AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 83 Monday,
No. 43 March 5, 2018

Pages 9135–9418

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 83 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 83, No. 43

Monday, March 5, 2018

Agriculture Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9259

Army Department
NOTICES
Meetings:
Education Advisory Subcommittee, 9299

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9318–9321

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9321–9324

Civil Rights Commission
NOTICES
Meetings:
Arizona Advisory Committee, 9259

Coast Guard
RULES
Drawbridge Operations:
Nanticoke River, Seaford, DE, 9204–9205
Safety Zones:
St. Francis Yacht Club Fireworks, San Francisco, CA, 9205–9207
PROPOSED RULES
Safety Zones:
Black Warrior River, Tuscaloosa, AL, 9252–9254
Charleston Race Week, Charleston Harbor, Charleston, SC, 9249–9252
Cooper River Bridge Run, Cooper River, and Town Creek Reaches, Charleston, SC, 9245–9247
Xterra Swim, Intracoastal Waterway; Myrtle Beach, SC, 9247–9249

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Army Department
See Engineers Corps

Drug Enforcement Administration
NOTICES
Importers of Controlled Substances; Applications:
PerkinElmer, Inc., 9337–9338
Stepan Co., 9337

Education Department
RULES
Innovation for Teacher Quality:
Troops-to-Teachers Program, 9207–9208

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9302–9303
Orders:
Puget Sound Energy, Inc.; Sierra Pacific Power Co. d/b/a; NV Energy, et al., 9301–9302

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Bogue Banks Master Beach Nourishment Plan, on Bogue Banks Barrier Island, Carteret County, NC, 9300–9301

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
California; Northern Sierra Air Quality Management District, 9213–9215
National Emission Standards for Hazardous Air Pollutants:
Vermont; Approval of Section 112(l) Authority; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, 9215–9219
PROPOSED RULES
National Emission Standards for Hazardous Air Pollutants:
Vermont; Approval of Section 112(l) Authority; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, 9254–9255
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Exchange Network Grants Progress Reports (Renewal), 9314–9315
Meetings:
Fungicide, and Rodenticide Act Scientific Advisory Panel; Nomination of Ad Hoc Expert Members, 9307–9310
Recent Postings of Broadly Applicable Alternative Test Methods, 9306–9307
Review of Existing Volatile Organic Compounds Emissions Factor for Flares at Natural Gas Production Sites and New Emissions Factors for Enclosed Ground Flares, 9313–9314
Transuranic Waste Characterization Program at Idaho National Laboratorys Advanced Mixed Waste Treatment Project, 9310–9313

Federal Aviation Administration
RULES
Airworthiness Directives:
The Boeing Company Airplanes, 9178–9181
Amendment of Class E Airspace:
Selinsgrove, PA, 9181–9182
Aviation Safety Organization Changes, 9162–9176
Special Conditions:
Textron Aviation, Inc., Model C90A King Air; Installation of Electronic Engine Control System, 9176–9178
PROPOSED RULES
Airworthiness Directives:
The Boeing Company Airplanes, 9238–9242

Amendment of Class D Airspace and Class E Airspace; Establishment of Class E Airspace:
Pensacola, FL, and Milton, FL, 9242–9243
Amendment of Class D and E Airspace:
Jacksonville, NC, 9243–9245

Federal Communications Commission
NOTICES
Meetings:
Open Commission Meeting, 9315–9316

Federal Deposit Insurance Corporation
RULES
Alternatives to References to Credit Ratings with Respect to Permissible Activities for Foreign Branches of Insured State Nonmember Banks and Pledge of Assets by Insured Domestic Branches of Foreign Banks, 9135–9144

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 9316

Federal Emergency Management Agency
NOTICES
Requests for Nominations;
Board of Visitors for National Fire Academy, 9329

Federal Energy Regulatory Commission
NOTICES
Applications:
Southwest Gas Corp., 9303–9304
Combined Filings, 9304–9306
Meetings:
Reliability Technical Conference, 9305
Refund Effective Dates:
RockGen Energy, LLC, 9306
Westwood Generation, LLC, 9303

Federal Financial Institutions Examination Council
RULES
Appraisal Subcommittee Revised Policy Statements, 9144–9162

Federal Railroad Administration
RULES
Monetary Threshold for Reporting Rail Equipment Accidents/Incidents for Calendar Year 2018, 9219–9222

Federal Trade Commission
NOTICES
Proposed Consent Agreements:
PayPal, Inc., 9316–9318

Food and Drug Administration
NOTICES
Requests for Comments:
Post-Marketing Pediatric-Focused Product Safety Reviews, 9324–9325

Foreign Assets Control Office
RULES
North Korea Sanctions Regulations, 9182–9204

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Ground-Water Monitoring Network Cooperative Funding Application, 9336–9337

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9325–9326

Historic Preservation, Advisory Council
NOTICES
Meetings:
Quarterly Business Meeting, 9328

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services

Industry and Security Bureau
NOTICES
Decisions and Orders:
Trilogy International Associates, Inc.; William Michael Johnson, 9259–9267

Interior Department
See Geological Survey

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Aluminum Extrusions from the People's Republic of China, 9267–9272
Certain Aluminum Foil from the People's Republic of China, 9274–9277
Diamond Sawblades and Parts Thereof from the People's Republic of China, 9280–9281
Hydrofluorocarbon Blends from the People's Republic of China, 9277–9278
Initiation of Five-Year (Sunset) Reviews, 9279–9280
Opportunity to Request Administrative Review, 9284–9287
Wooden Bedroom Furniture from the People's Republic of China, 9272–9274
Determinations of Sales at Less Than Fair Value:
Certain Aluminum Foil from the People's Republic of China, 9282–9284

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Pure Granular Magnesium from China, 9337

Justice Department
See Drug Enforcement Administration
NOTICES
Proposed Consent Decrees under the Clean Water Act, 9338

Management and Budget Office
NOTICES
Draft 2017 Report to Congress on the Benefits and Costs of Federal Regulation and Agency Compliance with the Unfunded Mandates Reform Act, 9338–9339

Maritime Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Quarterly Readiness of Strategic Seaport Facilities Reporting, 9363
Requests for Administrative Waivers of the Coastwise Trade Laws:
Vessel LOLAL OCEAN EXPLORER, 9363–9364

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9339–9340
Meetings:
Ad Hoc Task Force on STEM Education, 9341
Human Exploration and Operations Committee, 9340–9341
Technology, Innovation and Engineering Committee, 9339

National Archives and Records Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9341–9342

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 9327
National Eye Institute, 9327–9328
National Heart, Lung, and Blood Institute, 9327
National Library of Medicine, 9326, 9328
Office of AIDS Research Advisory Council, 9326

National Oceanic and Atmospheric Administration
RULES
Atlantic Highly Migratory Species:
Atlantic Bluefin Tuna Fisheries; General Category Fishery, 9232–9235
Fisheries of the Exclusive Economic Zone off Alaska:
Pacific Cod by Catcher Vessels Less than 50 feet Length Overall using Hook-and-Line Gear in Central Regulatory Area of Gulf of Alaska, 9236–9237
Reallocation of Pollock in Bering Sea and Aleutian Islands, 9235–9236
PROPOSED RULES
Atlantic Highly Migratory Species:
Shortfin Mako Shark Management Measures, 9255–9257
Fisheries of the Exclusive Economic Zone off Alaska:
Essential Fish Habitat Amendments, 9257–9258
Taking and Importing Marine Mammals Incidental to Specified Activities:
U.S. Navy Marine Structure Maintenance and Pile Replacement in Washington, 9366–9401
NOTICES
Determination of Overfishing or an Overfished Condition, 9298–9299
Permit Applications:
Endangered Species; File No. 21366, 9297
Endangered Species; File No. 21467, 9297–9298
Takes of Marine Mammals Incidental to Specified Activities:
Bravo Wharf Recapitalization Project, Year 2, 9287–9297

National Science Foundation
NOTICES
Reporting Requirements Regarding Findings of Sexual Harassment, Other Forms of Harassment, or Sexual Assault, 9342–9343

Nuclear Regulatory Commission
NOTICES
Aluminum High Energy Arc Fault Particle Size Characterization, 9344–9345
Meetings; Sunshine Act, 9343–9344

Presidential Documents
PROCLAMATIONS
Special Observances:
American Red Cross Month (Proc. 9700), 9403–9406
Irish-American Heritage Month (Proc. 9701), 9407–9408
Women's History Month (Proc. 9702), 9409–9410
ADMINISTRATIVE ORDERS
Ukraine; Continuation of National Emergency (Notice of March 2, 2018), 9411–9414
Venezuela; Continuation of National Emergency (Notice of March 2, 2018), 9415
Zimbabwe; Continuation of National Emergency (Notice of March 2, 2018), 9417–9418

Securities and Exchange Commission
NOTICES
Applications:
TriplePoint Venture Growth BDC Corp., et al., 9357–9361
Self-Regulatory Organizations; Proposed Rule Changes:
ICE Clear Europe, Ltd., 9345, 9351
Investors Exchange, LLC, 9349–9351
Nasdaq Stock Market, LLC, 9351–9357
NYSE Arca, Inc., 9347–9349
Options Clearing Corp., 9345–9347

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition:
Like Life: Sculpture, Color, and the Body, 9361–9362
Visitors to Versailles, 16821789, 9362
Determinations Regarding Use of Chemical Weapons by North Korea under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, 9362–9363
Meetings:
International Joint Commission; Nutrient Loading and Impacts in Lakes Champlain and Memphremagog, 9362

Surface Transportation Board
RULES
Ex Parte Communications in Informal Rulemaking Proceedings, 9222–9232

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration

Treasury Department
See Foreign Assets Control Office

U.S. Citizenship and Immigration Services
NOTICES
Extension of Designation of Syria for Temporary Protected Status, 9329–9336

Veterans Affairs Department
RULES
Reimbursement of Qualifying Adoption Expenses for Certain Veterans, 9208–9213
NOTICES
Meetings:
Advisory Committee on Homeless Veterans, 9364

Separate Parts In This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 9366–9401

Part III
Presidential Documents, 9403–9410

Part IV
Presidential Documents, 9411–9415, 9417–9418

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

Proclamations:

9700 9405
9701 9407
9702 9409

Administrative Orders:

Notices:
Notice of March 2, 2018 9413
Notice of March 2, 2018 9415
Notice of March 2, 2018 9417

12 CFR

Ch. XI 9135
347 9135

14 CFR

1 9162
21 9162
23 9176
25 9162
26 9162
27 9162
34 9162
39 9178
43 9162
45 9162
60 9162
61 9162
63 9162
65 9162
71 9181
91 9162
97 9162
107 9162
110 9162
119 9162
121 9162
125 9162
129 9162
133 9162
135 9162
137 9162
141 9162
142 9162
145 9162
183 9162

Proposed Rules:

39 9238
71 (2 documents) 9242, 9243

31 CFR

510 9182

33 CFR

117 9204
165 9205

Proposed Rules:

165 (4 documents) 9245, 9247, 9249, 9252

34 CFR

230 9207

38 CFR

17 9208

40 CFR

52 9213
63 9215

Proposed Rules:

63 9254

49 CFR

225 9219
1102 9222

50 CFR

635 9232
679 (2 documents) 9235, 9236

Proposed Rules:

218 9366
635 9255
679 9257

Rules and Regulations

Federal Register
Vol. 83, No. 43
Monday, March 5, 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.

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 347

RIN 3064–AE36

Alternatives to References to Credit Ratings With Respect to Permissible Activities for Foreign Branches of Insured State Nonmember Banks and Pledge of Assets by Insured Domestic Branches of Foreign Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule (final rule) to amend its international banking regulations consistent with section 939A (section 939A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the FDIC's authority under section 5(c) of the Federal Deposit Insurance Act (FDI Act). The final rule adopts without change the revisions and amendments that the FDIC proposed in a June 2016 notice of proposed rulemaking (NPR or proposed rule). These revisions and amendments include: Replacing references to credit ratings in the regulation's definition of investment grade with an alternative standard of creditworthiness; and making changes to the eligibility criteria for the types of assets that insured branches of foreign banks may pledge for the benefit of the FDIC.

DATES: This rule is effective April 1, 2018.

FOR FURTHER INFORMATION CONTACT: Eric Reither, Senior Capital Markets Specialist, Examination Support, Capital Markets Branch, Division of Risk Management Supervision, 202–898–3707, *EReither@fdic.gov;* Galo Cevallos, Senior International Advisor, International Affairs Branch, Division of Insurance and Research, *GCevallos@fdic.gov;* Catherine Topping, Counsel, *CTopping@fdic.gov;* Benjamin Klein, Counsel, *BKlein@fdic.gov,* Bank Activities Unit, Supervision and Legislation Branch, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The intent of the final rule is to conform Part 347 with section 939A's directive to reduce reliance on external credit ratings. By removing references to credit ratings in Part 347 and adopting an alternative standard of creditworthiness, the final rule encourages regular, in-depth analysis of the credit risks associated with specific types of securities held by foreign branches of state nonmember banks under subpart A of Part 347 (subpart A), or pledged for the benefit of the Deposit Insurance Fund (DIF) by the insured U.S. branches of foreign banks under subpart B of Part 347 (subpart B). The final rule supports these objectives by establishing an investment grade definition that is now applied in both subparts A and B.

The financial crisis in 2008 highlighted the importance of considering the liquidity of a security when assessing its overall risk. To address this concern, the revisions to the asset pledge requirement in subpart B include the application of a liquidity standard to the securities pledged to the FDIC by the insured U.S. branches of foreign banks, and applying a fair value discount to such pledged assets. These amendments support the objective of the asset pledge requirement, which is to ensure orderly asset liquidation at maximum value in the event such assets need to be liquidated to pay the insured deposits of the U.S. branch of the foreign bank.

II. Background

In the decades prior to the financial crisis in 2008, third party credit risk assessments by nationally recognized statistical ratings organizations (NRSROs) helped to provide transparency and efficiency to the securities markets. Their assessments of creditworthiness allowed originators and investors to more accurately and readily meet their risk tolerances and investment strategies. Many financial regulations used these external credit risk ratings to set limits on the activities of regulated entities in order to foster safe and sound investment practices. However, during the run-up to the crisis many regulated institutions overly relied on the credit risk assessments of NRSROs, often neglecting to conduct a thorough, independent credit risk analysis. At the same time, flaws in the NRSROs' rating methodologies and conflicts arising from their business model (including certain commercial relationships with the originators of securities and strong competition by NRSROs for market share), undermined the accuracy of the credit ratings for a number of asset classes. Consequently, many investors, including banking organizations, experienced significant losses on securities with ratings that implied credit losses would be very unlikely and minimal. This prompted Congress to enact section 939A of the Dodd-Frank Act,[1] which directs each federal agency to review and modify regulations that reference credit ratings.

Section 939A requires each federal agency to review its regulations that require the use of an assessment of creditworthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. Each agency must modify its regulations identified in the review by removing references to, or requirements of reliance on, credit ratings and substituting appropriate standards of creditworthiness.

Subpart A of Part 347—Foreign Banking and Investment by Insured State Nonmember Banks

Subpart A of Part 347, 12 CFR 347.101 to 347.122, addresses the international banking and investment activities of state nonmember banks, including the establishment and operations of foreign branches and subsidiaries.[2] In general, these regulations implement the FDIC's statutory authority under section

[1] Public Law No. 111–203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010).

[2] A state nonmember bank may establish a non-U.S. branch with the approval of the FDIC (12 U.S.C. 1828(d)(2)). National banks must gain the approval of the Board of Governors of the Federal Reserve System (''Federal Reserve'') to open a non-U.S. branch. These branches may engage in any activity that is permitted in the United States, as well as those that are usual in connection with the banking business in the foreign country where it is located. State member banks may establish foreign branches with the approval of the Federal Reserve. U.S. banking organizations may also conduct international banking activities through Edge and agreement corporations. 12 U.S.C. 611–631 (''Edge corporations''); 12 U.S.C. 601–604(a) (''agreement corporations'').

18(d)(2) of the FDI Act [3] regarding branches of insured state nonmember banks in foreign countries, and section 18(*l*) of the FDI Act [4] regarding insured state nonmember bank investments in foreign entities.

In addition to their general banking powers, banks with foreign branches are permitted to conduct a broad range of investment activities, including investment services and underwriting of debt and equity securities.[5] Under 12 CFR 347.115(b), a foreign branch of a bank may invest in, underwrite, distribute and deal, or trade foreign government obligations that have an investment grade rating, up to an aggregate limit of ten percent of the bank's Tier 1 capital, as calculated under the Basel III capital rules in 12 CFR part 324, subpart C.[6] Section 347.102(o) currently defines investment grade to mean a security that is rated in one of the four highest categories by two or more NRSROs or one NRSRO if the security is rated by only one NRSRO.[7]

Subpart B of Part 347—Foreign Banks

The regulations contained in subpart B of Part 347 primarily implement provisions of the FDI Act and the International Banking Act (IBA) [8] concerning insured and noninsured U.S. branches of foreign banks.[9] Each foreign banking organization maintaining an insured branch must comply with specific FDIC asset maintenance [10] and asset pledge requirements under section 5(c) of the FDI Act. These requirements are separate and apart from other capital equivalency requirements of federal or state licensing authorities.[11] The FDIC no longer insures the deposits accepted by branches of foreign banks, except for deposits made in branches of foreign banks that are insured by operation of the grandfathering provisions of the IBA, as amended by the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA).[12] The universe of these grandfathered branches is very limited. There are currently only ten insured U.S. branches of foreign banks in operation (four federal branches and six state branches). A foreign bank that has an insured branch must pledge assets for the benefit of the FDIC to protect the DIF in the event that the FDIC is obligated to pay the insured deposits of an insured branch under section 11(f) of the FDI Act.[13] Section 347.209(d) provides a list of the types of assets that a foreign bank may pledge for the benefit of the FDIC. In describing certain asset types, 12 CFR 347.209(d) references credit ratings issued by a nationally recognized rating service in connection with a determination of the credit quality of the assets that a foreign bank may pledge. Specifically, in three instances in subpart B, the references are to the highest subset of rating bands within the investment grade categories established by the ratings agencies.

III. Notice of Proposed Rulemaking

On June 28, 2016, the FDIC published the NPR in the **Federal Register**.[14] The NPR proposed amending the provisions of subparts A and B of Part 347 that reference credit ratings. The NPR proposed amending subpart A, which sets forth the FDIC's requirements for insured state nonmember banks that operate foreign branches, by replacing references to credit ratings in the definition of investment grade with a standard for determining the creditworthiness of securities and other financial instruments that has been adopted in other federal regulations that conform to section 939A. The NPR proposed amending subpart B to revise the FDIC's asset pledge requirement for insured U.S. branches of foreign banks. The NPR proposed amending the eligibility criteria for the types of assets that foreign banks may pledge by replacing the references to credit ratings with the revised definition of investment grade. This investment grade standard would be applied to each type of pledgeable asset under the NPR, which also proposed a liquidity requirement for such assets, and proposed subjecting them to a fair value discount. The NPR also proposed introducing cash as a new asset type that foreign banks may pledge under subpart B, and proposed creating a separate asset category expressly for debt securities issued by government sponsored enterprises.

The FDIC sought comments on all aspects of the June 2016 NPR and received two comment letters, one from a foreign banking organization and one from a private individual. These comments were considered in developing this final rule. The comments are discussed in the relevant sections that follow.

IV. The Final Rule

Part 347—International Banking Subpart A—Foreign Banking and Investment by Insured State Nonmember Banks

Section 347.102 Definitions

The final rule amends the definition of investment grade in 12 CFR 347.102(o) by deleting the references to credit ratings and NRSROs. This final rule defines investment grade as a security whose issuer has adequate capacity to meet all financial commitments under the security for the projected life of the exposure. Such an entity has adequate capacity to meet financial commitments if the risk of its default is low, and the full and timely repayment of principal and interest is expected.

The FDIC sought comment on whether this proposed standard of creditworthiness addressed the FDIC's objective of applying a standard that is transparent, well defined, differentiates credit risk, and provides for the timely measurement of change to the credit profile of the investment. One commenter, while generally supportive of efforts to implement an alternative to credit ratings references, expressed concern that the standard was

[3] 12 U.S.C. 1828(d)(2).

[4] 12 U.S.C. 1828(*l*).

[5] The limitations on international investments and the definition of permissible activities found in the FDIC's regulations in Part 347 are similar to, but not identical to, those found in Regulation K of the Federal Reserve.

[6] 12 CFR 324.20 through 324.22.

[7] An NRSRO is an entity registered with the U.S. Securities and Exchange Commission as an NRSRO under section 15E of the Securities Exchange Act of 1934. See 15 U.S.C. 78o–7, as implemented by 17 CFR 240.17g–1.

[8] Public Law 95–369, 92 Stat. 607 (Sept. 17, 1978) (codified at 12 U.S.C. 3101 *et seq.*).

[9] U.S. branches of foreign banks may be licensed by the Office of the Comptroller of the Currency (''OCC'') or by an individual state. The Federal Reserve is required to approve any new foreign bank branch. The Federal Reserve, among other things, is required to certify that the country from which the foreign bank is located subjects its banks, including the applicant, to comprehensive, consolidated supervision. 12 U.S.C. 3105(d).

[10] The FDIC requires that an insured branch of a foreign bank maintain, on a daily basis, eligible U.S. dollar-denominated assets in an amount not less than 106% of the preceding quarter's average book value of the branch's liabilities excluding those due to other offices or wholly owned subsidiaries of the foreign bank. 12 CFR 347.210.

[11] Although U.S. branches and agencies of foreign banks have no capital of their own, those that are federally licensed must deposit cash or eligible securities at approved insured banks to satisfy the ''capital equivalency requirement'' specified by the IBA. The amount of the deposit is required to be at least 5% of the total liabilities of the branch or agency office, or the capital that would be required if it were a freestanding national bank. 12 U.S.C. 3102(g)(2). The underlying purpose of the IBA provision is to ensure that branches and agencies of a foreign bank maintain a minimum level of unencumbered assets in the United States that would be available in a liquidation of the branch or agency. State-licensed branches and agencies also must meet capital equivalency requirements, which vary from state to state. *See, e.g.,* N.Y. Banking Law 202–b.

[12] Before FBSEA, a small number of foreign bank branches had obtained FDIC insurance under the provisions of the IBA and thus were permitted to accept retail deposits. These branches (insured branches) are ''grandfathered'', *i.e.,* they may continue to receive insured retail deposits pursuant to section 6(d)(2) of the IBA. 12 U.S.C. 3104(d)(2).

[13] 12 U.S.C. 1821(f).

[14] 81 FR 41877 (June 28, 2016).

subjective, entity-specific and possibly arbitrary. The other commenter expressed a similar concern that the standard was general and would require subjective determinations. The commenter recommended that the FDIC provide a more straightforward and objective standard.

The FDIC believes that the revised standard provides a flexible, straightforward measure of creditworthiness that is consistent with existing policy. The revised definition achieves the dual goal of reducing reliance on credit ratings and encouraging regular, in-depth analysis of the credit risks associated with specific types of securities held by foreign branches of state nonmember banks under subpart A, or pledged for the benefit of the FDIC by the insured U.S. branches of foreign banks under subpart B. The revised definition of investment grade is also consistent with the definition of investment grade that was adopted by the FDIC, OCC, and Federal Reserve in the Basel III capital rules.[15] This definition is also consistent with the non-ratings based creditworthiness standard applicable to permissible corporate debt securities investments of savings associations adopted by the FDIC in 12 CFR part 362 [16] and the credit quality standards regarding permissible investments for national banks adopted by the OCC under 12 CFR parts 1, 16, and 160.[17] In addition, it is consistent with the final rules adopted by the OCC that remove references to credit ratings from its regulations pertaining to foreign bank capital equivalency deposits for federal branches under 12 CFR 28.15.[18] Achieving consistency with other creditworthiness standards adopted by the federal banking agencies advances section 939A's directive that agencies establish, to the extent feasible, uniform standards of creditworthiness. Based on these considerations, the FDIC is adopting as final the revisions in the proposed rule to the regulatory definition of investment grade.

Section 347.115 Permissible Activities for a Foreign Branch of an Insured State Nonmember Bank

Section 347.115 defines the particular activities that a foreign branch of an insured state nonmember bank may conduct. These activities are subject to safety and soundness limitations and are limited by the extent to which the activities are consistent with banking practices in the foreign country where the bank maintains a branch. The final rule, consistent with the NPR, retains the language of 12 CFR 347.115(b), but § 347.115(b) is affected by the final rule insofar as § 347.115(b) uses the adopted definition of the term investment grade in 12 CFR 347.102(o). Subject to certain limitations and restrictions, § 347.115(b) permits a state nonmember bank's foreign branches to underwrite, distribute and deal, invest in, or trade investment grade obligations of any foreign country, its political subdivisions, and certain of its agencies and instrumentalities.[19] This authority is generally consistent with the provisions of the Federal Reserve's Regulation K, which governs the international operations of foreign branches of member banks.[20]

The regulatory definition of investment grade adopted in the final rule will remove references to credit ratings consistent with section 939A but will not affect the general consistency between the Federal Reserve's Regulation K and the FDIC's Part 347 with regard to permissible activities. For purposes of the final rule, an issuer would satisfy this new standard if the state nonmember bank appropriately determines that the obligor presents low default risk and is expected to make timely payments of principal and interest. The definition addresses the safety and soundness concerns of this activity of foreign branches—namely the exposure of the foreign branch and the DIF to the entity issuing the security—without reference to a credit rating or an NRSRO. As noted above, the FDIC believes that the finalized standard will encourage state nonmember banks to conduct regular, in-depth analysis of the credit risks associated with specific types of securities held by their foreign branches.

Part 347—International Banking Subpart B—Foreign Banks

Section 347.209 Pledge of Assets

12 CFR 347.209 establishes the asset pledge requirement for insured U.S. branches of foreign banks. The amount that each foreign bank must pledge is determined by the supervisory risk posed by each U.S. branch and the U.S. branch's asset maintenance level.[21] The amount of assets that a U.S. branch of a foreign bank must pledge varies from two percent to eight percent of the branch's liabilities and is determined by reference to the risk-based assessment schedule provided in 12 CFR 347.209(b)(1).[22]

The current FDIC rules in 12 CFR 347.209(d) require that certain asset types have credit ratings within the top rating bands of an NRSRO. Under the existing rule, commercial paper may be eligible for pledging purposes if it is rated P–1 or P–2, or their equivalent, by an NRSRO.[23] Municipal general obligations are eligible if they have a credit rating within the top two rating bands of a NRSRO. Notes issued by bank and thrift holding companies, banks, or savings associations must also be rated within the top two rating bands of an NRSRO in order to be eligible. These references to the highest subset of rating bands within the investment grade categories established by the ratings agencies impose a higher credit standard than investment grade. The other types of eligible assets in the existing rules include: Bank CDs with maturities of not greater than one year; Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or fully guaranteed by the United States or any agency thereof;

[15] *See* 78 FR 62018 (Oct. 11, 2013) (Federal Reserve and OCC) (final rule); 78 FR 55340 (Sept. 10, 2013) (interim final rule) (FDIC); 79 FR 20754 (April 14, 2014) (final rule) (FDIC). In finalizing the Basel III capital rules, Federal Reserve and OCC issued a joint final rule, and the FDIC separately issued a substantively identical interim final rule, which was later made final without substantive changes.

[16] *See* Permissible Investments for Federal and State Savings Associations: Corporate Debt Securities, 77 FR 43151 (July 24, 2012).

[17] *See* Alternatives to the Use of External Credit Ratings in the Regulations of the OCC, 77 FR 35253 (June 13, 2012).

[18] The OCC's regulations previously allowed for the use of certificates of deposit (''CDs'') or bankers' acceptances as part of the deposit if the issuer of the instrument was rated ''investment grade'' by an internationally recognized rating organization. Under the revised regulation, the issuer of the certificate of deposit or banker's acceptance must have ''an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure.'' *See* Alternatives to the Use of External Credit Ratings in the Regulations of the OCC, 77 FR 35253 (June 13, 2012).

[19] The definition of ''investment grade'' for obligations of governments other than the host government was adopted in 2005 when the FDIC amended its international banking regulations, Part 347. 70 FR 17550 (April 6, 2005).

[20] Under the Regulation K, a foreign branch of a member bank may underwrite, distribute, buy, sell, and hold certain government debt obligations only if such obligations are rated investment grade. *See* 12 CFR 211.4(a)(2)(i)(C)–(D). The Federal Reserve adopted the definition of investment grade in its revisions to Regulation K in 2001. The investment grade rating requirement for obligations of governments other than the host government was considered appropriate because it limited cross-border transfer risk. 66 FR 54346 (Oct. 26, 2001).

[21] 12 CFR 347.209(b). Generally, an insured branch must maintain a level of assets that exceeds 106 percent of its liabilities. 12 CFR 347.210.

[22] The pledged assets must be placed at a depository approved by the FDIC. Generally, each insured branch of the foreign bank must meet the asset pledge requirement separately; however, a foreign bank with more than one insured branch in any state may treat all of its insured branches in the state as one entity for purposes of complying with this requirement. *See* 12 CFR 347.209(b)(5).

[23] P–1 and P–2 are Moody's top two rating bands for short-term obligations.

banker's acceptances with a maturity not greater than 180 days; and obligations of certain international development banks.[24]

The final rule removes the references to credit ratings issued by NRSROs in 12 CFR 347.209(d) and substitutes an investment grade standard to ensure the assets have appropriate credit quality. As proposed in the NPR, the final rule also permits only highly liquid assets to be pledged, and submits these instruments to fair value haircuts. The revised credit and liquidity standards and the comments addressing these standards are discussed below.

Credit and Liquidity Standards

Under this final rule, instruments falling within the relevant asset categories are eligible for pledging if they are investment grade. Consistent with this final rule's amendment to subpart A of Part 347, the final rule adds the same definition of investment grade to the definitions section of subpart B, 12 CFR 347.202, to define investment grade as a security issued by an entity that has adequate capacity to meet financial commitments under the security for the projected life of the exposure. To meet this standard, the insured branch of the foreign bank needs to determine that the risk of default by the obligor is low, and that full and timely repayment of principal and interest is expected. As noted earlier, this investment grade standard is consistent with other regulations amended pursuant to section 939A.

As proposed in the NPR, this final rule also provides that instruments falling within the relevant asset categories are eligible for pledging only if they are highly liquid. Highly liquid securities are those that:

- Exhibit low credit and market risk;
- are traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and
- are a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.[25]

The final rule requires a foreign bank to demonstrate that the instrument meets the highly liquid standard.

The FDIC sought comment on whether the proposed investment grade and liquidity standards for pledged assets under subpart B of Part 347 are reasonable provisions and whether the removal of references to external credit ratings should be implemented as proposed or whether there are alternatives that would achieve a creditworthiness standard that is sufficiently risk sensitive. One commenter expressed concern that the proposed investment grade and liquidity requirements will significantly increase the operational burden on the branch. This commenter expressed concern that the new standards contained in the definitions of investment grade and highly liquid are general and will require subjective determinations. The commenter also expressed the opinion that the highly liquid standard is not required under Section 939A. The commenter further noted that the introduction of this new standard is not necessary to protect the DIF against losses. This commenter contended that the types of pledgeable assets, coupled with the investment grade requirement, would provide adequate assurance that pledged assets are sufficiently low risk and liquid.

The proposed amendments in Subpart A address the permissible international banking and investment activities of state nonmember banks. Subpart A differs in scope and purpose from subpart B, which establishes asset maintenance and pledge requirements for insured U.S. branches of foreign banks. The asset pledge requirements exist to protect the DIF by ensuring orderly asset liquidations at maximum values in the event such assets are liquidated to pay the insured deposits of the U.S. branch of the foreign bank.

Although requiring foreign banks to verify that pledged assets satisfy the proposed standards may require some initial adjustment of existing processes, the FDIC believes that it would impose minimal additional burden. The final rule adopts standards of investment grade and highly liquid assets that are already in use in other banking regulations. In addition, insured U.S. branches of foreign banks are currently expected to conduct due diligence to meet applicable standards of safety and soundness in connection with their investment activities without sole reliance on NRSRO ratings as a measure of creditworthiness. Furthermore, market data should already be accessible through an insured branch's normal data source channels, and should be used in pre-purchase and ongoing investment due diligence. Therefore, the FDIC does not believe that the final rule will significantly increase the operational burden on insured branches of foreign banks.

Existing 12 CFR 347.209(d) includes creditworthiness standards that exceed investment grade. That is, with some pledgeable asset types only the top two letter ratings (*e.g.,* AAA, AA) within the investment grade band would be acceptable. The highly liquid standard in the final rule is necessary, in part, to ensure that the elevated quality of the pledged assets established under the current standard continues. Furthermore, complementing the investment grade requirement with the highly liquid requirement will ensure that the pledged assets can be readily converted to cash with little impact on their values.

The FDIC believes that adopting the investment grade and highly liquid criteria, in conjunction with the fair value discount, helps ensure that pledged assets continue to support orderly asset liquidation at maximum value in the event such assets need to be liquidated to pay the insured deposits of the U.S. branch of the foreign bank. Based on these considerations, the FDIC is adopting as final the revisions in the proposed rule related to the definition of investment grade and the highly liquid requirement.

Fair Value Discount

As proposed in the NPR, the final rule requires that the fair values of the investment grade and highly liquid pledged assets be discounted to reflect the credit risk and market price volatility of such assets. Under the final rule, the discounted fair value of the assets determines the pledged dollar amount. The FDIC expects that the valuations of the pledged assets be updated at least quarterly. Further, the final rule adopts a standardized haircut table, consistent with the Basel III capital rules, to promote simplicity and ease of reference.[26] Under this approach, the applicable haircut is determined by reference to the asset's risk-weight and remaining maturity.[27] For example, a foreign insured branch may elect to pledge investment grade commercial paper with a fair value of

[24] *See* 12 CFR 347.209(d)(1), (2), (5), and (6).

[25] The definition of a highly liquid asset is consistent with the definition established in 12 CFR part 252, subpart O Enhanced Prudential Standards for Foreign Banking Organizations (The Federal Reserve's Regulation YY).

[26] In 12 CFR 324.37(c)(3), the FDIC established requirements for applying standardized haircuts for market price volatility which are scheduled on Table 1 to § 324.37—Standard Supervisory Market Price Volatility Haircuts (Table 1). A portion of Table 1 concerning haircuts for non-sovereign issuers serves as the basis for the reference table included in the proposed rule.

[27] *See* 12 CFR 324.32 for general risk weights.

$100,000 and remaining maturity of less than one year. These instruments are risk-weighted at 100 percent under the Basel III capital rules. Under the reference table, the corresponding haircut is 4 percent; therefore, the amount of the $100,000 asset that counts towards the satisfaction of the asset pledge requirement is arrived at by multiplying $100,000 by 0.96 (1 − 0.04), which equals $96,000. Consistent with the haircut requirements in the risk-based capital rules, pledged assets that receive a zero percent risk weight do not receive a fair value haircut.[28]

The FDIC solicited comment on whether pledged assets should be discounted as proposed, or whether the full fair value of assets pledged under the existing risk-based assessment schedule already provide sufficient protection to the DIF. In addition, the FDIC sought comment on whether another method of discounting would advance the objective of ensuring that pledged assets be as free from risk and as liquid as possible. One commenter indicated that the fair value discount is burdensome and suggested that the full fair value be permitted to be pledged, contending that the benefit to the DIF of the discount requirement would likely be minimal. The commenter further cited operational burden concerns with implementing the quarterly valuation calculation. The commenter also contended that, based on its tentative calculations, the fair value discount requirement would require it to pledge a considerable amount of additional eligible assets, resulting in increased costs.

The FDIC believes the fair value haircut provides an appropriate methodology for discounting fair values which is consistent with the haircuts applied to financial collateral pledged to certain transactions under the Basel III capital rules as adopted by the FDIC.[29] Further, the FDIC believes the expectation of quarterly updates to valuation of the pledged assets is reasonable given that quarterly valuations are currently required in the pledge agreement between each of the foreign banks and the FDIC. Moreover, the FDIC believes that applying the fair value discount results in minimal burden because the calculation of the applicable fair value discount is based on the risk weight of the applicable asset under the Basel III capital rules, which is an analysis that should already be undertaken by these institutions. Lastly, the FDIC recognized in the NPR that the haircut provision could impact foreign banks that pledge bank notes or CDs because they may need to pledge additional collateral under the proposed rule compared with the pledge requirements under the existing rule. However, the FDIC expects any additional collateral required as a result of the haircut provision to be minimal.

