planning to examine the frequency with which issuers use municipal advisors over time in a retrospective analysis of the municipal advisor regulatory framework in the future.

[49] MSRB Notice 2017–04 (Feb. 16, 2017) (the ''Request for Comment'').

[50] Letter from Noreen P. White, Co-President, and Kim M. Whelan, Co-President, Acacia Financial Group, Inc., dated April 7, 2017 (''Acacia''); Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated March 24, 2017 (''BDA''); Letter from Norman L. Ashkenas, Chief Compliance Officer, Fidelity Brokerage Services, LLC, Richard J. O'Brien, Chief Compliance Officer, National Financial Services, LLC, and Jason Linde, Chief Compliance Officer, Fidelity Investments Institutional Services Company, LLC, dated March 24, 2017 (''Fidelity''); Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, dated March 24, 2017 (''FSI''); Letter from Laura D. Lewis, Principal, Lewis Young Robertson & Burningham, Inc., dated March 24, 2017 (''Lewis Young''); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated March 24, 2017 (''NAMA''); Letter from Leo Karwejna, Chief Compliance Officer, Cheryl Maddox, General Counsel, and Catherine Humphrey-Bennett, Municipal Advisory Compliance Officer, Public Financial Management, Inc. and PFM Financial Advisors LLC, dated March 23, 2017 (''PFM''); Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated March 24, 2017 (''SIFMA''); Letter from Paul Curley, Director of College Savings Research, Strategic Insight, dated May 16, 2017 (''SI''); Letter from Donna DiMaria, Chairman of the Board of Directors and Chair of the 3PM Regulatory Committee, Third Party Marketers Association, dated March 23, 2017 (''3PM''); and Letter from Robert J. McCarthy, Director, Regulatory Policy, Wells Fargo Advisors, dated March 24, 2017 (''Wells Fargo'').

During the period in which the MSRB considered the comments received in response to the Request for Comment, the Board concluded to separately propose the amendments to Rule G–21(e). The SEC approved those amendments on August 18, 2017, and the amendments became effective on November 18, 2017. *See* Exchange Act Release No. 81432 (Aug. 18, 2017), 82 FR 40199 (Aug. 24, 2017) (SR–MSRB–2017–04). Fidelity, FSI, SIFMA and SI addressed the draft amendments to Rule G–21(e) in their letters to the MSRB. The MSRB discussed those comments in SR–MSRB–2017–04, and generally will not discuss those comments as part of this proposed rule change.

[51] *See* BDA, Fidelity, FSI, SIFMA and Wells Fargo letters. To the extent that the five commenters that focused on draft Rule G–40 provided comments relevant to the draft amendments to Rule G–21, those comments are also included in the discussion below.

[52] FSI letter at 2.

[53] SIFMA letter at 2.

[54] FSI letter at 2.

[55] *See* BDA, SIFMA, and 3PM letters.

[56] *See* BDA, Fidelity, SIFMA, and Wells Fargo letters.

[57] SIFMA letter at 2.

[58] BDA letter.

[59] *See* BDA letter; SIFMA letter at 5; and 3PM letter at 7–8. *See also* SIFMA letter at 8 (''SIFMA strongly supports the harmonization of draft Rule G–40 with FINRA Rule 2210 with respect to the categorization of communications''); 3PM letter at 4 (stating that the MSRB ''should also consider segregating advertisements by investor group as well for solicitor municipal advisors''); 3PM letter at 4 (''we believe that the MSRB should also consider segregating advertisements by investor group as well for solicitor municipal advisors'').

BDA stated that, if the MSRB has a rule that applies different definitions and different sets of responsibilities and does not differentiate between communications sent to retail and institutional customers, the MSRB will have created an increased regulatory burden along with considerable confusion for broker-dealers. While the MSRB appreciates BDA's concerns, Rule G–21 currently applies different standards and responsibilities than what is currently required by FINRA Rule 2210. For example, Rule G–21 currently requires pre-approval by a principal of all advertisements, including advertisements that would be considered institutional communications under FINRA Rule 2210. Other than permitting testimonials in advertisements subject to certain conditions, the MSRB has determined not to revise the draft amendments to Rule G–21 to reflect BDA's suggestion that the MSRB more fully harmonize Rule G–21 with FINRA Rule 2210.

[60] *See* FINRA Rule 2210(a)(1).

[61] *See* FINRA Rule 2210(b) and (c) (generally requiring pre-approval by a principal of the member

Moreover, the MSRB, unlike FINRA, does not require the filing of advertisements with the MSRB before first use and the MSRB does not review advertisements. Rather, and since the MSRB approved its advertising rules in 1978,[62] the MSRB has relied upon its core fair dealing principles set forth in its advertising rules and the important supervisory function of principal pre-approval to regulate advertisements by dealers.[63] The MSRB continues to believe that it is important that a principal pre-approve an advertisement regardless of the intended recipient of the advertisement. Therefore, the Board determined not to revise the draft amendments to Rule G–21 to reflect commenters' suggestions about adopting FINRA Rule 2210's definition of communications and the distinctions that result from that definition.

(ii) Use of Testimonials

BDA, Fidelity, SIFMA, and Wells Fargo urged the Board to permit testimonials in dealer advertising to better harmonize Rule G–21 with FINRA Rule 2210.[64] Commenters argued that to do otherwise would result in confusion and an inconsistent ''patchwork'' approach to dealer rules and that regulatory harmonization and consistency between MSRB and FINRA rules are paramount.[65] Further, SIFMA, Fidelity, and Wells Fargo believed that the protections set forth in FINRA Rule 2210 relating to testimonials[66] were strong enough for retail communications to investors, including investors who are seniors.[67] Fidelity suggested that the MSRB engage with FINRA to determine whether FINRA Rule 2210(d)(6) adequately protects investors who are seniors.[68] After carefully considering commenters' suggestions, as well as consulting with FINRA staff, the Board determined to revise the draft amendments to Rule G–21. The proposed rule change would permit dealer advertisements, but not municipal advisor advertisements (discussed below), to contain testimonials under the same conditions as are currently set forth in FINRA Rule 2210(d)(6).

(iii) Incorporation of FINRA Rule 2210 by Reference

SIFMA commented that, while it supported the MSRB's efforts to level the playing field between dealers and municipal advisors, the better way to level that playing field, as well as to promote harmonization with FINRA's rules, is for the Board to incorporate FINRA Rule 2210 by reference into the MSRB's rules.[69] SIFMA stated that, since Rule G–21 was adopted in 1978, Rule G–21 has not been regularly or uniformly harmonized with what is now FINRA Rule 2210 and that this discordance has led to confusion among all market participants and regulatory risk for dealers.[70]

Nevertheless, SIFMA did not propose that the MSRB incorporate FINRA Rule 2210 in its entirety by reference into Rule G–21. Rather, SIFMA submitted that certain provisions of FINRA Rule 2210(c) relating to the filing of advertisements with FINRA and the review procedures for those advertisements were unnecessary and burdensome and should not be included. Similarly, SIFMA proposed that provisions in FINRA Rule 2210(e) relating to the limitations on the use of FINRA's name and any other corporate name owned by FINRA be exempted from the incorporation by reference of FINRA Rule 2210 into Rule G–21.

Further, SIFMA recognized that there may be a need for certain MSRB regulation of dealer and municipal advisor advertising. SIFMA stated that ''[w]ith respect to advertising or public communications for most municipal securities products (except for municipal advisory business and municipal fund securities), we feel there is no compelling reason to establish a different rule set than that which exists under FINRA Rule 2210.''[71]

As discussed under ''Background'' above, Rule G–21 is one of the MSRB's core fair practice rules that has been in effect since 1978. In proposing those rules, the MSRB stated the purpose of the fair practice rules ''is to codify basic standards of fair and ethical business conduct for municipal securities professionals.''[72] After carefully considering SIFMA's suggestions, including the recognition of the important differences between the corporate and municipal securities markets, the MSRB determined not to incorporate FINRA Rule 2210 by reference into Rule G–21. Further, the MSRB notes that if the MSRB were to incorporate FINRA Rule 2210 by reference and if FINRA or its staff were to provide an interpretation of FINRA Rule 2210, the Board automatically would be adopting that interpretation without considering the interpretation's

before the earlier of the retail communication's first use or the filing of the advertisement with FINRA—correspondence and institutional communications are not subject to member pre-approval and filing with FINRA; however, there must be supervisory policies and procedures in place relating to such communications).

[62] The Board originally had three rules that addressed advertising—Rule G–21, Rule G–33 (relating to advertisements for new issues) and Rule G–34 (relating to advertisements for products). In 1980, the Board merged Rules G–33 and G–34 into Rule G–21. *See* Notice of Approval of Amendments to the Board's Advertising Rules (Nov. 21, 1980) CCH MSRB Manual ¶ 10,167 at 10,599.

[63] *See, e.g., supra* note 29 at 10,371.

[64] BDA letter, Fidelity letter at 5–6, SIFMA letter at 6–7, and Wells Fargo letter at 2–3.

[65] *See, e.g.,* BDA letter and SIFMA letter at 6. *See also* 3PM letter at 6 (the prohibition on the use of testimonial in an advertisement would create an issue for ''municipal advisors that are registered with both the MSRB and FINRA . . . [w]hile we are not necessarily against the notion of adhering to the strictest standard, this approach does require additional compliance and oversight resources to be dedicated to a function and ultimately results in additional cost to the municipal advisor''). The MSRB does not address 3PM's interpretation of FINRA rules and the issue of the ability of an associated person to like or recommend items on social media platforms.

[66] FINRA Rule 2210(d)(6) provides:

(A) If any testimonial in a communication concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.

(B) Retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:

(i) The fact that the testimonial may not be representative of the experience of other customers.

(ii) The fact that the testimonial is no guarantee of future performance or success.

(iii) If more than $100 in value is paid for the testimonial, the fact that it is a paid testimonial.

[67] *See* SIFMA letter at 6; Fidelity letter at 7–8; Wells Fargo letter at 2–3.

[68] Fidelity letter at 7–8.

[69] SIFMA letter at 2–3. SIFMA also stated that the MSRB should consider all the exceptions and guidance in FINRA Rule 2210(d) regarding content standards and that SIFMA and its members feel very strongly about these exceptions, particularly Rule 2210(d)(6), on testimonials, FINRA Rule 2210(d)(7), on recommendations, and FINRA Rule 2210(d)(9), on prospectuses, including private placement memoranda. SIFMA letter at 5. The MSRB's considerations of testimonials is discussed above under ''Proposed Amended Rule G–21—Harmonization with FINRA Rule 2210—Use of testimonials.'' The MSRB's considerations of private placement memoranda are discussed below under ''Potential Additional Exclusions from the Definition of Advertisement—Private Placement Memoranda.'' SIFMA did not provide further details about its suggestion concerning recommendations. At this time, the MSRB has determined not to include revisions to the draft amendments to Rule G–21 in the proposed rule change to address SIFMA's suggestion about recommendations. *See also* BDA letter (''[t]here is no compelling policy reason to have different communication standards for municipal securities and corporate securities''); and Lewis Young letter (''we suggest you eliminate the current provisions related to advertising of Rule G–21 on broker/dealer activities otherwise governed by both G–17 and G–42 and that you not impose a Rule G–40 on non-broker/dealer advisors'').

[70] SIFMA letter at 2.

[71] SIFMA letter at 9. 3PM had a somewhat analogous view to that of SIFMA's about the Request for Comment. 3PM noted that most solicitor municipal advisors that are members of 3PM are also members of FINRA. 3PM submitted that the Board should focus on municipal advisor firms that have no regulatory oversight rather than layering additional compliance regulations and costs on solicitor municipal advisors. 3PM letter at 13.

[72] *See supra* note 29 at 10,371.

ramifications for the unique municipal securities market. In addition, there are municipal securities dealers that are not members of FINRA. Those dealers may not have the necessary notice of FINRA's rule interpretations.

(iv) Definition of Standards for Product and Professional Advertisements

BDA suggested that the definitions of standards for product advertisements and professional advertisements were made redundant by the general and content standards in the draft amendments to Rule G–21 and draft Rule G–40, and that the provisions should be deleted to signify that these types of communications are covered by the draft amendments to Rule G–21 and draft Rule G–40.[73] Although the provisions in the draft amendments to Rule G–21 and draft Rule G–40 are analogous to the current provisions in Rule G–21, there are differences in those provisions. For example, Rule G–21(b) contains a strict liability standard relating to the publication or dissemination of professional advertisements. Since the MSRB first proposed Rule G–21, the MSRB has believed that ''a strict standard of responsibility for securities professionals [is necessary] to assure that their advertisements are accurate.'' [74] After careful consideration, the MSRB has determined at this time not to delete the standards for product and professional advertisements.

B. Potential Additional Exclusions From the Definition of Advertisement

Commenters suggested additional exclusions from the definition of an advertisement. Those exclusions related to private placement memoranda [75] and responses to RFPs or RFQs.[76]

(i) Private Placement Memoranda

BDA and SIFMA suggested that as part of its harmonization effort, the MSRB should exclude private placement memoranda from the definition of advertisement.[77] BDA noted those materials are frequently used as offering memoranda and thus should be excluded from the definition of advertisement alongside preliminary offering statements.[78]

The MSRB believes, however, that such an exclusion would cause disharmonization with FINRA Rule 2210. FINRA Rule 2210 does not provide a similar exclusion from the definition of a communication. After careful consideration, the Board determined not to revise the draft amendments to Rule G–21 to reflect commenters' suggestion.

(ii) Response to an RFP or RFQ

BDA and SIFMA commented that the Board should amend Rule G–21 (Acacia, BDA, SIFMA, NAMA and PFM also made similar comments with respect to draft Rule G–40) to exclude a response to an RFP or RFQ from the definition of advertisement.[79] Commenters submitted that it was not appropriate for the MSRB to regulate responses to requests for proposals or qualifications the same way that the MSRB regulates ''retail communications''—*i.e.,* possibly requiring principal approval in writing before sending the response to the RFP or RFQ to an issuer. The MSRB agrees. In the Request for Comment, the MSRB noted that a response to an RFP or RFQ would be excluded from regulation under the draft amendments to Rule G–21 and draft Rule G–40 because the response would be excluded from the definition of a form letter. Nevertheless, commenters stated that they did not believe that exclusion was sufficient, and stated that such responses to RFPs and RFQs should be explicitly excluded from the definition of advertisement.[80] In particular, SIFMA expressed concern about the number of employees at a municipal securities issuer who may review an RFP or RFQ, and stated that it should not matter how many employees at such an issuer review the responses to an RFP and RFQ.