Based on these and other considerations, the FDIC is adopting as final the discount methodology in the proposed rule.

Assets That May Be Pledged

As proposed in the NPR, the final rule also amends 12 CFR 347.209(d) by adding cash as a new asset type that foreign banks may pledge under subpart B, and by creating a separate asset category expressly for debt securities issued by government sponsored enterprises (GSEs). Cash and securities issued by GSEs are included in the definition of highly liquid assets in the Federal Reserve's regulation prescribing enhanced prudential standards for foreign banking organizations.[30] The FDIC also understands that some insured branches of foreign banks currently pledge GSE debt securities under 12 CFR 347.209(d)(2) because they qualify as obligations of a U.S. government instrumentality. The Basel III capital rules recognize that the risk characteristics of GSE securities differ from those guaranteed by the U.S. government. The capital rules bear this out by assigning the former a twenty percent risk weight and the latter a zero percent risk weight.[31] Therefore, the final rule eliminates the reference to obligations of U.S. instrumentalities in 12 CFR 347.209(d)(2), and creates a separate category expressly for GSE securities. Creating a separate category for GSE securities is necessary because such securities are subject to a haircut under the final rule to account for their twenty percent risk weight under the Basel III capital rules, whereas securities guaranteed by the U.S. government are not subject to a haircut given their zero percent risk weight.

Pursuant to subpart B, all assets pledged, including cash, are required to be subject to the terms of a pledge agreement executed by the pledging foreign bank and the depository.[32] Subpart B requires that the pledge agreement's terms include a requirement that pledged assets be placed with a depository for safekeeping.[33] Subpart B also requires that the pledged assets be designated as assets subject to the pledge agreement.[34] In addition, the assets must be held separately from the assets of the foreign bank or depository, and must at all times be segregated on the records of the depository and clearly identified as assets subject to the pledge agreement.[35] Subpart B requires that a foreign bank obtain the FDIC's prior written approval of the depository selected.[36]

The FDIC solicited comment on whether the types of assets that may be pledged should be expanded to include cash as proposed. One commenter expressed support for the addition of cash as a new eligible asset type. The commenter also sought clarification as to whether an insured branch would be permitted to receive interest on any such pledged cash. While subpart B generally authorizes insured branches to retain interest earned on pledged assets,[37] the operation of subpart B's segregation and safekeeping requirements as applied to pledged cash would preclude the payment of interest on such cash. Most importantly, in order for pledged cash to be deemed held for safekeeping and segregated in accordance with subpart B's requirements, such cash must be held separate from the general funds of the bank and may not be commingled with any cash or other property of the depository. Accordingly, such cash may not be loaned, invested, used in operations, or used for any other purpose by the depository. Because, generally, interest is paid for the use of cash, if the depository complies with the safekeeping and segregation requirement, it cannot use the cash and, thus, there would be no basis for the payment of interest. In the event that the FDIC is appointed receiver of the depository, cash pledged and held for the purposes of, and in accordance with, the requirements of subpart B, would

[28] Assets with zero percent risk weight include cash; Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency thereof; and obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development.

[29] FDIC-supervised institutions may use the risk-mitigating effects of financial collateral, subject to a market price volatility haircut, in determining the exposure amount of such transactions for risk-weighting purposes. *See* 79 FR 20760 (April 14, 2014).

[30] 12 CFR part 252 subpart O.

[31] 12 CFR 324.32(a) and (c).

[32] 12 CFR 347.209(e)(5)(i). FDIC staff is reviewing executed pledge agreements in order to determine what revisions, if any, will be necessary in light of the final rule's revisions to Part 347.

[33] 12 CFR 347.209(c).

[34] 12 CFR 347.209(e)(5)(ii).

[35] *Id.*

[36] 12 CFR 347.209(c)

[37] 12 CFR 347.209(e)(10). A foreign bank may retain interest earned on pledged assets unless the FDIC by written notice prohibits such retention.

not be treated as property of the depository receivership.

The FDIC views the amendments to the pledgeable asset criteria as consistent with other rulemakings, and as resulting in minimal impact on the insured U.S. branches of foreign banks.

Based on these, and other, considerations, the final rule adopts the pledgeable asset categories as proposed in the NPR. Accordingly, a foreign bank may pledge the assets listed below, provided that such assets are denominated in United States dollars, and satisfy both the investment grade and highly liquid standards. Further, such assets must be discounted at the rates set forth in the haircut table.

The revised pledgeable asset categories are as follows:

(1) Cash;

(2) Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency thereof;

(3) Obligations of U.S. GSEs;

(4) Negotiable CDs that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank which has executed a valid waiver of offset agreement or similar debt instruments that are payable in the United States; provided, that the maturity of any certificate or issuance is not greater than one year; and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(5) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development;

(6) Commercial paper;

(7) Notes issued by bank and savings and loan holding companies, banks, or savings associations organized under the laws of the United States or any state thereof or notes issued by branches or agencies of foreign banks, provided that the notes are payable in the United States, and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(8) Banker's acceptances that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank; provided, that the maturity of any acceptance is not greater than 180 days; and provided further, that the branch or agency issuing the acceptance is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(9) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States; and

(10) Any other asset determined by the FDIC to be acceptable.[38]

Cash, treasury bills or other direct obligations of or fully guaranteed by the United States or any agency thereof, and the obligations of the stated international development banks will categorically satisfy the investment grade and highly liquid standards discussed above.[39] Therefore, foreign banks that pledge these assets will not be required to perform individual analyses to verify that the assets meet the investment grade and highly liquid standards. Pledgeable assets that receive a zero percent risk weight will generally not require a fair value haircut.

Foreign banks pledging assets that do not categorically satisfy the investment grade and highly liquid standards will need to demonstrate that the assets being pledged meet the investment grade and highly liquid standards. Foreign banks can find the appropriate haircut by identifying the risk weight associated with the asset in the capital rules.

Other Technical Revisions

As proposed in the NPR, the final rule adds a definition of agency to the definitions section of subpart B, 12 CFR 347.202, which already contains a definition of branch under the existing regulation, in order to clarify that negotiable CDs, banker's acceptances, and notes issued by a branch or agency of a foreign bank located only in the United States are eligible for pledging. The definition was not previously in subpart B. The term agency is used in 12 CFR 347.209(d)(1), (d)(4), and (d)(7) to describe the types of bank CDs, banker's acceptances, and notes issued by a branch or agency of a foreign bank that are eligible for pledging by a U.S. branch of a foreign bank. The final rule incorporates the definition of agency found in section 1(b)(1) of the IBA, which defines agency to mean ''any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States.''[40] This definition makes clear that only negotiable CDs, banker's acceptances, or notes issued by an agency of a foreign bank located in the United States are eligible pledged assets. The FDIC does not allow for the pledging of these instruments unless they are issued by an agency of a foreign bank located in the United States. It is also consistent with the definition of branch in subpart B, which means any office or place of business of a foreign bank located in any state of the United States.[41] The final rule also amends 12 CFR 347.209(d)(7) by removing the reference to United States in the description of branches or agencies of foreign banks because those terms as defined in existing subpart B necessarily mean an office or place of business of a foreign bank located in the United States. Furthermore, as proposed, the final rule amends 12 CFR 347.209(d)(7) to clarify that, consistent with requirements associated with pledging CDs and banker's acceptances in paragraphs (d)(1) and (d)(4), a pledging U.S. branch of a foreign bank may not pledge a note issued by a branch or agency of a foreign bank that has the same country of domicile as the pledging bank. This requirement avoids potential same-country risks represented by the branches and agencies as direct extensions of foreign banks.

One commenter expressed concern with the proposal to amend 12 CFR 347.209(d)(7) to clarify that a pledging U.S. branch of a foreign bank may not pledge a note issued by a branch or agency of a foreign bank that has the same country of domicile as the pledging bank. In particular, the commenter contended that in some instances the same-country risk would be very low in certain jurisdictions and recommended the implementation of an objective standard when evaluating same-country risks given that the risk

[38] The FDIC also reserves the right to require the substitution of pledged assets with other assets deemed more acceptable to the FDIC, as currently provided in 12 CFR 347.209(d).

[39] A direct debt obligation issued by a U.S. government-sponsored enterprise or an asset-backed security guaranteed by a U.S. GSE will categorically satisfy the investment grade standard only if the GSE is operating with capital support or another form of direct financial assistance from the U.S. government. All GSEs will categorically satisfy the liquidity standard.

[40] 12 U.S.C. 3101(1). The proposed definition is also consistent with the definition of agency in the Federal Reserve's and OCC's international banking regulations. *See* 12 CFR 211.21(b) (Federal Reserve) and 12 CFR 28.11(g) (OCC).

[41] 12 CFR 347.202(b).

profiles of different countries can vary significantly. The FDIC believes the requirement as proposed is an important safeguard against potential same-country risks represented by issuing branches and agencies as direct extensions of foreign banks. The requirement as proposed is also consistent with the existing requirements for pledging CDs and banker's acceptances under 12 CFR 347.209(d)(1) and (d)(4). The FDIC is adopting the proposed requirement related to this and all other proposed technical revisions as final.

As proposed in the NPR, the final rule amends the list of eligible collateral to eliminate the obsolete exception for non-negotiable CDs that were pledged as collateral to the FDIC on March 18, 2005, until maturity according to the original terms of the existing deposit agreement. The maturity date for any non-negotiable CD that was grandfathered under this provision has passed. Consequently, the provision by its terms is obsolete and no longer serves a useful purpose.

V. Expected Effects

a. Subpart A

The applicability of the revision to subpart A of Part 347 in the final rule is limited to state nonmember banks that operate branches in foreign countries. As of June 30, 2017, there were seven state nonmember banks operating 13 foreign branches in six countries. All but one of the state nonmember banks with foreign branches are large, multi-billion dollar financial institutions with commensurate systems and capabilities. The revision to subpart A will therefore apply to a small number of mostly larger state nonmember banks with more sophisticated operations, and the effect of the revision to the definition of investment grade is expected to impose negligible additional burden relative to the size and capabilities of these banks. The FDIC also notes that prior to the enactment of the Dodd-Frank Act and implementation of section 939A, state nonmember banks were expected to have a credit risk management framework for securities and investments that included robust pre-purchase analysis and ongoing monitoring by the banking organization. The revision to the definition of investment grade in Part 347 will encourage regular, in-depth analysis by the banking organization of credit risks of securities, which is a prudent practice already expected of banks. This will likely result in little or no additional costs associated with credit risk analysis over those currently expended. However, potential credit losses will likely decline as covered institutions are more diligent in assessing their credit risk exposure, which would provide a benefit.

b. Subpart B

The revisions to subpart B of Part 347 in the final rule will apply only to the insured U.S. branches of foreign banks. As of June 30, 2017, there were ten insured branches of foreign banks. The FDIC expects the revisions to subpart B to have the effect of ensuring that collateral pledged by these institutions is very low risk and as liquid as possible in order to provide protection to the DIF. For purposes of carrying out the section 939A review related to subpart B, the FDIC surveyed the insured U.S. branches of foreign banks to examine the composition of assets pledged. At the time of the review, treasury bills, bank notes, and CDs were the primary instruments pledged. Consequently, the haircut provision could impact foreign banks that choose to continue pledging a predominance of bank notes or CDs, as this may require pledging some measure of additional collateral under the proposed rule compared with the pledge requirements under the existing rule. Additionally, the final rule may alter to some extent the nature of the recordkeeping and reporting requirements associated with subpart B. Information developed through prudent investment practices will need to evidence satisfaction of the new standards. That information will be retained for supervisory review, but additional time should be negligible. Therefore, the FDIC views the proposed amendments to the pledgeable asset criteria as resulting in minimal impact on the insured U.S. branches of foreign banks.

VI. Alternatives Considered

Section 939A requires that agencies adopt standards of creditworthiness that, to the extent feasible, are uniform. The adoption of an alternative definition of investment grade would be inconsistent with section 939A's directive to adopt uniform standards.

In addition to adopting the definition of investment grade, the final rule, consistent with the proposed rule, amends subpart B of Part 347 to impose liquidity and discounting requirements for assets pledged by insured branches of foreign banks operating in the United States. Alternatives to the proposed definition of highly liquid would contradict the definition of highly liquid assets as adopted in other Dodd-Frank Act rulemakings, thereby creating different treatment of the same securities. Similarly, the calculation of fair value discounts for pledged assets is based on the risk weights assigned to such assets in the capital rules. The FDIC did not receive any comments with specific recommendations for alternatives.

VII. Effective Date

The Administrative Procedure Act (APA) generally requires that a final rule be published in the **Federal Register** no less than 30 days before its effective date.[42] Section 302 of Riegle Community Development and Regulatory Improvement Act (RCDRIA)[43] generally requires that regulations prescribed by Federal banking agencies which impose additional reporting, disclosures or other new requirements on insured depository institutions take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form unless an agency finds good cause that the regulations should become effective sooner. The effective date of the Rule is April 1, 2018, which is the first day of the calendar quarter which begins on or after the date on which the regulations are published in final form, as required by RCDRIA. 12 CFR 347.209(b) requires that a foreign bank with an insured branch pledge assets equal to the appropriate percentage of the insured branch's average liabilities for the last 30 days of the most recent calendar quarter. The FDIC expects foreign banks with insured branches to comply with Part 347 Subpart B's asset pledge requirements, as amended by the final rule, beginning in the calendar quarter commencing on April 1, 2018. This provides foreign banks and their insured branches with adequate time to transition to Subpart B's amended asset pledge requirements.

VIII. Regulatory Analyses

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA)[44] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information associated with subpart A is entitled *Foreign Banking and Investment by Insured State Nonmember Banks* (OMB No. 3064–0125). This information collection

[42] 5 U.S.C. 553(d).

[43] 12 U.S.C. 4802.

[44] 44 U.S.C. 3501 *et seq.*

consists of applications related to establishing and closing a foreign branch; applications related to acquiring stock of a foreign organization; and records and reports which a nonmember bank must maintain once it has established a foreign branch or foreign organization. As described above, the final rule's revision to subpart A consists of a change to the definition of investment grade and imposes no additional recordkeeping or reporting burden on insured state nonmember banks. Therefore, the FDIC expects that the PRA burden estimates of this collection will not be affected by this final rule. Accordingly, the FDIC will not be submitting any information collection request to OMB relating to the information collection associated with subpart A (OMB 3064–0125).

The collection of information associated with subpart B is entitled *Foreign Banks* (OMB No. 3064–0114). This information collection consists of, among other things, internal recordkeeping by insured branches of foreign banks, and reporting requirements related to an insured branch's pledge of assets to the FDIC. Under the final rule, all assets pledged to the FDIC under subpart B must be investment grade, highly liquid, and subject to a fair value discount. Several types of assets pledged by banks under subpart B would be categorically investment grade and highly liquid, and subject to a zero percent discount under the final rule. Insured branches of foreign banks will be able to continue to pledge these assets without any adjustment to their reporting and recordkeeping requirements. To the extent that an insured branch of a foreign bank pledges an asset that would not be categorically investment grade, highly liquid, or that would not receive a zero percent discount, the FDIC expects minimal additional burden to accompany such a pledge of assets. Recordkeeping associated with the diligence that will be required for determining that an asset is highly liquid and investment grade is already expected of these institutions as part of their pre-purchase and ongoing investment due diligence. Similarly, the calculation of the applicable fair value discount is based on the risk weight of the applicable asset under the Basel III capital rules, which is an analysis that should already be undertaken by these institutions. Therefore, the FDIC expects that any resulting changes in burden will be so minimal that they will not alter the existing PRA burden estimates of this collection. Notwithstanding the fact that the FDIC does not expect a change in burden, the final rule may alter to some extent the nature of the recordkeeping requirements associated with subpart B. Accordingly, the FDIC will be submitting an information collection request to OMB relating to the information collection associated with subpart B (OMB 3064–0114). The existing burden estimates for the information collection associated with subpart B are as follows:

Title	Times/year	Respondents per year	Hours per response	Total burden hours
Moving a branch	1	1	8	8
Consent to operate	1	1	8	8
Conduct activities	1	1	8	8
Recordkeeping	1	10	120	1,200
Pledge of assets:				
documents	4	10	0.25	10
reports	4	10	2	80
Total Burden				1,314

The FDIC has a continuing interest in the public's opinions of our existing information collections. At any time, comments are invited on:

- Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;
- The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. A copy of the comments may also be submitted to the OMB desk officer for the FDIC by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503, by facsimile to 202–395–5806, or by email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of final rulemaking, an agency prepare a Final Regulatory Flexibility Act analysis describing the impact of the rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $550 million). A Final Regulatory Flexibility Act analysis, however, is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the final rule. For the reasons provided below, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The final rule makes revisions to the existing rules in subpart A of Part 347 consistent with section 939A of the Dodd-Frank Act.[45] The rules in subpart A of Part 347 address issues related to the international activities and investments of insured state nonmember banks. In general, they implement the FDIC's statutory authority under section 18(d)(2) of the FDI Act regarding branches of insured state nonmember banks in foreign countries, and section 18(*l*) of the FDI Act regarding insured state nonmember bank investments in foreign entities. As of June 30, 2017, there were seven state nonmember banks with 13 foreign branches.

[45] Subpart J of part 303 contains the procedural rules that implement Part 347. No revisions are proposed to these rules.

Available information indicates that state nonmember banks with foreign investments or foreign branches are not small entities.

The final rule also amends subpart B of Part 347 as applied to insured U.S. branches of foreign banks. As of September 30, 2016, there were ten insured branches of foreign banks, only one of which qualifies as a small entity. Therefore, the revisions to subpart B of Part 347 will not have a significant impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The OMB has determined that the final rule is not a major rule within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).[46] As required by SBREFA, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999: Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.[47]

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. The FDIC sought to present the final rule in a simple and straightforward manner. The FDIC did not receive any comment on its use of plain language.

List of Subjects in 12 CFR Part 347

Bank deposit insurance, Banks, Banking, Foreign banking, Investments, Insured foreign branches, Reporting and recordkeeping requirements, United States investments abroad.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends part 347 of chapter III of Title 12, Code of Federal Regulations as follows:

[46] 5 U.S.C. 801, *et seq.*

[47] Public Law 105–277, 112 Stat. 2681 (1998).

PART 347—INTERNATIONAL BANKING

■ 1. The authority citation for part 347 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Pub L. No. 111–203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010) (codified 15 U.S.C. 78o–7 note).

■ 2. In § 347.102, paragraph (o) is revised to read as follows:

§ 347.102 Definitions.

* * * * *

(o) *Investment grade* means a security issued by an entity that has adequate capacity to meet financial commitments for the projected life of the exposure. Such an entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

* * * * *

■ 3. In § 347.202, paragraphs (p) through (y) are redesignated as paragraphs (s) through (bb); paragraphs (k) through (o) are redesignated as paragraphs (m) through (q); paragraphs (b) through (j) are redesignated as paragraphs (c) through (k); and new paragraphs (b), (l), and (r) are added to read as follows:

§ 347.202 Definitions.

* * * * *

(b) Agency means any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States.

* * * * *

(l) Highly liquid means, with respect to a security, that the security has low credit and market risk; is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

* * * * *

(r) Investment grade means a security issued by an entity that has adequate capacity to meet financial commitments for the projected life of the exposure. Such an entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

* * * * *

■ 4. In § 347.209, paragraph (d) is revised and Table 1 is added to the end of the section to read as follows:

§ 347.209 Pledge of assets.

* * * * *

(d) *Assets that may be pledged.* (1) This paragraph sets forth the kinds of assets that may be pledged to satisfy the requirements of this section. A foreign bank shall be deemed to have pledged any such assets for the benefit of the FDIC or its designee at such time as any such asset is placed with the depository. The FDIC reserves the right to require the substitution of pledged assets with other assets deemed acceptable to the FDIC.

(2) A foreign bank may pledge the kinds of assets set forth in this paragraph (d)(2), provided that: Such assets are denominated in United States dollars; such assets are investment grade, as that term is defined in § 347.202(r); and such assets are highly liquid, as that term is defined in § 347.202(l). Furthermore, for the purposes of calculating the amount of assets required to be pledged under paragraph (b) of this section, the assets that are eligible for pledging under this paragraph (d)(2) must be discounted at the rates set forth in Table 1 to § 347.209.

(i) Cash;

(ii) Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency thereof;

(iii) Obligations of United States government-sponsored enterprises;

(iv) Negotiable certificates of deposit that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch of a foreign bank which has executed a valid waiver of offset agreement or similar debt instruments that are payable in the United States and that are issued by any agency of a foreign bank which has executed a valid waiver of offset agreement; provided, that the maturity of any certificate or issuance is not greater than one year; and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(v) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development;

(vi) Commercial paper;

(vii) Notes issued by bank and savings and loan holding companies, banks, or savings associations organized under the laws of the United States or any state thereof or notes issued by branches or agencies of foreign banks, provided that the notes are payable in the United States, and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(viii) Banker's acceptances that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank; provided, that the maturity of any acceptance is not greater than 180 days; and provided further, that the branch or agency issuing the acceptance is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(ix) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States;

(x) Any other asset determined by the FDIC to be acceptable.

* * * * *

TABLE 1 TO § 347.209—SUPERVISORY HAIRCUTS FOR ASSETS PLEDGED UNDER § 347.209(d)

Remaining maturity	Haircut % assigned based on maturity and risk weight			
	Risk weight (%) by issuer as specified in part 324.32			
	0%	20%	50%	100%
≤to 1 Year	0	1.0	2.0	4.0
>1 Year but ≤5 Years	0	4.0	6.0	8.0
>5 years	0	8.0	12.0	16.0

Dated at Washington, DC, on February 14, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–04255 Filed 3–2–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Chapter XI

[Docket No. AS18–02]

Appraisal Subcommittee; Revised ASC Policy Statements

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Adoption of revised ASC Policy Statements.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council is adopting revised ASC Policy Statements. The ASC Policy Statements provide guidance to ensure State appraiser certifying and licensing agencies comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, and the rules promulgated thereunder. The revised ASC Policy Statements supersede the current ASC Policy Statements.

DATES: The revised ASC Policy Statements adopted February 14, 2018, are applicable March 5, 2018.

FOR FURTHER INFORMATION CONTACT: James R. Park, Executive Director, at (202) 595–7575, or Alice M. Ritter, General Counsel, at (202) 595–7577, Appraisal Subcommittee, 1401 H Street NW, Suite 760, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

I. Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI), established the ASC.[1] The purpose of Title XI is to provide protection of Federal financial and public policy interests by upholding Title XI requirements for appraisals performed for federally related transactions.[2] Pursuant to Title XI, one of the ASC's core functions is to monitor the requirements established by the States[3] for certification and licensing of appraisers qualified to perform appraisals in connection with federally related transactions. This is accomplished through periodic ASC Compliance Reviews of each State appraiser regulatory program (Appraiser Program) to determine compliance or lack thereof with Title XI, and to assess implementation of minimum requirements for credentialing of appraisers as adopted by the Appraiser Qualifications Board (*The Real Property Appraiser Qualification Criteria* or AQB Criteria). The revised ASC Policy Statements provide guidance to the States regarding how Appraiser Programs will be evaluated during ASC Compliance Reviews.

Title XI as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)[4] expanded the ASC's core functions to include monitoring of the requirements established by States that elect to register and supervise the operations and activities of appraisal management companies[5] (AMCs). States electing to register and supervise AMCs must implement minimum requirements in accordance with the AMC Rule.[6] As a result, States with an

[1] The ASC Board is comprised of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System [Board], Bureau of Consumer Financial Protection [CFPB], Federal Deposit Insurance Corporation [FDIC], Office of the Comptroller of the Currency [OCC], and National Credit Union Administration [NCUA]). The other two members are designated by the heads of the Department of Housing and Urban Development (HUD) and the Federal Housing Finance Agency (FHFA).

[2] Refers to any real estate related financial transaction which: (a) A federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser. (Title XI § 1121 (4), 12 U.S.C. 3350.)

[3] The 50 States, the District of Columbia, and four Territories, which are the Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, and United States Virgin Islands.

[4] Public Law 111–203, 124 Stat. 1376.

[5] Title XI § 1103 (a)(1)(B), 12 U.S.C. 3332.

[6] The Dodd-Frank Act added section 1124 to Title XI, *Appraisal Management Company Minimum Requirements,* which required the OCC, Board, FDIC, NCUA, CFPB, and FHFA to establish, by rule, minimum requirements for the registration and supervision of AMCs by States that elect to register

AMC regulatory program (AMC Program) will be evaluated during the ASC's Compliance Review to determine compliance or lack thereof with Title XI, and to assess implementation of the minimum requirements for State registration and supervision of AMCs as established by the AMC Rule. The amendments to Title XI by the Dodd-Frank Act also allow States with an AMC Program to add information about AMCs in their State to the National Registry of AMCs (AMC Registry). The revised ASC Policy Statements include guidance to the States regarding how AMC Programs will be evaluated during ASC Compliance Reviews.

The ASC published Proposed Revised Policy Statements on January 10, 2017. The comment period was scheduled to close on April 10, 2017. The ASC suspended the comment period in response to the White House Chief of Staff Memorandum titled *Regulatory Freeze Pending Review,* signed on January 20, 2017, pending review by the Office of Management and Budget (OMB). The ASC re-published Proposed Revised Policy Statements on September 20, 2017, with a 60-day comment period.[7] With certain changes to the proposal, the revised ASC Policy Statements were adopted by the ASC at its February 14, 2018 Meeting substantially as proposed.

II. Revised ASC Policy Statements

The revised ASC Policy Statements[8] are being issued by the ASC in three parts to provide States with the necessary information to maintain their Appraiser Programs and AMC Programs in compliance with Title XI and the rules promulgated thereunder:

➢ Part A, *Appraiser Program*—Policy Statements 1 through 7 correspond with the categories that are: (a) Evaluated during the Appraiser Program Compliance Review; and (b) included in the *ASC's Compliance Review Report of the Appraiser Program.*

➢ Part B, *AMC Program*—Policy Statements 8 through 10 correspond with the categories that are: (a) Evaluated during the AMC Program Compliance Review; and (b) included in the *ASC's Compliance Review Report of the AMC Program.* Policy Statement 11 addresses the statutory implementation period.

➢ Part C, *Interim Sanctions* – Policy Statement 12 sets forth required procedures in the event that interim sanctions are imposed against a State by the ASC for non-compliance in either the Appraiser Program or the AMC Program.

The revised ASC Policy Statements include two appendices:

1. Appendix A provides an overview of the Compliance Review process; and
2. Appendix B provides a glossary of terms.

For reasons discussed in section III of this **SUPPLEMENTARY INFORMATION**, the revised Policy Statements are adopted substantially as proposed with modifications to Policy Statements 7 and 10 removing proposed additional requirements for complaint logs. The revised Policy Statements also contain technical, nonsubstantive changes.

III. Revised ASC Policy Statements and Public Comments on the Proposed Policy Statements

The following provides a section by section review of the proposed Policy Statements and a discussion of public comments received by the ASC concerning the proposal. The ASC received 29 comments, 27 of which addressed issues such as wind turbines and environmental issues, and were non-responsive to the proposal. The 2 comments that were responsive to the proposal were received from State appraiser certifying and licensing agencies.

1. Introduction and Purpose

The ASC proposal to expand the introduction to include the monitoring of States that elect to register and supervise the operations and activities of AMCs, and to include an explanation of the proposed Policy Statements' three parts and appendices is adopted without change in the revised ASC Policy Statements.

2. Part A: Appraiser Program

a. Policy Statement 1: Statutes, Regulations, Policies and Procedures Governing State Appraiser Programs

The ASC proposal to modify Policy Statement 1 to include a definition of trainee appraiser to better reflect how changes to Title XI affect Appraiser Programs with trainee requirements is adopted without change in the revised ASC Policy Statement.

b. Policy Statement 2: Temporary Practice

The ASC proposal to modify Policy Statement 2 to clarify requirements for temporary practice, including requirements to track temporary practice permits and maintain documentation, is adopted without change in the revised ASC Policy Statements.

c. Policy Statement 3: National Registry of Appraisers

The ASC received one comment regarding the proposal to add language to Policy Statement 3 stating, ''Only those appraisers whose registry fees have been transmitted to the ASC will be eligible to be on the Appraiser Registry for the period subsequent to payment of the fee.'' The commenter expressed concern that States would not be able to upload information to the Appraiser Registry until after the monthly invoice is paid. This would not, however, be the case. There is no change in how States populate the Appraiser Registry; States are invoiced after the information is added to the Appraiser Registry. Nothing in that process would change. An appraiser on the Appraiser Registry would only be impacted if the State failed to pay the invoice amount for that appraiser timely, which has always been ASC practice and policy. The ASC proposal to modify Policy Statement 3 to clarify requirements regarding States' submission of registry fees and eligibility of appraisers for the Appraiser Registry is adopted without change in the revised ASC Policy Statements.

d. Policy Statement 4: Application Process

The ASC proposal to modify Policy Statement 4 to include: (1) Additional guidance to States implementing AQB Criteria regarding the background of applicants for credentials and requiring States to document applicant files with evidence supporting decisions made regarding individual appraisers; (2) additional guidance on requirements for States to validate renewal requirements for appraisers and parameters for auditing education-related affidavits; and (3) clarification on the requirement that States engage analysts who are knowledgeable about the *Uniform Standards of Professional Appraisal Practice* (USPAP) and document how the analysts are qualified is adopted without change in the revised ASC Policy Statements.

e. Policy Statement 5: Reciprocity

The ASC proposal to modify Policy Statement 5 to include a requirement that States obtain and maintain sufficient relevant documentation pertaining to an application for issuance

and supervise AMCs pursuant to Title XI and the rules promulgated thereunder. (Title XI § 1124 (a), 12 U.S.C. 3353(a)). Those rules were finalized and published on June 9, 2015, at 80 FR 32658 with an effective date of August 10, 2015. (12 CFR 34.210–34.216; 12 CFR 225.190–225.196; 12 CFR 323.8–323.14; 12 CFR 1222.20–1222.26).

[7] 82 FR 43966 (Sept. 20, 2017).

[8] These Policy Statements, adopted February 14, 2018, supersede all previous Policy Statements adopted by the ASC.

of a credential by reciprocity is adopted without change in the revised ASC Policy Statements.

f. Policy Statement 6: Education

The ASC proposal to modify Policy Statement 6 to clarify that States may not continue to accept AQB approved courses after the AQB's expiration date unless the course content is reviewed and approved by the State is adopted without change in the revised ASC Policy Statements.

g. Policy Statement 7: State Agency Enforcement

The ASC received one comment regarding the proposal to require additional information on complaint logs. As proposed, States would be required to include terms of disposition, and, in the case of open complaints, the most recent activity and date thereof. The commenter addressed the burden imposed on States by requiring them to duplicate information that is readily available and documented elsewhere. The commenter also suggested that such additional requirements may be more appropriate in the case of a State that needs additional monitoring due to compliance issues with Title XI. The ASC agrees with the commenter's concerns and is adopting Policy Statement 7 without the proposed additional requirements for complaint logs. Policy Statement 7 is otherwise adopted as proposed.

3. Part B: AMC Program

a. Policy Statement 8: Statutes, Regulations, Policies and Procedures Governing State AMC Programs

Policy Statement 8 reflects the statutory provision that States are not required to establish an AMC Program, and clarifies for those States that establish AMC Programs the ASC oversight during ASC Compliance Reviews. Policy Statement 8 reiterates that States with an AMC Program must: (1) Establish and maintain an AMC Program with the legal authority and mechanisms consistent with the AMC Rule; (2) impose requirements on AMCs consistent with the AMC Rule; and (3) enforce and document ownership limitations for State-registered AMCs. Policy Statement 8 informs States that while they may have a more expansive definition of an AMC in their State statute, only AMCs that meet the federal definition in Title XI may be included on the AMC Registry. The language in Policy Statement 8 has been modified to clarify that formal ASC oversight of State AMC Programs will begin at the next regularly scheduled Compliance Review of a State after a State elects to register and supervise AMCs pursuant to the AMC Rule. Policy Statement 8 is otherwise adopted as proposed.

b. Policy Statement 9: National Registry of AMCs (AMC Registry)

The ASC proposal for new Policy Statement 9 is adopted without change in the revised ASC Policy Statements. Policy Statement 9 clarifies requirements for States with an AMC Program to maintain the AMC Registry.

c. Policy Statement 10: State Agency Enforcement

Consistent with Policy Statement 7, Policy Statement 10 is adopted without the proposed additional requirements for complaint logs. Policy Statement 10 is otherwise adopted as proposed and clarifies requirements for States' AMC enforcement programs in those States with an AMC Program.

d. Policy Statement 11: Statutory Implementation Period

The ASC proposal for new Policy Statement 11 is adopted without change in the revised ASC Policy Statements. Policy Statement 11 clarifies the statutory implementation period and any extensions that may be granted.

4. Part C: Interim Sanctions

a. Policy Statement 12: Interim Sanctions

The ASC proposal for new Policy Statement 12 is adopted without change in the revised ASC Policy Statements. Policy Statement 12 clarifies interim sanctions which may be imposed on State Programs when those programs fail to be effective. The procedures include due process provisions and rules of evidence, and establish timeliness for proceedings.

5. Appendices

The ASC proposal for Appendix A, which provides an overview of the Compliance Review process; and Appendix B, which provides a glossary of terms, is adopted without change in the revised ASC Policy Statements.

The ASC revised Policy Statements are adopted as follows:

Contents

Introduction and Purpose
Part A: Appraiser Program
Policy Statement 1
Statutes, Regulations, Policies and Procedures Governing State Appraiser Programs
A. State Regulatory Structure
B. Funding and Staffing
C. Minimum Criteria
D. Federally Recognized Appraiser Classifications
E. Non-federally Recognized Credentials
F. Appraisal Standards
G. Exemptions
H. ASC Staff Attendance at State Board Meetings
I. Summary of Requirements
Policy Statement 2
Temporary Practice
A. Requirement for Temporary Practice
B. Excessive Fees or Burdensome Requirements
C. Summary of Requirements
Policy Statement 3
National Registry of Appraisers (Appraiser Registry)
A. Requirements for the Appraiser Registry
B. Registry Fee and Invoicing Policies
C. Access to Appraiser Registry Data
D. Information Sharing
E. Summary of Requirements
Policy Statement 4
Application Process
A. Processing of Applications
B. Qualifying Education for Initial or Upgrade Applications
C. Continuing Education for Reinstatement and Renewal Applications
D. Experience for Initial or Upgrade Applications
E. Examination
F. Summary of Requirements
Policy Statement 5
Reciprocity
A. Reciprocity Policy
B. Application of Reciprocity Policy
C. Appraiser Compliance Requirements
D. Well-Documented Application Files
E. Summary of Requirements
Policy Statement 6
Education
A. Course Approval
B. Distance Education
C. Summary of Requirements
Policy Statement 7
State Agency Enforcement
A. State Agency Regulatory Program
B. Enforcement Process
C. Summary of Requirements
Part B: AMC Program
Policy Statement 8
Statutes, Regulations, Policies and Procedures Governing State AMC Programs
A. Participating States and ASC Oversight
B. Relation to State Law
C. Funding and Staffing
D. Minimum Requirements for Registration and Supervision of AMCs as Established by the AMC Rule
E. Summary of Requirements
Policy Statement 9
National Registry of AMCs (AMC Registry)
A. Requirements for the AMC Registry
B. Registry Fee and Invoicing Policies
C. Reporting Requirements
D. Access to AMC Registry Data
E. Summary of Requirements
Policy Statement 10
State Agency Enforcement
A. State Agency Regulatory Program
B. Enforcement Process
C. Summary of Requirements
Policy Statement 11
Statutory Implementation Period
Part C: Interim Sanctions
Policy Statement 12

Interim Sanctions
A. Authority
B. Opportunity To Be Heard or Correct Conditions
C. Procedures
Appendices
Appendix A—Compliance Review Process
Appendix B—Glossary of Terms

Introduction and Purpose

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended (Title XI) established the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC).[9] The purpose of Title XI is to provide protection of Federal financial and public policy interests by upholding Title XI requirements for appraisals performed for federally related transactions. Specifically, those appraisals shall be performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

Pursuant to Title XI, one of the ASC's core functions is to monitor the requirements established by the States [10] for certification and licensing of appraisers qualified to perform appraisals in connection with federally related transactions.[11] Title XI as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) [12] expanded the ASC's core functions to include monitoring of the requirements established by States that elect to register and supervise the operations and activities of appraisal management companies [13] (AMCs).[14]

The ASC performs periodic Compliance Reviews [15] of each State appraiser regulatory program (Appraiser Program) to determine compliance or lack thereof with Title XI, and to assess implementation of minimum requirements for credentialing of appraisers as adopted by the Appraiser Qualifications Board (*The Real Property Appraiser Qualification Criteria* or AQB Criteria). As a result of the Dodd-Frank Act amendments to Title XI, States with an AMC regulatory program (AMC Program) will be evaluated during the Compliance Review to determine compliance or lack thereof with Title XI, and to assess implementation of the minimum requirements for State registration and supervision of AMCs as established by the AMC Rule.[16]

The ASC is issuing these revised Policy Statements [17] in three parts to provide States with the necessary information to maintain their Appraiser Programs and AMC Programs in compliance with Title XI:

➢ Part A, *Appraiser Program*—Policy Statements 1 through 7 correspond with the categories that are: (a) Evaluated during the Appraiser Program Compliance Review; and (b) included in the *ASC's Compliance Review Report of the Appraiser Program.*

➢ Part B, *AMC Program*—Policy Statements 8 through 10 correspond with the categories that are: (a) Evaluated during the AMC Program Compliance Review; and (b) included in the *ASC's Compliance Review Report of the AMC Program.*

➢ Part C, *Interim Sanctions*—Policy Statement 12 sets forth required procedures in the event that interim sanctions are imposed against a State by the ASC for non-compliance in either the Appraiser Program or the AMC Program.