To ensure that the definition of form letter is interpreted as intended, the proposed rule change includes Supplementary Material .03 to Rule G–21 and Supplementary Material .01 to proposed Rule G–40. This supplementary material explains that an entity that receives a response to an RFP, RFQ or similar request would count as one ''person'' for the purposes of the definition of a form letter no matter the number of employees of the entity who may review the response. Other than the supplementary material, the Board determined that no other revisions to the draft amendments to Rule G–21 or to draft Rule G–40 were necessary to address commenters' concerns about RFPs and RFQs.

C. Hypothetical Illustrations

The Request for Comment noted that FINRA had recently requested comment on draft amendments to FINRA Rule 2210 to create an exception to the rule's prohibition on projecting performance to permit a firm to distribute a customized hypothetical investment planning illustration that includes the projected performance of an investment strategy. In part, in the interest of potential harmonization, the MSRB asked whether it should consider a similar proposal. Fidelity, SIFMA, and Wells Fargo commented that the MSRB should include a similar exception in the draft amendments to Rule G–21 and in draft Rule G–40.[81]

The comment period on FINRA's draft amendments to FINRA Rule 2210 closed March 27, 2017, and FINRA is still considering the comments that it received.[82] The Board determined that it would be premature to include provisions to address FINRA's draft amendments to Rule 2210 in the proposed rule change before FINRA determines how to proceed with those draft amendments. The MSRB will continue to monitor the FINRA initiative.

D. Hyperlinks

The amendments to Rule G–21(e), effective November 18, 2017, clarify that a hyperlink can be used for an investor to obtain more current municipal fund security performance information. Fidelity suggested that the MSRB expand the use of hyperlinks more broadly and in other advertising contexts outside of municipal fund security performance advertisements.[83] The MSRB appreciates Fidelity's suggestion, but at this time, has determined to not expand the use of hyperlinks in other types of advertisements.

[73] BDA letter. *See also* SIFMA letter at 4 (strongly supporting the removal of the definition of ''advertisement,'' ''form letter,'' and ''professional advertisement'' in favor of harmonizing with FINRA Rule 2210's three categories of communications, and stating that ''[h]armonization of the MSRB and FINRA rules would also necessitate the removal of the confusing and duplicative definition of 'product advertisement'').

[74] *See supra* note 29 at 10,376.

[75] *See* BDA letter and SIFMA letter at 5.

[76] *See, e.g.,* BDA letter and SIFMA letter at 5–6.

[77] Similarly, 3PM stated that, ''[g]iven the nature of a private placement memorandum for private issuers, we do not believe these documents should be classified as an advertisement and should be excepted from the rule as are preliminary official statements, official statements, preliminary prospectuses, summary prospectuses or registration statements.'' *See* 3PM letter at 11.

[78] *See* BDA letter.

[79] *See* Acacia letter, BDA letter, SIFMA letter at 6, NAMA letter at 2, and PFM letter at 2.

[80] *Id.*

[81] *See* Fidelity letter at 4, SIFMA letter at 7, and Wells Fargo letter at 3. *See also* 3PM letter at 5 (stating that institutional investors should be permitted to receive materials with projected or targeted returns).

[82] FINRA received 21 comment letters in response to Regulatory Notice 17–06, FINRA Requests Comment on Proposed Amendments to Rules Governing Communications with the Public.

[83] *See* Fidelity letter at 3.

E. Coordination Between Self-Regulatory Organizations

Fidelity encouraged the MSRB to review existing and upcoming FINRA guidance concerning communications with the public and to engage with FINRA directly during the rulemaking process.[84] The MSRB agrees with this approach and notes that it has directly engaged with FINRA during this particular rulemaking process, and regularly coordinates with FINRA as well as other financial regulators on rulemaking and other matters. As noted in the Request for Comment, the MSRB reviews the rulemaking proposals of FINRA as well as those of other financial regulators.[85]

F. Dealer/Municipal Advisor Jurisdictional Guidance

Commenters suggested that the MSRB provide guidance and/or exemptions from Rule G–21 for dealer/municipal advisors. Specifically, SIFMA suggested that the MSRB amend Rule G–21 to clarify that the activities of dealer/municipal advisors are governed by draft Rule G–40 when those dealer/municipal advisors are engaging in municipal advisor advertising.[86] Lewis Young had a somewhat analogous comment. Lewis Young suggested that the MSRB ''eliminate the current provisions related to advertising of Rule G–21 on broker/dealer activities otherwise governed by both G–17 and G–42 and that you not impose a Rule G–40 on non-broker/dealer advisors.'' [87] Although such clarifications relating to dealer/municipal advisors under Rule G–21 may be beneficial in the future, the MSRB's regulatory scheme relating to municipal advisors is not yet complete. The MSRB believes that its regulation of financial advisory activities (as an element of municipal securities activity) should remain in place at least until a more complete regulatory framework for municipal advisors is in effect.[88] Thus, after careful consideration of commenters' suggestions, the Board determined not to further revise the draft amendments to Rule G–21 to reflect commenters' suggestions.

II. Proposed Rule G–40

The MSRB received five comment letters that focused on draft Rule G–40.[89] The comments concerned (i) the ability of the MSRB to regulate advertising by municipal advisors through other MSRB rules without draft Rule G–40, (ii) the definition of municipal advisory client, (iii) revisions to draft Rule G–40's content standards, (iv) the adoption of the relief that SEC staff provided to investment advisers relating to testimonials in advertisements, (v) principal pre-approval, and (vi) guidance relating to municipal advisor websites and the use of social media. The comments ranged from strong support for draft Rule G–40 as set forth in the Request for Comment [90] to the view that there is no need for draft Rule G–40 because of other MSRB rules.[91]

A. Ability To Regulate Municipal Advisor Advertising Through Other Rules

Seeming to rely on the fiduciary duty requirements imposed on certain municipal advisors as well as the fair dealing requirements imposed on all municipal advisors, Acacia, Lewis Young, and NAMA submitted that the protections offered by Rule G–17 provide sufficient investor protection from misleading statements such that draft Rule G–40 is not necessary.[92] Further, Lewis Young explained that Rule G–42 ''imposes a high level of probity and care upon advisors'' and that ''in cases (rare) in which unsophisticated municipal issuers may be duped or deceived by an unscrupulous municipal advisor's 'advertising' communication, we suggest that Rule G–17 and Rule G–42 provide ample scope for enforcement.'' [93]

To rely on Rule G–17 to regulate municipal advisor advertising would create an unlevel playing field. This unlevel playing field would be between municipal advisors (subject to Rule G–17, but not Rule G–21) and dealers (subject to both Rules G–17 and G–21) and among municipal advisors that are not registered as dealers and municipal advisors that are also registered as dealers or investment advisers (subject to Rule G–21 and FINRA Rule 2210 or Advisers Act Rule 206(4)–1, as relevant).[94] Advertisements by dealers and investment advisers are regulated by advertising regulations that are separate from the other regulations to which dealers or investment advisers are subject.

Further, Rule G–42 applies only to non-solicitor municipal advisors; Rule G–42 excludes solicitor municipal advisors from the rule's scope. Lewis Young's comments fail to address how reliance on Rule G–42 would address advertising by solicitor municipal advisors that are not subject to Rule G–42. Moreover, other commenters submitted that having a separate rule to address advertising by municipal advisors would be helpful.[95]

After careful consideration, the MSRB determined to address advertising by municipal advisors through proposed Rule G–40.

B. Definition of Municipal Advisory Client

3PM provided a ''technical interpretation of the definition of 'municipal advisory client'" and suggested that the protections that would be provided by draft Rule G–40 may not be broad enough to protect municipal entities and obligated persons when they are solicited on behalf of third-parties by municipal

[84] *Id.* at 2–3.

[85] Request for Comment at 21.

[86] SIFMA letter at 8.

[87] Lewis Young letter.

[88] The MSRB has long regulated the activities of financial advisors. *See, e.g.,* Rule G–23, on activities of financial advisors. Rule G–23 was adopted as part of the Board's fair practice rules to codify basic standards of fair and ethical business conduct for dealers. Rule G–23 does not prescribe normative standards for dealer/municipal advisor conduct. Rather, as a conflicts of interest rule, it prohibits activities that would be in conflict with the ethical duties the dealer owes in its capacity as a financial advisor to its municipal issuer client. This approach to Rule G–23 has remained unchanged.

[89] *See* Acacia, Lewis Young, NAMA, PFM and 3PM letters.

[90] FSI letter at 3 (''FSI strongly supports further harmonization of regulatory requirements through the adoption of Rule G–40'').

[91] *See* Acacia letter at 1; Lewis Young letter; NAMA letter at 1.

[92] Acacia letter at 1 (''we agree with other commenters that this rule is unnecessary . . .[t]he core rules of G–17 coupled with G–42 and the fiduciary duty required under Dodd-Frank provides ample regulation to prevent false or misleading statements by municipal advisors''); Lewis Young letter (further suggesting that the MSRB should eliminate the ''current provisions related to advertising of Rule G–21 on broker/dealer activities otherwise governed by both Rule G–17 and Rule G–42 and that you [the MSRB] not impose a Rule G–40 on non-broker/dealer advisors''); NAMA letter at 1 (''we respectfully request that the Proposed Rule G–40 be withdrawn as the same results of ensuring falsehood or misleading statements are not used in advertising for MA professional services can already be found in Rule G–17'').

[93] Lewis Young letter; *see* Acacia letter at 1.

Lewis Young also suggested that ''an alternative would be a principles based 'truth in advertising' version of G–40 which could be written in one or two sentences. Rule G–21 could be correspondingly simplified.''

[94] 17 CFR 275.206(4)–1. Registered investment advisers, like non-solicitor municipal advisors, are subject to fiduciary standards, and also are subject to advertising rules under the Advisers Act.

[95] *See, e.g.,* SIFMA letter at 1 (''[w]e agree that the MSRB should have two rules on public communications, and we believe the rules should be divided based on activity, not by registration category''); and 3PM letter at 8–9 (''[i]n 3PM's opinion, the rules for municipal advisors are already confusing enough given different requirements for solicitor and non-solicitor municipal advisors. Including municipal advisor advertising within the body of G–21 would only complicate the issue further. We believe the municipal advisor rules should remain as Rule G–40, separate from G–21'').

advisors (''solicitor municipal advisors'').[96] In particular, 3PM suggested that the definition of municipal advisory client was too narrow, and that the definition should be expanded to include the municipal entity or obligated person that is the subject of the solicitation by a solicitor municipal advisor.[97] The MSRB agrees in substance with the comment and has intended throughout that the protections of draft Rule G–40 would apply to municipal entities and obligated persons under the definition of an advertisement. For clarification, the MSRB has revised the definition of an advertisement to ensure that the definition will be interpreted as intended. Under proposed Rule G–40(a)(i), an advertisement would explicitly include promotional literature distributed to municipal entities or obligated persons by a solicitor municipal advisor on behalf of the solicitor municipal advisor's municipal advisory client.

C. Definition of Advertisement

Rule 15Ba1–1(d)(1)(ii) under the Exchange Act excludes the provision of general information from the type of advice that would require a municipal advisor to register with the SEC.[98] SEC staff, in its Responses to Frequently Asked Questions, provided further information about those exclusions in its answer to ''Question 1.1: The General Information Exclusion from Advice versus Recommendations.'' [99] NAMA and PFM submitted that those general exclusions from the term ''advice'' that would permit a municipal advisor to not register with the SEC should equally apply as exclusions to the MSRB's draft municipal advisor advertising rule.[100]

The purpose of draft Rule G–40, in part, is to ensure that municipal advisor advertising does not contain any untrue statement of material fact and is not otherwise false or misleading. Regardless of whether certain information rises to the level of advice, that information may be advertising used to market to potential clients, which the MSRB believes should be covered by draft Rule G–40. Further, as noted by FSI, maintaining regulatory consistency between draft Rule G–40 and the draft amendments to Rule G–21 is important.[101] Among other things, FSI noted that regulatory consistency enhances the potential for compliance with draft Rule G–40 because dually regulated entities will comply with consistent standards, and can reduce regulatory arbitrage.[102] After considering commenters' suggestions, the Board determined not to include additional exceptions from the definition of an advertisement in proposed Rule G–40.

D. Draft Rule G–40's Content Standards

i. Content Standards, in General

NAMA, PFM and 3PM generally requested that draft Rule G–40 be revised to provide more definitive content standards.[103] In particular, NAMA and PFM stated that the content standards in draft Rule G–40 should reflect a clearer separation between the content standards applicable to product advertisements and the content standards applicable to professional advertisements. NAMA and PFM suggested that this separation was important because the clear majority of municipal advisors only engage in professional services advertising.[104] In addition, PFM stated that Sections (D), (E), and (F) of draft Rule G–40 should not be included in draft Rule G–40 as ''these provisions are more directly related to advertisements for products distributed by brokers, dealers, or municipal securities dealers, and should not be construed as necessary to administer to the types of services that municipal advisors may provide.'' [105]

The Board appreciates and considered commenters' suggestions. With regard to the suggestions about refining draft Rule G–40's content standards, the MSRB believes that those content standards are clear as drafted. Moreover, as the MSRB's regulatory regime relating to municipal advisors is not yet complete, the MSRB believes that, at this point, having different content standards based on the type of advertisement by the municipal advisor would not be warranted.[106] Further, having content standards in proposed Rule G–40 that are similar to those in proposed amended Rule G–21 may enhance the ability of dually registered dealers and municipal advisors to comply with MSRB rules.[107] After careful consideration, the Board determined not to revise draft Rule G–40 in response to commenters' suggestions.

ii. Content Standard About Non-Security Product Advertisements

The MSRB sought comment about whether the MSRB should provide guidance about municipal advisors that market non-security products, such as software programs, to their municipal advisory clients. Commenters generally responded that such guidance may be helpful, but generally either did not provide further information or cautioned that there should be a nexus between the product advertisement and municipal advisory activity for draft Rule G–40 to apply.[108]

[96] 3PM letter at 2.

[97] *Id.*

[98] 17 CFR 240.15Ba1–(d)(1)(ii).

[99] According to the SEC staff, examples of that general information include:

(a) Information regarding a person's professional qualifications and prior experience (*e.g.*, lists, descriptions, terms, or other information regarding prior experience on completed transactions involving municipal financial products or issuances of municipal securities); (b) general market and financial information (*e.g.,* market statistics regarding issuance activity for municipal securities or current market interest rates or index rates for different types of bonds or categories of credits); (c) information regarding a financial institution's currently-available investments (*e.g.,* the terms, maturities, and interest rates at which the financial institution offers these investments) or price quotes for investments available for purchase or sale in the market that meet criteria specified by a municipal entity or obligated person; (d) factual information describing various types of debt financing structures (*e.g.,* fixed rate debt, variable rate debt, general obligation debt, debt secured by various types of revenues, or insured debt), including a comparison of the general characteristics, risks, advantages, and disadvantages of these debt financing structures; and (e) factual and educational information regarding various government financing programs and incentives (*e.g.,* programs that promote energy conservation and the use of renewable energy).

Registration of Municipal Advisors Frequently Asked Questions, Office of Municipal Securities, U.S. Securities and Exchange Commission, last updated on May 19, 2014, available at *https://www.sec.gov/info/municipal/mun-advisors-faqs.shtml.*

[100] NAMA letter at 2; PFM letter at 2.

[101] FSI letter at 3.

[102] *Id.*

[103] *See* NAMA letter at 3; PFM letter at 3; and 3PM letter at 4–5.

[104] *See* NAMA letter at 3; PFM letter at 3 (''we believe that the MSRB should provide a clearer demarcation between the content standards for advertising products within the regulatory conventions set for broker-dealers . . . and the standards for advertising municipal advisory services more akin to regulatory conventions set for registered investment advisors [sic] who are also subject to a fiduciary standard (generally 'professional advertising') because our experience clearly shows that the vast majority of municipal advisors predominately engage in the latter type of advertising'').

[105] PFM letter at 4.

[106] The MSRB generally believes that regulation of financial advisory activity (as an element of municipal securities activity) should remain in place until a more complete regulatory framework for municipal advisory activity is in effect. Also, there may be some areas of financial advisory activity that are not clearly within the scope of SEC-defined municipal advisory activity. *See supra* note 88.

[107] The MSRB notes that approximately a quarter of municipal advisory firms are also registered as broker-dealers.

[108] *See* NAMA letter at 2 (submitting that ''[i]f the MSRB has identified any meaningful subset of MAs that advertise products, then a separate section should apply solely to product advertisements''); SIFMA letter at 8–9 (submitting that the MSRB should address content standards for municipal advisor product advertisements only to the extent such advertisements relate to municipal advisory activities such as the sale of software by a

The MSRB agrees that there should be a nexus between the product advertisement and the municipal advisory activity for proposed Rule G–40 to apply. The MSRB believes that when a municipal advisor publishes an advertisement about its municipal advisory services and that advertisement also markets a non-municipal security product that is related to the municipal advisory services, the municipal advisor should consider whether the entire advertisement and not just the portion of the advertisement addressing municipal advisory services, is consistent with all MSRB rules, including Rule G–17, proposed Rule G–40, Rule G–42 and Rule G–8, on books and records to be made by brokers, dealers, municipal securities dealers and municipal advisors.

E. Testimonials

BDA, NAMA, PFM, SIFMA, 3PM and Wells Fargo commented on draft Rule G–40(iv)(G) that would prohibit a municipal advisor from using testimonials in its advertisements.[109] Their comments ranged from the view that the MSRB's prohibition on the use of testimonials in municipal advisor advertisements is not warranted [110] to the view that, while the prohibition on the use of testimonials may be warranted, the MSRB should consider either the narrowing of that prohibition [111] or the potential costs that would be associated with that prohibition.[112]

Specifically, BDA stated that the ''MSRB's prohibition on testimonials in . . . Rule G–40 is [not] warranted.'' [113] SIFMA, while appearing to agree with BDA's comment, also suggested that draft Rule G–40 be harmonized with FINRA Rule 2210(d)(6) which permits testimonials in advertisements by dealers, subject to certain conditions (*see* discussion above under Rule G–21 comments).

NAMA, PFM and Wells Fargo stated that, if draft Rule G–40 were to prohibit testimonials by municipal advisors, the MSRB should provide relief from that prohibition. Commenters suggested that the MSRB narrow that prohibition either by adopting the SEC staff's definition of a testimonial that is applicable to investment advisers,[114] by adopting certain SEC staff no-action guidance relating to the use of testimonials by investment advisers,[115] or by completely adopting the substantial SEC staff guidance that relates to use of testimonials by investment advisers [116] that was set forth in an SEC Division of Investment Management guidance update.[117]

The Board considered commenters' suggestions, and recognizes the interpretive guidance provided by the SEC staff relating to testimonials.[118] Nevertheless, as discussed in the Request for Comment, the MSRB believes that a testimonial presents significant issues, including the ability to be misleading. Also noted in the Request for Comment, the MSRB recognizes that other comparable financial regulations, such as Rule 206(4)-1 under the Advisers Act, also prohibit advisers from including testimonials in advertisements (investment advisers, like non-solicitor municipal advisors, are subject to fiduciary standards).

Further, although the MSRB appreciates commenters' suggestions, the guidance related to the testimonial ban under the Advisers Act rule is SEC staff guidance, not guidance issued by the Commission.[119] The MSRB, however, will monitor developments relating to the testimonial ban under Rule 206(4)–1. In addition, as noted under ''Self-Regulatory Organization's Statement on Burden on Competition'' above, while the MSRB acknowledges that there will be certain increased costs for municipal advisors relating to compliance and supervision, the MSRB believes the benefits accrued to municipal entities and obligated persons from more accurate and objective information should exceed the costs over time. After careful consideration, the Board determined not to revise draft Rule G–40 to reflect commenters' suggestions.

F. Principal Pre-Approval

BDA argued that principal pre-approval was not needed or could be limited to certain types of advertisements.[120] BDA stated that clients of municipal advisors are institutions, and that as institutions, they do not need many of the ''mechanistic protections applicable to dealer relationships with retail investors.'' [121] BDA submitted that it ''does not believe that a principal needs to approve every advertisement.'' [122] BDA, however, did not discuss the types of advertisements that a principal would need to approve.

An important part of the MSRB's mission is to protect state and local governments and other municipal entities. It is, in part, because of that mission that the MSRB developed draft Rule G–40. The MSRB has long believed that principal pre-approval of advertisements is an essential part of an effective supervisory process. *See* discussion under ''Harmonization with FINRA Rule 2210'' above. After careful consideration, the MSRB determined not to revise draft Rule G–40 in response to BDA's suggestion.

G. Guidance Relating to Municipal Advisor Websites and the Use of Social Media

Commenters requested more specific guidance about the content posted on a municipal advisor's website and about the use of social media by a municipal advisor. In particular, Acacia, NAMA, and PFM requested guidance about whether material posted on a municipal advisor's website would constitute an advertisement under proposed Rule G–40.[123] In response, the MSRB notes that

municipal advisor to assist its clients with municipal securities transactions); 3PM letter at 10 (''[w]e believe that guidance regarding advertisements of non-security products should only be put in place for firms who are also conducting a security business and who have 'municipal advisory clients' that they plan to send non-security advertisements to. Firms who have ''municipal advisory clients [sic] that they are also soliciting on behalf of non-security products should be required to advise the buyers in the municipal entity of the arrangements that already exist with a municipal advisor''); *but see* Acacia letter at 2 (''[t]he MSRB would be over reaching if it attempted to regulate the use of non-security products. While there may be a subset of advisors who engage in this activity, we can see no nexus for the MSRB to become involved in non-security related regulations''). In response to Acacia's concerns, the MSRB notes that it is not suggesting that the MSRB regulate the use of non-security products by a municipal advisor. Rather, the MSRB was seeking comment about municipal advisors that may market non-security products along with their municipal advisory services.

[109] BDA letter; NAMA letter at 3; PFM letter at 4–5; SIFMA letter at 6–7; 3PM letter at 6; and Wells Fargo letter at 3.

[110] *See, e.g.,* BDA letter.

[111] *See, e.g.,* PFM letter at 4–5.

[112] 3PM letter at 6.

[113] BDA letter.

[114] *See* NAMA letter at 3; PFM letter at 4–5.

[115] *See* PFM letter at 4–5.

[116] *See* Wells Fargo letter at 3.

[117] IM Guidance Update No. 2014–04 (March 2014).

[118] *See supra* note 26.

[119] The MSRB notes that there are additional challenges if the MSRB were to adopt SEC staff guidance. Those challenges include monitoring SEC staff guidance and ensuring municipal advisors that are not also registered as investment advisers have notice of any changes to the SEC staff guidance. *See supra* note 26.

[120] BDA letter.

[121] *Id.*

[122] *Id.*

[123] Acacia letter; NAMA letter at 3; PFM letter at 5; *but see* SIFMA letter at 6 (''[t]he amendments to Rule G–21 and draft Rule G–40(c) apply to advertisements, regardless of whether electronic or other public media is used with those advertisements. As such, we feel no additional guidance by the MSRB is needed regarding the use of social media by a dealer or municipal advisor at this time'').

proposed Rule G–40(a)(i) defines an advertisement, in part, as any ''material . . . published or used in any electronic or other public media . . . .'' As such, proposed Rule G–40 would apply to any material posted on a municipal advisor's website or more generally, on any website, if that material comes within the definition of an advertisement as set forth in proposed Rule G–40(a)(i).

In addition, NAMA and PFM requested guidance on the use of social media.[124] The MSRB appreciates commenters' requests, and currently is studying whether to provide such guidance. As part of that consideration, the MSRB is reviewing the guidance concerning the use of social media provided by other financial regulators.[125]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2018–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2018–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2018–01 and should be submitted on or before February 28, 2018.

For the Commission, pursuant to delegated authority.[126]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02398 Filed 2–6–18; 8:45 am]

BILLING CODE 8011–01–P

[124] NAMA letter at 3; PFM letter at 5; *but see* Fidelity letter at 4 (''MSRB Rule G–21 applies to advertisements, regardless of whether electronic or other public media, including social media, is used with those advertisements'') and SIFMA letter at 6 (''[t]he amendments to Rule G–21 and draft Rule G–40(c) apply to advertisements, regardless of whether electronic or other public media is used with those advertisements. As such, we feel no additional guidance by the MSRB is needed regarding the use of social media by a dealer or municipal advisor at this time'').

[125] *See* Fidelity letter at 5 (''[o]n the topic of social media, FINRA has provided guidance on the application of its rules governing communications with the public to social media sites . . . . For example, we understand that FINRA is currently working on a new social media Q&A . . . .); SIFMA letter at 6 (''[w]e believe that FINRA is currently working on guidance regarding social media. In line with our earlier comments, we feel the MSRB should ascribe to this guidance or clearly articulate why it is not appropriate in this market''). The MSRB believes that SIFMA's comments relate to FINRA Regulatory Notice 17–18, Guidance on Social Networking websites and Business Communications (Apr. 2017).

[126] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82620; File No. SR–NYSE–2018–05]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Users With Access to Two Additional Third Party Systems and Connectivity to One Additional Third Party Data Feed

February 1, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 19, 2018, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to provide Users with access to two additional third party systems and connectivity to one additional third party data feed. In addition, the Exchange proposes to change its Price List related to these co-location services, and to update its Price List to eliminate obsolete text. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the co-location [4] services offered by the Exchange to provide Users [5] with access to two additional third party systems and connectivity to one additional third party data feed. In addition the Exchange proposes to make the corresponding changes to the Exchange's Price List related to these co-location services, and to update its Price List to eliminate obsolete text.

As set forth in the Price List, the Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers (''Third Party Systems''), and data feeds from third party markets and other content service providers (''Third Party Data Feeds'').[6] The lists of Third Party Systems and Third Party Data Feeds are set forth in the Price List.

The Exchange now proposes to make the following changes:

- Add two content service providers to the list of Third Party Systems: Miami International Securities Exchange and MIAX PEARL (together, the ''Additional Third Party Systems''); and
- add one feed to the list of Third Party Data Feeds: Miami International Securities Exchange/MIAX PEARL (the ''Additional Third Party Data Feed'').

The Exchange would provide access to the Additional Third Party Systems (''Access'') and connectivity to the Additional Third Party Data Feed (''Connectivity'') as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity.

The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Additional Third Party Systems and connectivity to the Additional Third Party Data Feed, as such third parties are not required to make that information public. However, if one or more third parties presently offer, or in the future opt to offer, such Access and Connectivity to Users, a User may utilize the Secure Financial Transaction Infrastructure (''SFTI'') network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The proposed rule change would become operative when the Additional Third Party Systems and the Additional Third Party Data Feed becomes available, which is expected to be no later than March 31, 2018. The Exchange will announce the dates that each Product is available through customer notices disseminated to all Users simultaneously.

Connectivity to Additional Third Party Systems

The Exchange proposes to revise the Price List to provide that Users may obtain connectivity to the two Additional Third Party Systems for a fee. As with the current Third Party Systems, Users would connect to the Additional Third Party Systems over the internet protocol (''IP'') network, a local area network available in the data center.[7]

As with the current Third Party Systems, in order to obtain access to an Additional Third Party System, the User would enter into an agreement with the relevant third party content service provider, pursuant to which the third party content service provider would charge the User for access to the Additional Third Party System. The Exchange would then establish a unicast connection between the User and the relevant third party content service provider over the IP network.[8] The Exchange would charge the User for the connectivity to the Additional Third Party System. A User would only receive, and only be charged for, access to Additional Third Party Systems for which it enters into agreements with the third party content service provider.

The Exchange has no ownership interest in the Additional Third Party Systems. Establishing a User's access to an Additional Third Party System would not give the Exchange any right to use the Additional Third Party Systems. Connectivity to an Additional Third Party System would not provide access or order entry to the Exchange's execution system, and a User's connection to an Additional Third Party System would not be through the Exchange's execution system.

As with the existing connections to Third Party Systems, the Exchange proposes to charge a monthly recurring fee for connectivity to an Additional Third Party System. Specifically, when a User requests access to an Additional Third Party System, it would identify the applicable content service provider and what bandwidth connection it required.

The Exchange proposes to modify its Price List to add the Additional Third Party Systems to its existing list of Third Party Systems. The additional items would be as follows:

Third Party Systems
Miami International Securities Exchange.
MIAX PEARL.

The Exchange does not propose to change the monthly recurring fee the Exchange charges Users for unicast connectivity to each Third Party System, including the Additional Third Party Systems.

Connectivity to Additional Third Party Data Feed

The Exchange proposes to revise the Price List to provide that Users may obtain connectivity to the Additional Third Party Data Feed for a fee. The Exchange would receive the Additional Third Party Data Feed from the content service provider, at its data center. It would then provide connectivity to that data to Users for a fee. Users would connect to the Additional Third Party Data Feed over the IP network.[9]

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC (''NYSE American'') and NYSE Arca, Inc. (''NYSE Arca'' and, together with NYSE American, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[6] *See* Securities Exchange Act Release No. 80311 (March 24, 2017), 82 FR 15741 (March 30, 2017) (SR–NYSE–2016–45).

[7] *See* Securities Exchange Act Release No. 74222 (February 6, 2015), 80 FR 7888 (February 12, 2015) (SR–NYSE–2015–05) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

[8] Information flows over existing network connections in two formats: ''unicast'' format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and ''multicast'' format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

[9] *See supra* note 7, at 7889 (''The IP network also provides Users with access to away market data products'').