Part A: Appraiser Program

Policy Statement 1

Statutes, Regulations, Policies and Procedures Governing State Appraiser Programs

A. State Regulatory Structure

Title XI requires the ASC to monitor each State appraiser certifying and licensing agency for the purpose of determining whether each such agency has in place policies, practices and procedures consistent with the requirements of Title XI.[18] The ASC recognizes that each State may have legal, fiscal, regulatory or other factors that may influence the structure and organization of its Appraiser Program. Therefore, a State has flexibility to structure its Appraiser Program so long as it meets its Title XI-related responsibilities.

States should maintain an organizational structure for appraiser certification, licensing and supervision that avoids conflicts of interest. A State agency may be headed by a board, commission or an individual. State board [19] or commission members, or employees in policy or decision-making positions, should understand and adhere to State statutes and regulations governing performance of responsibilities consistent with the highest ethical standards for public service. In addition, Appraiser Programs using private entities or contractors should establish appropriate internal policies, procedures and safeguards to promote compliance with the State agency's responsibilities under Title XI and these Policy Statements.

B. Funding and Staffing

The Dodd-Frank Act amended Title XI to require the ASC to determine whether States have sufficient funding and staffing to meet their Title XI requirements. Compliance with this provision requires that a State must provide its Appraiser Program with funding and staffing sufficient to carry out its Title XI-related duties. The ASC evaluates the sufficiency of funding and staffing as part of its review of all aspects of an Appraiser Program's effectiveness, including the adequacy of State boards, committees, or commissions responsible for carrying out Title XI-related duties.

C. Minimum Criteria

Title XI requires States to adopt and/or implement all relevant AQB Criteria. Requirements established by a State for certified residential or certified general appraisers, as well as requirements established for licensed appraisers, trainee appraisers and supervisory appraisers must meet or exceed applicable AQB Criteria.

D. Federally Recognized Appraiser Classifications

State Certified Appraisers

''State certified appraisers'' means those individuals who have satisfied the requirements for residential or general

[9] The ASC Board is made up of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System, Bureau of Consumer Financial Protection, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and National Credit Union Administration). The other two members are designated by the heads of the Department of Housing and Urban Development and the Federal Housing Finance Agency.

[10] See Appendix B, Glossary of Terms, for the definition of ''State.''

[11] See Appendix B, Glossary of Terms, for the definition of ''federally related transaction.''

[12] Public Law 111–203, 124 Stat. 1376.

[13] Title XI § 1103 (a)(1)(B), 12 U.S.C. 3332.

[14] See Appendix B, Glossary of Terms, for the definition of ''appraisal management company'' or AMC.

[15] See Appendix A, Compliance Review Process.

[16] The Dodd-Frank Act required the Office of the Comptroller of the Currency; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; National Credit Union Administration; Bureau of Consumer Financial Protection; and Federal Housing Finance Agency to establish, by rule, minimum requirements to be imposed by a participating State appraiser certifying and licensing agency on AMCs doing business in the State. (Title XI § 1124 (a), 12 U.S.C. 3353(a)). Those rules were finalized and published on June 9, 2015, at 80 FR 32658 with an effective date of August 10, 2015. (12 CFR 34.210–34.216; 12 CFR 225.190–225.196; 12 CFR 323.8–323.14; 12 CFR 1222.20–1222.26.)

[17] These Policy Statements, adopted February 14, 2018, supersede all previous Policy Statements adopted by the ASC.

[18] Title XI § 1118 (a), 12 U.S.C. 3347.

[19] *See* Appendix B, *Glossary of Terms,* for the definition of ''State board.''

certification in a State whose criteria for certification meet or exceed the applicable minimum AQB Criteria. Permitted scope of practice and designation for State certified residential or certified general appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

State Licensed Appraisers

''State licensed appraisers'' means those individuals who have satisfied the requirements for licensing in a State whose criteria for licensing meet or exceed the applicable minimum AQB Criteria. The permitted scope of practice and designation for State licensed appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

Trainee Appraisers

''Trainee appraisers'' means those individuals who have satisfied the requirements for credentialing in a State whose criteria for credentialing meet or exceed the applicable minimum AQB Criteria. Any minimum qualification requirements established by a State for individuals in the position of ''trainee appraiser'' or ''supervisory appraiser'' must meet or exceed the applicable minimum AQB Criteria. ASC staff will evaluate State designations such as ''registered appraiser,'' ''apprentice appraiser,'' ''provisional appraiser,'' or any other similar designation to determine if, in substance, such designation is consistent with a ''trainee appraiser'' designation and, therefore, administered to comply with Title XI. The permitted scope of practice and designation for trainee appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

Any State or Federal agency may impose additional appraiser qualification requirements for trainee, State licensed, certified residential or certified general classifications, if they consider such requirements necessary to carry out their responsibilities under Federal and/or State statutes and regulations, so long as the additional qualification requirements do not preclude compliance with AQB Criteria.

E. Non-Federally Recognized Credentials

States using non-federally recognized credentials or designations [20] must ensure that they are easily distinguished from the federally recognized credentials.

F. Appraisal Standards

Title XI and the Federal financial institutions regulatory agencies' regulations mandate that all appraisals performed in connection with federally related transactions be in written form, prepared in accordance with generally accepted appraisal standards as promulgated by the Appraisal Standards Board (ASB) in the Uniform Standards of Professional Appraisal Practice (USPAP), and be subject to appropriate review for compliance with USPAP.[21] States that have incorporated USPAP into State law should ensure that statutes or regulations are updated timely to adopt the current version of USPAP, or if State law allows, automatically incorporate the latest version of USPAP as it becomes effective. States should consider ASB Advisory Opinions, Frequently Asked Questions, and other written guidance issued by the ASB regarding interpretation and application of USPAP.

Any State or Federal agency may impose additional appraisal standards if they consider such standards necessary to carry out their responsibilities, so long as additional appraisal standards do not preclude compliance with USPAP or the Federal financial institutions regulatory agencies' appraisal regulations for work performed for federally related transactions.

The Federal financial institutions regulatory agencies' appraisal regulations define ''appraisal'' and identify which real estate-related financial transactions require the services of a State certified or licensed appraiser. These regulations define ''appraisal'' as a ''written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s) supported by the presentation and analysis of relevant market information.'' Per these regulations, an appraiser performing an appraisal review which includes the reviewer providing his or her own opinion of value constitutes an appraisal. Under these same regulations, an appraisal review that does not include the reviewer providing his or her own opinion of value does not constitute an appraisal. Therefore, under the Federal financial institutions regulatory agencies' regulations, only those transactions that involve appraisals for federally related transactions require the services of a State certified or licensed appraiser.

G. Exemptions

Title XI and the Federal financial institutions regulatory agencies' regulations specifically require the use of State certified or licensed appraisers in connection with the appraisal of certain real estate-related financial transactions.[22] A State may not exempt any individual or group of individuals from meeting the State's certification or licensing requirements if the individual or group member performs an appraisal when Federal statutes and regulations require the use of a certified or licensed appraiser. For example, an individual who has been exempted by the State from its appraiser certification or licensing requirements because he or she is an officer, director, employee or agent of a federally regulated financial institution would not be permitted to perform an appraisal in connection with a federally related transaction.

H. ASC Staff Attendance at State Board Meetings

The efficacy of the ASC's Compliance Review process rests on the ASC's ability to obtain reliable information about all areas of a State's Appraiser Program. ASC staff regularly attends open State board meetings as part of the on-site Compliance Review process. States are expected to make available for review by ASC staff minutes of closed meetings and executive sessions. States are encouraged to allow ASC staff to attend closed and executive sessions of State board meetings where such attendance would not violate State law or regulation or be inconsistent with other legal obligations of the State board. ASC staff is obligated to protect information obtained during the Compliance Review process concerning the privacy of individuals and any confidential matters.

I. Summary of Requirements

1. States must require that appraisals be performed in accordance with the latest version of USPAP.[23]

2. States must, at a minimum, adopt and/or implement all relevant AQB Criteria.[24]

[20] *See* Appendix B, *Glossary of Terms,* for the definition of ''non-federally recognized credentials or designations.''

[21] *See* Appendix B, *Glossary of Terms* for the definition of ''Uniform Standards of Professional Appraisal Practice.''

[22] Title XI § 1112, 12 U.S.C. 3341; Title XI § 1113, 12 U.S.C. 3342; Title XI § 1114, 12 U.S.C. 3343.

[23] Title XI § 1101, 12 U.S.C. 3331; Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[24] Title XI §§ 1116 (a), (c) and (e), 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347.

3. States must have policies, practices and procedures consistent with Title XI.[25]

4. States must have funding and staffing sufficient to carry out their Title XI-related duties.[26]

5. States must use proper designations and permitted scope of practice for certified residential; certified general; licensed; and trainee classifications.[27]

6. State board members, and any persons in policy or decision-making positions, must perform their responsibilities consistent with Title XI.[28]

7. States' certification and licensing requirements must meet the minimum requirements set forth in Title XI.[29]

8. State requirements for trainee appraisers and supervisory appraisers must meet or exceed the AQB Criteria.

9. State agencies must be granted adequate authority by the State to maintain an effective regulatory Appraiser Program in compliance with Title XI.[30]

Policy Statement 2

Temporary Practice

A. Requirement for Temporary Practice

Title XI requires State agencies to recognize, on a temporary basis, the certification or license of an out-of-State appraiser entering the State for the purpose of completing an appraisal assignment[31] for a federally related transaction. States are not, however, required to grant temporary practice permits to trainee appraisers. The out-of-State appraiser must register with the State agency in the State of temporary practice (Host State). A State may determine the process necessary for ''registration'' provided such process complies with Title XI and does not impose ''excessive fees or burdensome requirements,'' as determined by the ASC.[32] Thus, a credentialed appraiser[33] from State A has a statutory right to enter State B (the Host State) to perform an assignment concerning a federally related transaction, so long as the appraiser registers with the State agency in State B prior to performing the assignment. Though Title XI contemplates reasonably free movement of credentialed appraisers across State lines, an out-of-State appraiser must comply with the Host State's real estate appraisal statutes and regulations and is subject to the Host State's full regulatory jurisdiction. States should utilize the National Registry of Appraisers to verify credential status on applicants for temporary practice.

B. Excessive Fees or Burdensome Requirements

Title XI prohibits States from imposing excessive fees or burdensome requirements, as determined by the ASC, for temporary practice.[34] Adherence by State agencies to the following mandates and prohibitions will deter the imposition of excessive fees or burdensome requirements.

Host State agencies must:

a. issue temporary practice permits on an assignment basis;

b. issue temporary practice permits within five business days of receipt of a completed application, or notify the applicant and document the file as to the circumstances justifying delay or other action;

c. issue temporary practice permits designating the permit's effective date;

d. take regulatory responsibility for a temporary practitioner's unethical, incompetent and/or fraudulent practices performed while in the State;

e. notify the appraiser's home State agency[35] in the case of disciplinary action concerning a temporary practitioner;

f. allow at least one temporary practice permit extension through a streamlined process;

g. track all temporary practice permits using a permit log which includes the name of the applicant, date application received, date completed application received, date of issuance, and date of expiration, if any (States are strongly encouraged to maintain this information in an electronic, sortable format); and

h. maintain documentation sufficient to demonstrate compliance with this Policy Statement.

Host State agencies may not:

a. limit the valid time period of a temporary practice permit to less than 6 months (unless the applicant requests a specific end date and the applicant is allowed an extension if required to complete the assignment, the applicant's credential is no longer in active status during that period of time);

b. limit an appraiser to one temporary practice permit per calendar year;[36]

c. charge a temporary practice permit fee exceeding $250, including one extension fee;

d. impose State appraiser qualification requirements for education, experience and/or exam upon temporary practitioners;

e. require temporary practitioners to obtain a certification or license in the State of temporary practice;

f. require temporary practitioners to affiliate with an in-State licensed or certified appraiser;

g. refuse to register licensed or certified appraisers seeking temporary practice in a State that does not have a licensed or certified level credential; or

h. prohibit temporary practice.

Home State agencies may not:

a. delay the issuance of a written ''letter of good standing'' or similar document for more than five business days after receipt of a request; or

b. fail to consider and, if appropriate, take disciplinary action when one of its certified or licensed appraisers is disciplined by another State.

C. Summary of Requirements

1. States must recognize, on a temporary basis, appraiser credentials issued by another State if the property to be appraised is part of a federally related transaction.[37]

2. States must adhere to mandates, prohibitions and documentation requirements as set forth above in Section B above, titled *Excessive Fees or Burdensome Requirements.*[38]

Policy Statement 3

National Registry of Appraisers (Appraiser Registry)

A. Requirements for the Appraiser Registry

Title XI requires the ASC to maintain a National Registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions.[39] Title XI further requires the States to transmit to the ASC: (1) A roster listing individuals who have received a State certification or license

[25] Title XI § 1118 (a), 12 U.S.C. 3347.

[26] *Id;* Title XI § 1118 (b), 12 U.S.C. 3347.

[27] Title XI §§ 1116 (a), (c) and (e), 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; Title XI § 1113, 12 U.S.C. 3342; AQB *Real Property Appraiser Qualification Criteria.*

[28] Title XI § 1118 (a), 12 U.S.C. 3347.

[29] Title XI §§ 1116 (a), (c) and (e), 12 U.S.C. 3345.

[30] Title XI § 1118 (b), 12 U.S.C. 3347.

[31] *See* Appendix B, *Glossary of Terms,* for the definition of ''assignment.''

[32] Title XI § 1122 (a) (2), 12 U.S.C. 3351.

[33] *See* Appendix B, *Glossary of Terms,* for the definition of ''credentialed appraisers.''

[34] Title XI § 1122 (a)(2), 12 U.S.C. 3351.

[35] See Appendix B, Glossary of Terms, for the definition of ''home State agency.''

[36] State agencies may establish by statute or regulation a policy that places reasonable limits on the number of times an out-of-State certified or licensed appraiser may exercise his or her temporary practice rights in a given year. If such a policy is not established, a State agency may choose not to honor an out-of-State certified or licensed appraiser's temporary practice rights if it has made a determination that the appraiser is abusing his or her temporary practice rights and is regularly engaging in real estate appraisal services within the State.

[37] Title XI § 1122 (a)(1), 12 U.S.C. 3351.

[38] Title XI § 1122 (a)(2), 12 U.S.C. 3351.

[39] Title XI § 1103 (a)(3), 12 U.S.C. 3332.

in accordance with Title XI; (2) reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, revocations and suspensions; and (3) the registry fee as set by the ASC[40] from individuals who have received certification or licensing. States must notify the ASC as soon as practicable if a credential holder listed on the Appraiser Registry does not qualify for the credential held.

Roster and registry fee requirements apply to all individuals who receive State certifications or licenses, originally or by reciprocity, whether or not the individuals are, in fact, performing or planning to perform appraisals in federally related transactions. If an appraiser is certified or licensed in more than one State, the appraiser is required to be on each State's roster of certified or licensed appraisers, and a registry fee is due from each State in which the appraiser is certified or licensed.

Only AQB-compliant certified and licensed appraisers in active status on the Appraiser Registry are eligible to perform appraisals in connection with federally related transactions. Only those appraisers whose registry fees have been transmitted to the ASC will be eligible to be on the Appraiser Registry for the period subsequent to payment of the fee.

Some States may give State certified or licensed appraisers an option to not pay the registry fee. If a State certified or licensed appraiser chooses not to pay the registry fee, then the Appraiser Program must ensure that any potential user of that appraiser's services is aware that the appraiser is not eligible to perform appraisals for federally related transactions. The Appraiser Program must place a conspicuous notice directly on the face of any evidence of the appraiser's authority to appraise stating, ''Not Eligible To Appraise Federally Related Transactions,'' and the appraiser must not be listed in active status on the Appraiser Registry.

The ASC extranet application allows States to update their appraiser credential information directly to the Appraiser Registry. Only Authorized Registry Officials are allowed to request access for their State personnel (see section C below). The ASC will issue a User Name and Password to the designated State personnel responsible for that State's Appraiser Registry entries. Designated State personnel are required to protect the right of access, and not share their User Name or Password with anyone. States must adopt and implement a written policy to protect the right of access, as well as the ASC issued User Name and Password. The ASC will provide detailed specifications regarding the data elements on the Appraiser Registry.

B. Registry Fee and Invoicing Policies

Each State must remit to the ASC the annual registry fee, as set by the ASC, for State certified or licensed appraisers within the State to be listed on the Appraiser Registry. Requests to prorate refunds or partial-year registrations will not be granted. If a State collects multiple-year fees for multiple-year certifications or licenses, the State may choose to remit to the ASC the total amount of the multiple-year registry fees or the equivalent annual fee amount. The ASC will, however, record appraisers on the Appraiser Registry only for the number of years for which the ASC has received payment. Nonpayment by a State of an appraiser's registry fee may result in the status of that appraiser being listed as ''inactive.'' States must reconcile and pay registry invoices in a timely manner (45 calendar days after the invoice date). When a State's failure to pay a past due invoice results in appraisers being listed as inactive, the ASC will not change those appraisers back to active status until payment is received from the State. An inactive status on the Appraiser Registry, for whatever the reason, renders an appraiser ineligible to perform appraisals in connection with federally related transactions.

C. Access to Appraiser Registry Data

The ASC website provides free access to the public portion of the Appraiser Registry at *www.asc.gov.* The public portion of the Appraiser Registry data may be downloaded using predefined queries or user-customized applications.

Access to the full database, which includes non-public data (*e.g.,* certain disciplinary action information), is restricted to authorized State and Federal regulatory agencies. States must designate a senior official, such as an executive director, to serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the designated Authorized Registry Official. States must ensure that the authorization information provided to the ASC is updated and accurate.

D. Information Sharing

Information sharing (routine exchange of certain information among lenders, governmental entities, State agencies and the ASC) is essential for carrying out the purposes of Title XI. Title XI requires the ASC, any other Federal agency or instrumentality, or any federally recognized entity to report any action of a State certified or licensed appraiser that is contrary to the purposes of Title XI to the appropriate State agency for disposition. The ASC believes that full implementation of this Title XI requirement is vital to the integrity of the system of State appraiser regulation. States are encouraged to develop and maintain procedures for sharing of information among themselves.

The Appraiser Registry's value and usefulness are largely dependent on the quality and frequency of State data submissions. Accurate and frequent data submissions from all States are necessary to maintain an up-to-date Appraiser Registry. States must submit appraiser data in a secure format to the ASC at least monthly. If there are no changes to the data, the State agency must notify the ASC of that fact in writing. States are encouraged to submit data as frequently as possible.

States must report all disciplinary action[41] taken against an appraiser to the ASC via the extranet application within 5 business days after the disciplinary action is final, as determined by State law.[42] States not reporting via the extranet application must provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement.[43]

For the most serious disciplinary actions (*i.e.,* voluntary surrenders, suspensions and revocations, or any action that interrupts a credential holder's ability to practice), the appraiser's status must be changed on the Appraiser Registry to ''inactive,'' thereby making the appraiser ineligible to perform appraisals for federally related transactions or other transactions requiring the use of State certified or licensed appraisers.[44]

Title XI also contemplates the reasonably free movement of certified and licensed appraisers across State lines. This freedom of movement assumes, however, that certified and licensed appraisers are, in all cases, held accountable and responsible for their actions while performing appraisal activities.

[40] Title XI § 1109, *Roster of State certified or licensed appraisers; authority to collect and transmit fees,* requires the ASC to consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. (Title XI § 1109 (a), 12 U.S.C. 3338.)

[41] *See* Appendix B, *Glossary of Terms,* for the definition of ''disciplinary action.''

[42] *Id.*

[43] Title XI § 1118 (a), 12 U.S.C. 3347.

[44] *Id.*

E. Summary of Requirements

1. States must reconcile and pay registry invoices in a timely manner (45 calendar days after the invoice date).[45]

2. States must report all disciplinary action taken against an appraiser to the ASC via the extranet application within 5 business days after the disciplinary action is final, as determined by State law.[46]

3. States not reporting via the extranet application must provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement.[47]

4. For the most serious disciplinary actions (*i.e.,* voluntary surrenders, suspensions and revocations, or any action that interrupts a credential holder's ability to practice), the appraiser's status must be changed on the Appraiser Registry to ''inactive,'' thereby making the appraiser ineligible to perform appraisals for federally related transactions or other transactions requiring the use of State certified or licensed appraisers.[48]

5. States must designate a senior official, such as an executive director, who will serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the selected Authorized Registry Official, and any individual(s) authorized to act on their behalf.[49]

6. States must ensure that the authorization information provided to the ASC is updated and accurate.[50]

7. States must adopt and implement a written policy to protect the right of access to the Appraiser Registry, as well as the ASC issued User Name and Password.[51]

8. States must ensure the accuracy of all data submitted to the Appraiser Registry.[52]

9. States must submit appraiser data (other than discipline) to the ASC at least monthly. If a State's data does not change during the month, the State agency must notify the ASC of that fact in writing.[53]

10. If a State certified or licensed appraiser chooses not to pay the registry fee, the State must ensure that any potential user of that appraiser's services is aware that the appraiser's certificate or license is limited to performing appraisals only in connection with non-federally related transactions.[54]

Policy Statement 4

Application Process

AQB Criteria sets forth the minimum education, experience and examination requirements applicable to all States for credentialing of real property appraisers (certified, licensed, trainee and supervisory). In the application process, States must, at a minimum, employ a reliable means of validating both education and experience credit claimed by applicants for credentialing.[55] Effective January 1, 2017, AQB Criteria also requires States to assess whether an applicant for a real property appraiser credential possesses a background that would not call into question public trust. The basis for such assessment shall be a matter left to the individual States, and must, at a minimum, be documented to the file.

A. Processing of Applications

States must process applications in a consistent, equitable and well-documented manner. Applications for credentialing should be timely processed by State agencies (within 90 calendar days after receipt of a completed application). Any delay in the processing of applications must be sufficiently documented in the file to explain the delay. States must ensure appraiser credential applications submitted for processing do not contain invalid examinations as established by AQB Criteria.

States must obtain and maintain sufficient relevant documentation pertaining to an application for issuance, upgrade and renewal of a credential so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations. Documentation must include:

1. Application receipt date;
2. Education;
3. Experience;
4. Examination;
5. Continuing education; and
6. Any administrative or disciplinary action taken in connection with the application process, including results of any continuing education audit.

B. Qualifying Education for Initial or Upgrade Applications

States must verify that:

(1) The applicant's claimed education courses are acceptable under AQB Criteria; and

(2) the applicant has successfully completed courses consistent with AQB Criteria for the appraiser credential sought.

States may not accept an affidavit for claimed qualifying education from applicants for any federally recognized credential.[56] States must maintain adequate documentation to support verification of education claimed by applicants.

C. Continuing Education for Reinstatement and Renewal Applications

1. Reinstatement Applications

States must verify that:

(1) The applicant's claimed continuing education courses are acceptable under AQB Criteria; and

(2) the applicant has successfully completed all continuing education consistent with AQB Criteria for reinstatement of the appraiser credential sought.

States may not accept an affidavit for continuing education claimed from applicants for reinstatement. Applicants for reinstatement must submit documentation to support claimed continuing education and States must maintain adequate documentation to support verification of claimed education.

2. Renewal Applications

States must ensure that continuing education courses for renewal of an appraiser credential are consistent with AQB Criteria and that continuing education hours required for renewal of an appraiser credential were completed consistent with AQB Criteria. States may accept affidavits for continuing education credit claimed for credential renewal so long as the State implements a reliable validation procedure that adheres to the following objectives and requirements:

a. Validation Objectives

The State's validation procedures must be structured to permit acceptable projections of the sample results to the entire population of subject appraisers. Therefore, the sample must include an

[45] Title XI § 1118 (a), 12 U.S.C. 3347; Title XI § 1109 (a), 12 U.S.C. 3338.

[46] *Id.*

[47] Title XI § 1118 (a), 12 U.S.C. 3347.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] Includes applications for credentialing of trainee, licensed, certified residential or certified general classifications.

[56] If a State accepts education-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require documentation to support the appraiser's educational qualification for the certified classification, not just the incremental amount of education required to move from the non-certified to the certified classification. This requirement applies to all federally recognized credentials.

adequate number of affidavits selected from each federally recognized credential level to have a reasonable chance of identifying appraisers who fail to comply with AQB Criteria, and the sample must include a statistically relevant representation of the appraiser population being sampled.

b. Minimum Standards

(1) Validation must include a prompt post-approval audit. Each audit of an affidavit for continuing education credit claimed must be completed within 60 business days from the date the credential is scheduled for renewal (based on the credential's expiration date). To ensure the audit is a statistically relevant representation, a sampling of credentials that were renewed after the scheduled expiration date and/or beyond the date the sample was selected, must also be audited to ensure that a credential holder may not avoid being selected for a continuing education audit by renewing early or late.

(2) States must audit the continuing education-related affidavit for each credentialed appraiser selected in the sampling procedure.

(3) States must determine that education courses claimed conform to AQB Criteria and that the appraiser successfully completed each course.

(4) When a State determines that an appraiser's continuing education does not meet AQB Criteria, and the appraiser has failed to complete any remedial action offered, the State must take appropriate action to suspend the appraiser's eligibility to perform appraisals in federally related transactions until such time that the requisite continuing education has been completed. The State must notify the ASC within five (5) business days after taking such action in order for the appraiser's record on the Appraiser Registry to be updated appropriately.

(5) If a State determines that a renewal applicant knowingly falsely attested to completing the continuing education required by AQB Criteria, the State must take appropriate administrative and/or disciplinary action and report such action, if deemed to be discipline, to the ASC within five (5) business days.

(6) If more than ten percent of the audited appraisers fail to meet the AQB Criteria, the State must take remedial action [57] to address the apparent weakness of its affidavit process. The ASC will determine on a case-by-case basis whether remedial actions are effective and acceptable.

(7) In the case of a renewal being processed after the credential's expiration date, but within the State's allowed grace period for a late renewal, the State must establish a reliable process to audit affidavits for continuing education (*e.g.,* requiring documentation of all continuing education).

c. Documentation

States must maintain adequate documentation to support its affidavit renewal and audit procedures and actions.

d. List of Education Courses

To promote accountability, the ASC encourages States accepting affidavits for continuing education credit claimed for credential renewal to require that the appraiser provide a list of courses to support the affidavit.

D. Experience for Initial or Upgrade Applications

States must ensure that appraiser experience logs conform to AQB Criteria. States may not accept an affidavit for experience credit claimed by applicants for any federally recognized credential.[58]

1. Validation Required

States must implement a reliable validation procedure to verify that each applicant's experience meets AQB Criteria, including but not limited to, being USPAP compliant and containing the required number of hours and months.

2. Validation Procedures, Objectives and Requirements

a. Experience Hours Validation

States must determine the hours and time period claimed on the experience log are accurate. Appraiser Program staff or State board members must select the work product to validate the experience hours claimed; applicants may not have any role in this selection process.

b. USPAP Compliance

States must analyze a representative sample of the applicant's work product for compliance with USPAP. For appraisal experience to be acceptable under AQB Criteria, it must be USPAP compliant. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP. Persons analyzing work product for USPAP compliance must be knowledgeable about appraisal practice and USPAP, and States must be able to document how such persons are so qualified.

c. Determination of Experience Time Periods

Experience time periods must conform to requirements set forth in the AQB Criteria for the credential sought.

d. Supporting Documentation

States must maintain adequate documentation to support validation methods. The applicant's file, either electronic or paper, must include the information necessary to identify each appraisal assignment selected to validate the experience hours claimed and each appraisal assignment analyzed by the State for USPAP compliance, notes, letters and/or reports prepared by the official(s) evaluating the report for USPAP compliance, and any correspondence exchanged with the applicant regarding the appraisals submitted. This supporting documentation may be discarded upon the completion of the first ASC Compliance Review performed after the credential issuance or denial for that applicant.

E. Examination

States must ensure that an appropriate AQB-approved qualifying examination is administered for each of the federally recognized appraiser classifications requiring an examination.

[57] For example:

(1) A State may conduct an additional audit using a higher percentage of audited appraisers; or

(2) a State may publicly post action taken to sanction non-compliant appraisers to increase awareness in the appraiser community of the importance of compliance with continuing education requirements.

[58] *See* Policy Statement 1D and E for discussion of ''federally recognized credential'' and ''non-federally recognized credential.'' If prior to July 1, 2013, a State accepted experience-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require experience documentation to support the appraiser's qualification for the certified classification, not just the incremental amount of experience required to move from the non-certified to the certified classification. For example, if a State accepted an experience affidavit from an appraiser to support the appraiser's initial hours to qualify for the licensed classification, and subsequently that appraiser applies to upgrade to the certified residential classification, the State must require documentation to support the full experience hours required for the certified residential classification, not just the difference in hours between the two classifications.

F. Summary of Requirements

Processing of Applications

1. States must process applications in a consistent, equitable and well-documented manner.[59]

2. States must ensure appraiser credential applications submitted for processing do not contain invalid examinations as established by AQB Criteria.[60]

3. States must obtain and maintain sufficient relevant documentation pertaining to an application for issuance, upgrade or renewal of a credential so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.[61]

Education

1. States must verify that the applicant's claimed education courses are acceptable under AQB Criteria, whether for initial credentialing, renewal, upgrade or reinstatement.[62]

2. States must verify that the applicant has successfully completed courses consistent with AQB Criteria for the appraiser credential sought, whether for initial credentialing, renewal, upgrade or reinstatement.[63]

3. States must maintain adequate documentation to support verification.[64]

4. States may not accept an affidavit for education claimed from applicants for any federally recognized credential.[65]

5. States may not accept an affidavit for continuing education claimed from applicants for reinstatement.[66]

6. States may accept affidavits for continuing education credit claimed for credential renewal so long as the State implements a reliable validation procedure.[67]

7. Audits of affidavits for continuing education credit claimed must be completed within sixty (60) business days from the date the credential is scheduled for renewal (based on the credential's expiration date).[68]

8. In the case of a renewal being processed after the credential's expiration date, but within the State's allowed grace period for a late renewal, the State must establish a reliable process to audit affidavits for continuing education (*e.g.,* requiring documentation of all continuing education).[69]

9. States are required to take remedial action when it is determined that more than ten percent of audited appraiser's affidavits for continuing education credit claimed fail to meet the minimum AQB Criteria.[70]

10. States are required to take appropriate administrative and/or disciplinary action when it is determined that an applicant knowingly falsely attested to completing continuing education.[71]

11. When a State determines that an appraiser's continuing education does not meet AQB Criteria, and the appraiser has failed to complete any remedial action offered, the State must take appropriate action to suspend the appraiser's eligibility to perform appraisals in federally related transactions until such time that the requisite continuing education has been completed. The State must notify the ASC within five (5) business days after taking such action in order for the appraiser's record on the Appraiser Registry to be updated appropriately.[72]

Experience

1. States may not accept an affidavit for experience credit claimed from applicants for any federally recognized credential.[73]

2. States must ensure that appraiser experience logs conform to AQB Criteria.[74]

3. States must use a reliable means of validating appraiser experience claims on all initial or upgrade applications for appraiser credentialing.[75]

4. States must select the work product to validate the experience hours claimed on all initial or upgrade applications for appraiser credentialing.[76]

5. States must analyze a representative sample of the applicant's work product for compliance with USPAP on all initial or upgrade applications for appraiser credentialing.[77]

6. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP on all initial or upgrade applications for appraiser credentialing.[78]

7. Persons analyzing work product for USPAP compliance must be knowledgeable about appraisal practice and USPAP, and States must be able to document how such persons are so qualified.[79]

8. Experience time periods must conform to requirements set forth in the AQB Criteria for the credential sought.[80]

Examination

1. States must ensure that an appropriate AQB-approved qualifying examination is administered for each of the federally recognized credentials requiring an examination.[81]

Policy Statement 5

Reciprocity

A. Reciprocity Policy

Title XI contemplates the reasonably free movement of certified and licensed appraisers across State lines. The ASC monitors Appraiser Programs for compliance with the reciprocity provision of Title XI as amended by the Dodd-Frank Act.[82] Title XI requires that in order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must have a policy in place for issuing reciprocal credentials IF:

a. The appraiser is coming from a State (Home State) that is ''in compliance'' with Title XI as determined by the ASC; AND

b. (i) the appraiser holds a valid credential from the Home State; AND

(ii) the credentialing requirements of the Home State[83] meet or exceed those of the reciprocal credentialing State (Reciprocal State).[84]

An appraiser relying on a credential from a State that does not have such a policy in place may not perform appraisals for federally related transactions. A State may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy. However, States cannot impose additional impediments to obtaining reciprocal credentials.

For purposes of implementing the reciprocity policy, States with an ASC Finding[85] of ''Poor'' do not satisfy the

[59] Title XI § 1118 (a), 12 U.S.C. 3347.

[60] Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[61] Title XI § 1118 (a), 12 U.S.C. 3347.

[62] *Id.*

[63] *Id.*

[64] Title XI § 1118 (a), 12 U.S.C. 3347.

[65] *Id.*

[66] *Id.*

[67] Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[68] Title XI § 1118 (a), 12 U.S.C. 3347.

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[75] Title XI § 1118 (a), 12 U.S.C. 3347.

[76] Title XI § 1118 (a), 12 U.S.C. 3347.

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[81] *Id.*

[82] Title XI § 1122 (b), 12 U.S.C. 3351.

[83] As they exist at the time of application for reciprocal credential.

[84] *Id.*

[85] *See* Appendix A, *Compliance Review Process,* for an explanation of ASC Findings.

''in compliance'' provision for reciprocity. Therefore, States are not required to recognize, for purposes of granting a reciprocal credential, the license or certification of an appraiser credentialed in a State with an ASC Finding of ''Poor.''

B. Application of Reciprocity Policy

The following examples illustrate application of reciprocity in a manner that complies with Title XI. The examples refer to the reciprocity policy requiring issuance of a reciprocal credential IF:

a. The appraiser is coming from a State that is ''in compliance''; AND

b. (i) the appraiser holds a valid credential from that State; AND

(ii) the credentialing requirements of that State (as they currently exist) meet or exceed those of the reciprocal credentialing State (as they currently exist).

Example 1. Additional Requirements Imposed on Applicants

State A requires that prior to issuing a reciprocal credential the applicant must certify that disciplinary proceedings are not pending against that applicant in any jurisdiction. Under b (ii) above, if this requirement is not imposed on all of its own applicants for credentialing, STATE A cannot impose this requirement on applicants for reciprocal credentialing.

Example 2. Credentialing Requirements

An appraiser is seeking a reciprocal credential in STATE A. The appraiser holds a valid credential in STATE Z, even though it was issued in 2007. This satisfies b (i) above. However, in order to satisfy b (ii), STATE A would evaluate STATE Z's credentialing requirements as they currently exist to determine whether they meet or exceed STATE A's current requirements for credentialing.