In order to connect to the Additional Third Party Data Feed, a User would enter into a contract with the content service provider, pursuant to which the content service provider would charge the User for the Third Party Data Feed. The Exchange would receive the Third Party Data Feed over its fiber optic network and, after the content service provider and User entered into the contract and the Exchange received authorization from the content service provider, the Exchange would re-transmit the data to the User over the User's port. The Exchange would charge the User for the connectivity to the Additional Third Party Data Feed. A User would only receive, and would only be charged for, connectivity to the Additional Third Party Data Feed for which it entered into contracts.

The Exchange has no affiliation with the seller of the Additional Third Party Data Feed. It would have no right to use the Additional Third Party Data Feed other than as a redistributor of the data. The Additional Third Party Data Feed would not provide access or order entry to the Exchange's execution system. The Additional Third Party Data Feed would not provide access or order entry to the execution systems of the third parties generating the feed. The Exchange would receive the Additional Third Party Data Feed via arms-length agreements and it would have no inherent advantage over any other distributor of such data.

As it does with the existing Third Party Data Feeds, the Exchange proposes to charge a monthly recurring fee for connectivity to the Additional Third Party Data Feed. Depending on its needs and bandwidth, a User may opt to receive all or some of the feeds or services included in the Additional Third Party Data Feed.

The Exchange proposes to add the connectivity fees for the Additional Third Party Data to its existing list in the Price List. The additional item would be as follows:

Third Party Data Feed	Monthly recurring connectivity fee per Third Party Data Feed
Miami International Securities Exchange/MIAX PEARL	$2,000

Elimination of Obsolete Rule Language

The Exchange proposes to delete obsolete text from both the lists of Third Party Data Feeds and Third Party Systems in the Price List. More specifically, the Exchange proposes to make the following changes: [10]

- From both lists, remove the asterisk and note stating that the asterisked service is expected to be available no later than September 30, 2017, as the relevant services are currently available; and
- from the list of Third Party Data Feeds, remove the asterisks and note stating that the Euronext Optiq Compressed Derivatives is expected to be offered in place of Euronext no later than September 30, 2017, as such change has occurred, and remove Euronext as a Third Party Data Feed.

This proposed change would have no impact on pricing.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [11] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both the Affiliate SROs.[12]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering additional services, the Exchange would give each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs.

The Exchange would provide Access and Connectivity as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity. The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Additional Third Party Systems and connectivity to the Additional Third Party Data Feed. However, if one or more third parties presently offer, or in the future opt to offer, such Access and Connectivity to Users, a User may utilize the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in

[10] *See* Securities Exchange Act Release No. 81014 (June 23, 2017), 82 FR 29615 (June 29, 2017) (SR–NYSE–2017–25).

[11] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[12] *See* SR–NYSE–2013–59, *supra* note 5 at 51766. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAMER–2018–02 and SR–NYSEArca–2018–06.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

general, protect investors and the public interest because, by offering access to the Additional Third Party Systems and connectivity to the Additional Third Party Data Feed to Users when available, the Exchange would give Users additional options for connectivity and access to new services as soon as they are available, responding to User demand for access and connectivity options.

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee changes are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the additional services and fees proposed herein would be equitably allocated and not unfairly discriminatory because, in addition to the services being completely voluntary, they would be available to all Users on an equal basis (*i.e.,* the same products and services would be available to all Users). All Users that voluntarily selected to receive Access or Connectivity would be charged the same amount for the same services. Users that opted to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contracted with the relevant market or content provider would receive access or connectivity.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because the Exchange would offer the Access and Connectivity as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including resilient and redundant feeds. In addition, in order to provide Access and Connectivity, the Exchange would maintain multiple connections to each Additional Third Party Data Feed and Additional Third Party System, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by the relevant third party; and cover any applicable fees charged by the relevant third party, such as port fees. In addition, Users would not be required to use any of their bandwidth for Access and Connectivity unless they wish to do so.

The Exchange believes the proposed fees for Access and Connectivity would be reasonable because they would allow the Exchange to defray or cover the costs associated with offering Users access to Additional Third Party Systems and connectivity to Additional Third Party Data Feed while providing Users the convenience of receiving such Access and Connectivity within co-location, helping them tailor their data center operations to the requirements of their business operations.

The Exchange also believes that the proposal to delete obsolete text from the list of Third Party Data Feeds and the list of Third Party Systems would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed fee changes would remove obsolete text from the Price List, reducing the complexity and any potential ambiguity and providing clarification concerning the availability and the costs of products and services available to Users. Further, the Exchange believes that that the proposed modifications and updates to its Price List would be consistent with the public interest and the protection of investors because the public and investors would not be harmed and, in fact, would benefit from this updating and clarification.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because all of the proposed services are completely voluntary.

The Exchange believes that providing Users with additional options for connectivity and access to new services would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access and Connectivity would satisfy User demand for access and connectivity options. The Exchange would provide Access and Connectivity as conveniences equally to all Users. The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Additional Third Party Systems and connectivity to the Additional Third Party Data Feed, as such third parties are not required to make that information public. However, if one or more third parties presently offer, or in the future opt to offer, such Access and Connectivity to Users, a User may utilize the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(8).

party vendor. Users that opt to use the proposed Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The proposed deletion of obsolete text from the list of Third Party Data Feeds and the list of Third Party Systems would update the information and increase the clarity of the Price List concerning the availability and cost of products and services available to Users. Accordingly, the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the public and investors would benefit from this updating and clarification.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that the proposed rule changes present no new or novel issues. According to the Exchange, waiver of the operative delay would allow Users to access the Additional Third Party Systems and the Additional Third Party Data Feeds without delay, which would assist Users in tailoring their data center operations to the requirements of their business operations. The Exchange also represents that the proposed changes to the Price List would provide Users with more complete information regarding their Access and Connectivity options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2018–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2018–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2018–05 and should be submitted on or before February 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02401 Filed 2–6–18; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82615; File No. SR–CboeEDGX–2018–003]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 21.1, Definitions, To Modify a Time in Force Applicable to the Exchange's Equity Options Platform

February 1, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2018, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 21.1 to modify a Time in Force applicable to the Exchange's equity options platform (''EDGX Options'').

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 21.1, Definitions, to modify the Good Til Day (or ''GTD'') Time in Force. Currently, GTD orders are limited to the specific trading day on which they are entered, as the Exchange does not currently offer any orders that continue to remain on the Exchange for more than a single trading day (*i.e.,* does not carry any orders overnight). The Exchange notes that it received approval to offer the GTC Time in Force as part of its proposal to adopt rules to allow trading of complex orders on EDGX Options.[5] The GTC Time in Force is not limited to the trading day on which an order is entered.

The Exchange plans to make available the GTC Time in Force effective January 26, 2018. In connection with such release, the Exchange proposes to modify the GTD Time in Force to also allow orders with such Time in Force to remain in effect past the day on which they were entered, and therefore proposes to remove language that refers to the time of expiration as needing to be ''during such trading day''. In addition, to avoid confusion, the Exchange proposes to modify the name of the GTD Time in Force to ''Good Til Date'', which is more reflective of a Time in Force that can last for more than one trading day.

The Exchange does not believe that offering GTD functionality that allows orders to remain with the Exchange for more than one trading day raises any issues that are not already present with GTC orders. In turn, GTC is a common time in force and is typically implemented to allow orders to remain for more than one trading day.[6] The Exchange simply has not offered such functionality previously and therefore has had specific language reflecting that an expiration time must be during the trading day. The Exchange also notes that a GTD modifier providing a Time in Force that could last more than one day has been previously offered by at least one equities exchange not affiliated with the Exchange.[7]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the proposed amendment will provide additional flexibility to Users that wish to enter an order that will last past the trading day on which it is entered by allowing such Users to set a specific expiration time. The Exchange also believes the proposed amendment will increase the understanding of the Exchange's operations for all Users of the Exchange. In particular, the Exchange intends to release the GTC Time in Force in the near future, which will persist over multiple trading days unless cancelled, and believes that the Time in Force of GTD should similarly be able to persist over multiple trading days. The Exchange believes it could be confusing and inconsistent to offer a GTC Time in Force that can persist for longer than a

[5] *See* Securities Exchange Act Release No. 81891 (October 17, 2017), 82 FR 49058 (October 23, 2017) (SR–Bats–EDGX–2017–29).

[6] *See, e.g.,* C2 Rule 6.10(d)(2).

[7] *See* Securities Exchange Act Release No. 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (SR–NYSEArca–2015–56) (notice of filing by NYSE Arca describing proposed changes in connection with migration of technology to new platform, including retirement of GTD modifier).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

single trading day and a GTD Time in Force, which commonly means ''Good Til Date'', but that would have to expire no later than the end of the trading day on which it was entered. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is a minor update to an existing Time in Force, GTD, given the update to the Exchange's technology that will allow orders to persist for more than one trading day. The Exchange does not believe that the proposed changes will have any direct impact on competition. Thus, the Exchange does not believe that the proposal creates any significant impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may, as soon as possible, implement the proposed rule change. The Exchange notes that the proposal will promote consistency between the GTC and GTD Times in Force offered by the Exchange. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2018–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR-CboeEDGX–2018–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2018–003 and should be submitted on or before February 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02397 Filed 2–6–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82618; File No. SR–NYSEAMER–2018–02]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Users With Access to Two Additional Third Party Systems and Connectivity to One Additional Third Party Data Feed

February 1, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

19, 2018, NYSE American LLC (''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to provide Users with access to two additional third party systems and connectivity to one additional third party data feed. In addition, the Exchange proposes to change its NYSE American Equities Price List (''Price List'') and the NYSE American Options Fee Schedule (''Fee Schedule'') related to these co-location services, and to update its Price List and Fee Schedule to eliminate obsolete text. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the co-location [4] services offered by the Exchange to provide Users [5] with access to two additional third party systems and connectivity to one additional third party data feed. In addition the Exchange proposes to make the corresponding changes to the Exchange's Price List and Fee Schedule related to these co-location services, and to update its Price List and Fee Schedule to eliminate obsolete text.

As set forth in the Price List and Fee Schedule, the Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers (''Third Party Systems''), and data feeds from third party markets and other content service providers (''Third Party Data Feeds'').[6] The lists of Third Party Systems and Third Party Data Feeds are set forth in the Price List and Fee Schedule.

The Exchange now proposes to make the following changes:

- Add two content service providers to the list of Third Party Systems: Miami International Securities Exchange and MIAX PEARL (together, the ''Additional Third Party Systems'' or ''ATPS''); and
- add one feed to the list of Third Party Data Feeds: Miami International Securities Exchange/MIAX PEARL (the ''Additional Third Party Data Feed'' or ''ATPD'').

The Exchange would provide access to the Additional Third Party Systems (''Access'') and connectivity to the Additional Third Party Data Feed (''Connectivity'') as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity.

The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Additional Third Party Systems and connectivity to the Additional Third Party Data Feed, as such third parties are not required to make that information public. However, if one or more third parties presently offer, or in the future opt to offer, such Access and Connectivity to Users, a User may utilize the Secure Financial Transaction Infrastructure (''SFTI'') network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The proposed rule change would become operative when the Additional Third Party Systems and the Additional Third Party Data Feed become available, which is expected to be no later than March 31, 2018. The Exchange will announce the dates that each Product is available through customer notices disseminated to all Users simultaneously.

Connectivity to Additional Third Party Systems

The Exchange proposes to revise the Price List and Fee Schedule to provide that Users may obtain connectivity to the two Additional Third Party Systems for a fee. As with the current Third Party Systems, Users would connect to the Additional Third Party Systems over the internet protocol (''IP'') network, a local area network available in the data center.[7]

As with the current Third Party Systems, in order to obtain access to an Additional Third Party System, the User would enter into an agreement with the relevant third party content service provider, pursuant to which the third party content service provider would charge the User for access to the Additional Third Party System. The Exchange would then establish a unicast connection between the User and the relevant third party content service provider over the IP network.[8] The Exchange would charge the User for the connectivity to the Additional Third Party System. A User would only receive, and only be charged for, access to Additional Third Party Systems for which it enters into agreements with the third party content service provider.

The Exchange has no ownership interest in the Additional Third Party Systems. Establishing a User's access to an Additional Third Party System would not give the Exchange any right

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE LLC'') and NYSE Arca, Inc. (''NYSE Arca'' and, together with NYSE LLC, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[6] *See* Securities Exchange Act Release No. 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR–NYSEMKT–2016–63).

[7] *See* Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR–NYSEMKT–2015–08) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

[8] Information flows over existing network connections in two formats: ''unicast'' format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and ''multicast'' format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

to use the Additional Third Party Systems. Connectivity to an Additional Third Party System would not provide access or order entry to the Exchange's execution system, and a User's connection to an Additional Third Party System would not be through the Exchange's execution system.

As with the existing connections to Third Party Systems, the Exchange proposes to charge a monthly recurring fee for connectivity to an Additional Third Party System. Specifically, when a User requests access to an Additional Third Party System, it would identify the applicable content service provider and what bandwidth connection it required.

The Exchange proposes to modify its Price List and Fee Schedule to add the Additional Third Party Systems to its existing list of Third Party Systems. The additional items would be as follows:

THIRD PARTY SYSTEMS

Miami International Securities Exchange MIAX PEARL.

The Exchange does not propose to change the monthly recurring fee the Exchange charges Users for unicast connectivity to each Third Party System, including the Additional Third Party Systems.

Connectivity to Additional Third Party Data Feed

The Exchange proposes to revise the Price List and Fee Schedule to provide that Users may obtain connectivity to the Additional Third Party Data Feed for a fee. The Exchange would receive the Additional Third Party Data Feed from the content service provider, at its data center. It would then provide connectivity to that data to Users for a fee. Users would connect to the Additional Third Party Data Feed over the IP network.[9]

In order to connect to the Additional Third Party Data Feed, a User would enter into a contract with the content service provider, pursuant to which the content service provider would charge the User for the Third Party Data Feed. The Exchange would receive the Third Party Data Feed over its fiber optic network and, after the content service provider and User entered into the contract and the Exchange received authorization from the content service provider, the Exchange would re-transmit the data to the User over the User's port. The Exchange would charge the User for the connectivity to the Additional Third Party Data Feed. A User would only receive, and would only be charged for, connectivity to the Additional Third Party Data Feed for which it entered into contracts.

The Exchange has no affiliation with the seller of the Additional Third Party Data Feed. It would have no right to use the Additional Third Party Data Feed other than as a redistributor of the data. The Additional Third Party Data Feed would not provide access or order entry to the Exchange's execution system. The Additional Third Party Data Feed would not provide access or order entry to the execution systems of the third parties generating the feed. The Exchange would receive the Additional Third Party Data Feed via arms-length agreements and it would have no inherent advantage over any other distributor of such data.

As it does with the existing Third Party Data Feeds, the Exchange proposes to charge a monthly recurring fee for connectivity to the Additional Third Party Data Feed. Depending on its needs and bandwidth, a User may opt to receive all or some of the feeds or services included in the Additional Third Party Data Feed.