Example 3. Multiple State Credentials

An appraiser credentialed in several States is seeking a reciprocal credential in State A. That appraiser's initial credentials were obtained through examination in the original credentialing State and through reciprocity in the additional States. State A requires the applicant to provide a ''letter of good standing'' from the State of original credentialing as a condition of granting a reciprocal credential. State A may not impose such a requirement since Title XI does not distinguish between credentials obtained by examination and credentials obtained by reciprocity for purposes of granting reciprocal credentials.

C. Appraiser Compliance Requirements

In order to maintain a credential granted by reciprocity, appraisers must comply with the credentialing State's policies, rules and statutes governing appraisers, including requirements for payment of certification and licensing fees, as well as continuing education.[86]

D. Well-Documented Application Files

States must obtain and maintain sufficient relevant documentation pertaining to an application for issuance of a credential by reciprocity so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

E. Summary of Requirements

1. States must have a reciprocity policy in place for issuing a reciprocal credential to an appraiser from another State under the conditions specified in Title XI in order for the State's appraisers to be eligible to perform appraisals for federally related transactions.[87]

2. States may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy; however, States may not impose additional impediments to issuance of reciprocal credentials.[88]

3. States must obtain and maintain sufficient relevant documentation pertaining to an application for issuance of a credential by reciprocity so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.[89]

Policy Statement 6

Education

AQB Criteria sets forth minimum requirements for appraiser education courses. This Policy Statement addresses proper administration of education requirements for compliance with AQB Criteria. (For requirements concerning qualifying and continuing education in the application process, see Policy Statement 4, *Application Process*.)

A. Course Approval

States must ensure that approved appraiser education courses are consistent with AQB Criteria and maintain sufficient documentation to support that approved appraiser education courses conform to AQB Criteria.

States should ensure that course approval expiration dates assigned by the State coincide with the endorsement period assigned by the AQB's Course Approval Program or any other AQB-approved organization providing approval of course design and delivery. States may not continue to accept AQB approved courses after the AQB's expiration date unless the course content is reviewed and approved by the State.

States should ensure that educational providers are afforded equal treatment in all respects.[90]

States are encouraged to accept courses approved by the AQB's Course Approval Program.

B. Distance Education

States must ensure that distance education courses meet AQB Criteria and that the delivery mechanism for distance education courses offered by a non-academic provider, including secondary providers, has been approved by an AQB-approved organization providing approval of course design and delivery.

States may not continue to accept courses after the AQB-approved organization's approval of course design and delivery date has expired.

C. Summary of Requirements

1. States must ensure that appraiser education courses are consistent with AQB Criteria.[91]

2. States must maintain sufficient documentation to support that approved appraiser courses conform to AQB Criteria.[92]

3. States must ensure the delivery mechanism for distance education courses offered by a non-academic provider, including secondary providers, has been approved by an AQB-approved organization providing approval of course design and delivery.[93]

[86] A State may offer to accept continuing education (CE) for a renewal applicant who has satisfied CE requirements of a home State; however, a State may not impose this as a requirement for renewal, thereby imposing a requirement for the renewal applicant to retain a home State credential.

[87] Title XI § 1122 (b), 12 U.S.C. 3351.

[88] *Id.*

[89] Title XI § 1118 (a), 12 U.S.C. 3347.

[90] For example:

(1) consent agreements requiring additional education should not specify a particular course provider when there are other providers on the State's approved course listing offering the same course; and

(2) courses from professional organizations should not be automatically approved and/or approved in a manner that is less burdensome than the State's normal approval process.

[91] Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[92] Title XI § 1118 (a), 12 U.S.C. 3347.

[93] Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

Policy Statement 7

State Agency Enforcement

A. State Agency Regulatory Program

Title XI requires the ASC to monitor the States for the purpose of determining whether the State processes complaints and completes investigations in a reasonable time period, appropriately disciplines sanctioned appraisers and maintains an effective regulatory program.[94]

B. Enforcement Process

States must ensure that the system for processing and investigating complaints[95] and sanctioning appraisers is administered in a timely, effective, consistent, equitable, and well-documented manner.

1. Timely Enforcement

States must process complaints of appraiser misconduct or wrongdoing in a timely manner to ensure effective supervision of appraisers, and when appropriate, that incompetent or unethical appraisers are not allowed to continue their appraisal practice. Absent special documented circumstances, final administrative decisions regarding complaints must occur within one year (12 months) of the complaint filing date.[96] Special documented circumstances are those extenuating circumstances (fully documented) beyond the control of the State agency that delays normal processing of a complaint such as: complaints involving a criminal investigation by a law enforcement agency when the investigative agency requests that the State refrain from proceeding; final disposition that has been appealed to a higher court; documented medical condition of the respondent; ancillary civil litigation; and complex cases that involve multiple individuals and reports. Such special documented circumstances also include those periods when State rules require referral of a complaint to another State entity for review and the State agency is precluded from further processing of the complaint until it is returned. In that circumstance, the State agency should document the required referral and the time period during which the complaint was not under its control or authority.

2. Effective Enforcement

Effective enforcement requires that States investigate allegations of appraiser misconduct or wrongdoing, and if allegations are proven, take appropriate disciplinary or remedial action. Dismissal of an alleged violation solely due to an ''absence of harm to the public'' is inconsistent with Title XI. Financial loss or the lack thereof is not an element in determining whether there is a violation. The extent of such loss, however, may be a factor in determining the appropriate level of discipline.

Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP and States must be able to document how such persons are so qualified.

States must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the complaint.

Closure of a complaint based solely on a State's statute of limitations that results in dismissal of a complaint without the investigation of the merits of the complaint is inconsistent with the Title XI requirement that States assure effective supervision of the activities of credentialed appraisers.[97]

3. Consistent and Equitable Enforcement

Absent specific documented facts or considerations, substantially similar cases within a State should result in similar dispositions.

4. Well-Documented Enforcement

States must obtain and maintain sufficient relevant documentation pertaining to a matter so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

a. Complaint Files

Complaint files must:

- Include documentation outlining the progress of the investigation;
- demonstrate that appraisal reports are analyzed and any USPAP violations are identified and considered, whether or not they were the subject of the complaint;
- include rationale for the final outcome of the case (*i.e.,* dismissal or imposition of discipline);
- include documentation explaining any delay in processing, investigation or adjudication;
- contain documentation that all ordered or agreed upon discipline, such as probation, fine, or completion of education is tracked and that completion of all terms is confirmed; and
- be organized in a manner that allows understanding of the steps taken throughout the complaint, investigation, and adjudicatory process.

b. Complaint Logs

States must track all complaints using a complaint log. The complaint log must record all complaints, regardless of their procedural status in the investigation and/or resolution process, including complaints pending before the State board, Office of the Attorney General, other law enforcement agencies, and/or offices of administrative hearings.

The complaint log must include the following information (States are strongly encouraged to maintain this information in an electronic, sortable format):

1. Case number
2. Name of respondent
3. Actual date the complaint was received by the State
4. Source of complaint (*e.g.,* consumer, lender, AMC, bank regulator, appraiser, hotline) or name of complainant
5. Current status of the complaint
6. Date the complaint was closed (*e.g.,* final disposition by the administrative hearing agency, Office of the Attorney General, State Appraiser Regulatory Agency or Court of Appeals)
7. Method of disposition (*e.g.,* dismissal, letter of warning, consent order, final order)

C. Summary of Requirements

1. States must maintain relevant documentation to enable understanding of the facts and determinations in the matter and the reasons for those determinations.[98]

2. States must resolve all complaints filed against appraisers within one year (12 months) of the complaint filing date, except for special documented circumstances.[99]

3. States must ensure that the system for processing and investigating complaints and sanctioning appraisers is administered in an effective, consistent, equitable, and well-documented manner.[100]

4. States must track complaints of alleged appraiser misconduct or wrongdoing using a complaint log.[101]

5. States must appropriately document enforcement files and include rationale.[102]

[94] Title XI § 1118(a), 12 U.S.C. 3347.

[95] *See* Appendix B, *Glossary of Terms,* for the definition of ''complaint.''

[96] The one-year period for resolution of complaints is not intended to have the impact of a statute of limitation or statute of repose.

[97] Title XI § 1117, 12 U.S.C. 3346.

[98] Title XI § 1118(a), 12 U.S.C. 3347.

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] *Id.*

6. States must regulate, supervise and discipline their credentialed appraisers.[103]

7. Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP, and States must be able to document how such persons are so qualified.[104]

Part B: AMC Program

Policy Statement 8

Statutes, Regulations, Policies and Procedures Governing State AMC Programs

A. Participating States and ASC Oversight

States are not required to establish an AMC registration and supervision program. For those States electing to participate in the registration and supervision of AMCs (participating States), ASC staff will informally monitor the State's progress to implement the requirements of Title XI and the AMC Rule.[105] Formal ASC oversight of State AMC Programs will begin at the next regularly scheduled Compliance Review of a State after a State elects to register and supervise AMCs pursuant to the AMC Rule. Formal ASC oversight will consist of evaluating AMC Programs in participating States during the Compliance Review process to determine compliance or lack thereof with Title XI, and to assess implementation of the minimum requirements for State registration and supervision of AMCs as established by the AMC Rule. Upon expiration of the statutory implementation period (see Policy Statement 11, *Statutory Implementation Period*), Compliance Reviews will include ASC oversight of AMC Programs for any participating State.

B. Relation to State Law

Participating States may establish requirements in addition to those in the AMC Rule.

Participating States may also have a more expansive definition of AMCs.[106] However, if a participating State has a more expansive definition of AMCs than in Title XI (thereby encompassing State regulation of AMCs that are not within the Title XI definition of AMC), the State must ensure such AMCs are identified as such in the State database, just as States currently do for non-federally recognized credentials or designations. Only those AMCs that meet the Federal definition of AMC will be eligible to be on the AMC Registry.

C. Funding and Staffing

The Dodd-Frank Act amended Title XI to require the ASC to determine whether participating States have sufficient funding and staffing to meet their Title XI requirements. Compliance with this provision requires that a State must provide its AMC Program with funding and staffing sufficient to carry out its Title XI-related duties. The ASC evaluates the sufficiency of funding and staffing as part of its review of all aspects of an AMC Program's effectiveness, including the adequacy of State boards, committees, or commissions responsible for carrying out Title XI-related duties.

D. Minimum Requirements for Registration and Supervision of AMCs as Established by the AMC Rule

1. AMC Registration and Supervision

If a State chooses to participate in the registration and supervision of AMCs in accordance with the AMC Rule, the State will be required to comply with the minimum requirements set forth in the AMC Rule. States should refer to the AMC Rule for compliance requirements[107] as this Policy Statement merely summarizes what the AMC Rule requires of participating States.

(a) The AMC Rule includes requirements for participating States to establish and maintain within the State appraiser certifying and licensing agency an AMC Program with the legal authority and mechanisms to:

(1) Review and approve or deny AMC initial registration applications and/or renewals for registration;

(2) Examine records of AMCs and require AMCs to submit information;

(3) Verify that appraisers on AMCs' panels hold valid State credentials;

(4) Conduct investigations of AMCs to assess potential violations of appraisal-related laws, regulations, or orders;

(5) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates appraisal-related laws, regulations, or orders; and

(6) Report an AMC's violation of appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the ASC.

(b) The AMC Rule includes requirements for participating States to impose requirements on AMCs that are not Federally regulated AMCs[108] to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Engage only State-certified or State-licensed appraisers for federally related transactions in conformity with any federally related transaction regulations;

(3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder.

2. Ownership Limitations for State-registered AMCs

A. Appraiser Certification or Licensing of Owners

An AMC subject to State registration shall not be registered by a State or included on the AMC Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or

[103] *Id.*

[104] *Id.*

[105] Title XI § 1103 (a)(1)(B), 12 U.S.C. 3332. AMC Rule means the interagency final rule on minimum requirements for State registration and supervision of AMCs (12 CFR 34.210–34.216; 12 CFR 225.190–225.196; 12 CFR 323.8 –323.14; 12 CFR 1222.20–1222.26.

[106] Title XI as amended by the Dodd-Frank Act defines ''appraisal management company'' to mean, in part, an external third party that oversees a network or panel of more than 15 appraisers (State certified or licensed) in a State, or 25 or more appraisers nationally (two or more States) within a given year. (12 U.S.C. 3350(11)). Title XI as amended by the Dodd-Frank Act also allows States to adopt requirements in addition to those in the AMC Rule. (12 U.S.C. 3353(b)). For example, States may decide to supervise entities that provide appraisal management services, but do not meet the size thresholds of the Title XI definition of AMC. If a State has a more expansive regulatory framework that covers entities that provide appraisal management services but do not meet the Title XI definition of AMC, the State should only submit information regarding AMCs meeting the Title XI definition to the AMC Registry.

[107] *See* footnote 104.

[108] ''Federally regulated AMCs,'' meaning AMCs that are subsidiaries owned and controlled by an insured depository institution or an insured credit union and regulated by a Federal financial institutions regulatory agency, are not required to register with the State (Title XI § 1124 (c), 12 U.S.C. 3353(c)).

revoked in any State for a substantive cause,[109] as determined by the State appraiser certifying and licensing agency. A State's process for review could, for example, be by questionnaire, or affidavit, or background screening, or otherwise. States must document to the file the State's method of review and the result.

B. Good Moral Character of Owners

An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(1) Is determined by the State not to have good moral character; or

(2) Fails to submit to a background investigation carried out by the State.

A State's process for review could, for example, be by questionnaire, or affidavit, or background screening, or otherwise. The ASC would expect written documentation of the State's method of review and the result.

3. Requirements for Federally Regulated AMCs

Participating States are not required to identify Federally regulated AMCs [110] operating in their States, but rather the Federal financial institution regulatory agencies are responsible for requiring such AMCs to identify themselves to participating States and report required information.

A Federally regulated AMC shall not be included on the AMC Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the ASC.

E. Summary of Requirements

1. Participating States must establish and maintain an AMC Program with the legal authority and mechanisms consistent with the AMC Rule.[111]

2. Participating States must impose requirements on AMCs consistent with the AMC Rule.[112]

3. Participating States must enforce and document ownership limitations for State-registered AMCs.[113]

4. Only those AMCs that meet the Federal definition of AMC will be eligible to be on the AMC Registry. Therefore, participating States that have a more expansive definition of AMCs than in the AMC Rule must ensure such non-Federally recognized AMCs are identified as such in the State database.[114]

5. States must have funding and staffing sufficient to carry out their Title XI-related duties.[115]

Policy Statement 9

National Registry of AMCs (AMC Registry)

A. Requirements for the AMC Registry

Title XI requires the ASC to maintain the AMC Registry of AMCs that are either registered with and subject to supervision of a participating State or are operating subsidiaries of a Federally regulated financial institution.[116] Title XI further requires the States to transmit to the ASC: (1) Reports on a timely basis of supervisory activities involving AMCs, including investigations resulting in disciplinary action being taken; and (2) the registry fee as set by the ASC [117] from AMCs that are either registered with a participating State or are Federally regulated AMCs.[118]

As with appraiser registry fees, Title XI, § 1109(a)(4)(b) requires the AMC registry fee to be collected by each participating State and transmitted to the ASC. Therefore, as with appraisers, an AMC will pay a registry fee in each participating State in which the AMC operates. As with appraisers, an AMC operating in multiple participating States will pay a registry fee in multiple States in order to be on the AMC Registry for each State.

States must notify the ASC as soon as practicable if an AMC listed on the AMC Registry is no longer registered with or operating in the State. The ASC extranet application allows States to update their AMC information directly to the AMC Registry.

B. Registry Fee and Invoicing Policies

Each State must remit to the ASC the annual registry fee, as set by the ASC, for AMCs to be listed on the AMC Registry. Requests to prorate refunds or partial-year registrations will not be granted. If a State collects multiple-year fees for multiple-years, the State may choose to remit to the ASC the total amount of the multiple-year registry fees or the equivalent annual fee amount. The ASC will, however, record AMCs on the AMC Registry only for the number of years for which the ASC has received payment. States must reconcile and pay registry invoices in a timely manner (45 calendar days after receipt of the invoice).

C. Reporting Requirements

State agencies must report all disciplinary action [119] taken against an AMC to the ASC via the extranet application within 5 business days after the disciplinary action is final, as determined by State law. States not reporting via the extranet application must provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement. For the most serious disciplinary actions (*e.g.,* any action that interrupts an AMCs ability to provide appraisal management services), the AMCs status must be changed on the AMC Registry to ''inactive.'' A Federally regulated AMC operating in a State must report to the State the information required to be submitted by the State to the ASC, pursuant to the ASC's policies regarding the determination of the AMC registry fee.

D. Access to AMC Registry Data

The ASC website provides free access to the public portion of the AMC Registry at *www.asc.gov.* The public portion of the AMC Registry data may be downloaded using predefined queries or user-customized applications.

Access to the full database, which includes non-public data (*e.g.,* certain disciplinary action information), is restricted to authorized State and Federal regulatory agencies. States must designate a senior official, such as an executive director, to serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the designated Authorized Registry Official. States must ensure that the authorization information provided to the ASC is updated and accurate. States must adopt and implement a written policy to protect the right of access, as well as the ASC issued User Name and Password.

E. Summary of Requirements

1. States must reconcile and pay registry invoices in a timely manner (45 calendar days after receipt of the invoice).[120]

2. State agencies must report all disciplinary action taken against an

[109] An AMC subject to State registration is not barred from being registered by a State or included on the AMC Registry of AMCs if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified. (12 CFR 34.210–34.216; 12 CFR 225.190–225.196; 12 CFR 323.8 –323.14; 12 CFR 1222.20–1222.26.

[110] *See* footnote 104.

[111] 12 CFR 34.210–34.216; 12 CFR 225.190–225.196; 12 CFR 323.8–323.14; 12 CFR 1222.20–1222.26.

[112] *Id.*

[113] *Id.*

[114] Title XI § 1118 (b), 12 U.S.C. 3347.

[115] *Id.*

[116] Title XI § 1103(a)(6), 12 U.S.C. 3332.

[117] Title XI § 1109(a)(4), 12 U.S.C. 3338.

[118] Title XI § 1109(a)(3) and (4), 12 U.S.C. 3338.

[119] *See* Appendix B, *Glossary of Terms,* for the definition of ''disciplinary action.''

[120] Title XI § 1118(a), 12 U.S.C. 3347; Title XI § 1109 (a), 12 U.S.C. 3338.

AMC to the ASC via the extranet application within 5 business days after the disciplinary action is final, as determined by State law.[121]

3. States not reporting via the extranet application must provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement.[122]

4. For the most serious disciplinary actions (*e.g.,* any action that interrupts an AMC's ability to provide appraisal management services), the AMC's status must be changed on the AMC Registry to ''inactive.''[123]

5. States must notify the ASC as soon as practicable if an AMC listed on the AMC Registry is no longer registered with or operating in the State.

6. States must designate a senior official, such as an executive director, who will serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the selected Authorized Registry Official, and any individual(s) authorized to act on their behalf. [124]

7. States must adopt and implement a written policy to protect the right of access to the AMC Registry, as well as the ASC issued User Name and Password.[125]

8. States must ensure the accuracy of all data submitted to the AMC Registry.[126]

Policy Statement 10

State Agency Enforcement

A. State Agency Regulatory Program

Title XI requires the ASC to monitor the States for the purpose of determining whether the State processes complaints and completes investigations in a reasonable time period, appropriately disciplines sanctioned AMCs and maintains an effective regulatory program.[127]

B. Enforcement Process

States must ensure that the system for processing and investigating complaints[128] and sanctioning AMCs is administered in a timely, effective, consistent, equitable, and well-documented[129] manner.

1. Timely Enforcement

States must process complaints against AMCs in a timely manner to ensure effective supervision of AMCs. Absent special documented circumstances, final administrative decisions regarding complaints must occur within one year (12 months) of the complaint filing date. Special documented circumstances are those extenuating circumstances (fully documented) beyond the control of the State agency that delays normal processing of a complaint such as: Complaints involving a criminal investigation by a law enforcement agency when the investigative agency requests that the State refrain from proceeding; final disposition that has been appealed to a higher court; documented medical condition of the respondent; ancillary civil litigation; and complex fraud cases that involve multiple individuals and reports. Such special documented circumstances also include those periods when State rules require referral of a complaint to another State entity for review and the State agency is precluded from further processing of the complaint until it is returned. In that circumstance, the State agency should document the required referral and the time period during which the complaint was not under its control or authority.

2. Effective Enforcement

Effective enforcement requires that States investigate complaints, and if allegations are proven, take appropriate disciplinary or remedial action.

3. Consistent and Equitable Enforcement

Absent specific documented facts or considerations, substantially similar cases within a State should result in similar dispositions.

4. Well-Documented Enforcement

States must obtain and maintain sufficient relevant documentation pertaining to a matter so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

a. Complaint Files

Complaint files must:

- Include documentation outlining the progress of the investigation;
- include rationale for the final outcome of the case (*i.e.,* dismissal or imposition of discipline);
- include documentation explaining any delay in processing, investigation or adjudication;
- contain documentation that all ordered or agreed upon discipline is tracked and that completion of all terms is confirmed; and
- be organized in a manner that allows understanding of the steps taken throughout the complaint, investigation, and adjudicatory process.

b. Complaint Logs

States must track all complaints using a complaint log. The complaint log must record all complaints, regardless of their procedural status in the investigation and/or resolution process, including complaints pending before the State board, Office of the Attorney General, other law enforcement agencies, and/or offices of administrative hearings. The complaint log must include the following information (States are strongly encouraged to maintain this information in an electronic, sortable format):

1. Case number
2. Name of respondent
3. Actual date the complaint was received by the State
4. Source of complaint (*e.g.,* consumer, lender, AMC, bank regulator, appraiser, hotline) or name of complainant
5. Current status of the complaint
6. Date the complaint was closed (*e.g.,* final disposition by the administrative hearing agency, Office of the Attorney General, State AMC Program or Court of Appeals)
7. Method of disposition (*e.g.,* dismissal, letter of warning, consent order, final order)

C. Summary of Requirements

1. States must maintain relevant documentation to enable understanding of the facts and determinations in the matter and the reasons for those determinations.[130]

2. States must resolve all complaints filed against AMCs within one year (12 months) of the complaint filing date, except for special documented circumstances.[131]

3. States must ensure that the system for processing and investigating complaints and sanctioning AMCs is administered in an effective, consistent, equitable, and well-documented manner.[132]

4. States must track complaints of alleged AMC misconduct or wrongdoing using a complaint log.[133]

5. States must appropriately document enforcement files and include rationale.[134]

[121] Title XI § 1118(a), 12 U.S.C. 3347.

[122] *Id.*

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] Title XI § 1118(a), 12 U.S.C. 3347.

[128] *See* Appendix B, *Glossary of Terms,* for the definition of ''complaint.''

[129] *See* Appendix B, *Glossary of Terms,* for the definition of ''well-documented.''

[130] Title XI § 1118(a), 12 U.S.C. 3347.

[131] *Id.*

[132] *Id.*

[133] *Id.*

[134] *Id.*

Policy Statement 11

Statutory Implementation Period

Title XI and the AMC Rule set forth the statutory implementation period.[135] The AMC Rule was effective on August 10, 2015. As of 36 months from that date (August 10, 2018), an AMC may not provide appraisal management services for a federally related transaction in a non-participating State unless the AMC is a Federally regulated AMC. Appraisal management services may still be provided for federally related transactions in non-participating States by individual appraisers, by AMCs that are below the minimum statutory panel size threshold, and as noted, by Federally regulated AMCs.

The ASC, with the approval of the Federal Financial Institutions Examination Council (FFIEC), may extend this statutory implementation period for an additional 12 months if the ASC makes a finding that a State has made substantial progress toward implementing a registration and supervision program for AMCs that meets the standards of Title XI.[136]

Part C: Interim Sanctions

Policy Statement 12

Interim Sanctions

A. Authority

Title XI grants the ASC authority to impose sanctions on a State that fails to have an effective Appraiser or AMC Program.[137] The ASC may remove a State credentialed appraiser or a registered AMC from the Appraiser or AMC Registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration and disciplinary proceedings as an alternative to or in advance of a non-recognition proceeding.[138] In determining whether an Appraiser or AMC Program is effective, the ASC shall conduct an analysis as required by Title XI. An ASC Finding of Poor on the Compliance Review Report [139] issued to a State at the conclusion of an ASC Compliance Review may trigger an analysis by the ASC for potential interim sanction(s). The following provisions apply to the exercise by the ASC of its authority to impose interim sanction(s) on State agencies.

B. Opportunity To Be Heard or Correct Conditions

The ASC shall provide the State agency with:

1. Written notice of intention to impose an interim sanction; and
2. opportunity to respond or to correct the conditions causing such notice to the State.

Notice and opportunity to respond or correct the conditions shall be in accordance with section C, *Procedures.*

C. Procedures

This section prescribes the ASC's procedures which will be followed in arriving at a decision by the ASC to impose an interim sanction against a State agency.

1. Notice

The ASC shall provide a written Notice of intention to impose an interim sanction (Notice) to the State agency. The Notice shall contain the ASC's analysis as required by Title XI of the State's licensing and certification of appraisers, the registration of AMCs, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and AMCs, the investigation of complaints, and enforcement actions against appraisers and AMCs.[140] The ASC shall verify the State's date of receipt, and publish both the Notice and the State's date of receipt in the **Federal Register**.

2. State Agency Response

Within 15 days of receipt of the Notice, the State may submit a response to the ASC's Executive Director. Alternatively, a State may submit a Notice Not to Contest with the ASC's Executive Director. The filing of a Notice Not to Contest shall not constitute a waiver of the right to a judicial review of the ASC's decision, findings and conclusions. Failure to file a Response within 15 days shall constitute authorization for the ASC to find the facts to be as presented in the Notice and analysis. The ASC, for good cause shown, may permit the filing of a Response after the prescribed time.

3. Briefs, Memoranda and Statements

Within 45 days after the date of receipt by the State agency of the Notice as published in the **Federal Register**, the State agency may file with the ASC's Executive Director a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice and analysis.

4. Oral Presentations to the ASC

Within 45 days after the date of receipt by the State agency of the Notice as published in the **Federal Register**, the State may file a request with the ASC's Executive Director to make oral presentation to the ASC. If the State has filed a request for oral presentation, the matter shall be heard within 45 days. An oral presentation shall be considered as an opportunity to offer, emphasize and clarify the facts, policies and laws concerning the proceeding, and is not a Meeting [141] of the ASC. On the appropriate date and time, the State agency will make the oral presentation before the ASC. Any ASC member may ask pertinent questions relating to the content of the oral presentation. Oral presentations will not be recorded or otherwise transcribed. Summary notes will be taken by ASC staff and made part of the record on which the ASC shall decide the matter.

5. Conduct of Interim Sanction Proceedings

(a) Written Submissions

All aspects of the proceeding shall be conducted by written submissions, with the exception of oral presentations allowed under subsection 4 above.

Disqualification

An ASC member who deems himself or herself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such member, the ASC will rule on the matter as a part of the record.

(b) Authority of ASC Chairperson

The Chairperson of the ASC, in consultation with other members of the ASC whenever appropriate, shall have complete charge of the proceeding and shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings.

(c) Rules of Evidence

Except as is otherwise set forth in this section, relevant material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551–559) and other applicable law.

[135] Title XI § 1124(f)(1), 12 U.S.C. 3353 and 12 CFR 34.210–34.216; 12 CFR 225.190–225.196; 12 CFR 323.8–323.14; 12 CFR 1222.20–1222.26.

[136] Title XI § 1124(f)(2), 12 U.S.C. 3353.

[137] Title XI § 1118(a), 12 U.S.C. 3347.

[138] *Id.*

[139] *See Appendix A—Compliance Review Process.*

[140] Title XI § 1118(a), 12 U.S.C. 3347.

[141] The proceeding is more in the nature of a Briefing not subject to open meeting requirements. The presentation is an opportunity for the State to brief the ASC—to offer, emphasize and clarify the facts, policies and laws concerning the proceeding, and for the ASC members to ask questions. Additional consideration is given to the fact that this stage of the proceeding is pre-decisional.

6. Decision of the ASC and Judicial Review

Within 90 days after the date of receipt by the State agency of the Notice as published in the **Federal Register**, or in the case of oral presentation having been granted, within 30 days after presentation, the ASC shall issue a final decision, findings and conclusions and shall publish the decision promptly in the **Federal Register**. The final decision shall be effective on issuance. The ASC's Executive Director shall ensure prompt circulation of the decision to the State agency. A final decision of the ASC is a prerequisite to seeking judicial review.

7. Computing Time

Time computation is based on business days. The date of the act, event or default from which the designated period of time begins to run is not included. The last day is included unless it is a Saturday, Sunday, or Federal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday.

8. Documents and Exhibits

Unless otherwise provided by statute, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the ASC's Executive Director in the proceeding's file and will be available for public inspection and copying.

9. Judicial Review

A decision of the ASC under this section shall be subject to judicial review. The form of proceeding for judicial review may include any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction in a court of competent jurisdiction.[142]

Appendices

Appendix A—Compliance Review Process

The ASC monitors State Appraiser and AMC Programs for compliance with Title XI. The monitoring of State Programs is largely accomplished through on-site visits known as a Compliance Review (Review). A Review is conducted over a two- to four-day period, and is scheduled to coincide with a meeting of the Program's decision-making body whenever possible. ASC staff reviews the Appraiser Program and the seven compliance areas addressed in Policy Statements 1 through 7. ASC staff reviews a participating State's AMC Program and the three compliance areas addressed in Policy Statements 8 through 10. Sufficient documentation demonstrating compliance must be maintained by a State and made available for inspection during the Review. ASC staff reviews a sampling of documentation in each of the compliance areas. The sampling is intended to be representative of a State Program in its entirety.

Based on the Review, ASC staff provides the State with an ASC staff report for the Appraiser Program, and if applicable, an ASC staff report for the AMC Program, detailing preliminary findings. The State is given 60 days to respond to the ASC staff report(s). At the conclusion of the Review, a Compliance Review Report (Report) is issued to the State for the Appraiser Program, and if applicable, a Report is also issued for the AMC Program, with the ASC Finding on each Program's overall compliance, or lack thereof, with Title XI. Deficiencies resulting in non-compliance in any of the compliance areas are cited in the Report. ''Areas of Concern'' which potentially expose a Program to compliance issues in the future are also addressed in the Report. The ASC's final disposition is based upon the ASC staff report, the State's response and staff's recommendation.

The following chart provides an explanation of the ASC Findings and rating criteria for each ASC Finding category. The ASC Finding places particular emphasis on whether the State is maintaining an effective regulatory Program in compliance with Title XI.

ASC finding	Rating criteria	Review cycle (program history or nature of deficiency may warrant a more accelerated review cycle)
Excellent	• State meets all Title XI mandates and complies with requirements of ASC Policy Statements. • State maintains a strong regulatory Program. • Very low risk of Program failure.	2-year.
Good	• State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements. • Deficiencies are minor in nature. • State is adequately addressing deficiencies identified and correcting them in the normal course of business. • State maintains an effective regulatory Program. • Low risk of Program failure.	2-year.
Needs Improvement	• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements. • Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program.. • State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies. • State regulatory Program needs improvement. • Moderate risk of Program failure.	2-year with additional monitoring.
Not Satisfactory	• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements. • Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program. • State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing. • State regulatory Program has substantial deficiencies. • Substantial risk of Program failure.	1-year.
Poor	• State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements.	Continuous monitoring.

[142] 5 U.S.C. 703—*Form and venue of proceeding.*

ASC finding	Rating criteria	Review cycle (program history or nature of deficiency may warrant a more accelerated review cycle)
	• Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program. • State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies. • High risk of Program failure.	

The ASC has two primary Review Cycles: Two-year and one-year. Most States are scheduled on a two-year Review Cycle. States may be moved to a one-year Review Cycle if the ASC determines more frequent on-site Reviews are needed to ensure that the State maintains an effective Program. Generally, States are placed on a one-year Review Cycle because of non-compliance issues or serious areas of concerns that warrant more frequent on-site visits. Both two-year and one-year Review Cycles include a review of all aspects of the State's Program.

The ASC may conduct Follow-up Reviews and additional monitoring. A Follow-up Review focuses only on specific areas identified during the previous on-site Review. Follow-up Reviews usually occur within 6–12 months of the previous Review. In addition, as a risk management tool, ASC staff identifies State Programs that may have a significant impact on the nation's appraiser regulatory system in the event of Title XI compliance issues. For States that represent a significant percentage of the credentials on the Appraiser Registry, ASC staff performs annual on-site Priority Contact visits. The primary purpose of the Priority Contact visit is to review topical issues, evaluate regulatory compliance issues, and maintain a close working relationship with the State. This is not a complete Review of the Program. The ASC will also schedule a Priority Contact visit for a State when a specific concern is identified that requires special attention. Additional monitoring may be required where a deficiency is identified and reports on required or agreed upon corrective actions are required monthly or quarterly. Additional monitoring may include on-site monitoring as well as off-site monitoring.

Appendix B—Glossary of Terms

Appraisal management company (AMC): Refers to, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

(A) To recruit, select, and retain appraisers;

(B) to contract with licensed and certified appraisers to perform appraisal assignments;

(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

(D) to review and verify the work of appraisers.

AQB Criteria: Refers to the *Real Property Appraiser Qualification Criteria* as established by the Appraiser Qualifications Board of the Appraisal Foundation setting forth minimum education, experience and examination requirements for the licensure and certification of real property appraisers, and minimum requirements for ''Trainee'' and ''Supervisory'' appraisers.

Assignment: As referenced herein, for purposes of temporary practice, ''assignment'' means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement.

Complaint: As referenced herein, any document filed with, received by, or serving as the basis for possible inquiry by the State agency regarding alleged violation of Title XI, Federal or State law or regulation, or USPAP by a credentialed appraiser or appraiser applicant, for allegations of unlicensed appraisal activity, or complaints involving AMCs. A complaint may be in the form of a referral, letter of inquiry, or other document alleging misconduct or wrongdoing.

Credentialed appraisers: Refers to State licensed, certified residential or certified general appraiser classifications.

Disciplinary action: As referenced herein, corrective or punitive action taken by or on behalf of a State agency which may be formal or informal, or may be consensual or involuntary, resulting in any of the following:

a. Revocation of credential or registration
b. suspension of credential or registration
c. written consent agreements, orders or reprimands
d. probation or any other restriction on the use of a credential
e. fine
f. voluntary surrender [143]
g. other acts as defined by State statute or regulation as disciplinary

With the exception of voluntary surrender, suspension or revocation, such action may be exempt from reporting to the National Registry if defined by State statute, regulation or written policy as ''non-disciplinary.''

Federally related transaction: Refers to any real estate related financial transaction which:

(a) A federal financial institutions regulatory agency engages in, contracts for, or regulates; and

(b) requires the services of an appraiser. (See Title XI § 1121 (4), 12 U.S.C. 3350.)

Federal financial institutions regulatory agencies: Refers to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration. (*See* Title XI § 1121 (6), 12 U.S.C. 3350.)

Home State agency: As referenced herein, State agency or agencies that grant an appraiser a licensed or certified credential. Residency in the home State is not required. Appraisers may have more than one home State agency.

Non-federally recognized credentials or designations: Refers to any State appraiser credential or designation other than trainee, State licensed, certified residential or certified general classifications as defined in Policy Statement 1, and which is not recognized by Title XI.

Real estate related financial transaction: Any transaction involving:

(a) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

(b) the refinancing of real property or interests in real property; and

(c) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities. (*See* Title XI § 1121 (5), 12 U.S.C. 3350.)

State: Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands. (American Samoa does not have a Program.)

State board: As referenced herein, ''State board'' means a group of individuals (usually appraisers, AMC representatives, bankers, consumers, and/or real estate professionals) appointed by the Governor or a similarly positioned State official to assist or oversee State Programs. A State agency may be headed by a board, commission or an individual.

Uniform Standards of Professional Appraisal Practice (USPAP): Refers to appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation establishing minimum requirements for development and reporting of appraisals, including real property appraisal. Title XI requires appraisals prepared by State certified and licensed appraisers to be performed in conformance with USPAP.