The Exchange proposes to add the connectivity fees for the Additional Third Party Data to its existing list in the Price List and Fee Schedule. The additional item would be as follows:

Third party data feed	Monthly recurring connectivity fee per third party data feed
Miami International Securities Exchange/MIAX PEARL	$2,000

Elimination of Obsolete Rule Language

The Exchange proposes to delete obsolete text from both the lists of Third Party Data Feeds and Third Party Systems, in both the Price List and Fee Schedule. More specifically, the Exchange proposes to make the following changes: [10]

- From both lists, remove the asterisk and note stating that the asterisked service is expected to be available no later than September 30, 2017, as the relevant services are currently available; and
- from the list of Third Party Data Feeds, remove the asterisks and note stating that the Euronext Optiq Compressed Derivatives is expected to be offered in place of Euronext no later than September 30, 2017, as such change has occurred, and remove Euronext as a Third Party Data Feed.

This proposed change would have no impact on pricing.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [11] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both the Affiliate SROs.[12]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free

[9] *See supra* note 7, at 7894 (''The IP network also provides Users with access to away market data products'').

[10] *See* Securities Exchange Act Release No. 81015 (June 23, 2017), 82 FR 29610 (June 29, 2017) (SR–NYSEMKT–2017–32).

[11] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[12] *See* SR–NYSEMKT–2013–67, *supra* note 5 at 50471. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2018–05 and SR–NYSEArca–2018–06.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering additional services, the Exchange would give each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs.

The Exchange would provide Access and Connectivity as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity. The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Additional Third Party Systems and connectivity to the Additional Third Party Data Feed. However, if one or more third parties presently offer, or in the future opt to offer, such Access and Connectivity to Users, a User may utilize the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the Additional Third Party Systems and connectivity to the Additional Third Party Data Feed to Users when available, the Exchange would give Users additional options for connectivity and access to new services as soon as they are available, responding to User demand for access and connectivity options.

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee changes are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the additional services and fees proposed herein would be equitably allocated and not unfairly discriminatory because, in addition to the services being completely voluntary, they would be available to all Users on an equal basis (*i.e.,* the same products and services would be available to all Users). All Users that voluntarily selected to receive Access or Connectivity would be charged the same amount for the same services. Users that opted to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contracted with the relevant market or content provider would receive access or connectivity.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because the Exchange would offer the Access and Connectivity as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including resilient and redundant feeds. In addition, in order to provide Access and Connectivity, the Exchange would maintain multiple connections to each ATPD and ATPS, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by the relevant third party; and cover any applicable fees charged by the relevant third party, such as port fees. In addition, Users would not be required to use any of their bandwidth for Access and Connectivity unless they wish to do so.

The Exchange believes the proposed fees for Access and Connectivity would be reasonable because they would allow the Exchange to defray or cover the costs associated with offering Users access to Additional Third Party Systems and connectivity to Additional Third Party Data Feed while providing Users the convenience of receiving such Access and Connectivity within co-location, helping them tailor their data center operations to the requirements of their business operations.

The Exchange also believes that the proposal to delete obsolete text from the list of Third Party Data Feeds and the list of Third Party Systems would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed fee changes would remove obsolete text from the Price List and Fee Schedule, reducing the complexity and any potential ambiguity and providing clarification concerning the availability and the costs of products and services available to Users. Further, the Exchange believes that that the proposed modifications and updates to its Price List and Fee Schedule would be consistent with the public interest and the protection of investors because the public and investors would not be harmed and, in fact, would benefit from this updating and clarification.

[15] 15 U.S.C. 78f(b)(4).

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because all of the proposed services are completely voluntary.

The Exchange believes that providing Users with additional options for connectivity and access to new services would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access and Connectivity would satisfy User demand for access and connectivity options. The Exchange would provide Access and Connectivity as conveniences equally to all Users. The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Additional Third Party Systems and connectivity to the Additional Third Party Data Feed, as such third parties are not required to make that information public. However, if one or more third parties presently offer, or in the future opt to offer, such Access and Connectivity to Users, a User may utilize the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor. Users that opt to use the proposed Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The proposed deletion of obsolete text from the list of Third Party Data Feeds and the list of Third Party Systems would update the information and increase the clarity of the Price List and Fee Schedule concerning the availability and cost of products and services available to Users. Accordingly, the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the public and investors would benefit from this updating and clarification.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that the proposed rule changes present no new or novel issues. According to the Exchange, waiver of the operative delay would allow Users to access the Additional Third Party Systems and the Additional Third Party Data Feeds without delay, which would assist Users in tailoring their data center operations to the requirements of their business operations. The Exchange also represents that the proposed changes to the Price List would provide Users with more complete information regarding their Access and Connectivity options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[16] 15 U.S.C. 78f(b)(8).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2018–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2018–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2018–02 and should be submitted on or before February 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02400 Filed 2–6–18; 8:45 am]

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[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82613; File No. SR–NYSE–2017–36]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt New Equity Trading Rules for Trading UTP Securities on Pillar, Including Orders and Modifiers, Order Ranking and Display, and Order Execution and Routing

February 1, 2018.

On July 28, 2017, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new equity trading rules to allow the Exchange to trade securities that are listed on a national securities exchange other than NYSE (''UTP Securities'') [3] pursuant to unlisted trading privileges for the first time on Pillar, the Exchange's new trading technology platform. The proposed rule change was published for comment in the **Federal Register** on August 9, 2017.[4]

On September 18, 2017, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated November 7, 2017, as the date within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On November 7, 2017, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.[8] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act [9] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. As noted earlier, the proposed rule change was published for notice and comment in the **Federal Register** on August 9, 2017. February 5, 2018, is 180 days from that date, and April 6, 2018, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates April 6, 2018 as the date by which the Commission should either approve or disapprove the proposed rule change (File Number SR–NYSE–2017–36).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02395 Filed 2–6–18; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NYSE Rule 1.1(ii) for a definition of UTP Security.

[4] *See* Securities Exchange Act Release No. 81310 (Aug. 3, 2017), 82 FR 37257 (Aug. 9, 2017).

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 81641 (Sept. 18, 2017), 82 FR 44483 (Sept. 22, 2017).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 82028 (Nov. 7, 2017), 82 FR 52757 (Nov. 14, 2017).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82617; File No. SR–NYSEARCA–2018–06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Users With Access to Two Additional Third Party Systems and Connectivity to One Additional Third Party Data Feed

February 1, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 19, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to provide Users with access to two additional third party systems and connectivity to one additional third party data feed. In addition, the Exchange proposes to change its NYSE Arca Options Fees and Charges (the ''Options Fee Schedule'') and the NYSE Arca Equities Fees and Charges (the ''Equities Fee Schedule'' and, together with the Options Fee Schedule, the ''Fee Schedules'') related to these co-location services, and to update its Fee Schedules to eliminate obsolete text. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the co-location [4] services offered by the Exchange to provide Users [5] with access to two additional third party systems and connectivity to one additional third party data feed. In addition the Exchange proposes to make the corresponding changes to the Exchange's Fee Schedules related to these co-location services, and to update its Fee Schedules to eliminate obsolete text.

As set forth in the Fee Schedules, the Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers (''Third Party Systems''), and data feeds from third party markets and other content service providers (''Third Party Data Feeds'').[6] The lists of Third Party Systems and Third Party Data Feeds are set forth in the Fee Schedules.

The Exchange now proposes to make the following changes:

- Add two content service providers to the list of Third Party Systems: Miami International Securities Exchange and MIAX PEARL (together, the ''Additional Third Party Systems'' or ''ATPS''); and
- add one feed to the list of Third Party Data Feeds: Miami International Securities Exchange/MIAX PEARL (the ''Additional Third Party Data Feed'' or ''ATPD'').

The Exchange would provide access to the Additional Third Party Systems (''Access'') and connectivity to the Additional Third Party Data Feed (''Connectivity'') as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity.

The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Additional Third Party Systems and connectivity to the Additional Third Party Data Feed, as such third parties are not required to make that information public. However, if one or more third parties presently offer, or in the future opt to offer, such Access and Connectivity to Users, a User may utilize the Secure Financial Transaction Infrastructure (''SFTI'') network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The proposed rule change would become operative when the Additional Third Party Systems and the Additional Third Party Data Feed become available, which is expected to be no later than March 31, 2018. The Exchange will announce the dates that each Product is available through customer notices disseminated to all Users simultaneously.

Connectivity to Additional Third Party Systems

The Exchange proposes to revise the Fee Schedules to provide that Users may obtain connectivity to the two Additional Third Party Systems for a fee. As with the current Third Party Systems, Users would connect to the Additional Third Party Systems over the internet protocol (''IP'') network, a local area network available in the data center.[7]

As with the current Third Party Systems, in order to obtain access to an Additional Third Party System, the User would enter into an agreement with the relevant third party content service provider, pursuant to which the third party content service provider would charge the User for access to the Additional Third Party System. The Exchange would then establish a unicast connection between the User and the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE LLC'') and NYSE American LLC (''NYSE American and, together with NYSE LLC, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[6] *See* Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR–NYSEArca–2016–89).

[7] *See* Securities Exchange Act Release No. 74219 (February 6, 2015), 80 FR 7899 (February 12, 2015) (SR–NYSEArca–2015–03) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

relevant third party content service provider over the IP network.[8] The Exchange would charge the User for the connectivity to the Additional Third Party System. A User would only receive, and only be charged for, access to Additional Third Party Systems for which it enters into agreements with the third party content service provider.

The Exchange has no ownership interest in the Additional Third Party Systems. Establishing a User's access to an Additional Third Party System would not give the Exchange any right to use the Additional Third Party Systems. Connectivity to an Additional Third Party System would not provide access or order entry to the Exchange's execution system, and a User's connection to an Additional Third Party System would not be through the Exchange's execution system.

As with the existing connections to Third Party Systems, the Exchange proposes to charge a monthly recurring fee for connectivity to an Additional Third Party System. Specifically, when a User requests access to an Additional Third Party System, it would identify the applicable content service provider and what bandwidth connection it required.

The Exchange proposes to modify its Fee Schedules to add the Additional Third Party Systems to its existing list of Third Party Systems. The additional items would be as follows:

THIRD PARTY SYSTEMS

Miami International Securities Exchange.
MIAX PEARL.

The Exchange does not propose to change the monthly recurring fee the Exchange charges Users for unicast connectivity to each Third Party System, including the Additional Third Party Systems.

Connectivity to Additional Third Party Data Feed

The Exchange proposes to revise the Fee Schedules to provide that Users may obtain connectivity to the Additional Third Party Data Feed for a fee. The Exchange would receive the Additional Third Party Data Feed from the content service provider, at its data center. It would then provide connectivity to that data to Users for a fee. Users would connect to the Additional Third Party Data Feed over the IP network.[9]

In order to connect to the Additional Third Party Data Feed, a User would enter into a contract with the content service provider, pursuant to which the content service provider would charge the User for the Third Party Data Feed. The Exchange would receive the Third Party Data Feed over its fiber optic network and, after the content service provider and User entered into the contract and the Exchange received authorization from the content service provider, the Exchange would re-transmit the data to the User over the User's port. The Exchange would charge the User for the connectivity to the Additional Third Party Data Feed. A User would only receive, and would only be charged for, connectivity to the Additional Third Party Data Feed for which it entered into contracts.

The Exchange has no affiliation with the seller of the Additional Third Party Data Feed. It would have no right to use the Additional Third Party Data Feed other than as a redistributor of the data. The Additional Third Party Data Feed would not provide access or order entry to the Exchange's execution system. The Additional Third Party Data Feed would not provide access or order entry to the execution systems of the third parties generating the feed. The Exchange would receive the Additional Third Party Data Feed via arms-length agreements and it would have no inherent advantage over any other distributor of such data.

As it does with the existing Third Party Data Feeds, the Exchange proposes to charge a monthly recurring fee for connectivity to the Additional Third Party Data Feed. Depending on its needs and bandwidth, a User may opt to receive all or some of the feeds or services included in the Additional Third Party Data Feed.

The Exchange proposes to add the connectivity fees for the Additional Third Party Data to its existing list in the Fee Schedules. The additional item would be as follows:

Third party data feed	Monthly recurring connectivity fee per third party data feed
Miami International Securities Exchange/MIAX PEARL	$2,000

Elimination of Obsolete Rule Language

The Exchange proposes to delete obsolete text from both the lists of Third Party Data Feeds and Third Party Systems in the Fee Schedules. More specifically, the Exchange proposes to make the following changes: [10]

- From both lists, remove the asterisk and note stating that the asterisked service is expected to be available no later than September 30, 2017, as the relevant services are currently available; and
- from the list of Third Party Data Feeds, remove the asterisks and note stating that the Euronext Optiq Compressed Derivatives is expected to be offered in place of Euronext no later than September 30, 2017, as such change has occurred, and remove Euronext as a Third Party Data Feed.

This proposed change would have no impact on pricing.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [11] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both the Affiliate SROs.[12]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

[8] Information flows over existing network connections in two formats: ''unicast'' format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and ''multicast'' format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

[9] *See supra* note 7, at 7899 (''The IP network also provides Users with access to away market data products'').

[10] *See* Securities Exchange Act Release No. 81013 (June 23, 2017), 82 FR 29604 (June 29, 2017) (SR–NYSEArca–2017–62).

[11] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[12] *See* SR–NYSEArca–2013–80, *supra* note 5 at 50459. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2018–05 and SR–NYSEAMER–2018–02.

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering additional services, the Exchange would give each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs.

The Exchange would provide Access and Connectivity as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity. The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Additional Third Party Systems and connectivity to the Additional Third Party Data Feed. However, if one or more third parties presently offer, or in the future opt to offer, such Access and Connectivity to Users, a User may utilize the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the Additional Third Party Systems and connectivity to the Additional Third Party Data Feed to Users when available, the Exchange would give Users additional options for connectivity and access to new services as soon as they are available, responding to User demand for access and connectivity options.

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee changes are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the additional services and fees proposed herein would be equitably allocated and not unfairly discriminatory because, in addition to the services being completely voluntary, they would be available to all Users on an equal basis (*i.e.,* the same products and services would be available to all Users). All Users that voluntarily selected to receive Access or Connectivity would be charged the same amount for the same services. Users that opted to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contracted with the relevant market or content provider would receive access or connectivity.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because the Exchange would offer the Access and Connectivity as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including resilient and redundant feeds. In addition, in order to provide Access and Connectivity, the Exchange would maintain multiple connections to each ATPD and ATPS, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by the relevant third party; and cover any applicable fees charged by the relevant third party, such as port fees. In addition, Users would not be required to use any of their bandwidth for Access and Connectivity unless they wish to do so.

The Exchange believes the proposed fees for Access and Connectivity would be reasonable because they would allow the Exchange to defray or cover the costs associated with offering Users access to Additional Third Party Systems and connectivity to Additional Third Party Data Feed while providing Users the convenience of receiving such Access and Connectivity within co-location, helping them tailor their data center operations to the requirements of their business operations.

The Exchange also believes that the proposal to delete obsolete text from the list of Third Party Data Feeds and the list of Third Party Systems would remove impediments to, and perfect the

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed fee changes would remove obsolete text from the Fee Schedules, reducing the complexity and any potential ambiguity and providing clarification concerning the availability and the costs of products and services available to Users. Further, the Exchange believes that that the proposed modifications and updates to its Fee Schedules would be consistent with the public interest and the protection of investors because the public and investors would not be harmed and, in fact, would benefit from this updating and clarification.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because all of the proposed services are completely voluntary.

The Exchange believes that providing Users with additional options for connectivity and access to new services would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access and Connectivity would satisfy User demand for access and connectivity options. The Exchange would provide Access and Connectivity as conveniences equally to all Users. The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Additional Third Party Systems and connectivity to the Additional Third Party Data Feed, as such third parties are not required to make that information public. However, if one or more third parties presently offer, or in the future opt to offer, such Access and Connectivity to Users, a User may utilize the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor. Users that opt to use the proposed Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The proposed deletion of obsolete text from the list of Third Party Data Feeds and the list of Third Party Systems would update the information and increase the clarity of the Fee Schedules concerning the availability and cost of products and services available to Users. Accordingly, the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the public and investors would benefit from this updating and clarification.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that the proposed rule changes present no new or novel issues. According to the Exchange, waiver of the operative delay would allow Users to access the Additional Third Party Systems and the Additional Third Party Data Feeds without delay, which would assist Users in tailoring their data center operations to the requirements of their business operations. The Exchange also represents that the proposed changes to the Price List would provide Users with more complete information regarding their Access and Connectivity options. The Commission believes that waiving

[16] 15 U.S.C. 78f(b)(8).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2018–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2018–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2018–06 and should be submitted on or before February 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02399 Filed 2–6–18; 8:45 am]

BILLING CODE 8011–01–P

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 04/04–0297 issued to BB&T Capital Partners/Windsor Mezzanine Fund, LLC said license is hereby declared null and void.

United States Small Business Administration.

A. Joseph Shepard,

Associate Administrator for Investment and Innovation.

[FR Doc. 2018–02391 Filed 2–6–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 10296]

Notice of Receipt of an Application From the California Department of Transportation for Issuance of a Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of a New Border Crossing at Otay Mesa East

AGENCY: Department of State.

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of State (DOS) hereby gives notice that on November 22, 2017, it received an application from the California Department of Transportation (Caltrans) for a Presidential permit authorizing the construction, connection, operation, and maintenance of a new border crossing at Otay Mesa East to serve the San Diego, California and Tijuana, Baja California areas, called the Otay Mesa East Port of Entry. A new port of entry in San Diego County could alleviate strain on the existing ports of entry and the local and regional transportation infrastructure.

DATES: Comments must be submitted no later than March 9, 2018 at 11:59 p.m.

ADDRESSES: For reasons of efficiency, the State Department encourages the electronic submission of comments through the Federal Government's eRulemaking Portal (*http://www.regulations.gov*), enter Docket No. DOS–2018–0007, and follow the prompts to submit a comment. The State Department also will accept comments submitted in hard copy by mail and postmarked no later than March 9, 2018. Please note that standard mail delivery to the State Department can be delayed due to security screening. To submit comments by mail, use the following address: Office of Mexican Affairs, Bureau of Western Hemisphere Affairs, Room 3924, Department of State, 2201 C St. NW, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Litah N. Miller, Office of Mexican Affairs, Bureau of Western Hemisphere Affairs, via email at *WHA-BorderAffairs@state.gov;* by phone at 202–647–9894; or by mail at Office of Mexican Affairs, Bureau of Western Hemisphere Affairs, Room 3924, Department of State, 2201 C St. NW, Washington, DC 20520.

SUPPLEMENTARY INFORMATION: Deputy Secretary of State John D. Negroponte issued a Presidential permit for a port of entry in the same location November 20, 2008. That permit is expected to expire November 20, 2018. Caltrans requested a new permit on November 22, 2017.

The application may be found at: Caltrans's application is available at *https://www.state.gov/p/wha/rt/permit/app/califdotpermit/index.htm.*

Under Executive Order 11423, as amended, the Secretary of State is designated and empowered to receive all applications for Presidential permits for the construction, connection, operation, or maintenance at the borders of the United States of facilities including land crossings and bridges. The Secretary of State, or his delegate, issues or denies Presidential permits under Executive Order 11423 on the basis of a national interest determination. That determination may include consideration of a range of factors, including but not limited to foreign policy; environmental, cultural, and economic impacts; and compliance with applicable law and policy.

As provided in E.O. 11423, this application is being circulated to relevant federal agencies for review and comment. Interested members of the public are invited to submit written comments regarding this application. The public comment period will end 30 days from the publication of this notice. Comments are not private. They will be posted on the site *http://www.regulations.gov.* The comments will not be edited to remove identifying or contact information, and the State Department cautions against including any information that one does not want publicly disclosed. The State Department requests that any party soliciting or aggregating comments received from other persons for submission to the State Department inform those persons that the State Department will not edit their comments to remove identifying or contact information, and that they should not include any information in their comments that they do not want publicly disclosed.

Colleen A. Hoey,

Director, Office of Mexican Affairs, Department of State.

[FR Doc. 2018–02539 Filed 2–6–18; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 10305]

Meeting on United States-Oman Free Trade Agreement Environment Chapter Implementation, Joint Forum on Environmental Cooperation, and Public Session

AGENCY: Department of State.

ACTION: Announcement of meetings; solicitation of suggestions; invitation to public session.

SUMMARY: The Department of State and the Office of the United States Trade Representative (USTR) are providing notice that the governments of the United States and Oman intend to hold a meeting to review implementation of the Environment Chapter of the United States-Oman Free Trade Agreement (FTA), the United States-Oman Joint Forum on Environmental Cooperation (Joint Forum), and a public session in Muscat, Oman, on March 4 and 5, 2018, at a venue to be announced.

DATES: The public session will be held on March 5, 2018, in Muscat, Oman at a venue to be announced. Suggestions on the Joint Forum meeting agenda and/or the 2018–2021 Plan of Action should be provided no later than March 1, 2018, to facilitate consideration.

ADDRESSES: Those interested in attending the public session should email Tiffany Prather at *PratherTA@state.gov* to find out the time and place of the session. Suggestions on the Joint Forum meeting agenda and/or the 2018–2021 Plan of Action should be emailed to *PratherTA@state.gov* or faxed to Tiffany Prather at (202) 647–5947, with the subject line ''United States-Oman Environmental Cooperation.''

FOR FURTHER INFORMATION CONTACT: Tiffany Prather, (202) 647–4548.

SUPPLEMENTARY INFORMATION: The governments of the United States and Oman (the governments) created the Joint Forum pursuant to the United States-Oman Memorandum of Understanding on Environmental Cooperation (MOU), signed on February 20, 2006. During the Joint Forum, the governments will discuss how the United States and Oman can work together to protect and conserve the environment, highlight past bilateral environmental cooperation, review activities under the 2014–2017 Plan of Action, and commit to a 2018–2021 Plan of Action. The Department of State and USTR invite the members of the public to submit written suggestions on items to include on the meeting agenda or in the 2018–2021 Plan of Action.

The Department of State and USTR also invite interested persons to attend a public session where the public will have the opportunity to ask about implementation of both the MOU and the Environment Chapter of the United States-Oman FTA. In the Environment Chapter of the United States-Oman FTA, the governments ''recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening bilateral trade and investment relations'' and committed to undertaking cooperative environmental activities pursuant to the MOU. In Section 2 of the MOU, the governments established the Joint Forum to coordinate and review environmental cooperation activities. As envisioned in the MOU, the Joint Forum develops Plans of Action; reviews and assesses cooperative environmental activities undertaken pursuant to the Plan of Action; recommends ways to improve cooperation; and undertakes such other activities as the Governments may deem to be appropriate. Through this notice, the United States is soliciting the views of the public with respect to the 2018–2021 Plan of Action.

Members of the public, including NGOs, educational institutions, private sector enterprises, and all other interested persons, are invited to submit written suggestions regarding items for inclusion in the meeting agendas or in the new Plan of Action. Please include your full name and identify any organization or group you represent. We encourage submitters to refer to:

- United States-Oman Memorandum of Understanding on Environmental Cooperation;
- 2011–2014 Plan of Action Pursuant to the United States-Oman Memorandum of Understanding on Environmental Cooperation;
- 2014–2017 Plan of Action Pursuant to the United States-Oman Memorandum of Understanding on Environmental Cooperation;
- Chapter 17 of the United States-Oman Free Trade Agreement;
- Final Environmental Review of the United States–Oman Free Trade Agreement.

These documents are available at: *http://www.state.gov/e/oes/eqt/trade/oman/index.htm.*

Rob Wing,

Acting Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2018–02420 Filed 2–6–18; 8:45 am]

BILLING CODE 4710–09–P

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold its regular business meeting on March 8, 2018, in

State College, Pennsylvania. Details concerning the matters to be addressed at the business meeting are contained in the Supplementary Information section of this notice.

DATES: The meeting will be held on Thursday, March 8, 2018, at 9 a.m.

ADDRESSES: The meeting will be held at The Penn Stater Hotel and Conference Center, Senate 23 Room, 215 Innovation Boulevard, State College, PA 16803.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, 717–238–0423, ext. 1312.

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) Presentation on the Susquehanna Flood Forecast and Warning System; (2) presentation of the Maurice Goddard Award; (3) FY–2019 budget reconciliation; (4) ratification/approval of contracts/grants; (5) rulemaking action to codify in the Commission's regulations and strengthen the Commission's Access to Records Policy providing rules and procedures for the public to request and receive the Commission's public records; (6) report on delegated settlements; and (7) Regulatory Program projects.

The Regulatory Program projects and the final rulemaking were the subject of public hearings conducted by the Commission on February 1, 2018, and November 2, 2017, respectively; notices for which were published in 83 FR 414, January 3, 2018, and 82 FR 47407, October 12, 2017, respectively.

The public is invited to attend the Commission's business meeting. Comments on the Regulatory Program projects and the final rulemaking were subject to a deadline of February 12, 2018, and November 13, 2017, respectively. Written comments pertaining to other items on the agenda at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110–1788, or submitted electronically through *http://www.srbc.net/pubinfo/public participation.htm.* Such comments are due to the Commission on or before March 2, 2018. Comments will not be accepted at the business meeting noticed herein.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: February 2, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–02460 Filed 2–6–18; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Nineteenth Tactical Operations Committee (TOC) Meeting

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Nineteenth TOC Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Nineteenth TOC Meeting.

DATES: The meeting will be held March 1, 2018, 09:00 a.m.–4:00 p.m., Eastern Time.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW, Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Trin Mitra, TOC Secretariat, 202–330–0665, *tmitra@rtca.org,* 1150 18th Street NW, Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or website at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given of the Nineteenth TOC Meeting. The TOC is a component of RTCA, which is a Federal Advisory Committee. The agenda will include the following:

March 1, 2018, 9:00 a.m. to 4:00 p.m., Eastern Time

1. Welcome and Introductions of TOC Members
2. Official Statement of Designated Federal Officer
3. Review and Approval of Meeting Summary from the Previous TOC Meeting
4. FAA Update
5. Consideration of Draft Recommendations from the Intentional GPS Interference Task Group
6. FAA Response on Previous TOC Recommendations
7. Discuss Future of the TOC
8. Other Business
9. Closing Comments—DFO and Chairs
10. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 1, 2018.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17 NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2018–02385 Filed 2–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0177]

Crash Preventability Demonstration Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: On July 27, 2017, FMCSA announced the initiation of a crash preventability demonstration program in which the Agency would accept requests for data review (RDRs) to evaluate the preventability of certain categories of crashes through its national data correction system known as DataQs. This notice provides additional information to help submitters and other interested parties understand the demonstration program.

DATES: The crash preventability demonstration program began accepting RDRs on August 1, 2017, for crashes that occurred on or after June 1, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Catterson Oh, Compliance Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, Telephone 202–366–6160 or by email: *Catterson.Oh@dot.gov.* If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

In a **Federal Register** noticed dated July 12, 2016, FMCSA proposed a demonstration program to determine the efficacy of preventability determinations on certain types of crashes that are generally less complex. (81 FR 45210) The Agency proposed to accept RDRs to evaluate the preventability of certain categories of crashes through its national data correction system known as DataQs. It proposed that a crash challenged through an RDR would be found not preventable when documentation submitted with the RDR

established that the crash was not preventable.

On July 27, 2017, FMCSA published a subsequent **Federal Register** notice announcing the start of the demonstration program and explaining the details of the program.

Since August 1, 2017, over 2,500 RDRs have been submitted to FMCSA. Based on the experiences operating the program for the first few months, the Agency identified some areas of the program requiring more instruction and details.

Demonstration Program Details

Correctly Submitting Eligible Crashes to the Demonstration Program

The DataQs system includes both the standard review program and the crash preventability demonstration program. Some submitters have entered crashes under the standard review program, rather than the crash preventability demonstration program, by selecting ''Not an FMCSA-reportable crash'' or requesting the review of an ineligible crash. A selection of ''Not an FMCSA-reportable crash'' is for those crashes that do not meet FMCSA's recordable crash definition of a fatality, injury, or property damage requiring a vehicle to be towed from the scene. DataQs RDRs entered into the standard review program will be closed without a preventability determination because they were not submitted under the demonstration program. Also, when an RDR is submitted for a crash that is not eligible for the demonstration program, the system will close the RDR without any action. Examples of ineligible crashes include those that do not fall under the eight types of crashes and those that occurred before June 1, 2017.

For the crash preventability demonstration program, submitters should choose ''Crash could not be prevented,'' ensure that the crash event date is on or after June 1, 2017, and select an eligible crash type. For more information, submitters should view the FMCSA video at *https://www.fmcsa.dot.gov/safety/crash-preventability-demonstration-program-video.*

Types of Crashes

The only types of crashes that will be reviewed using the RDR process during the demonstration program are:

1. When the commercial motor vehicle (CMV) was struck by a motorist driving under the influence (or related offense);
2. When the CMV was struck by a motorist driving the wrong direction;
3. When the CMV was struck in the rear;
4. When the CMV was struck while it was legally stopped or parked, including when the vehicle was unattended;
5. When the CMV struck an individual committing or attempting to commit suicide by stepping or driving in front of the CMV;
6. When the CMV sustained disabling damage after striking an animal in the roadway;
7. When the crash was the result of an infrastructure failure, falling trees, rocks, or other debris; or
8. When the CMV was struck by cargo or equipment from another vehicle.