Well-documented: Means that States obtain and maintain sufficient relevant

[143] A voluntary surrender that is not deemed disciplinary by State law or regulation, or is not related to any disciplinary process need not be reported as discipline provided the individual's Appraiser Registry record is updated to show the credential is inactive.

documentation pertaining to a matter so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

* * * * *

Dated: February 24, 2018.

By the Appraisal Subcommittee.

Arthur Lindo,

Chairman.

[FR Doc. 2018–04410 Filed 3–2–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 25, 26, 27, 34, 43, 45, 60, 61, 63, 65, 91, 97, 107, 110, 119, 121, 125, 129, 133, 135, 137, 141, 142, 145, and 183

[Docket No.: FAA–2018–0119; Amdt Nos. 1–72, 21–101, 25–145, 26–7, 27–49, 34–6, 43–50, 45–31, 60–5, 61–141, 63–40, 65–56, 91–350, 97–1338, 107–2, 110–2, 119–19, 121–380, 125–68, 129–53, 133–16, 135–139, 137–17, 141–19, 142–10, 145–32, 183–17]

RIN 2120–AL05

Aviation Safety Organization Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA Aircraft Certification Service (AIR) and Flight Standards Service (AFS) have reorganized to align with functional organization design concepts. The AIR reorganization included eliminating product directorates and restructuring and re-designating field offices. The AFS reorganization included eliminating geographic regions, realigning headquarters organizations, and restructuring field offices. Currently, various rules in the Code of Federal Regulations refer to specific AIR and AFS offices that are obsolete after the reorganizations. This rule replaces specific references with generic references not dependent on any particular office structure. This rule does not impose any new obligations and is only intended to eliminate any confusion about with whom regulated entities and other persons should interact when complying with these various rules in the future.

DATES: Effective March 5, 2018.

FOR FURTHER INFORMATION CONTACT: For questions concerning AIR offices referred to in this action, contact Suzanne Masterson, Transport Standards Branch (AIR–670), Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98189; telephone (206) 231–3211 or (425) 227–1855; email *suzanne.masterson@faa.gov.*

For questions concerning AFS offices referred to in this action, contact Joseph Hemler, Commercial Operations Branch (AFS–820), Flight Standards Service, Federal Aviation Administration, 55 M Street SE, 8th floor, Washington, DC 20003–3522; telephone (202) 267–1100; email *joseph.k.hemler-jr@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption

Section 553(b)(3)(A) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules of agency organization, procedure, or practice, except when notice or hearing is required by statute. Under this section, an agency may issue a final rule without seeking comment prior to the rulemaking.

Additionally, section 553(b)(3)(B) of the APA authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. The FAA finds that notice and public comment to this immediately adopted final rule are unnecessary because this rule meets the exception of section 553(b)(3)(A). The sole purpose of this rule is to reflect organizational changes within AIR and AFS. This rule imposes no additional requirements on the public. Therefore, the FAA has determined that notice and public comment are unnecessary.

The FAA further finds, under 5 U.S.C. 553(d)(3), that good cause exists for making this rule effective upon publication in the **Federal Register**. It is unnecessary to delay the effective date of this rule because the final rule consists only of organizational amendments that have no substantive effect on the public.

Authority for This Rulemaking

The FAA's authority to issue rules is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator.

This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules, including rules that carry out the functions of the agency.

This regulation is within the scope of that authority because the rule makes non-substantive edits to agency organization, procedure, or practice that guides the public's interaction with AIR and AFS.

I. Overview of Immediately Adopted Final Rule

AIR and AFS have reorganized to align with a functional organization design concept. Currently, various rules in title 14 of the Code of Federal Regulations (14 CFR) parts 21, 25, 26, 27, 34, 91, 121, 125, 129, 135, and 183 refer to specific AIR offices that are obsolete after its reorganization. Additionally, various rules in 14 CFR parts 1, 43, 45, 60, 61, 63, 65, 91, 97, 107, 110, 119, 121, 125, 129, 133, 135, 137, 141, 142, 145, and 183 refer to specific AFS offices that are obsolete after its reorganization. This rule replaces specific office references with generic references not dependent on any particular office structure. This rule is intended to eliminate any confusion about with whom regulated entities and other persons should interact when complying with these various rules in the future.

II. Background

AIR and AFS have played a critical role in assuring that the U.S. National Airspace System operates at the highest level of safety. This level of safety has been achieved through the development of standards, policy, and guidance to assure the safe design and production of aviation products, as well as the safe and standardized certification, operation, and oversight of multiple types of FAA certificate holders.

The aviation system is rapidly changing, placing greater demands on its participants. It is more complex, interconnected, and reliant on new technologies. Each component of the aircraft certification safety system—which extends beyond AIR and AFS to include industry's role in ensuring compliance to regulations, and the public's participation in the regulatory process—must address the challenges posed by the changing environment. The FAA's ability to meet the diverse and ever-increasing expectations of its stakeholders, including the flying public, industry, Congress, and other certification authorities, requires fundamental changes to several aspects of the aircraft, airmen, and operator certification safety system, including the organizational structure of AIR and AFS.

The AIR and AFS management teams evaluated changing domestic and global demands on AIR and AFS and

determined a need for improved organizational efficiencies in order to provide other civil aviation authorities, manufacturers, and stakeholders with consistent and predictable outputs. The management teams evaluated feasible options and selected a functional organization design concept. AIR's reorganization into functional divisions has built necessary infrastructure to enable a comprehensive approach to becoming more efficient and effective. AIR has implemented and completed its reorganization in a phased approach. Product directorates have been eliminated in 2017 and replaced with functional divisions. Field offices have been reorganized and re-designated. For further details on this reorganization, please refer to *https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=21315* and *https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/air/transformation/*.

You can also obtain more information on the new AIR organization and the responsibilities and functions of the AIR divisions in FAA Order 8100.5C, ''Aircraft Certification Service—Organizational Structure and Functions.'' AIR also created a new order, FAA Order 8100.18, ''Aircraft Certification Service Organizational Realignment References,'' that facilitates the use of existing AIR policy and guidance after the realignment of AIR by detailing which new AIR office takes the place of which former AIR office. These orders are available online at *https://www.faa.gov/regulations_policies/orders_notices/*.

The AFS reorganization into functional areas aligns its infrastructure to more efficiently and effectively meet the needs of the aviation industry and improve standardization and agility to changing world needs while providing oversight for continued operational safety. AFS has eliminated regional offices, realigned headquarters organizations, and restructured field offices. More functional alignment in field offices will take place in the future. Where legacy AFS references exist, the user can access the Flight Standards Information Management System (FSIMS) publication page (*http://fsims.faa.gov/PublicationForm.aspx*) and select ''Future of Flight Standards (FFS) Updates'' found under ''Active Publication.'' This link provides a listing that translates organizational codes from the legacy AFS structure to the FFS structure.

III. Discussion of Immediately Adopted Final Rule

Certain offices referenced in various rules under 14 CFR parts 1, 21, 25, 26, 27, 34, 43, 45, 60, 61, 63, 65, 91, 97, 107, 110, 119, 121, 125, 129, 133, 135, 137, 141, 142, 145, and 183 are obsolete due to AIR and AFS reorganization. References to non-existent offices may cause confusion for applicants, approval holders, and certificate holders in the future when interacting with AIR and AFS. The FAA is replacing specific references with generic references not dependent on any particular office structure. This rule is intended to eliminate any confusion about with whom regulated entities and other persons should interact when complying with these various rules in the future.

The new AIR and AFS organizations will continue to maintain offices throughout the United States that—for the public—perform the same functions and provide the same services that those offices performed previously. However, the names of these offices and their internal reporting structure have changed, and may continue to change over time. The generic references to offices that the FAA used in this rule are intended to refer to the same offices as the previous specific references, but with references to regions or localities removed, along with specific office names. The generic references also include offices that have international duties. Table 1 provides the specific changes for nomenclature. Additionally, some manager and director titles have changed, but these new titles are of equivalent hierarchy within the FAA. One advantage of AIR and AFS restructuring is to allow for a more-virtual work environment with less dependence on geographic region, which accommodates resource sharing among offices performing the same functions, resulting in more efficiency.

This rule does not change any existing processes. Processes for public interaction with AIR and AFS (such as application processes, reporting processes, and oversight processes) are documented in orders, notices, advisory circulars (ACs), and policy statements. These documents are available online at *https://www.faa.gov/regulations_policies/*. AIR and AFS will continue to provide the public the opportunity to comment on any proposed revisions to these documents prior to incorporation.

Where general references to ''the FAA'' are introduced in specific sections, existing advisory material for the affected section specifies the AIR and AFS offices responsible for the function identified in that section. For example, in § 21.3, the FAA is replacing the words ''Aircraft Certification Office in the region in which the person required to make the report is located'' with the word ''FAA.'' AC 21–9B, ''Manufacturers Reporting Failures, Malfunctions, or Defects,'' provides instructions on reporting to specific offices within AIR. The existing AIR advisory material remains in effect and is not affected by the realignment of AIR, except as noted in FAA Order 8100.18. Similarly, AFS's advisory material remains in effect and is not affected by the realignment of AFS, except as noted in FAA Order 1100.1.

TABLE 1—REVISED NOMENCLATURE AND AFFECTED SECTIONS OF 14 CFR

Old nomenclature/ current CFR	New nomenclature/ revision	Affected sections of 14 CFR
a Flight Standards District Office	the responsible Flight Standards office	§ 107.63.
an FAA Flight Standards District Office	a Flight Standards office	§§ 61.55, 61.77, and 133.15.
an FAA Flight Standards District Office	the responsible Flight Standards office	§ 141.67.
an FAA Flight Standards district office	the responsible Flight Standards office	§ 91.203.
an FAA Flight Standards District Office or an International Field Office.	the responsible Flight Standards office	§ 65.93.
Advanced Qualification Program	Air Transportation Division	§§ 121.909 and 121.923.
Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane.	responsible Aircraft Certification Service office for the affected airplane.	Special Federal Aviation Regulation No. 88 to part 21.
Aircraft Certification Office in the region in which the person required to make the report is located.	FAA	§ 21.3.
appropriate aircraft certification office	FAA	§§ 21.47, 21.75, 21.113, 21.618, and 21.619.

TABLE 1—REVISED NOMENCLATURE AND AFFECTED SECTIONS OF 14 CFR—Continued

Old nomenclature/ current CFR	New nomenclature/ revision	Affected sections of 14 CFR
appropriate FAA Flight Standards District Office, Alaskan Region.	responsible Flight Standards office	Appendix C to part 121.
assigned Flight Standards Office	responsible Flight Standards office	§§ 121.1117 and 129.117.
Certificate Holding District Office	responsible Flight Standards office	§ 121.314.
certificate holding district office	responsible Flight Standards office	Appendix P to part 121 and §§ 121.103, 121.121, 125.51, 145.163, 145.207, 145.209, 145.211, 145.215, and 145.217.
certificate-holding district office	responsible Flight Standards office	§§ 119.37, 119.41, 119.47, 119.51, 119.57, 119.61, 119.65, 119.69, 121.97, 121.117, 121.291, 121.405, 121.467, 121.565, 121.585, 121.586, 121.628, 121.685, 135.91, 135.129, 135.179, 135.213, 135.273, 135.417, and 135.431.
certificate holding district office (CHDO)	responsible Flight Standards office	Appendix G to part 135 and § 121.374.
certificate-holding FAA Flight Standards District Office.	responsible Flight Standards office	§§ 133.25, 133.31, and 135.243.
CHDO	responsible Flight Standards office	Appendix G to part 135 and § 121.374.
Director	Executive Director	§§ 60.5, 60.29, 91.317, 91.415, 91.1017, 91.1431, 119.41, 119.51, 121.97, 121.117, 121.417, 121.585, 125.35, 125.206, 129.11, 135.129, 135.158, and 137.17.
Director of	Executive Director	§ 183.33.
district office	office	§ 133.33.
Director, Aircraft Certification Service, or the Director's designee.	Aircraft Certification Service	§ 183.11.
district office that has jurisdiction over	responsible Flight Standards office for	§ 133.15.
either apply to the appropriate aircraft certification office for an STC or apply.	apply to the FAA either for an STC, or	§ 21.113.
FAA aircraft certification office	Aircraft Certification Service office	§ 21.4.
FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over.	responsible Aircraft Certification Service office for.	§§ 121.1107, 125.505, and 129.107.
FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate.	responsible Aircraft Certification Service office	Special Federal Aviation Regulation No. 88 to part 21.
FAA (Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane).	responsible Aircraft Certification Service office for the affected airplane.	Special Federal Aviation Regulation No. 88 to part 21.
FAA Certificate Holding District Office	responsible Flight Standards office	§§ 121.368 and 135.426.
FAA certificate holding district office	responsible Flight Standards office	§ 121.99.
FAA certificate-holding district office	responsible Flight Standards office	§ 121.373.
FAA certificate-holding office	responsible Flight Standards office	§ 133.21.
FAA Flight Standards District Office	Flight Standards office	§§ 61.55, 61.64, and 61.77.
FAA Flight Standards District Office	responsible Flight Standards office	§ 135.19.
FAA Flight Standards district office	responsible Flight Standards office	§§ 125.21, 125.25, 125.35, 125.47, 125.71, 125.219, and 125.295.
FAA Flight Standards District Office having geographic responsibility.	responsible Flight Standards office	§ 129.14.
FAA Flight Standards District Office having jurisdiction over.	responsible Flight Standards office for	§§ 133.25, 133.33, 137.17, 137.51, 141.25, 141.53, and 141.91.
FAA Flight Standards District Office having jurisdiction over the area in which his home base of operations is located.	responsible Flight Standards office	§ 133.27.
FAA Flight Standards district office having jurisdiction over the area in which the applicant is located.	responsible Flight Standards office	§ 91.409.
FAA Flight Standards district office having jurisdiction over the area in which the operator is located.	responsible Flight Standards office	§ 91.213.
FAA Flight Standards District Office having jurisdiction over the school.	responsible Flight Standards office	§ 141.37.
FAA Flight Standards District Office last having jurisdiction over his operation.	responsible Flight Standards office	§ 137.77.
FAA Flight Standards district office nearest the airport where the flight will originate.	responsible Flight Standards office	§ 91.23.
FAA Flight Standards District Office or International Field Office.	responsible Flight Standards office	§ 65.95.
FAA Flight Standards District Office responsible for the geographic area concerned.	responsible Flight Standards office	§ 119.1.
FAA Flight Standards District Office that has jurisdiction over.	responsible Flight Standards office for	§ 137.15 and 142.11.

TABLE 1—REVISED NOMENCLATURE AND AFFECTED SECTIONS OF 14 CFR—Continued

Old nomenclature/ current CFR	New nomenclature/ revision	Affected sections of 14 CFR
FAA Flight Standards District Office with jurisdiction over the geographical area.	responsible Flight Standards office for the area.	§ 91.146.
FAA office responsible for administering its type certificate.	responsible Aircraft Certification Service office	§ 21.4.
FAA Oversight Office	responsible Aircraft Certification Service office	Appendices M and N to part 25 and §§ 26.11, 26.21, 26.23, 26.33, 26.35, 26.43, 26.45, 26.47, 26.49, 91.1507, 121.1109, 121.1111, 121.1113, 121.1117, 125.507, 125.509, 129.109, 129.111, 129.113, and 129.117.
FAA Regional Flight Standards Division	Flight Standards office	Appendix C to part 121.
FAA type certificate holding office	Aircraft Certification Service office	§ 21.4.
Flight Standards District Office	Flight Standards office	Special Federal Aviation Regulation No. 100–2 to part 61 and §§ 61.85, 91.1015, 91.1017, 91.1053, 91.1109, 91.1415, 91.1417, 129.5, and 129.11.
Flight Standards District Office	responsible Flight Standards office	Special Federal Aviation Regulation No. 50–2 to part 91 and §§ 45.22, 125.201, 133.25, 135.4, and 137.17.
Flight Standards district office	Flight Standards office	§ 135.243.
Flight Standards District Office (FSDO)	Flight Standards office	§ 91.1507.
Flight Standards District Offices	Flight Standards offices	Special Federal Aviation Regulation No. 100–2 to part 61.
Flight Standards District Office having jurisdiction of the area in which the applicant is located.	responsible Flight Standards office	Appendix A to part 91.
Flight Standards District Office in whose area the applicant proposes to establish or has established his or her principal base of operations.	responsible Flight Standards office	§ 119.36.
Flight Standards District Office nearest	responsible Flight Standards office for	§ 133.25.
Flight Standards District Office nearest to its principal place of business.	responsible Flight Standards office	§ 91.147.
Flight Standards District Office or International Field Office.	responsible Flight Standards office	Appendix G to part 121.
Flight Standards District Office that has jurisdiction over the area.	responsible Flight Standards office	§ 141.87.
Flight Standards Division Manager in the region of the certificate holding district office.	appropriate Flight Standards division manager in the responsible Flight Standards office.	§ 121.358.
Flight Standards Division Manager or Aircraft Certification Directorate Manager of the FAA region in which the airshow is located.	appropriate Flight Standards Division Manager or Aircraft Certification Service Division Director responsible for the airshow location.	§ 91.715.
Flight Standards Division Manager or Aircraft Certification Directorate Manager of the FAA region in which the applicant is located or to the region within which the U.S. point of entry is located.	appropriate Flight Standards Division Manager, or Aircraft Certification Service Division Director.	§ 91.715.
Flight Standards International Field Office	Flight Standards office	§§ 129.111, 129.113, and 129.115.
in writing the appropriate aircraft certification office.	the FAA in writing	§ 21.47.
local Flight Standards District Office	responsible Flight Standards office	Appendix B to part 63.
local FAA Flight Standards district office	responsible Flight Standards office	§ 91.409.
local FAA Flight Standards district office having jurisdiction over the area in which the aircraft is based.	responsible Flight Standards office	§ 91.409.
Manager of the Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration.	Director of the division of the Aircraft Certification Service responsible for the airworthiness rules.	§§ 121.310, 121.312, and 135.170.
Manager, Aircraft Certification Office, or the Manager's designee.	Aircraft Certification Service	§§ 183.11.
Manufacturing Inspection District Office in the geographic area in which the manufacturer or air carrier is located.	FAA	§ 21.215.
nearest FAA Flight Standards District Office	responsible Flight Standards office	Special Federal Aviation Regulations No. 79 and No. 104 to part 91 and §§ 91.1603, 121.723, 135.43, and 137.1.
nearest FAA Flight Standards district office	responsible Flight Standards office	§ 91.23.
nearest FAA Flight Standards District Office (FSDO).	responsible Flight Standards office	§§ 91.1607, 91.1611, and 91.1613.
nearest Flight Standards District Office	responsible Flight Standards office	§§ 125.3 and 135.160.
Regional Office	responsible Flight Standards office	Appendix B to part 63.
responsible FAA aircraft certification office	FAA office responsible for the design approval	Appendix K to part 25.

TABLE 1—REVISED NOMENCLATURE AND AFFECTED SECTIONS OF 14 CFR—Continued

Old nomenclature/ current CFR	New nomenclature/ revision	Affected sections of 14 CFR
that district office	the responsible Flight Standards office	§ 125.35.

In addition to the above nomenclature changes, this rule makes the following conforming changes:

• In §§ 1.2 and 110.2, removes the acronym and definition for certificate holding district office because the FAA no longer uses this nomenclature in the rules.

• In § 21.15, removes the reference ''and is submitted to the appropriate aircraft certification office'' because the FAA no longer uses this nomenclature in the rules and this information is adequately addressed by existing guidance on submitting applications for type certificates.

• In § 21.603, removes the reference ''to the appropriate aircraft certification office'' because the FAA no longer uses this nomenclature in the rules and this information is adequately addressed by existing guidance on submitting applications for technical standard order authorizations.

• In §§ 26.3, 91.1501, 121.1101, 125.501, and 129.101, removes the definition of ''FAA Oversight Office'' because the FAA no longer uses this nomenclature in the rules.

• In § 34.60, removes the reference to the ''Aircraft Certification Office'' because the FAA no longer uses this nomenclature in the rules.

• In appendix B to part 43, removes references to office designators ''AFS–750'' and ''AFS–751'', which are obsolete references.

• In appendices A and C to part 60, removes the contact information for Ed Cook, Senior Advisor to the Division Manager, Air Transportation Division, because this information is obsolete and not necessary.

• In §§ 60.5 and 60.29, removes the reference to ''AFS–1'', which is an obsolete reference.

• In § 91.1505, replaces the words ''that have been approved by the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane are incorporated within its inspection program:'' with ''are incorporated within its inspection program. The repair assessment guidelines must be approved by the responsible Aircraft Certification Service office for the type certificate for the affected airplane.'' This revision does not change the requirements of this section. It clarifies the wording so it is easier to understand and harmonizes the sentence structure with the other rules for repairs assessment of pressurized fuselages in §§ 121.1107, 125.505, and 129.107.

• In appendix P to part 121, removes the reference to ''AFS–200'', which is an obsolete reference.

• In § 97.20, replaces ''FAA National Aeronautical Charting Office. These charts are available for purchase from the FAA's National Aeronautical Charting Office, Distribution Division, 6303 Ivy Lane, Suite 400, Greenbelt, MD 20770'' with ''FAA. These charts are available from the FAA at *https://www.faa.gov/air_traffic/flight_info/aeronav/digital_products/*'' because the FAA has ceased the sale of paper charts and now publishes charts for free on the internet.

• In § 125.509, replaces the word ''Office'' with the word ''office'' to create a generic reference.

In addition, this rule removes the Transport Airplane Directorate address from §§ 25.5 and 25.795 and removes the Rotorcraft Standards Staff address from § 27.685. These addresses were provided as one option to obtain documents incorporated by reference in the rule. With the movement of the Northwest Regional office and the movement to a more virtual work environment, the FAA addresses provided may change and require more flexibility. Therefore, we have removed these addresses. Per 5 CFR 51.7, documents incorporated by reference need to be ''reasonably available'' to regulated entities. Additional options for obtaining these documents from the National Archives and Records Administration (NARA) and other locations such as the National Institute of Justice at no cost continue to be listed in the rule. This rule also updates the website reference to NARA in these sections.

IV. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.,* requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended, 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. 1532, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with a base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule is not a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866. The rule is also not ''significant'' as defined in the Department of Transportation's (DOT's) Regulatory Policies and Procedures. The final rule will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to international trade, and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Evaluation

DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

AIR and AFS have reorganized to align with functional organization design concepts. The AIR reorganization included eliminating product directorates and restructuring and re-designating field offices. The AFS

reorganization included eliminating geographic regions and moving to a more functionally based organization. Specific AIR and AFS office references currently in 14 CFR are obsolete post-reorganization and will be replaced by generic references not dependent on any particular office structure. This rule is intended to clarify any confusion over which offices regulated entities and other persons should interact with when complying with 14 CFR regulations. Since this rule involves non-substantial clarifying editorial changes only, the costs of the rule will be minimal.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, ''RFA'') establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As discussed above, since the rule involves non-substantial editorial changes only, due to FAA reorganization, the FAA finds the costs of this rule will be minimal. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended, prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this rule and has determined that the rule is in accord with the Trade Agreements Act as the rule applies equally to domestic and foreign persons engaged in aviation activities under 14 CFR.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this immediately adopted final rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6(d), which covers the issuance of regulatory documents covering administrative or procedural requirements and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132, ''Federalism.'' The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this immediately adopted final rule under Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, ''Promoting International Regulatory Cooperation,'' promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771 titled ''Reducing Regulation and Controlling Regulatory Costs,'' directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' are subject to these requirements.

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

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/;* or

3. Accessing the Government Printing Office's web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 26

Aircraft, Aviation safety.

14 CFR Part 27

Aircraft, Aviation safety.

14 CFR Part 34

Air pollution control, Aircraft.

14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 45

Aircraft, Exports, Signs and symbols.

14 CFR Part 60

Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 63

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Navigation (air), Reporting and recordkeeping requirements, Security measures.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Aviation safety, Drug abuse, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 91

Air carrier, Air taxis, Air traffic controller, Aircraft, Airmen, Airports, Alaska, Aviation safety, Canada, Charter flights, Cuba, Drug traffic control, Ethiopia, Freight, Incorporation by reference, Iraq, Mexico, Noise control, North Korea, Political candidates, Reporting and recordkeeping, Somalia, Syria, Transportation.

14 CFR Part 97

Air traffic control, Airports, Navigation (air), Weather.

14 CFR Part 107

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping, Security measures, Signs and symbols.

14 CFR Part 110

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping.

14 CFR Part 129

Air carriers, Administration Aircraft, Aviation safety, Reporting and recordkeeping, Security measures, Smoking.

14 CFR Part 133

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

14 CFR Part 137

Agriculture, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 141

Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools.

14 CFR Part 142

Administrative practice and procedure, Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools, Teachers.

14 CFR Part 145

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 183

Aircraft, Airmen, Authority delegations (Government agencies),

Health professions, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

§ 1.2 [Amended]

■ 2. In § 1.2, remove the definition for *CHDO.*

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND ARTICLES

■ 3. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

Special Federal Regulation No. 88 [Amended]

■ 4. Amend Special Federal Regulation No. 88 as follows:

■ a. In paragraph 2(a), remove the words ''FAA (Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane)'' and add, in their place, the words ''responsible Aircraft Certification Service office for the affected airplane''.

■ b. In paragraph 2(c), remove the words ''FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate'' and add, in their place, the words ''responsible Aircraft Certification Service office''.

■ c. In paragraph 2(d), remove the words ''Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane,'' and add, in their place, the words ''responsible Aircraft Certification Service office for the affected airplane''.

§ 21.3 [Amended]

■ 5. In § 21.3(e)(1), remove the words ''Aircraft Certification Office in the region in which the person required to make the report is located'' and add, in their place, the word ''FAA''.

§§ 21.3, 21.47, 21.75, 21.113, 21.618, and 21.619 [Amended]

■ 6. In addition to the amendment set forth above, in 14 CFR part 21, remove the words ''appropriate aircraft certification office'' and add, in their place, the word ''FAA'' in the following places:

■ a. Section 21.3(f);
■ b. Section 21.47(c);
■ c. Section 21.75;
■ d. Section 21.113(b);
■ e. Section 21.618(b); and
■ f. Section 21.619(a).

§ 21.4 [Amended]

■ 7. Amend § 21.4 as follows:

■ a. In paragraph (a)(1) introductory text, remove the words ''FAA aircraft certification office,'' and add, in their place, the words ''Aircraft Certification Service office,''.

■ b. In paragraph (b)(1) introductory text, remove the words ''FAA type certificate holding office'' and add, in their place, the words ''Aircraft Certification Service office''; and remove the words ''FAA office responsible for administering its type certificate'' and add, in their place, the words ''responsible Aircraft Certification Service office''.

§ 21.15 [Amended]

■ 8. In § 21.15(a), after the words ''prescribed by the FAA'' and before the period, remove the words ''and is submitted to the appropriate aircraft certification office''.

§ 21.47 [Amended]

■ 9. In § 21.47(b) and (d), remove the words ''in writing the appropriate aircraft certification office'' and add, in their place, the words ''the FAA in writing''.

§ 21.113 [Amended]

■ 10. In addition to the amendments set forth above, in § 21.113(a), remove the words ''either apply to the appropriate aircraft certification office for an STC or apply'' and add, in their place, the words ''apply to the FAA either for an STC, or''.

§ 21.215 [Amended]

■ 11. In § 21.215, remove the words ''Manufacturing Inspection District Office in the geographic area in which the manufacturer or air carrier is located'' and add, in their place, the word ''FAA''.

§ 21.603 [Amended]

■ 12. In § 21.603(a) introductory text, remove the words ''to the appropriate aircraft certification office''.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 13. The authority citation for part 25 continues to read as follows:

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

§ 25.5 [Amended]

■ 14. In § 25.5(a):

■ a. Remove the words '', and at FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356''; and

■ b. Remove the text ''*http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*'' and add, in its place, the text ''*http://www.archives.gov/federal-register/cfr/ibr-locations.html*''.

■ 15. Amend § 25.795 by revising paragraphs (f)(2)(i) and (ii) and removing paragraph (f)(2)(iii) to read as follows:

§ 25.795 Security considerations.

* * * * *

(f) * * *

(2) * * *

(i) National Institute of Justice (NIJ), *http://www.ojp.usdoj.gov/nij,* telephone (202) 307–2942; or

(ii) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

Appendix K to Part 25 [Amended]

■ 16. In sections K25.2.2(h)(1)(i) and (ii) and K25.3.2(e)(1)(i) and (ii) of appendix K to part 25, remove the words ''responsible FAA aircraft certification office'' and add, in their place, the words ''FAA office responsible for the design approval''.

Appendix M and Appendix N to Part 25 [Amended]

■ 17. In part 25, remove the words ''FAA Oversight Office'' and add, in their place, the words ''responsible Aircraft Certification Service office'' in the following places:

■ a. Section M25.5(b) and (c) of appendix M; and

■ b. Section N25.3(e) of appendix N.

PART 26—CONTINUED AIRWORTHINESS AND SAFETY IMPROVEMENTS FOR TRANSPORT CATEGORY AIRPLANES

■ 18. The authority citation for part 26 continues to read as follows:

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

§ 26.3 [Removed and Reserved]

■ 19. Remove and reserve § 26.3.

§§ 26.11, 26.21, 26.23, 26.33, 26.35, 26.43, 26.45, 26.47, and 26.49 [Amended]

■ 20. In 14 CFR part 26, remove the words ''FAA Oversight Office'' and add, in their place, the words ''responsible Aircraft Certification Service office'' in the following places:
■ a. Section 26.11(b), (c)(1), (e) introductory text, and (e)(3);
■ b. Section 26.21(b)(2) introductory text, (b)(2)(ii), (b)(4), (d)(3), and (e) introductory text;
■ c. Section 26.23(b)(2) and (3);
■ d. Section 26.33(b)(1), (d)(1) and (2), (e), (f), (g) introductory text, (h) introductory text, and (h)(3);
■ e. Section 26.35(b)(1), (c) introductory text, (d)(1), (f) introductory text, and (f)(3);
■ f. Section 26.43(b)(2), (c)(3), (d)(2), (e)(2), (f) introductory text, and (f)(4);
■ g. Section 26.45(b)(3), (c)(2), (d)(3), and (e) introductory text;
■ h. Section 26.47(b)(3), (c)(2), (d)(3), and (e) introductory text; and
■ i. Section 26.49(a)(3) and (b) introductory text.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

■ 21. The authority citation for part 27 continues to read as follows:

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

§ 27.685 [Amended]

■ 22. Amend § 27.685(d)(4) as follows:
■ a. Remove the words ''at the FAA, Rotorcraft Standards Staff, 4400 Blue Mount Road, Fort Worth, Texas, or''.
■ b. Remove the text ''*http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*'' and add, in its place, the text ''*http://www.archives.gov/federal-register/cfr/ibr-locations.html*''.

PART 34—FUEL VENTING AND EXHAUST EMISSION REQUIREMENTS FOR TURBINE ENGINE POWERED AIRPLANES

■ 23. The authority citation for part 34 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.,* 7572; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44714.

§ 34.60 [Amended]

■ 24. In § 34.60(e), remove the words ''Aircraft Certification Office''.

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

■ 25. The authority citation for part 43 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

Appendix B to Part 43 [Amended]

■ 26. Amend appendix B to part 43 as follows:
■ a. In paragraph (c)(2), remove the text ''AFS–750,''.
■ b. In paragraph (d)(3), remove the text ''AFS–751,''.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

■ 27. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113–40114, 44101–44105, 44107–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

§ 45.22 [Amended]

■ 28. In § 45.22(a)(3)(i), remove the words ''Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

PART 60—FLIGHT SIMULATION TRAINING DEVICE INITIAL AND CONTINUING QUALIFICATION AND USE

■ 29. The authority citation for part 60 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, and 44701; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note).

§§ 60.5 and 60.29 [Amended]

■ 30. In part 60, remove the text ''AFS–1,'' in the following places:
■ a. Section 60.5(d); and
■ b. Section 60.29(b)(2).

§§ 60.5 and 60.29 [Amended]

■ 31. In addition to the amendments set forth above, in 14 CFR part 60, remove all references to ''Director'' and add, in their place, the words ''Executive Director'' in the following places:
■ a. Section 60.5(d); and
■ b. Section 60.29(a)(4)(ii) and (b)(2).

Appendix A to Part 60 [Amended]

■ 32a. In Attachment 6 to appendix A, under FSTD Directive 1, remove the **FOR FURTHER INFORMATION CONTACT** paragraph.

Appendix C to Part 60 [Amended]

■ 32b. In Attachment 5 to appendix C, remove the **FOR FURTHER INFORMATION CONTACT** paragraph.

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 33. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, 45301–45302; Sec. 2307 Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note).

Special Federal Aviation Regulation No. 100–2 [Amended]

■ 34. Amend Special Federal Aviation Regulation No. 100–2 as follows:
■ a. In paragraph 1 introductory text, remove the words ''District Offices'' and add, in their place, the word ''offices''; and
■ b. In paragraph 3 introductory text, remove the words ''District Office'' and add, in their place, the word ''office''.

§ 61.55, 61.64, and 61.77 [Amended]

■ 35. In 14 CFR part 61, remove all references to ''FAA Flight Standards District Office'' and add, in their place, ''Flight Standards office'' in the following places:
■ a. Section 61.55(d)(6);
■ b. Section 61.64(g)(4); and
■ c. Section 61.77(b)(5).

§ 61.55 and 61.77 [Amended]

■ 36. In 14 CFR part 61, remove the words ''an FAA Flight Standards District Office'' and add, in their place, the words ''a Flight Standards office'' in the following places:
■ a. Section 61.55(d)(3) and (4) and (e)(3), (4), and (6); and
■ b. Section 61.77(b) introductory text.

§ 61.85 [Amended]

■ 37. In § 61.85(b), remove the words ''District Office'' and add, in their place, the word ''office''.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

■ 38. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

Appendix B to Part 63 [Amended]

■ 39. Amend appendix B to part 63 as follows:
■ a. In paragraphs (f) introductory text, (j)(2) and (3), (k)(2), and (m), remove the

words ''local Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

■ b. In paragraphs (j)(2) and (3), remove the words ''regional office'' and add, in their place, the words ''responsible Flight Standards office''.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 40. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

§ 65.93 [Amended]

■ 41. In § 65.93(a) introductory text, remove the words ''an FAA Flight Standards District Office or an International Field Office'' and add, in their place, the words ''the responsible Flight Standards office''.

§ 65.95 [Amended]

■ 42. In § 65.95(c), remove the words ''FAA Flight Standards District Office or International Field Office'' and add, in their place, the words ''responsible Flight Standards office''.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 43. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note) articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

Special Federal Aviation Regulation No. 50–2 [Amended]

■ 44. In Special Federal Regulation No. 50–2, remove the words ''Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office'' in the following places:

■ a. Section 3(a)(2), (b), and (c)(2);

■ b. Section 4 introductory text; and

■ c. Section 5 introductory text.

Special Federal Aviation Regulation No. 79 [Amended]

■ 45. In section 4 of Special Federal Aviation Regulation No. 79, remove the words ''nearest FAA Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

Special Federal Aviation Regulation No. 104 [Amended]

■ 46. In section 4 of Special Federal Aviation Regulation No. 104, remove the words ''nearest FAA Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 91.23 [Amended]

■ 47. Amend § 91.23 as follows:

■ a. In paragraph (a)(3), remove the words ''nearest FAA Flight Standards district office'' and add, in their place, the words ''responsible Flight Standards office''.

■ b. In paragraph (c)(3) introductory text, remove the words ''FAA Flight Standards district office nearest the airport where the flight will originate'' and add, in their place, the words ''responsible Flight Standards office''.

§ 91.146 [Amended]

■ 48. In § 91.146(e) introductory text, remove the words ''FAA Flight Standards District Office with jurisdiction over the geographical area'' and add, in their place, the words ''responsible Flight Standards office for the area''.

§ 91.147 [Amended]

■ 49. In § 91.147(b), remove the words ''Flight Standards District Office nearest to its principal place of business'' and add, in their place, the words ''responsible Flight Standards office''.

§ 91.203 [Amended]

■ 50. In § 91.203(a)(1), remove the words ''an FAA Flight Standards district office'' and add, in their place, the words ''the responsible Flight Standards office''.

§ 91.213 [Amended]

■ 51. In § 91.213(a)(2), remove the words ''FAA Flight Standards district office having jurisdiction over the area in which the operator is located,'' and add, in their place, the words ''responsible Flight Standards office,''.