A significant number of RDRs submitted are, in fact, not eligible for the demonstration program. Below are examples of crash types that were submitted, and determined to be not eligible for the program:

1. Crashes that do not match any eligible crash type.
2. RDRs asserting the driver who struck the CMV was operating under the influence without any supporting evidence, such as documents showing testing results, citation, or arrest.
3. RDRs submitted for crashes identified as ''struck by a motorist driving the wrong direction'' where the vehicle that struck the CMV was not operating completely in the wrong lane and in the wrong direction. These crashes do not include when the vehicle that struck the CMV swerved across the center line but did not travel entirely in the wrong lane and in the wrong direction. In addition, this crash type does not include crashes at intersections, crashes with vehicles completing a U-turn, or when a vehicle traveling in the same direction as the CMV crashes into the CMV for whatever reason.

Eligible crashes include when the vehicle that struck the CMV completely crossed the median or center line and traveled into opposing traffic or was operating in the wrong direction on a divided highway.

4. RDRs for crashes where the CMV was struck in other places on the vehicle, but not in the rear. For the purposes of this demonstration program, FMCSA is defining ''struck in the rear'' to mean only crashes when the rear plane of the CMV was struck. Crashes where the CMV was struck on the side near the rear of the vehicle, or other places on the vehicle, are not eligible. This includes crashes where the vehicle was struck at the 7 o'clock or 5 o'clock positions.
5. RDRs for crashes when the vehicle was stopped in traffic and not legally stopped or parked.
6. RDRs alleging a suicide attempt without any supporting evidence.
7. RDRs indicating the CMV struck other vehicles stopped for a fallen tree or rocks, but the CMV did not strike the tree or rocks.
8. RDRs asserting the CMV was struck by cargo or equipment, but the documentation establishes the CMV was actually hit by another vehicle.

These parameters are needed so that the Agency can accurately and consistently assess the evaluation of crashes during the demonstration program.

Documents To Be Submitted

Because the burden is on the submitter to show by compelling evidence that the crash was not preventable, the submitter should submit all evidence in support of the preventability determination. The Agency considers all relevant evidence submitted. FMCSA is not, however, requiring any specific documentation in support of a preventability determination.

FMCSA advised in its July 27, 2017, **Federal Register** notice that the Agency could request additional information on the crash, which may include any documentation the carrier is required to maintain under the Agency's regulations. In some instances, FMCSA will request additional information to confirm that the driver was operating in compliance with applicable regulatory requirements. To date in the demonstration program, FMCSA has requested the following types of documents:

1. Proof of a valid Commercial Driver's License (CDL) on the date of the crash—If the license was renewed after the crash date, FMCSA is unable to determine the license status on the date of the crash because the Commercial Driver's License Information System (CDLIS) provides only the new license issuance date. If the submitter does not provide documentation of a valid CDL on the date of the crash, in response to FMCSA's request, the crash determination will be ''Undecided'' because FMCSA cannot confirm the driver was operating with a valid CDL.
2. Proof of a valid medical certificate on the date of the crash—If the CDLIS system indicates the medical certificate was expired on the date of the crash and evidence of a valid medical certificate on the date of the crash is not submitted in response to FMCSA's request, the crash determination will be ''Undecided'' because FMCSA cannot confirm the driver was operating with a valid medical certificate.
3. Proof that the driver was operating in accordance with the excepted status—If a CDL driver has an exempt license, FMCSA is requesting information about the load to confirm the driver was operating within the restrictions of the license. If the documentation of the load is not provided, the determination will be ''Undecided'' because FMCSA cannot confirm the driver was operating in compliance with CDL restrictions.

It is incumbent on the submitter to accurately provide the requested document such as a medical card or CDL for the date of the crash. In addition, when documents such as police accident reports and insurance papers are submitted, full copies should be provided.

Re-Opening RDRs

If a submitter receives a determination that the crash was preventable or undecided, or the RDR is closed for another reason, the RDR may be re-opened once. The request will be reconsidered by FMCSA only if additional documentation or new information is submitted. If additional information or documentation is not provided, the RDR will be closed with the initial determination without further consideration.

Additionally, once an RDR is closed, the Agency will not be responding to additional comments submitted through the DataQs system. The RDR must be reopened and additional information submitted as cause for FMCSA to reconsider the determination.

Input From the Public

The opportunity to collect information from other parties is critical to determining the impacts and costs of this demonstration program. During the demonstration program, if a crash review results in a preliminary determination that the crash was not preventable, the Agency will publish the crash report number, U.S. DOT number, motor carrier name, crash event date, crash event State and crash type on its DataQs website.

Any member of the public with documentation or data to refute the proposed determination has 30 days to submit the documentation through the DataQs system at *https://dataqs.fmcsa.dot.gov.* Information on how to submit additional documentation is available at *https://www.fmcsa.dot.gov/safety/crash-preventability-demonstration-program.*

Any new documents or data will be reviewed and considered before FMCSA makes a final determination. Final determinations will be published on SMS within 60 days of the final decision.

However, based on feedback from some stakeholders, the Agency recognizes that some parties involved in the crash might not be able to provide input within 30 days. The Agency will maintain a list of not preventable final determinations on its website at *https://www.fmcsa.dot.gov/safety/crash-preventability-demonstration-program.* This list will be updated monthly. If at any time during this demonstration program a party has information and documentation to counter this determination, FMCSA will accept that information at *Crash.Preventability@dot.gov.* Therefore, determinations may be revised after consideration of this additional information.

Agency Use of Data

As explained in the July 17, 2017, **Federal Register** notice, final determinations made through this demonstration program will be noted on the Agency's Safety Measurement System (SMS). No crashes are removed from SMS as a result of this demonstration program. For the purpose of prioritizing motor carriers for safety interventions, FMCSA will continue to use all crashes during the demonstration program.

The crash preventability determinations made under this program will not affect any carrier's safety rating or ability to operate. FMCSA will not issue penalties or sanctions based on these determinations, nor do they establish any obligations or impose legal requirements on any motor carrier. These determinations also will not change how the Agency will make enforcement decisions.

Information submitted about a crash as part of this demonstration program may be shared with the appropriate FMCSA Division Office for further investigation. Likewise, if an investigation reveals additional information about a crash for which the demonstration program made a preventability determination, this information may be shared within the Agency and the crash subjected to further review.

Throughout this demonstration period, FMCSA will maintain data so that at the conclusion of the demonstration program, the Agency can conduct analyses. It is expected that the Agency's analyses would include, but not be limited to, the cost of operating the test and its extrapolation to a larger program; future crash rates of carriers that submitted RDRs, future crash rates of motor carriers with not preventable crashes, and impacts to SMS crash rates and improvements to prioritization.

Additionally, under 49 U.S.C. 504(f), ''No part of a report of an accident occurring in operations of a motor carrier, motor carrier of migrant workers, or motor private carrier and required by the Secretary, and no part of a report of an investigation of the accident made by the Secretary, may be admitted into evidence or used in a civil action for damages related to a matter mentioned in the report or investigation.'' The crash preventability determinations made under this program are intended only for FMCSA's use in determining whether the program may improve the Agency's prioritization tools. These determinations are made on the basis of information available to FMCSA at the time of the determination and are not appropriate for use by private parties in civil litigation. These determinations do not establish fault or negligence by any party and are made by persons with no personal knowledge of the crash.

DataQs

Motor carriers and drivers, as well as any member of the public, may submit crash preventability RDRs through the Agency's DataQs system. DataQs has been modified to provide this functionality. The DataQs system is available at: *https://dataqs.fmcsa.dot.gov.* The DataQs User Guide advises that it should take 2 weeks to have an RDR reviewed. The User Guide is for RDRs that are not in the demonstration program. Based on the volume of RDRs submitted, the Agency's timeframe for review is averaging 3 to 4 weeks.

Additional information on how to submit a crash preventability RDR is available on the Agency's website at *https://www.fmcsa.dot.gov/safety/crash-preventability-demonstration-program.*

Issued under the authority delegated in 49 CFR 1.87 on: January 31, 2018.

Cathy F. Gautreaux,

Deputy Administrator.

[FR Doc. 2018–02437 Filed 2–6–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0138]

Agency Information Collection Activities: Extension of an Approved Information Collection Request; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA requests approval to revise an existing ICR titled, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery,'' due to an increase in the annual cost to respondents. This ICR will allow for ongoing, collaborative and

actionable communication between FMCSA and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. On August 10, 2017, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on this ICR. The agency received no comments in response to that notice.

DATES: Please send your comments to this notice by March 9, 2018. OMB must receive your comments by this date to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2017–0138. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Martin Walker, Division Chief, FMCSA, Office of Research. Telephone (202) 385–2364; or email *martin.walker@dot.gov.* Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Mail Stop W63–432, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background: Executive Order 12862, ''Setting Customer Service Standards,'' directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector (58 FR 48257, Sept. 11, 1993). In order to work continuously to ensure that our programs are effective and meet our customers' needs, FMCSA seeks to extend OMB approval of a generic clearance to collect qualitative feedback from our customers on our service delivery. The surveys covered in this generic clearance provide a way for FMCSA to collect this data directly from our customers.

The surveys covered by this collection provide a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with FMCSA's programs.

The solicitation of feedback targets areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses are assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency only submits a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

FMCSA estimates that the annual burden hour for this information collection has decreased by approximately 1,218 hours from the previously approved 3,450 hours. This is due in part to (1) discontinuing a previously OMB approved mail-based customer satisfaction survey, and (2) adding the annual Analysis, Research, and Technology sessions.

Additionally, because of discontinuing mail surveys, respondents will not incur any non-hour costs (*e.g.* stamps), which results in an estimated decrease of $440 annually. The expected annual cost to the Federal Government has decreased from $200,800 annually to $137,076 due in part to the cost difference in the discontinuation of the customer satisfaction survey using outreach materials previously approved and estimating the implementation of the ART Forum contracts.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 2126–0049.

Type of Request: Extension of a currently-approved information collection.

Respondents: State and local agencies, the general public, stakeholders,

original equipment manufacturers and suppliers to the commercial motor vehicle (CMV) industry, fleets, owner-operators, state CMV safety agencies, research organizations and contractors, news organizations, safety advocacy groups, and other Federal agencies.

Estimated Number of Respondents: 9,270.

Estimated Time per Response: Range from 5–30 minutes.

Expiration Date: March 31, 2018.

Frequency of Response: Generally, on an annual basis.

Estimated Total Annual Burden: 2,233.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on: January 31, 2018.

G. Kelly Regal,

Associate Administrator, Office of Research and Information Technology.

[FR Doc. 2018–02439 Filed 2–6–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0011]

Petition for Modification of Single Car Air Brake Test Procedures

Under part 232 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that on January 5, 2018, the Association of American Railroads (AAR) requested the Federal Railroad Administration (FRA) grant a modification of the single car air brake test procedures as prescribed in 49 CFR 232.305(a). FRA assigned the request Docket Number FRA–2018–0011.

As described in its request, the AAR Braking Systems Committee has revised and sent out for comment an updated version of AAR Standard S–486–04—*Code of Air Brake System Tests for Freight Equipment,* which is incorporated by reference in 49 CFR 232.305—*Single car air brake tests.* The main objective of the revision was to incorporate tests for a new feature known as brake cylinder maintaining. AAR asked for expedited processing of this request so the 60-day review period required by 49 CFR 232.307 can begin as soon as possible and the new procedure can be referenced in the CFR.

A copy of these documents and the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Docket Number FRA–2018–0011) and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 9, 2018, will be considered by FRA before final action is taken. Pursuant to 49 CFR 232.307(d), if no comment objecting to the requested modification is received during the 60-day comment period, or if FRA does not issue a written objection to the requested modification, the modification will become effective on April 23, 2018.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–02428 Filed 2–6–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2018–0013]

Establishment of an Emergency Relief Docket for Calendar Year 2018

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of establishment of public docket.

SUMMARY: This Notice announces the establishment of FRA's emergency relief docket (ERD) for calendar year 2018. The designated ERD for calendar year 2018 is docket number FRA–2018–0013.

ADDRESSES: See Supplementary Information section for further information regarding submitting petitions and/or comments to Docket No. FRA–2018–0013.

SUPPLEMENTARY INFORMATION: On May 19, 2009, FRA published a direct final rule establishing ERDs and the procedures for handling petitions for emergency waivers of safety rules, regulations, or standards during an emergency situation or event. 74 FR 23329. That direct final rule became effective on July 20, 2009 and made minor modifications to 49 CFR 211.45 in FRA's Rules of Practice in 49 CFR part 211. Section 211.45(b) provides that each calendar year FRA will establish an ERD in the publicly accessible DOT docket system (available at *http://www.regulations.gov).* Section 211.45(b) further provides that FRA will publish a notice in the **Federal Register** identifying by docket number the ERD for that year. FRA established the ERD and emergency waiver procedures to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events. This Notice announces the designated ERD for calendar year 2018 is docket number FRA–2018–0013.

As detailed in section 211.45, if the FRA Administrator determines an emergency event as defined in 49 CFR 211.45(a) has occurred, or that an imminent threat of such an emergency occurring exists, and public safety

would benefit from providing the railroad industry with operational relief, the emergency waiver procedures of 49 CFR 211.45 will go into effect. In such an event, the FRA Administrator will issue a statement in the ERD indicating the emergency waiver procedures are in effect and FRA will make every effort to post the statement on its website at *http://www.fra.dot.gov/.* Any party desiring relief from FRA regulatory requirements as a result of the emergency should submit a petition for emergency waiver under 49 CFR 211.45(e) and (f). Specific instructions for filing petitions for emergency waivers under 49 CFR 211.45 are found at 49 CFR 211.45(f). Specific instructions for filing comments in response to petitions for emergency waivers are at 49 CFR 211.45(h).

Privacy

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–02426 Filed 2–6–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2007–0007]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that on January 24, 2018, SMS Rail Service petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223. FRA assigned the petition Docket Number FRA–2007–0007.

Specifically, SMS Rail Service (SLRS) is seeking an extension of its existing waiver of compliance from 49 CFR 223.11, *Requirements for existing locomotives,* for one of its locomotives, SLRS 308. Locomotive SLRS 308 is a Baldwin Locomotive Works S12, built in 1953. The locomotive is currently in storage, but maintained in serviceable condition. SLRS would like to be able to operate the locomotive again should it have an immediate need. Locomotive SLRS 308 would be operated within the Pureland Industrial Park in Bridgeport, NJ. Maximum operating speed would be 10 miles per hour.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 26, 2018 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–02427 Filed 2–6–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Government Securities Act of 1986

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the extension of information collections under the regulations which were issued pursuant to the Government Securities Act of 1986, as amended.