§§ 91.317, 91.415, 91.1017, and 91.1431 [Amended]

■ 52. In 14 CFR part 91, remove all references to ''Director'' and add, in their place, the words ''Executive Director'' in the following places:

■ a. Section 91.317(c);

■ b. Section 91.415(c);

■ c. Section 91.1017(d)(2); and

■ d. Section 91.1431(c).

§ 91.409 [Amended]

■ 53. Amend § 91.409 as follows:

■ a. In paragraph (d) introductory text, remove the words ''FAA Flight Standards district office having jurisdiction over the area in which the applicant is located'' and add, in their place, the words ''responsible Flight Standards office''.

■ b. In the undesignated paragraph following paragraph (d)(4), remove the words ''local FAA Flight Standards district office'' and add, in their place, the words ''responsible Flight Standards office''.

■ c. In paragraph (g) introductory text, remove the words ''local FAA Flight Standards district office having jurisdiction over the area in which the aircraft is based'' and add, in their place, the words ''responsible Flight Standards office''.

■ 54. Amend § 91.715 by revising paragraph (a) to read as follows:

§ 91.715 Special flight authorization for foreign civil aircraft.

(a) Foreign civil aircraft may be operated without airworthiness certificates required under § 91.203 if a special flight authorization for that operation is issued under this section. Application for a special flight authorization must be made to the appropriate Flight Standards Division Manager, or Aircraft Certification Service Division Director. However, in the case of an aircraft to be operated in the U.S. for the purpose of demonstration at an airshow, the application may be made to the appropriate Flight Standards Division Manager or Aircraft Certification Service Division Director responsible for the airshow location.

* * * * *

§§ 91.1015, 91.1017, 91.1053, 91.1109, 91.1415, and 91.1417 [Amended]

■ 55. In addition to the amendments set forth above, in 14 CFR part 91, remove all references to ''District Office'' and add, in their place, the word ''office'' in the following places:

■ a. Section 91.1015(d);

■ b. Section 91.1017(b)(1) and (2), (b)(3) introductory text, (b)(4) introductory text, (b)(4)(i), (c)(2), (c)(3) introductory text, (c)(4), (d) introductory text, (d)(3), and (e);

■ c. Section 91.1053(b);

■ d. Section 91.1109(b) introductory text;

■ e. Section 91.1415(d); and

■ f. Section 91.1417 introductory text.

§ 91.1501 [Amended]

■ 56. Amend § 91.1501 by removing and reserving paragraph (b).

■ 57. Amend § 91.1505 by revising paragraph (a) introductory text to read as follows:

§ 91.1505 Repairs assessment for pressurized fuselages.

(a) No person may operate an Airbus Model A300 (excluding the -600 series), British Aerospace Model BAC 1–11, Boeing Model 707, 720, 727, 737 or 747, McDonnell Douglas Model DC–8, DC–9/MD–80 or DC–10, Fokker Model F28, or Lockheed Model L–1011 airplane beyond applicable flight cycle implementation time specified below, or May 25, 2001, whichever occurs later, unless repair assessment guidelines applicable to the fuselage pressure boundary (fuselage skin, door skin, and bulkhead webs) are incorporated within its inspection program. The repair assessment guidelines must be approved by the responsible Aircraft Certification Service office for the type certificate for the affected airplane.

* * * * *

§ 91.1507 [Amended]

■ 58. Amend § 91.1507 as follows:

■ a. In paragraphs (b) and (d), remove the words ''FAA Oversight Office'' and add, in their place, the words ''responsible Aircraft Certification Service office''.

■ b. In paragraph (f), remove the words ''Flight Standards District Office (FSDO)'' and add, in their place, the words ''Flight Standards office''.

§ 91.1603 [Amended]

■ 59. In § 91.1603(d), remove the words ''nearest FAA Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 91.1607, 91.1611, and 91.1613 [Amended]

■ 60. In part 91, remove the words ''nearest FAA Flight Standards District Office (FSDO)'' and add, in their place, the words ''responsible Flight Standards office'' in the following places:

■ a. Section 91.1607(d);

■ b. Section 91.1611(d); and

■ c. Section 91.1613(d).

Appendix A to Part 91 [Amended]

■ 61. In section 1(a) introductory text of appendix A to part 91, remove the words ''Flight Standards District Office having jurisdiction of the area in which the applicant is located'' and add, in their place, the words ''responsible Flight Standards office''.

PART 97—STANDARD INSTRUMENT PROCEDURES

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

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

■ 63. Amend § 97.20 by revising paragraph (c) to read as follows:

§ 97.20 General.

* * * * *

(c) Standard instrument approach procedures and takeoff minimums and obstacle departure procedures (ODPs) are depicted on aeronautical charts published by the FAA. These charts are available from the FAA at *https://www.faa.gov/air_traffic/flight_info/aeronav/digital_products/.*

PART 107—SMALL UNMANNED AIRCRAFT SYSTEMS

■ 64. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40101 note, 40103(b), 44701(a)(5); Sec. 333 of Pub. L. 112–95, 126 Stat. 75.

§ 107.63 [Amended]

■ 65. In § 107.63(b)(1), remove the words ''a Flight Standards District Office'' and add, in their place, the words ''the responsible Flight Standards office''.

PART 110—GENERAL REQUIREMENTS

■ 66. The authority citation for part 110 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

§ 110.2 [Amended]

■ 67. In § 110.2, remove the definition for *Certificate-holding district office.*

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 68. The authority citation for part 119 continues to read as follows:

Authority: Pub. L. 111–216, sec. 215 (August 1, 2010); 49 U.S.C. 106(f), 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

§ 119.1 [Amended]

■ 69. In § 119.1(e)(7)(iv), remove the words ''FAA Flight Standards District Office responsible for the geographic area concerned'' and add, in their place, the words ''responsible Flight Standards office''.

§ 119.36 [Amended]

■ 70. In § 119.36(a), remove the words ''Flight Standards District Office in whose area the applicant proposes to establish or has established his or her principal base of operations'' and add, in their place, the words ''responsible Flight Standards office''.

§§ 119.37, 119.41, 119.47, 119.51, 119.57, 119.61, 119.65, and 119.69 [Amended]

■ 71. In 14 CFR part 119, remove all references to ''certificate-holding district office'' and add, in their place, the words ''responsible Flight Standards office'' in the following places:

■ a. Section 119.37(e);

■ b. Section 119.41(a)(2), (c)(1) and (2), and (d);

■ c. Section 119.47(b);

■ d. Section 119.51(b)(1) and (2), (b)(3) introductory text, (b)(4) introductory text, (b)(4)(i), (c)(2), (c)(3) introductory text, (c)(4), (d) introductory text, (d)(3), (e);

■ e. Section 119.57(b)(2)(ii);

■ f. Section 119.61(c);

■ g. Section 119.65(e)(3); and

■ h. Section 119.69(e)(3).

§§ 119.41 and 119.51 [Amended]

■ 72. In addition to the amendments set forth above, remove the word ''Director'' and add, in its place, the words ''Executive Director'' in the following places:

■ a. Section 119.41(d)(2); and

■ b. Section 119.51(d)(2).

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 73. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95 126 Stat 62 (49 U.S.C. 44732 note).

§ 121.97, 121.117, 121.291, 121.405, 121.467, 121.565, 121.585, 121.586, 121.628, and 121.685 [Amended]

■ 74. In 14 CFR part 121, remove all references to ''certificate-holding district office'' and add, in their place, the words ''responsible Flight Standards office'' in the following places:

■ a. Section 121.97(c);

■ b. Section 121.117(c);

■ c. Section 121.291(c)(2) and (4);

■ d. Section 121.405(e);

■ e. Section 121.467(c)(2);

■ f. Section 121.565(d);

■ g. Section 121.585(n)(2);

■ h. Section 121.586(b) and (c);

■ i. Section 121.628(a)(2); and

■ j. Section 121.685.

§ 121.97, 121.117, 121.417, and 121.585 [Amended]

■ 75. In addition to the amendments set forth above, in 14 CFR part 121, remove all references to ''Director'' and add, in their place, the words ''Executive Director'' in the following places:
■ a. Section 121.97(c);
■ b. Section 121.117(c);
■ c. Section 121.417(d); and
■ d. Section 121.585(p).

§ 121.99 [Amended]

■ 76. In § 121.99(a), remove the words ''FAA certificate holding district office'' and add, in their place, the words ''responsible Flight Standards office''.

§§ 121.103 and 121.121 and Appendix P to Part 121 [Amended]

■ 77. In 14 CFR part 121, remove the words ''certificate holding district office'' and add, in their place, the words ''responsible Flight Standards office'' in the following places:
■ a. Section 121.103(b)(3);
■ b. Section 121.121(b)(3); and
■ c. Section I(e)(1)(v) of appendix P to part 121.

§§ 121.310 and 121.312 [Amended]

■ 78. In 14 CFR part 121, remove the words ''Manager of the Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration,'' and add, in their place, the words ''Director of the division of the Aircraft Certification Service responsible for the airworthiness rules'' in the following places:
■ a. Section 121.310(f)(3)(iv) and (v); and
■ b. Section 121.312(a)(4).

§ 121.314 [Amended]

■ 79. In § 121.314(d)(2), remove the words ''Certificate Holding District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 121.35 8 [Amended]

■ 80. In § 121.358(c)(1), remove the words ''Flight Standards Division Manager in the region of the certificate holding district office'' and add, in their place, the words ''appropriate Flight Standards division manager in the responsible Flight Standards office''.

§ 121.368 [Amended]

■ 81. In § 121.368(h), remove the words ''FAA Certificate Holding District Office,'' and add, in their place, the words ''responsible Flight Standards office,''.

§ 121.373 [Amended]

■ 82. In § 121.373(c), remove the words ''FAA certificate-holding district office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 121.374 [Amended]

■ 83. Amend § 121.374 as follows:
■ a. In paragraph (h)(1) introductory text, remove the words ''certificate holding district office (CHDO)'' and add, in their place, the words ''responsible Flight Standards office''.
■ b. In paragraphs (h)(2), (i)(2), and (o), remove all references to ''CHDO'' and add, in its place, the words ''responsible Flight Standards office''.

§ 121.723 [Amended]

■ 84. In § 121.723, remove the words ''nearest FAA Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§§ 121.909 and 121.923 [Amended]

■ 85. In part 121, remove the words ''Advanced Qualification Program'' and add, in their place, the words ''Air Transportation Division'' in the following places:
■ a. Section 121.909(a); and
■ b. Section 121.923(a)(2).

§ 121.1101 [Amended]

■ 86. In § 121.1101, remove and reserve paragraph (b).

§ 121.1107 [Amended]

■ 87. In § 121.1107(a) introductory text:
■ a. Remove the word ''McDonnel'' and add, in its place, the word ''McDonnell''; and
■ b. Remove the words ''FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over'' and add, in their place, the words ''responsible Aircraft Certification Service office for''.

§§ 121.1109, 121.1111, 121.1113, and 121.1117 [Amended]

■ 88. In part 121, remove the words ''FAA Oversight Office'' and add, in their place, the words ''responsible Aircraft Certification Service office'' in the following places:
■ a. Section 121.1109(c)(2);
■ b. Section 121.1111(c) introductory text;
■ c. Section 121.1113(b) and (d); and
■ d. Section 121.1117(c)(2), (d)(1), and (g).

§ 121.1117 [Amended]

■ 89. In addition to the amendments set forth above, in § 121.1117(k)(1), remove the words ''assigned Flight Standards Office'' and add, in their place, the words ''responsible Flight Standards office''.

Appendix C to Part 121 [Amended]

■ 90. Amend appendix C to part 121 as follows:
■ a. In paragraph 1(a)(2), remove the words ''FAA Regional Flight Standards Division'' and add, in their place, the words ''Flight Standards office''.
■ b. In paragraph 1(b), remove the words ''appropriate FAA Flight Standards District Office, Alaskan Region,'' and add, in their place, the words ''responsible Flight Standards office''.

Appendix G to Part 121 [Amended]

■ 91. In paragraph 1(a) of appendix G to part 121, remove the words ''Flight Standards District Office or International Field Office'' and add, in their place, the words ''responsible Flight Standards office''.

Appendix P to Part 121 [Amended]

■ 92. In addition to the amendments set forth above, in section I(e)(1)(v) of appendix P to part 121, remove the words ''to AFS–200''.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 93. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

§ 125.3 [Amended]

■ 94. In § 125.3(c), remove the words ''nearest Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§§ 125.21, 125.25, 125.35, 125.47, 125.71, 125.219, and 125.295 [Amended]

■ 95. In 14 CFR part 125, remove the words ''FAA Flight Standards district office'' and add, in their place, the words ''responsible Flight Standards office'' in the following places:
■ a. Section 125.21(a);
■ b. Section 125.25(c);
■ c. Section 125.35(a) introductory text, (b), and (d);
■ d. Section 125.47;
■ e. Section 125.71(d)(2);
■ f. Section 125.219(e); and
■ g. Section 125.295.

§ 125.35 [Amended]

■ 96. In addition to the amendments set forth above, amend § 125.35 as follows:

■ a. In paragraphs (a)(2) and (d), remove all references to ''that district office'' and add, in their place, the words ''the responsible Flight Standards office''.

■ b. In paragraphs (c) and (d), remove all references to ''Director'' and add, in their place, the words ''Executive Director''.

§ 125.51 [Amended]

■ 97. In § 125.51(b)(3), remove the words ''certificate holding district office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 125.201 [Amended]

■ 98. In § 125.201(a)(2), remove the words ''Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 125.206 [Amended]

■ 99. In § 125.206(b) introductory text and (b)(2), remove the word ''Director'' and add, in its place, the words ''Executive Director''.

§ 125.501 [Amended]

■ 100. In § 125.501, remove and reserve paragraph (b).

§ 125.505 [Amended]

■ 101. In § 125.505(a) introductory text:

■ a. Remove the word ''exlcuding'' and add, in its place, the word ''excluding''; and

■ b. Remove the words ''FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over'' and add, in their place, the words ''responsible Aircraft Certification Service office for''.

§§ 125.507 and 125.509 [Amended]

■ 102. In 14 CFR part 125, remove the words ''FAA Oversight Office'' and add, in their place, the words ''responsible Aircraft Certification Service office'' in the following places:

■ a. Section 125.507(b) and (d); and

■ b. Section 125.509(c)(2), (d)(1), and (g).

§ 125.509 [Amended]

■ 103. In addition to the amendments set forth above, in § 125.509(i), remove the word ''Office'' and add, in its place, the word ''office''.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 104. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

§§ 129.5 and 129.11 [Amended]

■ 105. In 14 CFR part 129, remove all references to ''District Office'' and add, in their place, the word ''office'' in the following places:

■ a. Section 129.5(g); and

■ b. Section 129.11(c)(1) and (2), (c)(3) introductory text, (c)(4) introductory text, (c)(4)(i), (d)(2), (d)(3) introductory text, (d)(4), (f) introductory text, (f)(3), and (g).

§ 129.11 [Amended]

■ 106. In addition to the amendments set forth above, in § 129.11(f)(2), remove the word ''Director'' and add, in its place, the words ''Executive Director''.

§ 129.14 [Amended]

■ 107. In § 129.14(b)(2), remove the words ''FAA Flight Standards District Office having geographic responsibility'' and add, in their place, the words ''responsible Flight Standards office''.

§ 129.101 [Amended]

■ 108. In § 129.101, remove and reserve paragraph (b).

§ 129.107 [Amended]

■ 109. In § 129.107(a) introductory text, remove the words ''FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over'' and add, in their place, the words ''responsible Aircraft Certification Service office for''.

§§ 129.109, 129.111, 129.113, and 129.117 [Amended]

■ 110. In 14 CFR part 129, remove the words ''FAA Oversight Office'' and add, in their place, the words ''responsible Aircraft Certification Service office'' in the following places:

■ a. Section 129.109(b)(2);

■ b. Section 129.111(c) introductory text;

■ c. Section 129.113(b) and (d); and

■ d. Section 129.117(c)(2), (d)(1), and (g).

§§ 129.111, 129.113, and 129.115 [Amended]

■ 111. In addition to the amendments set forth above, in 14 CFR part 129, remove the words ''International Field Office'' and add, in their place, the word ''office'' in the following places:

■ a. Section 129.111(e);

■ b. Section 129.113(f); and

■ c. Section 129.115(e).

§ 129.117 [Amended]

■ 112. In addition to the amendments set forth above, in § 129.117(i) and (k)(1), remove the words ''assigned Flight Standards Office'' and add, in their place, the words ''responsible Flight Standards office''.

PART 133—ROTORCRAFT EXTERNAL–LOAD OPERATIONS

■ 113. The authority citation for part 133 continues to read as follows:

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

§ 133.15 [Amended]

■ 114. In § 133.15:

■ a. Remove the words ''an FAA Flight Standards District Office'' and add, in their place, the words ''a Flight Standards office''; and

■ b. Remove the words ''district office that has jurisdiction over'' and add, in their place, the words ''responsible Flight Standards office for''.

§ 133.21 [Amended]

■ 115. In § 133.21(c), remove the words ''FAA certificate-holding office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 133.25 [Amended]

■ 116. Amend § 133.25 as follows:

■ a. In paragraph (a):

■ i. Remove the words ''FAA Flight Standards District Office having jurisdiction over'' and add, in their place, the words ''responsible Flight Standards office for'';

■ ii. Remove the words ''Flight Standards District Office nearest'' and add, in their place, the words ''responsible Flight Standards office for'';

■ iii. Remove the comma after ''§§ 133.19'' and before ''and 133.49''; and

■ iv. Remove the words ''Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

■ b. In paragraph (b), remove the words ''certificate-holding FAA Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 133.27 [Amended]

■ 117. In § 133.27(c), remove the words ''FAA Flight Standards District Office

having jurisdiction over the area in which his home base of operations is located'' and add, in their place, the words ''responsible Flight Standards office''.

§ 133.31 [Amended]

■ 118. In § 133.31(b), remove the words ''certificate-holding FAA Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 133.33 [Amended]

■ 119. In § 133.33(d)(1):
■ a. Remove the words ''FAA Flight Standards District Office having jurisdiction over'' and add, in their place, the words ''responsible Flight Standards office for''; and
■ b. Remove the words ''that district office'' and add, in their place, the words ''that office''.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 120. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

§ 135.4 [Amended]

■ 121. In § 135.4(b) introductory text, remove the words ''Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 135.19 [Amended]

■ 122. In § 135.19(c), remove the words ''FAA Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 135.43 [Amended]

■ 123. In § 135.43(b), remove the words ''nearest FAA Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 135.91, 135.129, 135.179, 135.213, 135.273, 135.417, and 135.431 [Amended]

■ 124. In 14 CFR part 135, remove the words ''certificate-holding district office'' and add, in their place, the words ''responsible Flight Standards office'' in the following places:
■ a. Section 135.91(e);
■ b. Section 135.129(n)(2);
■ c. Section 135.179(a)(2);
■ d. Section 135.213(b);
■ e. Section 135.273(c)(2);
■ f. Section 135.417 introductory text; and
■ g. Section 135.431(c).

§§ 135.129 and 135.158 [Amended]

■ 125. In addition to the amendments set forth above, in 14 CFR part 135, remove the word ''Director'' and add, in its place, the words ''Executive Director'' in the following places:
■ a. Section 135.129(p); and
■ b. Section 135.158(b) introductory text and (b)(2).

§ 135.160 [Amended]

■ 126. In § 135.160(b), remove the words ''nearest Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 135.170 [Amended]

■ 127. In § 135.170(b)(1)(vii), remove the words ''Manager of the Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration,'' and add, in their place, the words ''Director of the division of the Aircraft Certification Service responsible for the airworthiness rules''.

§ 135.243 [Amended]

■ 128. Amend § 135.243 as follows:
■ a. In paragraph (d)(3) introductory text, remove the words ''district office'' and add, in their place, ''office''.
■ b. In paragraph (d)(7), remove the words ''certificate-holding FAA Flight Standards district office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 135.426 [Amended]

■ 129. In § 135.426(h), remove the words ''FAA Certificate Holding District Office'' and add, in their place, the words ''responsible Flight Standards office''.

Appendix G to Part 135 [Amended]

■ 130. Amend appendix G to part 135 as follows:
■ a. In section G135.2.8(h) introductory text, remove the words ''certificate holding district office (CHDO)'' and add, in their place, the words ''responsible Flight Standards office''.
■ b. In section G135.2.8(i) introductory text, (i)(2), and (o), remove the words ''CHDO'' and add, in their place, the words ''responsible Flight Standards office''.

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

■ 131. The authority citation for part 137 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 44701–44702.

§ 137.1 [Amended]

■ 132. In § 137.1(c), remove the words ''nearest FAA Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.

§ 137.15 [Amended]

■ 133. In § 137.15, remove the words ''FAA Flight Standards District Office that has jurisdiction over'' and add, in their place, the words ''responsible Flight Standards office for''.

§ 137.17 [Amended]

■ 134. Amend § 137.17 as follows:
■ a. In paragraph (b), remove the words ''FAA Flight Standards District Office having jurisdiction over'' and add, in their place, the words ''responsible Flight Standards office for''.
■ b. In paragraph (c), remove the words ''Flight Standards District Office'' and add, in their place, the words ''responsible Flight Standards office''.
■ c. In paragraph (d), remove the word ''Director'' and add, in its place, the words ''Executive Director''.

§ 137.51 [Amended]

■ 135. In § 137.51(b)(3), remove the words ''FAA Flight Standards District Office having jurisdiction over'' and add, in their place, the words ''responsible Flight Standards office for''.

§ 137.77 [Amended]

■ 136. In § 137.77, remove the words ''FAA Flight Standards District Office last having jurisdiction over his operation'' and add, in their place, the words ''responsible Flight Standards office''.

PART 141—PILOT SCHOOLS

■ 137. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–45302.

§§ 141.25, 141.53, and 141.91 [Amended]

■ 138. In 14 CFR part 141, remove the words ''FAA Flight Standards District Office having jurisdiction over'' and add, in their place, the words ''responsible Flight Standards office for'' in the following places:
■ a. Section 141.25(d) introductory text;
■ b. Section 141.53(b)(1); and
■ c. Section 141.91(d).

§ 141.37 [Amended]

■ 139. In § 141.37(b)(2), remove the words ''FAA Flight Standards District

Office having jurisdiction over the school'' and add, in their place, the words ''responsible Flight Standards office''.

§ 141.67 [Amended]

■ 140. In § 141.67(d)(2), remove the words ''an FAA Flight Standards District Office'' and add, in their place, the words ''the responsible Flight Standards office ''.

§ 141.87 [Amended]

■ 141. In § 141.87(a), remove the words ''Flight Standards District Office that has jurisdiction over the area'' and add, in their place, the words ''responsible Flight Standards office''.

PART 142—TRAINING CENTERS

■ 142. The authority citation for part 142 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

§ 142.11 [Amended]

■ 143. In § 142.11(a)(2), remove the words ''FAA Flight Standards District Office that has jurisdiction over'' and add, in their place, the words ''responsible Flight Standards office for''.

PART 145—REPAIRS STATIONS

■ 144. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44709, 44717.

§ 145.163, 145.207, 145.209, 145.211, 145.215, and 145.217 [Amended]

■ 145. In 14 CFR part 145, remove all references to ''certificate holding district office'' and add, in their place, the words ''responsible Flight Standards office'' in the following places:
■ a. Section 145.163(d);
■ b. Section 145.207(d) and (e);
■ c. Section 145.209(d)(1), (e), (h)(1) and (2), and (j);
■ d. Section 145.211(c)(4) and (d);
■ e. Section 145.215(d); and
■ f. Section 145.217(a)(2) introductory text.

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

■ 146. The authority citation for part 183 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(f), 106(g), 40113, 44702, 45303.

§ 183.11 [Amended]

■ 147. Amend § 183.11 as follows:
■ a. In paragraph (c)(1), remove the words ''Manager, Aircraft Certification Office, or the Manager's designee,'' and add, in their place, the words ''Aircraft Certification Service''.
■ b. In paragraph (c)(2), remove the words ''Manager, Aircraft Certification Directorate, or the Manager's designee,'' and add, in their place, the words ''Aircraft Certification Service''.
■ c. In paragraph (e), remove the words ''Director, Aircraft Certification Service, or the Director's designee,'' and add, in their place, the words ''Aircraft Certification Service''.

§ 183.33 [Amended]

■ 148. In § 183.33(a), remove the words ''Director of'' everywhere they appear and add, in their place, the words ''Executive Director,''.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on January 24, 2018.

Daniel K. Elwell,

Acting Administrator.

[FR Doc. 2018–03374 Filed 3–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2018–0090; Special Conditions No. 23–286–SC]

Special Conditions: Textron Aviation, Inc., Model C90A King Air; Installation of Electronic Engine Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Textron Aviation, Inc., model C90A King Air airplane. This airplane as modified by Nextant Aerospace will have a novel or unusual design feature associated with installation of an engine that includes an electronic engine control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 5, 2018.

We must receive your comments by April 4, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0090 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Federal Aviation Administration, Aircraft Certification Service, Policy & Innovation Division, Small Airplane Standards Branch, AIR–691, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–3239; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the FAA has determined, in accordance with 5 U.S.C. 553(b)(3)(B) and 553(d)(3), that notice and opportunity for prior public comment hereon are unnecessary because the substance of these special conditions has been subject to the public comment process in several prior instances with

no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Special conditions No.	Company/airplane model
23–01–05–SC [1]	Eclipse Aviation Corporation/Model 500.
23–10–03–SC [2]	Diamond Aircraft Industries/Model DA–40NG.
23–98–03–SC [3]	Raytheon Aircraft Company/Model 3000.

Comments Invited

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

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On January 12, 2016, Nextant Aerospace applied for a supplemental type certificate (STC) for installation of two General Electric (GE) H75–100E engines that include electronic engine and propeller controls in the model C90A King Air. The model C90A, currently approved under Type Certificate No. 3A20, is a normal category twin turbo-propeller airplane with a maximum capacity of up to 13 passengers and a maximum takeoff weight of up to 9650 lbs. or 10,100 lbs., depending on the serial number modified. The airplane includes two Pratt & Whitney Corporation (PWC) PT6A–21 engines and either Hartzell or McCauley reversing propellers.

Nextant Aerospace originally received an STC for the model C90A for installation of two GE H75–100 engines. Nextant Aerospace has made application to amend the STC to install GE H75–100E engines, which include single channel analog supervisory electronic engine controls (EECs) in addition to the existing mechanical engine controls. The EEC does not include any software, but does provide single lever control for both the fuel metering and propeller control. The EEC also ensures the engine and propeller remain within their operating limits throughout the approved operating range, including propeller reverse operation and starting. Loss of the EEC results in the pilot control of the hydro-mechanical metering/shut-off lever.

The Nextant Aerospace installation of GE H75–100E engines in the model C90A King Air use an electronic engine control system (a single channel supervisory control with a mechanical backup as opposed to a two-channel full authority control with no mechanical backup) instead of a traditional mechanical only control system. Although the engine control system is certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to critical environmental effects and possible effects on or by other airplane systems. This includes indirect effects of lightning, radio interference with other airplane electronic systems, shared engine and airplane data, and power sources.

The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems and critical environmental effects, are contained in §§ 23.1306, 23.1308, and 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned. The integral nature of these systems makes it necessary to ensure the airplane functions, which may be included in the EEC, are properly evaluated and that the installation does not degrade the EEC reliability, which is approved under part 33. Sections 23.1306(a) and 23.1308(a) are applied to the EEC to ensure it remains equivalent to a mechanical only system, which is not generally susceptible to the High Intensity Radiated Fields (HIRF) and lightning environments.

In some cases, the airplane in which the engine is installed determines a higher classification than the engine controls are certificated for, requiring the EEC systems be analyzed at a higher classification. As of November 2005, EEC special conditions mandated the § 23.1309 classification for loss of EEC control as catastrophic for any airplane. This is not to imply an engine failure is classified as catastrophic, but that the EEC must provide an equivalent reliability to mechanical engine controls. In addition, §§ 23.1141(e) and 25.901(b)(2) are applied to provide the fault tolerant design requirements of turbine engine mechanical controls to the EEC and ensure adequate inspection and maintenance interval for the EEC. As this is a supervisory EEC with a mechanical control backup, the intent of this special condition is to ensure the installation of both the EEC and mechanical backup provide an equivalent reliability to that expected of a mechanical only control.

Part 23 did not envision the use of electronic engine controls with either full authority controls or supervisory only controls, and lacks the specific regulatory requirements necessary to provide an adequate level of safety. Therefore, special conditions are necessary.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (CFR) 21.101, Nextant Aerospace must show that the model C90A, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 3A20 or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in 3A20 are as follows: CAR 3, effective May 15, 1956, amendments 3–1, 3–2, and 3–8; CAR 3, amendment 3–6; and CAR 3 § 3.705, amendment 3–7. In addition, the certification basis includes special conditions and some requirements from 14 CFR parts 23, 25, 36 and SFAR 27, as noted on the Type Certificate Data Sheet. If the Administrator finds that the applicable airworthiness regulations in part 23 do not contain adequate or appropriate safety standards for the model C90A because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the model C90A must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/3B5A8ECF0327533486256B80006AEF68?OpenDocument&Highlight=23-01-05-sc.*

[2] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/4D1C0F36822269338625 7904004BC13F?OpenDocument&Highlight =electronic%20engine%20control.*

[3] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/FF5633DA88FBF46586256B960 05F8AAF?OpenDocument&Highlight=electronic %20engine%20control.*

same type certificate to incorporate the same novel or unusual design feature, the FAA would apply these special conditions to the other model.

Novel or Unusual Design Features

The model C90A King Air will incorporate the following novel or unusual design features: The installation of an Electronic Engine Control (EEC) system.

Discussion

As defined in the summary section, this airplane makes use of an electronic engine control system in addition to a traditional mechanical control system, which is a novel design for this type of airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. Mandating a structured assessment to determine potential installation issues mitigate the concerns that the addition of an electronic engine control does not produce a failure condition not previously considered.

Applicability

These special conditions are applicable to the model C90A King Air when modified by Nextant Aerospace. Should Nextant Aerospace apply later for a supplemental type certificate to modify any other model included on Type Certificate No. 3A20 to incorporate the same novel or unusual design feature, the FAA would apply these special conditions to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the model C90A airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances, identified above, and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, notice and opportunity for prior public comment hereon are unnecessary and the FAA finds good cause, in accordance with 5 U.S. Code §§ 553(b)(3)(B) and 553(d)(3), making these special conditions effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Textron Aviation (formerly Beechcraft); model C90A King Air airplanes modified by Nextant Aerospace.

1. Installation of Electronic Engine Control System

a. For electronic engine control (EEC) system installations, it must be established that no single failure or malfunction or probable combinations of failures of EEC system components will have an effect on the system, as installed in the airplane, that causes the Loss of Thrust Control (LOTC) probability of the system to exceed those allowed in part 33 certification.

b. Supervisory electronic engine control system installations must be evaluated for environmental and atmospheric conditions, including lightning. The EEC system lightning and High Intensity Radiated Fields (HIRF) effects that would result in LOTC or an unacceptable change in power or thrust must be evaluated in accordance with §§ 23.1306 and 23.1308.

c. The components of the installation must be constructed, arranged, and installed to ensure their continued safe operation between normal inspections or overhauls.

d. Functions incorporated into any electronic engine control that make it part of any equipment, systems or installation whose functions are beyond that of basic engine control and which may also introduce system failures and malfunctions, are not exempt from § 23.1309 and must be shown to meet part 23 levels of safety as derived from § 23.1309. Part 33 certification data, if applicable, may be used to show compliance with any part 23 requirements. If part 33 data is used to substantiate compliance with part 23 requirements, then the part 23 applicant must be able to provide this data for their showing of compliance.

Note: The term ''probable'' in the context of ''probable combination of failures'' does not have the same meaning as used for a safety assessment process. The term ''probable'' in ''probable combination of failures'' means ''foreseeable,'' or those, failure conditions anticipated to occur one or more times during the operational life of each airplane.

Issued in Kansas City, Missouri, on February 16, 2018.

Pat Mullen,

Manager, Small Airplane Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–04417 Filed 3–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0900; Product Identifier 2017–NM–055–AD; Amendment 39–19208; AD 2018–04–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, –500 series airplanes. This AD was prompted by a report of wire damage on a fuel boost pump power cable, and a separate report of a fuel tank explosion on a similarly equipped airplane. This AD requires the installation of new shielded wire bundles and convoluted liners within fuel tank conduits, and revision of the maintenance or inspection program, as applicable, to incorporate certain airworthiness limitations (AWLs). We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 9, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 9, 2018.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this

material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0900.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0900; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 737–100, –200, –200C, –300, –400, –500 series airplanes. The NPRM published in the **Federal Register** on September 26, 2017 (82 FR 44744). The NPRM was prompted by a report of wire damage on a fuel boost pump power cable, and a separate report of a fuel tank explosion on a similarly equipped airplane. The NPRM proposed to require the installation of new shielded wire bundles and convoluted liners within fuel tank conduits, and revision of the maintenance or inspection program, as applicable, to incorporate certain AWLs.

We are issuing this AD to prevent electrical arcing between the fuel boost pump power cable wiring and the surrounding conduit, which could lead to arc-through of the conduit, consequent fire or explosion of the fuel tank, and subsequent loss of the airplane.

This AD is further rulemaking following the interim action of AD 2007–24–02, Amendment 39–15268 (72 FR 65446, November 21, 2007) (''AD 2007–24–02''), which applies to all Boeing Model 737–100, –200, –200C, –300, –400, –500 series airplanes. AD 2007–24–02 was prompted by reports of a fuel tank explosion on a Boeing Model 727–200F airplane and chafed wires and a damaged wiring sleeve on a fuel boost pump power cable in a Boeing Model 737–300 airplane. AD 2007–24–02 requires repetitive detailed inspections for damage of the electrical wire and sleeve that run to the fuel boost pump through a conduit in the fuel tank, to address potential electrical arcing between the wiring and the surrounding conduit that could result in arc-through of the conduit, consequent fire or explosion of the fuel tank, and subsequent loss of the airplane. The preamble to AD 2007–24–02 explains that its requirements are considered ''interim action'' and that we might consider further rulemaking. We now have determined that further rulemaking is necessary, and this AD follows from that determination.

Comments

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

Support for the NPRM

The Air Line Pilots Association, International (ALPA) and The Boeing Company concurred with the proposed AD.

Request To Not Require Replacement or To Extend Compliance Time

The commenter, Hannes Merrick, requested that the FAA consider not requiring wire bundle replacement if faults are not found during inspection of the affected wire bundles, or at a minimum to extend the compliance time to allow for more time to accomplish the replacement required by the proposed AD. We infer that the commenter would regard the existing repetitive inspections as adequate for maintaining an acceptable level of safety with the current wire bundle configuration. The commenter did not provide substantiating data for extending the compliance time.

We do not agree with the commenter's requests. Our experience has shown that these specific wiring design changes are more effective than repetitive inspections in preventing unsafe conditions. The design change required by this AD adds an extra protective layer that is necessary to prevent wire chafing in specific areas of the airplane that are identified in Boeing Alert Service Bulletin 737–28A1273, Revision 1, dated March 14, 2017. We have also determined that the compliance time specified in this AD is appropriate to address the unsafe condition described in this AD. However, under the provisions of paragraph (l) of this AD, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed this AD in this regard.

Effects of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that the installation of winglets per supplemental type certificate (STC) ST01219SE does not affect the accomplishment of the manufacturer's service instructions.

We agree with the commenter that STC ST01219SE does not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. We have not changed this AD in this regard.

New Service Information

In paragraph (h) of the proposed AD we referred to Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated May 2016, as an appropriate source of service information for incorporating certain airworthiness limitations. After the NPRM was issued, we reviewed Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated November 2017, which also contains the airworthiness limitations cited in this AD. The November 2017 document includes a change to airworthiness limitation 28–AWL–29, which is not one of the airworthiness limitations cited in this AD. We have revised paragraph (h) of this AD to also refer to Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated November 2017, as an appropriate source of service information for incorporating the airworthiness limitations cited in this AD.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We reviewed the following service information.

• Boeing Alert Service Bulletin 737–28A1273, Revision 1, dated March 14, 2017. This service information describes procedures for the installation of new shielded wire bundles and convoluted liners within fuel tank conduits.

• Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated May 2016 and November 2017. This service information describes new AWLs for inspecting the fuel tank wiring and conduits. These documents are distinct since the November 2017 document includes a change to airworthiness limitation 28–AWL–29 (which is not required by this AD).

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

Costs of Compliance

We estimate that this AD affects 499 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation	154 work-hours × $85 per hour = $13,090	$5,561	$18,651	$9,306,849
Incorporation of Airworthiness Limitations	1 work-hour × $85 per hour = $85	0	85	42,415

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–04–12 The Boeing Company: Amendment 39–19208; Docket No. FAA–2017–0900; Product Identifier 2017–NM–055–AD.

(a) Effective Date

This AD is effective April 9, 2018.

(b) Affected ADs

This AD affects AD 2007–24–02, Amendment 39–15268 (72 FR 65446, November 21, 2007) (''AD 2007–24–02'').

(c) Applicability

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, –500 series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of chafed wires and a damaged wiring sleeve on a fuel boost pump power cable, and an on-ground fuel tank explosion. We are issuing this AD to prevent electrical arcing between the fuel boost pump power cable wiring and the surrounding conduit, which could lead to arc-through of the conduit, consequent fire or explosion of the fuel tank, and subsequent loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For Group 1 and Group 2 airplanes identified in Boeing Alert Service Bulletin 737–28A1273, Revision 1, dated March 14, 2017: Except as required by paragraph (j) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–28A1273, Revision 1, dated March 14, 2017, do all applicable actions identified as required for compliance (''RC'') in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1273, Revision 1, dated March 14, 2017.

(2) For airplanes identified as Group 3 in Boeing Alert Service Bulletin 737–28A1273,

Revision 1, dated March 14, 2017: Within 120 days after the effective date of this AD, inspect the airplane and do all applicable corrective actions using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(h) Revision of Maintenance or Inspection Program

Within 60 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, to incorporate the applicable Airworthiness Limitations (AWLs) from Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated May 2016 or November 2017, as identified in paragraphs (h)(1) and (h)(2) of this AD.

(1) 28–AWL–18 and 28–AWL–26, ''Fuel Boost Pump Wires In Conduit Installation—In Fuel Tank,'' for Boeing Model 737–100, –200, –200C series airplanes.

(2) 28–AWL–18 and 28–AWL–25, ''Fuel Boost Pump Wires In Conduit Installation—In Fuel Tank,'' for Boeing Model 737–300, –400, –500 series airplanes.

(i) No Alternative Critical Design Configuration Control Limitations (CDCCLs)

After the maintenance or inspection program, as applicable, has been revised as required by paragraph (h) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD.

(j) Exceptions to Service Information Specifications

For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Service Bulletin 737–28A1273, Revision 1, dated March 14, 2017, uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''after the effective date of this AD.''

(k) Terminating Action for Requirements of AD 2007–24–02

Accomplishment of the actions required by paragraph (g) of this AD terminates all requirements of AD 2007–24–02.

(l) Alternative Methods of Compliance (AMOCs)

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

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

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

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

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

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

(m) Related Information

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

(n) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 737–28A1273, Revision 1, dated March 14, 2017.

(ii) Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated May 2016.

(iii) Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated November 2017.

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

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Renton, Washington, on February 15, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–03824 Filed 3–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0839; Airspace Docket No. 14–AEA–7]

Amendment of Class E Airspace; Selinsgrove, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface in Selinsgrove, PA. A new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedure has been developed at Penn Valley Airport, requiring airspace reconfiguration at the airport. This action enhances the safety and airspace management of instrument flight rules (IFR) operations at the airport. This action also updates the geographic coordinates of the airport.

DATES: Effective 0901 UTC, May 24, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

www.archives.gov/federal-register/cfr/ibr-locations.html.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (82 FR 55060, November 20, 2017) for Docket No. FAA–2014–0839 to amend Class E airspace extending upward from 700 feet above the surface at Penn Valley Airport, Selinsgrove, PA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within a 9-mile radius (increased from an 8-mile radius) of Penn Valley Airport, Selinsgrove, PA, to accommodate the new RNAV (GPS) standard instrument approach procedure to Runway 35 developed for the safety and management of IFR operations at the airport.

The action removes the segment extending northbound from the Selinsgrove VOR/DME because it is no longer required as part of the airspace redesign.

The geographic coordinates of the airport are amended to coincide with the FAA's aeronautical database, and the name of the navigation aid is corrected from VORTAC to VOR/DME.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Selinsgrove, PA [Amended]

Penn Valley Airport, PA
(Lat. 40°49′16″ N, long. 76°51′551″ W)
Selinsgrove VOR/DME
(Lat. 40°47′27″ N, long. 76°53′03″ W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Penn Valley Airport, and within 5 miles southeast of the Selinsgrove VOR/DME 207° radial, extending from the 9-mile radius 10 miles southwest of the VOR/DME.

Issued in College Park, Georgia, on February 23, 2018.

Ryan W. Almasy,

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

[FR Doc. 2018–04325 Filed 3–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 510

North Korea Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the North Korea Sanctions Regulations and reissuing them in their entirety, in order to implement three recent Executive orders and to reference the North Korea Sanctions and Policy Enhancement Act of 2016 and the Countering America's

Adversaries Through Sanctions Act. OFAC is also incorporating several general licenses that have, until now, appeared only on OFAC's website on the North Korea Sanctions page, adding several new general licenses, and adding and expanding provisions to issue a more comprehensive set of regulations that will provide further guidance to the public. Finally, OFAC is updating certain regulatory provisions and making other technical and conforming changes. Due to the number of regulatory sections being updated or added, OFAC is reissuing the North Korea Sanctions Regulations in their entirety.

DATES: *Effective:* March 5, 2018.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's website (*www.treasury.gov/ofac*).

Background

Regulatory History and This Action

On November 4, 2010, OFAC issued the North Korea Sanctions Regulations, 31 CFR part 510 (75 FR 67912, November 4, 2010) (the ''Regulations''), to implement Executive Order 13466 of June 26, 2008 (73 FR 36787, June 27, 2008) (E.O. 13466) and Executive Order 13551 of August 30, 2010 (75 FR 53837, September 1, 2010) (E.O. 13551) pursuant to authorities delegated to the Secretary of the Treasury in those orders. The Regulations were initially issued in abbreviated form for the purpose of providing immediate guidance to the public. On June 20, 2011, OFAC amended the Regulations to implement Executive Order 13570 of April 18, 2011 (76 FR 22291, April 20, 2011) (E.O. 13570) pursuant to authorities delegated to the Secretary of the Treasury in that order (76 FR 35740, June 20, 2011).

Today, OFAC is amending the Regulations and reissuing them in their entirety. As set forth in more detail below, OFAC is implementing three recent Executive orders: Executive Order 13687 of January 2, 2015 (''Imposing Additional Sanctions with Respect to North Korea'') (80 FR 819, January 6, 2015) (E.O. 13687), Executive Order 13722 of March 15, 2016 (''Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea'') (81 FR 14943, March 18, 2016) (E.O. 13722), and Executive Order 13810 of September 20, 2017 (''Imposing Additional Sanctions With Respect to North Korea'') (82 FR 44705, September 25, 2017) (E.O. 13810). In addition, OFAC is amending the Regulations to reference the North Korea Sanctions and Policy Enhancement Act of 2016, Public Law 114–122, 130 Stat. 93 (22 U.S.C. 9201 note) (NKSPEA), and Title III of the Countering America's Adversaries Through Sanctions Act, Public Law 115–44, Aug. 2, 2017, 131 Stat. 886 (22 U.S.C. 9401 *et seq.*) (CAATSA). Additionally, OFAC is incorporating into the Regulations several new general licenses that have, until now, appeared only on OFAC's website on the North Korea Sanctions page, adding several new general licenses, and adding and expanding provisions to issue a more comprehensive set of regulations that will provide further guidance to the public. Finally, OFAC is updating certain regulatory provisions and making other technical and conforming changes. Due to the number of regulatory sections being updated or added, OFAC is reissuing the North Korea Sanctions Regulations in their entirety.

Executive and Statutory Authorities

E.O. 13466. On June 26, 2008, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), issued E.O. 13466. In E.O. 13466, the President found that the existence and risk of the proliferation of weapons-usable fissile material on the Korean Peninsula constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and declared a national emergency to deal with that threat. The President further found that it is necessary to continue certain restrictions with respect to North Korea that would otherwise be lifted pursuant to a then-forthcoming proclamation that would terminate the exercise of authorities then in place under the Trading With the Enemy Act (50 U.S.C. App. 1 *et seq.*) (TWEA) with respect to North Korea.

Section 1 of E.O. 13466 blocks, with certain exceptions, all property and interests in property of North Korea or a North Korean national that, pursuant to the President's authorities under the TWEA, were blocked as of June 16, 2000, and remained blocked immediately prior to the issuance of E.O. 13466.

Section 2 of E.O. 13466 prohibits, with certain exceptions, U.S. persons from registering a vessel in North Korea, obtaining authorization for a vessel to fly the North Korean flag, or owning, leasing, operating, or insuring any vessel flagged by North Korea.

E.O. 13551. On August 30, 2010, the President, invoking the authority of, *inter alia,* IEEPA and the United Nations Participation Act (22 U.S.C. 287c) (UNPA), and in view of United Nations Security Council Resolution (UNSCR) 1718 of October 14, 2006 and UNSCR 1874 of June 12, 2009, issued E.O 13551. In E.O. 13551, the President expanded the scope of the national emergency in E.O. 13466, finding that the continued actions and policies of the Government of North Korea—manifested by its unprovoked attack that resulted in the sinking of a Republic of Korea navy ship and the deaths of those onboard; its actions in violation of UNSCRs, including the procurement of luxury goods; and its illicit and deceptive activities in international markets, including money laundering, the counterfeiting of goods and currency, bulk cash smuggling, and narcotics trafficking—destabilize the Korean peninsula and imperil U.S. armed forces, allies, and trading partners in the region, and thereby constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.

Section 1(a) of E.O. 13551 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of the persons listed in the Annex to E.O. 13551 and other persons determined by the Secretary of the Treasury, in consultation with the Secretary of State to meet certain criteria set forth in E.O. 13551.

E.O. 13570. On April 18, 2011, the President, invoking the authority of, *inter alia,* IEEPA and section 5 of the UNPA, and in view of UNSCR 1718 of October 14, 2006 and UNSCR 1874 of June 12, 2009, issued E.O. 13570 to take additional steps to address the national emergency declared in E.O. 13466 and expanded in scope in E.O. 13551. Section 1 of E.O. 13570 prohibits, with certain exceptions, the importation into the United States, directly or indirectly, of any goods, services, or technology from North Korea.

E.O. 13687. On January 2, 2015, the President, invoking the authority of, *inter alia,* IEEPA, issued E.O. 13687. In E.O. 13687, the President expanded the scope of the national emergency declared in E.O. 13466, as modified in scope by and relied upon for additional steps in subsequent orders, finding that the provocative, destabilizing, and repressive actions and policies of the Government of North Korea, including its destructive, coercive cyber-related actions during November and December 2014, actions in violation of UNSCRs, and commission of serious human rights abuses, constitute a continuing threat to the national security, foreign policy, and economy of the United States.

Section 1(a) of E.O. 13687 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State to be an agency, instrumentality, or controlled entity of the Government of North Korea or the Workers' Party of Korea, to be an official of the Government of North Korea or the Workers' Party of Korea, or to meet other criteria set forth in E.O. 13687.

E.O. 13722. On March 15, 2016, the President, invoking the authority of, *inter alia,* IEEPA, the UNPA, and NKSPEA, and in view of UNSCR 2270 of March 2, 2016, issued E.O. 13722 to take additional steps with respect to the national emergency declared in E.O. 13466, as modified in scope by and relied upon for additional steps taken in subsequent orders.

Section 1(a) of E.O. 13722 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of the Government of North Korea or the Workers' Party of Korea. The property and interests in property of the Government of North Korea or the Workers' Party of Korea may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Section 2(a) of E.O. 13722 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person, of other persons determined by the Secretary of the Treasury, in consultation with the Secretary of State to operate in any industry in the North Korean economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be subject to section 2(a)(i) of E.O. 13722, including transportation, mining, energy, or financial services, or to meet other criteria set forth in E.O. 13722.

Section 3(a) of E.O. 13722 prohibits, with certain exceptions: (i) The exportation or reexportation, direct or indirect, from the United States, or by a U.S. person, wherever located, of any goods, services, or technology to North Korea; (ii) new investment in North Korea by a U.S. person, wherever located; and (iii) any approval, financing, facilitation, or guarantee by a U.S. person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by section 3(a) of E.O. 13722 if performed by a U.S. person or within the United States. The new exportation and reexportation prohibition operates in conjunction with preexisting comprehensive controls on North Korea that are maintained by the U.S. Department of Commerce under the Export Administration Regulations, 15 CFR parts 730–774 (EAR). The Department of Commerce requires a license for the export from the United States of all items subject to the EAR (other than food or medicine) that are destined for North Korea, whether by U.S. persons or non-U.S. persons. It also requires a license for the reexport to North Korea from a third country of all items subject to the EAR, whether by U.S. persons or non-U.S. persons. Section 3(a) of E.O. 13722, in effect, complements the restrictions maintained by the Department of Commerce and enhances those restrictions by adding a prohibition against the reexportation to North Korea by a U.S. person, wherever located, of items that are *not* subject to the EAR, including, for example, purely foreign-origin items.

E.O. 13810. On September 20, 2017, the President, invoking the authority of, *inter alia,* IEEPA and the UNPA, and in view of UNSCR 2321 of November 30, 2016, UNSCR 2356 of June 2, 2017, UNSCR 2371 of August 5, 2017, and UNSCR 2375 of September 11, 2017, issued E.O. 13810 to take further steps with respect to the national emergency declared in E.O. 13466, as modified in scope by and relied upon for additional steps in subsequent orders.

Section 1(a) of E.O. 13810 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of any person determined by the Secretary of the Treasury, in consultation with the Secretary of State to have engaged in at least one significant importation from or exportation to North Korea of any goods, services, or technology, or to meet other criteria set forth in E.O. 13810.

Section 2 of E.O. 13810 prohibits, with certain limited exceptions: (a) Any aircraft in which a foreign person has an interest that has landed at a place in North Korea from landing at a place in the United States within 180 days after departure from North Korea; and (b) any vessel in which a foreign person has an interest that has called at a port in North Korea within the previous 180 days, or that has engaged in a ship-to-ship transfer with such a vessel within the previous 180 days, from calling at a port in the United States.

Section 3(a) of E.O. 13810 blocks, with certain exceptions, all funds that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person and that originate from, are destined for, or pass through a foreign bank account that has been determined by the Secretary of the Treasury to be owned or controlled by a North Korean person or to have been used to transfer funds in which any North Korean person has an interest. The funds described above may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Section 4 of E.O. 13810 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to impose the sanctions described below on any foreign financial institution determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have: (i) Knowingly conducted or facilitated any significant transaction on behalf of any person whose property and interests in property are blocked pursuant to E.O. 13551, E.O. 13687, E.O. 13722, or E.O. 13810, or of any person whose property and interests in property are blocked pursuant to Executive Order 13382 (70 FR 38567, July 1, 2005) (''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'') in connection with North Korea-related activities; or (ii) knowingly conducted or facilitated any significant transaction in connection with trade with North Korea. With respect to a foreign financial institution determined to meet the criteria above, the Secretary of the Treasury, in consultation with the Secretary of State, may: (i) Prohibit the opening and prohibit or impose strict conditions on the maintenance of correspondent accounts or payable-through accounts in the United States by such foreign financial institution; or (ii) block all

property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of such foreign financial institution, and such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Other Executive Order provisions. In section 1(b) of E.O. 13551, section 2 of E.O. 13687, section 5 of E.O. 13722, and section 1(c) of E.O. 13810, the President determined that the making of donations of certain articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, as specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to those orders would seriously impair the President's ability to deal with the national emergency declared in E.O. 13466, as modified in scope by and relied upon for additional steps in the subsequent orders. The President therefore prohibited the donation of such items unless authorized by OFAC.

Section 1(c) of E.O. 13551, section 3 of E.O. 13687, section 6 of E.O. 13722, and section 1(d) of E.O. 13810 provide that the prohibition on any transaction or dealing in blocked property or interests in property includes the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to those orders, and the receipt of any contribution or provision of funds, goods, or services from any such person.

Section 3 of E.O. 13466, section 2 of E.O. 13551, section 2 of E.O. 13570, section 5 of E.O. 13687, section 7 of E.O. 13722, and section 6 of E.O. 13810 prohibit any transaction by a U.S. person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in those orders, as well as any conspiracy formed to violate such prohibitions. Pursuant to a 2007 amendment of IEEPA clarifying that it is illegal to cause a violation of IEEPA, section 2 of E.O. 13551, section 2 of E.O. 13570, section 5 of E.O. 13687, section 7 of E.O. 13722, and section 6 of E.O. 13810 further prohibit any transaction by a U.S. person or within the United States that causes a violation of any of those orders.

Section 5 of E.O. 13466, section 6 of E.O. 13551, section 5 of E.O. 13570, section 8 of E.O. 13687, section 11 of E.O. 13722, and section 10 of E.O. 13810 authorize the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, and, where relevant, the UNPA, as may be necessary to carry out the purposes of those orders. These sections also provide that the Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the U.S. government.

NKSPEA. On February 18, 2016, the President signed NKSPEA into law. Among other things, section 104(a) of NKSPEA provides that the President, with certain exceptions, shall block and prohibit all transactions in property and interests in property that are in the United States, that come within the United States, or that are or come within control or possession of a U.S. person of: The Government of North Korea, the Workers' Party of Korea, and certain other persons the President determines knowingly engage in certain North Korea-related activities.

Section 404(a) of NKSPEA provides authority for the President to promulgate regulations as may be necessary to carry out the provisions of NKSPEA. Pursuant to Presidential Memorandum of May 18, 2016: Delegation of Certain Functions and Authorities under the North Korea Sanctions and Policy Enhancement Act of 2016, the President delegated to the Secretary of the Treasury, in consultation with the Secretary of State, the functions and authorities vested in the President by sections 104(a) and to the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, and the Director of National Intelligence the functions and authorities vested in the President by section 404(a) of NKSPEA as necessary to carry out the provisions of NKSPEA.

CAATSA. On August 2, 2017, the President signed CAATSA into law. Title III of CAATSA, among other things, amends NKSPEA. Section 311(a) of CAATSA amends section 104(a) of NKSPEA to provide that the President shall, with certain exceptions, block and prohibit all transactions in property and interests in property that are in the United States, that come into the United States, or that are or come into the possession of U.S. persons of any person the President determines knowingly, directly or indirectly: imports, exports, or reexports to or from North Korea any defense article or defense service or engages in certain other North Korea-related activities.

Section 333(a) of CAATSA provides that the President shall, not later than 180 days after the date of enactment, promulgate regulations as necessary for the implementation of and amendments made by title III of CAATSA. Pursuant to Presidential Memorandum of September 29, 2017: Delegation of Certain Functions and Authorities under the Countering America's Adversaries Through Sanctions Act of 2017, the Ukraine Freedom Support Act of 2014, and the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, the President delegated to the Secretary of the Treasury, in consultation with the Secretary of State, the relevant functions and authorities vested in the President by section 321(b), with respect to section 302B(a) and (b) of the NKSPEA, as amended by CAATSA, and section 333 of CAATSA.

The President, through the issuance of E.O. 13466, E.O. 13551, E.O. 13570, E.O. 13687, E.O. 13722, and E.O. 13810, has put in place prohibitions and designation criteria that encompass all of the prohibitions and designation criteria contained in the provisions of NKSPEA and CAATSA discussed above and has thereby already taken the steps necessary to implement those provisions. While it is not legally necessary to take further steps, OFAC is issuing these amended Regulations to further implement the many provisions of E.O. 13466, E.O. 13551, E.O. 13570, E.O. 13687, E.O. 13722, and E.O. 13810.

Regulatory Structure

Subpart A of the Regulations clarifies the relation of this part to other laws and regulations. Subpart B of the Regulations implements the prohibitions contained in the various Executive Orders. *See, e.g.,* §§ 510.201 and 510.208. Persons identified in the Annex to E.O. 13551, designated for blocking by or under the authority of the Secretary of the Treasury pursuant to E.O. 13551, E.O. 13687, E.O. 13722, or E.O. 13810, or otherwise subject to the blocking provisions of those orders, are referred to throughout the Regulations as ''persons whose property and interests in property are blocked pursuant to § 510.201(a).'' The names of persons listed in or designated pursuant to these orders are published on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List), which is accessible via OFAC's website. Those names also are published in the **Federal Register** as they are added to the SDN List.

Section 510.201 of subpart B implements the many blocking prohibitions contained in the Executive Orders. Sections 510.202 and 510.203 of subpart B detail the effect of transfers of

blocked property in violation of the Regulations and set forth the requirement to hold blocked funds, such as currency, bank deposits, or liquidated financial obligations, in interest-bearing blocked accounts. Section 510.204 of subpart B provides that all expenses incident to the maintenance of blocked physical property shall be the responsibility of the owners and operators of such property, and that such expenses shall not be met from blocked funds, unless otherwise authorized. Section 510.204 further provides that blocked property may, in OFAC's discretion, be sold or liquidated and the net proceeds placed in a blocked, interest-bearing account in the name of the owner of the property.

Sections 510.205 through 510.209 and 510.211 set forth additional prohibitions pursuant to E.O. 13570, E.O. 13687, E.O. 13722, and E.O. 13810, including prohibitions on certain North Korea-related vessel and aircraft transactions, the importation and exportation of goods, services, or technology to or from North Korea, and new investment in North Korea.

Section 510.210 of subpart B implements the non-blocking provisions of section 4 of E.O. 13810 regarding the opening or maintenance of correspondent accounts or payable through accounts in the United States (the blocking provisions of section 4 of E.O. 13810 are implemented in § 510.201 of subpart B). The names of foreign financial institutions that are determined by the Secretary of the Treasury, in consultation with the Secretary of State, to engage in the activities described in § 510.210, and which are determined to be subject to prohibitions or strict conditions on the opening or maintaining of correspondent or payable-through accounts in the United States, will be listed on the Correspondent Account or Payable-Through Account Sanctions (CAPTA) List, which is accessible via OFAC's website (*www.treasury.gov/ofac*) and published in the **Federal Register.** This list also will state the prohibition or strict condition(s) that applies with respect to each sanctioned foreign financial institution, and the relevant or applicable sanctions program. The names of foreign financial institutions that meet these same criteria but whose property and interests in property are instead determined to be blocked pursuant to § 510.201 will be published on the SDN List, which is also accessible via OFAC's website.

Section 510.212 of subpart B implements the prohibitions of E.O. 13466, E.O. 13551, E.O. 13570, E.O. 13687, E.O. 13722, and E.O. 13810 on any transaction by a U.S. person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in those orders, and on any conspiracy formed to violate such prohibitions. Section 510.212 further contains the additional prohibition, included in all but the first order but available for all IEEPA-based prohibitions, on any transaction by a U.S. person or within the United States that causes a violation of any of the prohibitions in any of the orders.

Section 510.213 of subpart B details transactions that are exempt from the prohibitions of the Regulations pursuant to section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)). These exempt transactions relate to personal communications, the importation and exportation of information or informational materials, and transactions ordinarily incident to travel. The exemptions described in this section do not apply to any transactions involving property or interests in property of certain persons whose property and interests in property are blocked pursuant to the provisions of E.O. 13551, E.O. 13722, or E.O. 13810 and that are blocked pursuant to the authority of the UNPA in addition to IEEPA.

In subpart C of the Regulations, new definitions are being added to other key terms used in the Regulations. Because these new definitions were inserted in alphabetical order, the definitions that were in the prior abbreviated set of regulations have been renumbered. Similarly, in subpart D, which contains interpretations of the Regulations, certain provisions have been added and updated from those in the prior abbreviated set of regulations. Section 510.411 explains that the property and interests in property of an entity are blocked if the entity is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked, whether or not the entity itself is incorporated into the SDN List. Section 510.412 provides information about facilitation, and § 510.413 describes the non-exclusive factors the Secretary of the Treasury may consider when determining whether a transaction is significant.

Transactions otherwise prohibited by the Regulations but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E of the Regulations or by a specific license issued pursuant to the procedures described in subpart E of 31 CFR part 501. Subpart E of the Regulations also contains certain statements of specific licensing policy in addition to the general licenses. General licenses and statements of licensing policy relating to this part also may be available through the North Korea sanctions page on OFAC's website: *www.treasury.gov/ofac.*

With this rule, OFAC is incorporating into the Regulations, and in some cases amending, 10 general licenses that were previously posted only on OFAC's website. These general licenses have been removed from OFAC's website, because they have been replaced and superseded in their entirety by the Regulations. Nine of these general licenses were originally issued and posted on OFAC's website on March 16, 2016—General Licenses 1 through 9—and then reissued and posted on OFAC's website on March 24, 2016, to incorporate a technical change regarding the date the President signed E.O. 13722. General License 1 was replaced and superseded in its entirety by General License 1–A, which was posted on OFAC's website on December 20, 2016. General License 1–A is now located in the Regulations at § 510.510. General License 2, which authorizes the provision of certain legal services, is now located at § 510.507. General License 3, which authorized certain blocked account-related transactions, was replaced and superseded in its entirety by General License 3–A, which was posted on OFAC's website on September 21, 2017. General License 3–A is now located at § 510.505. General License 4, regarding personal remittances, is now located at § 510.511, and includes a cap on such remittances of $5,000 per year. General License 5, which authorizes certain activities of nongovernmental organizations, is now located at § 510.512. With respect to General License 5, OFAC has removed an authorization relating to educational activities; OFAC also added an authorization relating to the exportation of food and medicines to harmonize with Department of Commerce authorities. General License 6, pertaining to third-country diplomatic and consular funds transfers, is now located at § 510.515. General License 7, relating to telecommunications and mail service, is now located at § 510.516; and General License 8, regarding patents and intellectual property, is now located at § 510.517. General License 9, authorizing emergency medical services, is now located in § 510.509. On September 21, 2017, OFAC issued and posted on its website General License 10, authorizing the calling of certain vessels and landing of certain aircraft.

General License 10 is now located at § 510.518.

OFAC is also incorporating several new general licenses into the Regulations. Sections 510.506, 510.508, 510.513, and 510.514 authorize certain transactions relating to investment and reinvestment of certain funds, payments for legal services from funds originating outside the United States, the official business of the Federal government, and official activities of international organizations. Section 510.519 authorizes certain transactions for a 10-day period related to closing a correspondent account or payable-through account for a foreign financial institution whose name is added to the CAPTA List pursuant to the prohibition in § 510.211. This general license includes a reporting requirement pursuant to which a U.S. financial institution that maintained a correspondent account or a payable-through account for a foreign financial institution whose name is added to the CAPTA List must file a report with OFAC that provides full details on the closing of each such account within 30 days of the closure of the account. The report must include complete information on all transactions processed or executed in winding down and closing the account.

Subpart F of the Regulations refers to subpart C of part 501 for recordkeeping and reporting requirements. Subpart G of the Regulations describes the civil and criminal penalties applicable to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty or issuance of a finding of violation. Subpart G also refers to appendix A of part 501 for a more complete description of these procedures.

Subpart H of the Regulations refers to subpart E of part 501 for applicable provisions relating to administrative procedures and contains a delegation of certain authorities of the Secretary of the Treasury. Subpart I of the Regulations sets forth a Paperwork Reduction Act notice.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 510

Administrative practice and procedure, Aircraft, Banking, Blocking of assets, Diplomatic missions, Foreign financial institutions, Foreign trade, Imports, Medical services, Nongovernmental organizations, North Korea, Patents, Services, Telecommunications, United Nations, Vessels, Workers' Party of Korea.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control revises 31 CFR part 510 to read as follows:

PART 510—NORTH KOREA SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

510.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

510.201 Prohibited transactions involving blocked property.
510.202 Effect of transfers violating the provisions of this part.
510.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
510.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
510.205 Prohibited importation of goods, services, or technology from North Korea.
510.206 Prohibited exportation and reexportation of goods, services, or technology to North Korea.
510.207 Prohibited vessel transactions related to North Korean registration and flagging.
510.208 Prohibited aircraft landing or vessel calling in the United States.
510.209 Prohibited new investment in North Korea.
510.210 Prohibitions or strict conditions with respect to correspondent or payable-through accounts or blocking of certain foreign financial institutions identified by the Secretary of the Treasury.
510.211 Prohibited facilitation.
510.212 Evasions; attempts; causing violations; conspiracies.
510.213 Exempt transactions.

Subpart C—General Definitions

510.300 Applicability of definitions.
510.301 Arms or related materiel.
510.302 Blocked account; blocked property.
510.303 Correspondent account.
510.304 Effective date.
510.305 Entity.
510.306 Financial, material, or technological support.
510.307 Financial services.
510.308 Financial transaction.
510.309 Foreign financial institution.
510.310 Foreign person.
510.311 Government of North Korea.
510.312 Information or informational materials.
510.313 Interest.
510.314 Knowingly.
510.315 Licenses; general and specific.
510.316 Loans or other extensions of credit.
510.317 Luxury goods.
510.318 New investment.
510.319 North Korean person.
510.320 OFAC.
510.321 Payable-through account.
510.322 Person.
510.323 Property; property interest.
510.324 Transfer.
510.325 United States.
510.326 United States person; U.S. person.
510.327 U.S. depository institution.
510.328 U.S. financial institution.
510.329 U.S.-registered money transmitter.
510.330 U.S.-registered broker or dealer in securities.

Subpart D—Interpretations

510.401 Reference to amended sections.
510.402 Effect of amendment.
510.403 Termination and acquisition of an interest in blocked property.
510.404 Transactions ordinarily incident to a licensed transaction.
510.405 Exportation and reexportation of goods, services, or technology.
510.406 Offshore transactions involving blocked property.
510.407 Payments from blocked accounts to satisfy obligations prohibited.
510.408 Charitable contributions.
510.409 Credit extended and cards issued by financial institutions to a person whose property and interests in property are blocked.
510.410 Setoffs prohibited.
510.411 Entities owned by one or more persons whose property and interests in property are blocked.
510.412 Facilitation; change of policies and procedures; referral of business opportunities offshore.
510.413 Significant transaction(s).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

510.501 General and specific licensing procedures.
510.502 Effect of license or other authorization.
510.503 Exclusion from licenses.
510.504 Payments and transfers to blocked accounts in U.S. financial institutions.

510.505 Entries in certain accounts for normal service charges.
510.506 Investment and reinvestment of certain funds.
510.507 Provision of certain legal services.
510.508 Payments for legal services from funds originating outside the United States.
510.509 Emergency medical services.
510.510 North Korean mission to the United Nations and employees of the United Nations.
510.511 Noncommercial, personal remittances.
510.512 Certain services in support of nongovernmental organizations' activities.
510.513 Official business of the Federal Government.
510.514 Official activities of international organizations.
510.515 Third-country diplomatic and consular funds transfers.
510.516 Transactions related to telecommunications and mail.
510.517 Certain transactions related to patents, trademarks, copyrights, and other intellectual property.
510.518 Calling of certain vessels and landing of certain aircraft.
510.519 Transactions related to closing a correspondent or payable-through account.

Subpart F—Reports

510.601 Records and reports.

Subpart G—Penalties and Finding of Violation

510.701 Penalties.
510.702 Pre-Penalty Notice; settlement.
510.703 Penalty imposition.
510.704 Administrative collection; referral to United States Department of Justice.
510.705 Finding of Violation.

Subpart H—Procedures

510.801 Procedures.
510.802 Delegation of certain authorities of the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

510.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 114–122, 130 Stat. 93 (22 U.S.C. 9201–9255); Pub. L. 115–44, 131 Stat 886 (22 U.S.C. 9201 note); E.O. 13466, 73 FR 36787, June 27, 2008, 3 CFR, 2008 Comp., p. 195; E.O. 13551, 75 FR 53837, September 1, 2010; E.O. 13570, 76 FR 22291, April 20, 2011; E.O. 13687, 80 FR 819, January 6, 2015; E.O. 13722, 81 FR 14943, March 18, 2016; E.O. 13810, 82 FR 44705, September 25, 2017.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 510.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 510.201 Prohibited transactions involving blocked property.

(a)(1) All property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of the Government of North Korea or the Workers' Party of Korea are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(2) All property and interests in property of North Korea or a North Korean national that were blocked pursuant to the Trading With the Enemy Act as of June 16, 2000 and remained blocked on June 26, 2008, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(3) All property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) *E.O. 13551 Annex.* The persons listed in the Annex to Executive Order 13551 of August 30, 2010;

(ii) *E.O. 13551.* Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) To have, directly or indirectly, imported, exported, or reexported to, into, or from North Korea any arms or related materiel;

(B) To have, directly or indirectly, provided training, advice, or other services or assistance, or engaged in financial transactions, related to the manufacture, maintenance, or use of any arms or related materiel to be imported, exported, or reexported to, into, or from North Korea, or following their importation, exportation, or reexportation to, into, or from North Korea;

(C) To have, directly or indirectly, imported, exported, or reexported luxury goods to or into North Korea;

(D) To have, directly or indirectly, engaged in money laundering, the counterfeiting of goods or currency, bulk cash smuggling, narcotics trafficking, or other illicit economic activity that involves or supports the Government of North Korea or any senior official thereof;

(E) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activities described in paragraphs (a)(3)(ii)(A) through (D) of this section or any person whose property and interests in property are blocked pursuant to paragraph (a)(3)(i) or (ii) of this section;

(F) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to paragraph (a)(3)(i) or (ii) of this section; or

(G) To have attempted to engage in any of the activities described in paragraphs (a)(3)(ii)(A) through (F) of this section;

(iii) *E.O. 13687.* Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) To be an agency, instrumentality, or controlled entity of the Government of North Korea or the Workers' Party of Korea;

(B) To be an official of the Government of North Korea;

(C) To be an official of the Workers' Party of Korea;

(D) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Government of North Korea or any person whose property and interests in property are blocked pursuant to paragraph (a)(3)(iii) of this section; or

(E) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the Government of North Korea or any person whose property and interests in property are blocked pursuant to paragraph (a)(3)(iii) of this section;

(iv) *E.O. 13722.* Any person determined by the Secretary of the

Treasury, in consultation with the Secretary of State:

(A) To operate in any industry in the North Korean economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be subject to paragraph (a)(3)(iv) of this section, such as transportation, mining, energy, or financial services;

Note 1 to paragraph (a)(3)(iv)(A): Any industry in the North Korean economy that is determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be subject to paragraph (a)(3)(iv) of this section will be so identified in a publication in the **Federal Register**.

(B) To have sold, supplied, transferred, or purchased, directly or indirectly, to or from North Korea or any person acting for or on behalf of the Government of North Korea or the Workers' Party of Korea, metal, graphite, coal, or software, where any revenue or goods received may benefit the Government of North Korea or the Workers' Party of Korea, including North Korea's nuclear or ballistic missile programs;

(C) To have engaged in, facilitated, or been responsible for an abuse or violation of human rights by the Government of North Korea or the Workers' Party of Korea or any person acting for or on behalf of either such entity;

(D) To have engaged in, facilitated, or been responsible for the exportation of workers from North Korea, including exportation to generate revenue for the Government of North Korea or the Workers' Party of Korea;

(E) To have engaged in significant activities undermining cybersecurity through the use of computer networks or systems against targets outside of North Korea on behalf of the Government of North Korea or the Workers' Party of Korea;

(F) To have engaged in, facilitated, or been responsible for censorship by the Government of North Korea or the Workers' Party of Korea;

(G) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to paragraph (a)(1) or (a)(3)(iv) of this section;

(H) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to paragraph (a)(1) or (a)(3)(iv) of this section; or

(I) To have attempted to engage in any of the activities described in paragraphs (a)(3)(iv)(A) through (H) of this section;

(v) *E.O. 13810 section 1.* Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) To operate in the construction, energy, financial services, fishing, information technology, manufacturing, medical, mining, textiles, or transportation industries in North Korea;

(B) To own, control, or operate any port in North Korea, including any seaport, airport, or land port of entry;

(C) To have engaged in at least one significant importation from or exportation to North Korea of any goods, services, or technology;

(D) To be a North Korean person, including a North Korean person that has engaged in commercial activity that generates revenue for the Government of North Korea or the Workers' Party of Korea;

(E) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to paragraph (a)(3)(v) of this section; or

(F) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to paragraph (a)(3)(v) of this section; or

(vi) *E.O. 13810 section 4.* Any person that is a foreign financial institution:

(A) Determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have, on or after September 21, 2017, knowingly conducted or facilitated any significant transaction:

(*1*) On behalf of any person whose property and interests in property are blocked pursuant to Executive Order 13551, Executive Order 13687, Executive Order 13722, or Executive Order 13810, or of any person whose property and interests in property are blocked pursuant to Executive Order 13382 in connection with North Korea-related activities; or

(*2*) In connection with trade with North Korea; and

(B) With respect to which the Secretary of the Treasury, in consultation with the Secretary of State, has exercised the authority to block all property and interests in property.