DATES: Written comments should be received on or before April 9, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Lori Santamorena, Government Securities Regulations Staff, Bureau of the Fiscal Service, (202) 504–3632, *govsecreg@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Government Securities Act of 1986, as amended, (15 U.S.C. 78o–5).

OMB Number: 1530–0064.

Abstract: The information collections are contained within the regulations issued pursuant to the Government Securities Act (GSA) of 1986, as amended, (15 U.S.C. 78o-5), which require government securities brokers and dealers to make and keep certain records concerning their business activities and their holdings of government securities, to submit financial reports, and to make certain disclosures to investors. The regulations also require depository institutions to keep certain records of non-fiduciary custodial holdings of government securities. The regulations and associated collections are fundamental to customer protection and dealer financial responsibility.

Current Actions: Revision of a currently approved collection.

Type of Review: Regular.

Affected Public: Private Sector (Government securities brokers and dealers and financial institutions).

Estimated Number of Respondents: 2,676.

Estimated Total Annual Burden Hours: 224,592.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 2, 2018.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2018–02423 Filed 2–6–18; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of 6 individuals and 7 entities that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons and these entities are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel. 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action

On February 2, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons and entities are blocked under the relevant sanctions authority listed below.

Individuals

1. ASSAF, Nabil Mahmoud (a.k.a. ASSAF, Nabil; a.k.a. ASSAF, Nabil Muhammad), Lebanon; DOB 11 Sep 1964; POB Beirut, Lebanon; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male (individual) [SDGT] (Linked To: AL–INMAA ENGINEERING AND CONTRACTING).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for acting for or on behalf of AL–INMAA ENGINEERING AND CONTRACTING, an entity determined to be subject to E.O. 13224.

2. BADR–AL–DIN, Muhammad (a.k.a. BADREDDINE, Mohamed; a.k.a. BADREDDINE, Mohammed), Iraq; DOB 12 Oct 1958; POB El Ghbayr 5, Lebanon; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male (individual) [SDGT] (Linked To: AL–INMAA ENGINEERING AND CONTRACTING).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for acting for or on behalf of AL–INMAA ENGINEERING AND CONTRACTING, an entity determined to be subject to E.O. 13224.

3. QANSU, Jihad Muhammad (a.k.a. KANSO, Jehad; a.k.a. KANSO, Jehad Mohamed; a.k.a. KANSO, Jihad; a.k.a. KANSO, Jihad Mohamad; a.k.a. KANSOU, Jihad; a.k.a. KANSOU, Jihad Mohamad; a.k.a. KANSU, Jehad; a.k.a. QANSAWH, Jehad; a.k.a. QANSO, Jehad; a.k.a. QANSU, Jihad), Jinah-Hafez Al Asad Street, Abedah Building-1st Floor, Beirut, Lebanon; Hafez Al Assaad Street, Abadi Building, 1st Floor, Jnah, Baabda, Lebanon; Hafez Al Assaad Street, Ebadi Building, 1st Floor, Jnah, Baabda, Lebanon; DOB 10 Feb 1966; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Passport RL2647015 (Lebanon); alt. Passport 127298342 (Venezuela) (individual) [SDGT] (Linked To: AL–INMAA ENGINEERING AND CONTRACTING).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for acting for or on behalf of AL–INMAA ENGINEERING AND CONTRACTING, an entity determined to be subject to E.O. 13224.

4. QANSU, Ali Muhammad (a.k.a. KANSO, Ali Mohamed; a.k.a. KANSOU, Ali Mohamed; a.k.a. QANSU, Ali), Hafez Al Assaad Street, Abadi Building, 1st Floor, Jnah, Baabda, Lebanon; Hafez Al Assaad Street, Ebadi Building, 1st Floor, Jnah, Baabda, Lebanon; 5 Guma Valley Drive, Spur Road, Freetown, Sierra Leone; Haret Hreik, Lebanon; DOB 01 Oct 1967; POB Beirut, Lebanon; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Passport RL3504023 (Lebanon); alt.

Passport RL 522139 (Lebanon) (individual) [SDGT] (Linked To: TABAJA, Adham Husayn).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for acting for or on behalf of TABAJA, Adham Husayn, an individual determined to be subject to E.O. 13224.

5. SAAD, Issam Ahmad (a.k.a. SAAD, Isam Ahmad; a.k.a. SAD, Isam Ahmad), Lebanon; DOB 19 Oct 1964; POB Bent Jbayl, Lebanon; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Passport LR0191548 (Lebanon) (individual) [SDGT] (Linked To: AL–INMAA ENGINEERING AND CONTRACTING).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for acting for or on behalf of AL–INMAA ENGINEERING AND CONTRACTING, an entity determined to be subject to E.O. 13224.

6. SAAD, Abdul Latif (a.k.a. SAD, Abd-al-Latif), Iraq; DOB 10 Aug 1958; POB Bent Jbayl, Lebanon; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male (individual) [SDGT] (Linked To: AL–INMAA ENGINEERING AND CONTRACTING).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for acting for or on behalf of AL–INMAA ENGINEERING AND CONTRACTING, an entity determined to be subject to E.O. 13224.

Entities

1. BLUE LAGOON GROUP LTD. (f.k.a. BLUE LAGOON ALI KANSO GROUP (S.L.) LIMITED; a.k.a. BLUE LAGOON ALI KANSO GROUP LTD.; a.k.a. BLUE LAGOON GROUP), 65 Siaka Stevens Street, Freetown, Sierra Leone; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Tax ID No. 1060463–3 (Sierra Leone) [SDGT] (Linked To: QANSU, ALI MUHAMMAD).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for being owned or controlled by QANSU, ALI MUHAMMAD, an individual determined to be subject to E.O. 13224.

2. DOLPHIN TRADING COMPANY LIMITED, Bob Taylor Road, Paynesville, Monrovia, Liberia; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations [SDGT] (Linked To: QANSU, ALI MUHAMMAD).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for being owned or controlled by QANSU, ALI MUHAMMAD, an individual determined to be subject to E.O. 13224.

3. GOLDEN FISH LIBERIA LTD., 2nd Street Sinkor, Logan Town, Montserrado County, Monrovia, Liberia; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations [SDGT] (Linked To: QANSU, ALI MUHAMMAD).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for being owned or controlled by QANSU, ALI MUHAMMAD, an individual determined to be subject to E.O. 13224.

4. GOLDEN FISH S.A.L. (OFFSHORE), Tayuni Tower No. 1251, Section 30- 3rd floor, Chath Tayuni, Lebanon; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations [SDGT] (Linked To: QANSU, ALI MUHAMMAD).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for being owned or controlled by QANSU, ALI MUHAMMAD, an individual determined to be subject to E.O. 13224.

5. KANSO FISHING AGENCY LIMITED, Kissy Dockyard, Freetown, Sierra Leone; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations [SDGT] (Linked To: QANSU, ALI MUHAMMAD).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for being owned or controlled by QANSU, ALI MUHAMMAD, an individual determined to be subject to E.O. 13224.

6. SKY TRADE COMPANY, Logan Town, Opposite Rice Store, Monrovia, Liberia; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations [SDGT] (Linked To: QANSU, ALI MUHAMMAD).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for being owned or controlled by QANSU, ALI MUHAMMAD, an individual determined to be subject to E.O. 13224.

7. STAR TRADE GHANA LIMITED, Enyado HSE, Tema Harbour, (0537N 00001W), Tema, Ghana; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations [SDGT] (Linked To: QANSU, ALI MUHAMMAD).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for being owned or controlled by QANSU, ALI MUHAMMAD, an individual determined to be subject to E.O. 13224.

Dated: February 2, 2018.

John E. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2018–02453 Filed 2–6–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0734]

Agency Information Collection Activity: Report of General Information, Report of First Notice of Death, Report of Nursing Home or Assisted Living Information, Report of Defense Finance and Accounting Service (DFAS), Report of Non-Receipt of Payment, Report of Incarceration, Report of Month of Death

AGENCY: Veterans Benefits Administration (VBA), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 9, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0734'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 CFR 3.217.

Title: VA Form 27–0820, Report of General Information, VA Form 27–0820a, Report of Death of First Notice of Death, VA Form 27–0820b, Report of Nursing Home and Assisted Living Information, VA Form 27–0820c, Report of Defense Finance and Accounting Service (DFAS), VA Form 27–0820d, Report of Non-Receipt of Payment, VA Form 27–0820e, Report of Incarceration, VA Form 27–0820f, Report of Month of Death.

OMB Control Number: 2900–0734.

Type of Review: Extension of a currently approved collection.

Abstract: The forms will be used by VA personnel to document verbal information obtained telephonically from claimants or their beneficiary. The data collected will be used as part of the evidence needed to determine the claimant's or beneficiary's eligibility for benefits.

Affected Public: Individuals.

Estimated Annual Burden: 35,501 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,550,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2018–02363 Filed 2–6–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0718]

Agency Information Collection Activity: Yellow Ribbon Agreement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 9, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0718'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 3317.

Title: Yellow Ribbon Agreement, VA Form 22–0839.

OMB Control Number: 2900–0718.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 22–0839 will be used to determine which IHLs will be participating in the Yellow Ribbon Program, the maximum number of individuals for whom the IHL will make contributions in any given academic year, the maximum dollar amount of outstanding established charges that will be waived for each student based on student status (*i.e.,* undergraduate, graduate, doctoral) or sub-element (*i.e.,* college or professional school).

Affected Public: Institutions of Higher Learning.

Estimated Annual Burden: 47,208 hours.

Estimated Average Burden per Respondent: 14 hours.

Frequency of Response: Once Annually.

Estimated Number of Respondents: 3,372.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–02507 Filed 2–6–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0697]

Agency Information Collection Under OMB Review: Approval of Licensing or Certification Test and Organization or Entity

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 9, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0697'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0697'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: US Code 38 Section 3689.

Title: Approval of Licensing or Certification Test and Organization or Entity.

OMB Control Number: 2900–0697.

Type of Review: Reinstatement of a previously approved collection.

Abstract: SAAs and VA will use the information to decide whether the licensing and certification tests, and the organizations offering them, should be approved for use under the education programs VA administers. VA did not develop an official form for this information collection since section 3689 of title 38, United States Code, permitted VA to delegate the approval functions to the State Approving Agencies; and from the inception of this information collection, VA has given the State Approving Agencies the authority to approve licensing and certification tests and organizations. Consequently, the State Approving Agencies have developed their own forms to gather information they will need per their respective state laws to decide whether the licensing and certification tests and the organizations offering them should be approved. In the case of an organization seeking approval directly from VA, any information VA receives concerning the request for approval is forwarded directly to the appropriate State Approving Agency. Since SAAs have approval authority, education institutions and licensing and certification organizations supply information to the SAAs for approval in a manner specified by the SAA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 82 on March 17, 2017, pages 14277–14278.

Affected Public: Individuals or Households.

Estimated Annual Burden: 817 hours.

Estimated Average Burden per Respondent: 3 hours.

Frequency of Response: Annually.

Estimated Number of Respondents: 2451 respondents.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–02362 Filed 2–6–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 83 Wednesday,

No. 26 February 7, 2018

Part II

The President

Memorandum of February 5, 2018—Delegation of Certain Functions and Authorities Under Section 1238 of the National Defense Authorization Act for Fiscal Year 2018

Federal Register
Vol. 83, No. 26
Wednesday, February 7, 2018

Presidential Documents

Title 3—

The President

Memorandum of February 5, 2018

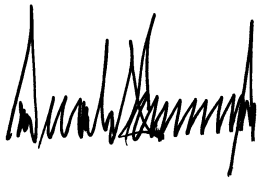
Delegation of Certain Functions and Authorities Under Section 1238 of the National Defense Authorization Act for Fiscal Year 2018

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[, and] the Director of National Intelligence

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of Defense, in coordination with the Secretary of State, the Secretary of the Treasury, and the Director of National Intelligence, the functions and authorities vested in the President by section 1238 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91).

The delegations in this memorandum shall apply to any provisions of any future public law that are the same or substantially the same as the provision referenced in this memorandum.

The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, February 5, 2018

[FR Doc. 2018–02603
Filed 2–6–18; 11:15 am]
Billing code 5001–06–P

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Federal Register

Vol. 83, No. 26

Wednesday, February 7, 2018

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4575–4830 1
4831–5028 2
5029–5174 5
5175–5296 6
5297–5520 7

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9695 5171
9696 5173
Executive Orders:
13492 (Revoked by EO 13823) 4831
13823 4831
Administrative Orders:
Memorandums:
Memorandum of February 5, 2018 5519

7 CFR

46 5775
319 5179
985 5029
Proposed Rules:
1051 5215

9 CFR

Proposed Rules:
301 4780
309 4780
310 4780

10 CFR

Proposed Rules:
20 5373
26 5373
50 5373
51 5373
52 5373
72 5373
73 5373
140 5373
430 5374

12 CFR

Proposed Rules:
1081 5055

14 CFR

25 4575
39 .....5182, 5297, 5299, 5301, 5304
71 .....4577, 4833
Proposed Rules:
39 .....4605, 4609
71 .....4611, 4613, 4863, 4865, 4866

15 CFR

801 4834
Proposed Rules:
4 5215

16 CFR

Proposed Rules:
1112 4578
1500 5056
1507 5056

18 CFR

11 5306

21 CFR

882 5033
1308 .....4580, 5188

25 CFR

140 5192
141 5192
211 5192
213 5192
225 5192
226 5192
227 5192
243 5192
249 5192

26 CFR

Proposed Rules:
1 4868
301 4868

32 CFR

286 5196

33 CFR

100 .....4838, 4840, 4843, 5035, 5306
117 .....4585, 4838, 4840, 4843, 4845
147 .....4838, 4840, 4843
165 .....4838, 4840, 4843, 5197
328 5200
Proposed Rules:
110 4882
165 5225

37 CFR

Proposed Rules:
201 .....4884, 5227
202 5227
211 5227
212 5227

39 CFR

3010 4585

40 CFR

52 .....4591, 4595, 4597, 4847
110 5200
112 5200
116 5200
117 5200
122 5200
124 4598
180 .....5307, 5312
230 5200
232 5200
241 5317

261 5340
300 ....5200, 5209, 5210
302 5200
401 5200
770 5340
Proposed Rules:
52 ....4614, 4617, 4886, 5375
60 4620
62 ....4621, 5231

45 CFR
Proposed Rules:
1603 ....4826, 4827

47 CFR
1 4600
15 4998
73 4998
74 4998
76 4998
Proposed Rules:
2 5057
25 5057

49 CFR
171 5037

50 CFR
20 5037
229 5349
622 5210
648 ....4601, 4849, 5212
660 4850
665 5051
679 ....5052, 5053, 5214
Proposed Rules:
20 4964
92 4623
622 4890

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List February 5, 2018

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