Note 2 to paragraph (a)(3)(vi): See § 510.210 for alternative sanctions that can be imposed on a foreign financial institution when the determination specified in paragraph (a)(3)(vi)(A) of this section is made.

Note 3 to paragraph (a): The names of persons listed in or designated or identified pursuant to Executive Order 13551, Executive Order 13687, Executive Order 13722, or Executive Order 13810 and whose property and interests in property are blocked pursuant to those orders and paragraph (a) of this section are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier ''DPRK.'' The names of persons referenced in paragraph (a)(vi)(A)(2) of this section and listed in or designated or identified pursuant to Executive Order 13382 whose property and interests in property are blocked pursuant to Executive Order 13382 in connection with North Korea-related activities are published in the **Federal Register** and incorporated into OFAC's SDN List with the identifier ''[NPWMD]'' and descriptive text ''Executive Order 13810 Information: Subject to blocking in connection with North Korea-related activities. The SDN List is accessible through the following page on OFAC's website: *www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 510.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section. The property and interests in property of persons who meet the definition of the term Government of North Korea, as defined in § 510.311, are blocked pursuant to paragraph (a) of this section regardless of whether the names of such persons are published in the **Federal Register** or incorporated into the SDN List.

Note 4 to paragraph (a): The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''BPI–DPRK.''

Note 5 to paragraph (a): Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, and administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless authorized by this part or by a specific license expressly referring to this part, any dealing in securities (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any securities on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such securities may have or might appear to have assigned, transferred, or otherwise disposed of the securities.

(d) All funds that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person and that originate from, are destined for, or pass through a foreign bank account that has been determined by the Secretary of the Treasury to be owned or controlled by a North Korean person, or to have been used to transfer funds in which any North Korean person has an interest, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(e) Funds subject to blocking or blocking pending investigation pursuant to paragraph (d) of this section may be identified via actual or constructive notice from OFAC to relevant U.S. persons believed to be holding or to soon come into possession of such funds. To the extent a foreign bank account determined to meet the criteria contained in paragraph (d) of this section is publicized, it will be published in the **Federal Register**.

(f)(1) The prohibitions in paragraph (a)(1) of this section apply except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this part or pursuant to the export control authorities implemented by the U.S. Department of Commerce, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

(2) The prohibitions in paragraphs (a)(2), (a)(3)(i) through (iii), and (d) of this section apply except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

(3) The prohibitions in paragraphs (a)(3)(iv) through (v) of this section apply except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date. These prohibitions are in addition to the export control authorities administered by the Department of Commerce.

§ 510.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interests in property blocked pursuant to § 510.201 is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or interests in property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interests in property blocked pursuant to § 510.201 unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note 1 to paragraph (d): The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property and interests in property blocked pursuant to § 510.201.

§ 510.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (e) or (f) of this section, or as otherwise directed or authorized by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 510.201, shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest

at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 510.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 510.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides financial or economic benefit or access to the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 510.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 510.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 510.201 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 510.205 Prohibited importation of goods, services, or technology from North Korea.

(a) The importation into the United States, directly or indirectly, of any goods, services, or technology from North Korea is prohibited.

(b) The prohibitions in this section apply except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

§ 510.206 Prohibited exportation or reexportation of goods, services, or technology to North Korea.

(a) The exportation or reexportation, directly or indirectly, from the United States, or by a U.S. person, wherever located, of any goods, services, or technology to North Korea is prohibited.

(b) The prohibitions in this section apply except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this part or pursuant to the export control authorities implemented by the U.S. Department of Commerce, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

§ 510.207 Prohibited vessel transactions related to North Korean registration and flagging.

(a) U.S. persons may not register a vessel in North Korea, obtain authorization for a vessel to fly the North Korean flag, or own, lease, operate, or insure any vessel flagged by North Korea.

(b) The prohibitions in this section apply except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

§ 510.208 Prohibited aircraft landing or vessel calling in the United States.

(a) No aircraft in which a foreign person has an interest that has landed at a place in North Korea may land at a place in the United States within 180 days after departure from North Korea.

(b) No vessel in which a foreign person has an interest that has called at a port in North Korea within the previous 180 days, and no vessel in which a foreign person has an interest that has engaged in a ship-to-ship transfer with such a vessel within the previous 180 days, may call at a port in the United States.

(c) The prohibitions in this section apply except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

§ 510.209 Prohibited new investment in North Korea.

(a) New investment, as defined in § 510.318, in North Korea by a U.S. person, wherever located, is prohibited.

(b) The prohibitions in this section apply except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this part or pursuant to the export control authorities implemented by the U.S. Department of Commerce, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

§ 510.210 Prohibitions or strict conditions with respect to correspondent or payable-through accounts or blocking of certain foreign financial institutions identified by the Secretary of the Treasury.

(a) *Prohibited activities.* A U.S. financial institution shall not:

(1) Open or maintain a correspondent account or a payable-through account in the United States for a foreign financial institution for which the opening or maintaining of such an account is prohibited pursuant to this section; or

(2) Maintain a correspondent account or a payable-through account in the United States in a manner that is inconsistent with any strict condition imposed and in effect pursuant to this section.

(b) *Sanctionable activity by foreign financial institutions.* The Secretary of the Treasury, in consultation with the Secretary of State, may determine that a foreign financial institution has, on or after September 21, 2017, knowingly conducted or facilitated any significant transaction:

(1) On behalf of any person whose property and interests in property are

blocked pursuant to Executive Order 13551, Executive Order 13687, Executive Order 13722, or Executive Order 13810, or on behalf of any person whose property and interests in property are blocked pursuant to Executive Order 13382 in connection with North Korea-related activities; or

(2) In connection with trade with North Korea.

Note 1 to paragraph (b): The names of persons listed in or designated or identified pursuant to Executive Order 13351, Executive Order 13687, Executive Order 13722, or Executive Order 13810 and whose property and interests in property are blocked pursuant to those orders are published in the **Federal Register** and incorporated into OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) with the identifier ''DPRK.'' The names of persons listed in or designated or identified pursuant to Executive Order 13382 and whose property and interests in property are blocked pursuant to that order in connection with North Korea-related activities are published in the **Federal Register** and incorporated into OFAC's SDN List with the identifier ''[NPWMD],'' and descriptive text ''Executive Order 13810 information: Subject to blocking in connection with North Korea-related activities''. The SDN List is accessible through the following page on OFAC's website: *www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 510.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section. The property and interests in property of persons who meet the definition of the term Government of North Korea are blocked pursuant to paragraph (a) of this section regardless of whether the names of such persons are published in the **Federal Register** or incorporated into the SDN List.

(c) *Imposition of sanctions on foreign financial institutions.* Upon determining that a foreign financial institution has engaged in sanctionable activity described in paragraph (b) of this section, the Secretary of the Treasury, in consultation with the Secretary of State, may:

(1) Prohibit the opening or maintaining by a U.S. financial institution of a correspondent account or a payable-through account in the United States for the foreign financial institution; or

(2) Impose one or more strict conditions on the maintaining by a U.S. financial institution of a correspondent account or a payable-through account in the United States for the foreign financial institution. Such conditions may include the following:

(i) Prohibiting or restricting any provision of trade finance through the correspondent account or payable-through account of the foreign financial institution;

(ii) Restricting the transactions that may be processed through the correspondent account or payable-through account of the foreign financial institution to certain types of transactions, such as personal remittances;

(iii) Placing monetary limits on, or limiting the volume of, the transactions that may be processed through the correspondent account or payable-through account of the foreign financial institution;

(iv) Requiring pre-approval from the U.S. financial institution for all transactions processed through the correspondent account or payable-through account of the foreign financial institution; or

(v) Prohibiting or restricting the processing of foreign exchange transactions through the correspondent account or payable-through account of the foreign financial institution.

(d) *Applicability of prohibitions.* The prohibitions in this section apply except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

Note 2 to § 510.210: The names of foreign financial institutions for which the opening or maintaining of a correspondent account or a payable-through account in the United States is prohibited or for which the maintenance of a correspondent account or payable-through account is subject to one or more strict conditions pursuant to this section will be added to the Correspondent Account or Payable-Through Account Sanctions (CAPTA) List on OFAC's website (*www.treasury.gov/ofac*), and published in the **Federal Register** along with the applicable prohibition or strict condition(s).

§ 510.211 Prohibited facilitation.

(a) Except as otherwise authorized, U.S. persons, wherever located, are prohibited from approving, financing, facilitating, or guaranteeing a transaction by a foreign person where the transaction by that foreign person would be prohibited by § 510.201(d), § 510.206, or § 510.209 if performed by a U.S. person or within the United States.

(b)(1) The prohibitions in this section with respect to § 510.201(d) apply except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

(2) The prohibitions in this section with respect to §§ 510.206 and 510.209 apply except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this part or pursuant to the export control authorities implemented by the U.S. Department of Commerce, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

§ 510.212 Evasions; attempts; causing violations; conspiracies.

(a) Any transaction on or after the effective date that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

§ 510.213 Exempt transactions.

(a) *United Nations Participation Act.* The exemptions described in this section do not apply to transactions involving property or interests in property of persons whose property and interests in property are blocked pursuant to the authority of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (UNPA).

Note 1 to paragraph (a): Persons whose property and interests in property are blocked pursuant to the authority of the UNPA include those listed on *both* OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) and the Consolidated United Nations Security Council Sanctions List (see *https://www.un.org)* as well as persons listed on the SDN List for being owned or controlled by, or acting for or on behalf of, such persons.

(b) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(c) *Information or informational materials.* (1) The prohibitions contained in this part do not apply to the importation from any country and the exportation to any country of any information or informational materials, as defined in § 510.312, whether commercial or otherwise, regardless of format or medium of transmission.

(2) This section does not exempt from regulation transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of information or informational materials, or to the provision of marketing and business

consulting services. Such prohibited transactions include payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730 through 774, or to the exportation of goods (including software) or technology for use in the transmission of any data, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property and interests in property are blocked pursuant to § 510.201(a) are prohibited.

(d) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation or exportation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Note 2 to paragraph (d): As of September 1, 2017, the U.S. Department of State has restricted the use of U.S. passports to travel into, in, or through North Korea. See 22 CFR 51.63. U.S. nationals who wish to travel to or within North Korea for the extremely limited purposes that are set forth in federal regulations must apply for a passport with a special validation from the Department of State. See *travel.state.gov* for additional details.

(e) *Official business.* The prohibitions contained in §§ 510.201(a)(1), 510.201(a)(3)(iv) through (vi) and (d), 510.206, and 510.208 through 510.211 do not apply to transactions for the conduct of the official business of the Federal Government or the United Nations and its Specialized Agencies, Programmes, Funds, and Related Organizations by employees, grantees, or contractors thereof.

Note 3 to paragraph (e): For an organizational chart listing the Specialized Agencies, Programmes, Funds, and Related Organizations of the United Nations, see the following page on the United Nations website: *http://www.unsceb.org/directory.*

Subpart C—General Definitions

§ 510.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

§ 510.301 Arms or related materiel.

The term *arms or related materiel* means arms or related materiel of all types, including any battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems, or related materiel including spare parts.

Note 1 to § 510.301: For additional guidance as to items that constitute *arms or related materiel,* please see determinations by the United Nations Security Council or its committee created pursuant to United Nations Security Council Resolution 1718, as well as designations by the Secretary of State of defense articles and defense services pursuant to the Arms Export Control Act and listed on the United States Munitions List (USML). In addition, items on the Commerce Control List as well as certain uncontrolled items that are subject to the Export Administration Act may be considered *related materiel.*

§ 510.302 Blocked account; blocked property.

For the purposes of this part, the terms *blocked account* and *blocked property* shall mean:

(a) Any account or property subject to the prohibitions in § 510.201(a) held in the name of the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action; and

(b) Any account or property subject to the prohibitions in § 510.201(d), and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

Note 1 to § 510.302: See § 510.411 concerning the blocked status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked pursuant to § 510.201(a).

§ 510.303 Correspondent account.

The term *correspondent account* means an account established by a U.S. financial institution for a foreign financial institution to receive deposits from, or to make payments on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution.

§ 510.304 Effective date.

(a) The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(1) With respect to transfers or other dealings in blocked property and interests in property of the Government of North Korea, as defined in § 510.311, or the Workers' Party of Korea prohibited by § 510.201(a)(1), 12:01 a.m. eastern daylight time, March 16, 2016;

(2) With respect to a person whose property and interests in property are blocked pursuant to § 510.201(a)(3)(i), 12:01 p.m. eastern daylight time, August 30, 2010;

(3) With respect to a person whose property and interests in property are otherwise blocked pursuant to § 510.201(a), the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked;

(4) With respect to funds subject to blocking pursuant to § 510.201(d), the earlier of the date of actual or constructive notice that funds are blocked or that a foreign bank account that the funds originate from, are destined for, or pass through has been determined to meet the criteria contained in § 510.201(d).

(5) With respect to the prohibition set forth in § 510.207, June 26, 2008;

(6) With respect to the prohibition set forth in § 510.205, 12:01 a.m. eastern daylight time, April 19, 2011;

(7) With respect to the prohibitions set forth in §§ 510.206 and 510.209, 12:01 a.m. eastern daylight time, March 16, 2016;

(8) With respect to the prohibitions set forth in § 510.208, 12:01 a.m. eastern daylight time, September 21, 2017; and

(9) With respect to the prohibition set forth in § 510.210, 12:01 a.m. eastern daylight time, September 21, 2017. The effective date of a prohibition or strict condition imposed pursuant to § 510.210 on the opening or maintaining of a correspondent account or a payable-through account in the United States by a U.S. financial institution for a particular foreign financial institution is

the earlier of the date the U.S. financial institution receives actual or constructive notice of such prohibition, condition, or blocking.

(b) For the purposes of this section, *constructive notice* is the date that a notice of the blocking of the relevant person's property and interests in property is published in the **Federal Register**.

§ 510.305 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 510.306 Financial, material, or technological support.

The term *financial, material, or technological support,* as used in § 510.201(a)(3)(ii)(E), (a)(3)(iii)(D), (a)(3)(iv)(G), and (a)(3)(v)(E), means any property, tangible or intangible, including currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

§ 510.307 Financial services.

The term *financial services* includes loans, transfers, accounts, insurance, investments, securities, guarantees, foreign exchange, letters of credit, and commodity futures or options.

§ 510.308 Financial transaction.

The term *financial transaction* means any transfer of value involving a financial institution.

§ 510.309 Foreign financial institution.

The term *foreign financial institution* means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any of the foregoing. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by OFAC.

§ 510.310 Foreign person.

The term *foreign person* means any person that is not a U.S. person.

§ 510.311 Government of North Korea.

The term *Government of North Korea* includes:

(a) The state and the Government of the Democratic People's Republic of Korea, as well as any political subdivision, agency, or instrumentality thereof;

(b) Any entity owned or controlled, directly or indirectly, by the foregoing, including any corporation, partnership, association, or other entity in which the Government of North Korea owns a 50 percent or greater interest or a controlling interest, and any entity which is otherwise controlled by that government;

(c) Any person that is, or has been, acting or purporting to act, directly or indirectly, for or on behalf of any of the foregoing; and

(d) Any other person determined by OFAC to be included within paragraphs (a) through (c) of this section.

Note 1 to § 510.311: The names of persons that OFAC has determined fall within this definition are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier ''[DPRK].'' The SDN List is accessible through the following page on OFAC's website: *www.treasury.gov/sdn.* However, the property and interests in property of persons who meet the definition of the term Government of North Korea are blocked pursuant to § 510.201(a) regardless of whether the names of such persons are published in the **Federal Register** or incorporated into the SDN List.

Note 2 to § 510.311: Section 501.807 of this chapter describes the procedures to be followed by persons seeking administrative reconsideration of OFAC's determination that they fall within the definition of the term Government of North Korea.

§ 510.312 Information or informational materials.

(a)(1) The term *information or informational materials* includes publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(2) To be considered information or informational materials, artworks must be classified under heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials,* with respect to exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (EAA), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 510.313 Interest.

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 510.314 Knowingly.

The term *knowingly,* with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

§ 510.315 Licenses; general and specific.

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's website: *www.treasury.gov/ofac.*

(c) The term *specific license* means any license or authorization issued pursuant to this part, but not set forth in subpart E of this part or made available on OFAC's website: *www.treasury.gov/ofac.*

Note 1 to § 510.315: *See* § 501.801 of this chapter on licensing procedures.

§ 510.316 Loans or other extensions of credit.

The term *loans or other extensions of credit* means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another

to repay an extension of funds or credit, including: Overdrafts; currency swaps; purchases of securities or debt securities, including securities from or issued by the Government of North Korea; purchases of a loan made by another person; sales of financial assets subject to an agreement to repurchase; renewals or refinancings whereby funds or credits are transferred or extended to a prohibited borrower or prohibited recipient; the issuance of standby letters of credit; and drawdowns on existing lines of credit.

§ 510.317 Luxury goods.

The term *luxury goods* includes those items listed in 15 CFR 746.4(b)(1) and supplement no. 1 to part 746 and similar items.

§ 510.318 New investment.

The term *new investment* means a transaction after 12:01 a.m. eastern daylight March 16, 2016 that constitutes:

(a) A commitment or contribution of funds or other assets; or

(b) A loan or other extension of credit as defined in § 510.316.

§ 510.319 North Korean person.

(a) The term *North Korean person* means any North Korean citizen, North Korean permanent resident alien, or entity organized under the laws of North Korea or any jurisdiction within North Korea (including foreign branches).

(b) For the purposes of § 510.201(a)(3)(v), the term *North Korean person* shall not include any United States citizen, any permanent resident alien of the United States, any alien lawfully admitted to the United States, or any alien holding a valid United States visa.

§ 510.320 OFAC.

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

§ 510.321 Payable-through account.

The term *payable-through account* means a correspondent account maintained by a U.S. financial institution for a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

§ 510.322 Person.

The term *person* means an individual or entity.

§ 510.323 Property; property interest.

The terms *property* and *property interest* include money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership, or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 510.324 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 510.325 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 510.326 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 510.327 U.S. depository institution.

The term *U.S. depository institution* means any entity (including its foreign branches) organized under the laws of the United States or any jurisdiction within the United States, or any agency, office, or branch located in the United States of a foreign entity, that is engaged primarily in the business of banking (for example, banks, savings banks, savings associations, credit unions, trust companies, and United States bank holding companies) and is subject to regulation by federal or state banking authorities.

§ 510.328 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or other extensions of credit, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 510.329 U.S.-registered money transmitter.

The term *U.S.-registered money transmitter* means any U.S. citizen,

permanent resident alien, or entity organized under the laws of the United States or of any jurisdiction within the United States, including its foreign branches, or any agency, office, or branch of a foreign entity located in the United States, that is a money transmitter, as defined in 31 CFR 1010.100(ff)(5), and that is registered pursuant to 31 CFR 1022.380.

§ 510.330 U.S.-registered broker or dealer in securities.

The term *U.S.-registered broker or dealer in securities* means any U.S. citizen, permanent resident alien, or entity organized under the laws of the United States or of any jurisdiction within the United States (including its foreign branches), or any agency, office, or branch of a foreign entity located in the United States, that:

(a) Is a ''broker'' or ''dealer'' in securities within the meanings set forth in the Securities Exchange Act of 1934;

(b) Holds or clears customer accounts; and

(c) Is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Subpart D—Interpretations

§ 510.401 Reference to amended sections.

(a) Reference to any section in this part is a reference to the same as currently amended, unless the reference includes a specific date. *See* 44 U.S.C. 1510.

(b) Reference to any ruling, order, instruction, direction or license issued pursuant to this part is a reference to the same as currently amended unless otherwise so specified.

§ 510.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 510.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a), such property shall no longer be deemed to be property blocked pursuant to § 510.201(a), unless there exists in the property another interest that is blocked pursuant to § 510.201(a), the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 510.201(a), such property shall be deemed to be property in which such person has an interest and therefore blocked.

§ 510.404 Transactions ordinarily incident to a licensed transaction.

(a) Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(1) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a);

(2) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property; or

(3) An ordinarily incident transaction, not explicitly authorized within the terms of the license, with a foreign financial institution that is subject to sanctions pursuant to § 510.210 when the transaction is one that is prohibited by § 510.210.

(b) For example, a license authorizing a person to complete a securities sale involving Company A, whose property and interests in property are blocked pursuant to § 510.201(a), also authorizes other persons to engage in activities that are ordinarily incident and necessary to complete the sale, including transactions by the buyer, broker, transfer agents, and banks, provided that such other persons are not themselves persons whose property and interests in property are blocked pursuant to § 510.201(a).

§ 510.405 Exportation and reexportation of goods, services, or technology.

(a) The prohibition on the exportation and reexportation of goods, services, or technology contained in § 510.206 applies to services performed on behalf of a person in North Korea or the Government of North Korea or where the benefit of such services is otherwise received in North Korea, if such services are performed:

(1) In the United States; or

(2) Outside the United States by a U.S. person, including by a foreign branch of an entity located in the United States.

(b) The benefit of services performed anywhere in the world on behalf of the Government of North Korea is presumed to be received in North Korea.

(c) The prohibitions contained in § 510.201 apply to services performed in the United States or by U.S. persons, wherever located, including by a foreign branch of an entity located in the United States:

(1) On behalf of or for the benefit of the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a); or

(2) With respect to property interests of the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a).

(d)(1) For example, U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to any person in North Korea or to the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a).

(2) For example, a U.S. person is engaged in a prohibited exportation of services to North Korea when it extends credit to a third-country firm specifically to enable that firm to manufacture goods for sale to North Korea or the Government of North Korea.

Note 1 to § 510.405: *See* §§ 510.507 and 510.509 on licensing policy with regard to the provision of certain legal and emergency medical services.

§ 510.406 Offshore transactions involving blocked property.

The prohibitions in § 510.201 on transactions or dealings involving blocked property (including a blocked account) apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are

blocked pursuant to § 510.201(a) or any property blocked by § 510.201(d).

§ 510.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 510.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

Note 1 to § 510.407: *See also* § 510.502(e), which provides that no license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

§ 510.408 Charitable contributions.

Unless specifically authorized by OFAC pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing, or medicine, may be made by, to, or for the benefit of, or received from, the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a) if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from such a person.

Note 1 to § 510.408: Separate authorization by the Department of Commerce under the Export Administration Regulations (EAR), 15 CFR part 730 through 774, may be required if the charitable contributions are subject to the EAR.

§ 510.409 Credit extended and cards issued by financial institutions to a person whose property and interests in property are blocked.

The prohibition in § 510.201 on dealing in property subject to that section and the prohibition in § 510.206 on exporting services to North Korea prohibit U.S. financial institutions from performing under any existing credit agreements, including charge cards, debit cards, or other credit facilities issued by a financial institution to the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a).

§ 510.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 510.201 if effected after the effective date.

§ 510.411 Entities owned by one or more persons whose property and interests in property are blocked.

(a) Persons whose property and interests in property are blocked pursuant to § 510.201(a) have an interest in all property and interests in property of an entity in which such persons directly or indirectly own, whether individually or in the aggregate, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 510.201(a), regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

(b) This section, which deals with the consequences of ownership of entities, in no way limits the definition of the Government of North Korea in § 510.311, which includes within its definition other persons whose property and interests in property are blocked but who are not on the SDN List.

§ 510.412 Facilitation; change of policies and procedures; referral of business opportunities offshore.

With respect to § 510.211, a prohibited facilitation or approval of a transaction by a foreign person occurs, among other instances, when a U.S. person:

(a) Alters its operating policies or procedures, or those of a foreign affiliate, to permit a foreign affiliate to accept or perform a specific contract, engagement, or transaction involving North Korea or the Government of North Korea without the approval of the U.S. person, where such transaction previously required approval by the U.S. person and such transaction by the foreign affiliate would be prohibited by this part if performed directly by a U.S. person or from the United States;

(b) Refers to a foreign person purchase orders, requests for bids, or similar business opportunities involving North Korea or the Government of North Korea to which the United States person could not directly respond as a result of the prohibitions contained in this part; or

(c) Changes the operating policies and procedures of a particular affiliate with the specific purpose of facilitating transactions that would be prohibited by this part if performed by a U.S. person or from the United States.

§ 510.413 Significant transaction(s).

In determining, for purposes of §§ 510.201(a)(3)(vi) and 510.210, whether a transaction(s) is significant, the Secretary of the Treasury or the Secretary's designee may consider the totality of the facts and circumstances. As a general matter, the Department of the Treasury may consider some or all of the following factors:

(a) *Size, number, and frequency.* The size, number, and frequency of transaction(s) over a period of time, including whether the transaction(s) is increasing or decreasing over time and the rate of increase or decrease.

(b) *Nature.* The nature of the transaction(s), including the type, complexity, and commercial purpose of the transaction(s).

(c) *Level of awareness; pattern of conduct.* (1) Whether the transaction(s) is performed with the involvement or approval of management or only by clerical personnel; and

(2) Whether the transaction(s) is part of a pattern of conduct or the result of a business development strategy.

(d) *Nexus.* The proximity between the foreign financial institution engaging in the transaction(s) and North Korea or a blocked person described in § 510.201.

(e) *Impact.* The impact of the transaction(s) on the objectives of Executive Order 13810 including the economic or other benefit conferred or attempted to be conferred on North Korea or a blocked person described in § 510.201.

(f) *Deceptive practices.* Whether the transaction(s) involves an attempt to obscure or conceal the actual parties or true nature of the transaction(s) to evade sanctions.

(g) *Other relevant factors.* Such other factors that the Department of the Treasury deems relevant on a case-by-case basis in determining the significance of a transaction(s).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 510.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in

this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the North Korea sanctions page on OFAC's website: *www.treasury.gov/ofac.*

§ 510.502 Effect of license or other authorization.

(a) No license or other authorization contained in this part, or otherwise issued by OFAC, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by OFAC and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property that would not otherwise exist under ordinary principles of law.

(d) Nothing contained in this part shall be construed to supersede the requirements established under any other provision of law or to relieve a person from any requirement to obtain a license or other authorization from another department or agency of the U.S. Government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency. For example, exports of goods, services, or technical data that are not prohibited by this part or that do not require a license by OFAC nevertheless may require authorization by the U.S. Department of Commerce, the U.S. Department of State, or other agencies of the U.S. Government.

(e) No license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

(f) Any payment relating to a transaction authorized in or pursuant to this part that is routed through the U.S. financial system should reference the relevant OFAC general or specific license authorizing the payment to avoid the blocking or rejection of the transfer.

§ 510.503 Exclusion from licenses.

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 510.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a) has any interest that comes within the possession or control of a U.S. financial institution, or any payment of funds or transfer of credit, subject to § 510.201(d) must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note 1 to § 510.504: *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 510.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 510.505 Entries in certain accounts for normal service charges.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 510.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 510.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 510.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (*e.g.,* through pledging or other use) to the Government of North Korea or any other person whose property and interests in property are blocked pursuant to § 510.201(a).

§ 510.507 Provision of certain legal services.

(a) The provision of the following legal services to or on behalf of the Government of North Korea, the Workers' Party of Korea, any other person whose property and interests in property are blocked pursuant to § 510.201(a) or any further Executive orders relating to the national emergency declared in Executive Order 13466 of June 26, 2008, or any person in North Korea, or in circumstances in which the benefit is otherwise received in North Korea, is authorized, provided that receipt of payment of professional fees and reimbursement of incurred expenses must be authorized: Pursuant to § 510.508, which authorizes certain payments for legal services from funds originating outside the United States; via specific license; or otherwise pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the

United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons or North Korea; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to or on behalf of the Government of North Korea, the Workers' Party of Korea, any other person whose property and interests in property are blocked pursuant to § 510.201(a) or any further Executive orders relating to the national emergency declared in Executive Order 13466 of June 26, 2008, or any person in North Korea, or in circumstances in which the benefit is otherwise received in North Korea, not otherwise authorized in this part, requires the issuance of a specific license.

(c) Consistent with § 510.404, U.S. persons do not need to obtain specific authorization to provide related services, such as making filings and providing other administrative services, that are ordinarily incident to the provision of services authorized by paragraph (a) of this section. Additionally, U.S. persons who provide services authorized by paragraph (a) of this section do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 510.201, or any further Executive orders relating to the national emergency declared in Executive Order 13466 of June 26, 2008, is prohibited unless licensed pursuant to this part.

Note 1 to § 510.507: Pursuant to part 501, subpart E, of this chapter, U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of certain blocked funds for the payment of professional fees and reimbursement of incurred expenses for the provision of such legal services where alternative funding sources are not available. For more information, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings,* which is available on OFAC's website at: *www.treasury.gov/ofac.*

§ 510.508 Payments for legal services from funds originating outside the United States.

(a) *Professional fees and incurred expenses.* Receipt of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 510.507(a) to or on behalf of the Government of North Korea, the Workers' Party of Korea, any other person whose property and interests in property are blocked pursuant to § 510.201(a) or any further Executive orders relating to the national emergency declared in Executive Order 13466 of June 26, 2008, or any person in North Korea, or in circumstances in which the benefit is otherwise received in North Korea, is authorized from funds originating outside the United States, provided that the funds received by U.S. persons as payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 510.507(a) do not originate from:

(1) A source within the United States;

(2) Any source, wherever located, within the possession or control of a U.S. person; or

(3) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 510.507(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute.

Note 1 to paragraph (a): Nothing in this paragraph (a) authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 510.201(a), any other part of this chapter, or any Executive order has an interest.

(b) *Reports.* (1) U.S. persons who receive payments pursuant to paragraph (a) of this section must submit annual reports no later than 30 days following the end of the calendar year during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) *Email (preferred method): OFAC.Regulations.Reports@treasury.gov;* or

(ii) *U.S. mail:* OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

§ 510.509 Emergency medical services.

The provision and receipt of nonscheduled emergency medical services that are otherwise prohibited by this part or any further Executive orders relating to the national emergency declared in Executive Order 13466 of June 26, 2008 are authorized.

§ 510.510 North Korean mission to the United Nations and employees of the United Nations.

(a) Except as provided in paragraph (c) of this section, the provision of goods or services in the United States to the official mission of the Government of North Korea to the United Nations (the mission) and payment for such goods or services are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the mission, or for personal use of the employees of the mission, their families, or persons forming part of their household, and are not for resale;

(2) The transaction does not involve the purchase, sale, financing, or refinancing of real property;

(3) The transaction does not involve the purchase, sale, financing, or refinancing of luxury goods;

(4) The transaction is not otherwise prohibited by law; and

(5) Funds transfers to or from the mission or the employees of the mission, their families, or persons forming part of their household are conducted through an account at a U.S.

financial institution specifically licensed by OFAC.

(b) Except as provided in paragraph (c) of this section, the provision of goods or services in the United States to the employees of the mission or of the United Nations, their families, or persons forming part of their household, and payment for such goods or services, are authorized, provided that:

(1) The goods or services are for personal use of the employees of the mission or of the United Nations, their families, or persons forming part of their household, and are not for resale;

(2) The transaction does not involve the purchase, sale, financing, or refinancing of luxury goods;

(3) The transaction is not otherwise prohibited by law; and

(4) Funds transfers to or from employees of the mission, their families, or persons forming part of their household are conducted through an account at a U.S. financial institution specifically licensed by OFAC.

(c) This section does not authorize U.S. financial institutions to open and operate accounts for, or extend credit to, the mission of the Government of North Korea or to the employees of the mission, their families, or persons forming part of their household. U.S. financial institutions are required to obtain specific licenses to operate accounts for, or extend credit to, the mission or to the employees of the mission, their families, or persons forming part of their household.

Note 1 to § 510.510: Nothing in this section authorizes the transfer of any property to the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a) other than the mission, nor does this section authorize any debit to a blocked account.

§ 510.511 Noncommercial, personal remittances.

(a)(1) U.S. persons are authorized to send and receive and U.S. depository institutions, U.S.-registered brokers or dealers in securities, and U.S.-registered money transmitters are authorized to process transfers of funds to or from North Korea or for or on behalf of an individual ordinarily resident in North Korea, other than an individual whose property and interests in property are blocked pursuant to § 510.201(a), in cases in which the transfers involve noncommercial, personal remittances, up to a maximum of $5,000 per year.

(2) Noncommercial, personal remittances do not include charitable donations of funds to or for the benefit of an entity or funds transfers for use in supporting or operating a business, including a family-owned business.

(b) The transferring institutions identified in paragraph (a) of this section may rely on the originator of a funds transfer with regard to compliance with paragraph (a) of this section, provided that the transferring institution does not know or have reason to know that the funds transfer is not in compliance with paragraph (a) of this section.

(c) An individual who is a U.S. person is authorized to carry funds as a noncommercial, personal remittance, as described in paragraph (a) of this section, to an individual in North Korea or ordinarily resident in North Korea, other than an individual whose property and interests in property are blocked pursuant to § 510.201(a), provided that the individual who is a U.S. person is carrying the funds on his or her behalf, not on behalf of another person.

§ 510.512 Certain services in support of nongovernmental organizations' activities.

(a) Nongovernmental organizations are authorized to export or reexport services to North Korea that would otherwise be prohibited by this part in support of the following not-for-profit activities:

(1) Activities to support humanitarian projects to meet basic human needs in North Korea, including drought, flood, and disaster relief; the distribution of food, medicine, and clothing intended to be used to relieve human suffering; the provision of shelter; the provision of clean water, sanitation, and hygiene assistance; the provision of health-related services; assistance for individuals with disabilities; and environmental programs;

(2) Activities to support democracy building in North Korea, including rule of law, citizen participation, government accountability, universal human rights and fundamental freedoms, access to information, and civil society development projects;

(3) Activities to support non-commercial development projects directly benefiting the North Korean people, including preventing infectious disease and promoting maternal/child health, sustainable agriculture, and clean water assistance; and

(4) Activities to support environmental protection, including the preservation and protection of threatened or endangered species and the remediation of pollution or other environmental damage.

(b) Nongovernmental organizations are authorized to export or reexport to North Korea from a third country food, as defined in paragraph (f)(1) of this section, and medicine, as defined in paragraph (f)(2) of this section, in support of the activities authorized in paragraph (a) of this section, provided that the food and medicine are not subject to the Export Administration Regulations (15 CFR parts 730 through 774) (EAR). For export or reexport by a U.S. person to North Korea from a third country of other items that are not subject to the EAR, a specific license from OFAC is required.

Note 1 to paragraph (b): Pursuant to 15 CFR 746.4(a), a license from the Department of Commerce is required to export or reexport any item subject to the EAR to North Korea, except food and medicine designated as EAR99.

Note 2 to paragraphs (a) and (b): The authorizations in paragraphs (a) and (b) of this section do not eliminate the need to comply with other applicable provisions of law, including any requirements of agencies other than the Department of the Treasury's Office of Foreign Assets Control. Such requirements include the EAR administered by the Department of Commerce and the International Traffic in Arms Regulations (22 CFR parts 120 through 130) administered by the Department of State.

(c) U.S. depository institutions, U.S.-registered brokers or dealers in securities, and U.S.-registered money transmitters are authorized to process transfers of funds on behalf of U.S. or third-country nongovernmental organizations, including transfers of funds to or from North Korea, in support of the activities authorized by paragraphs (a) and (b) of this section.

(d) Nongovernmental organizations are authorized to engage in transactions with the Government of North Korea that are necessary for the activities authorized by paragraphs (a) and (b) of this section, including payment of reasonable and customary taxes, fees, and import duties to, and purchase or receipt of permits, licenses, or public utility services from, the Government of North Korea.

Note 3 to paragraph (d): This paragraph (d) only authorizes nongovernmental organizations to conduct limited transactions with the Government of North Korea that are necessary for the activities described in paragraphs (a) and (b) of this section, such as payment of reasonable and customary taxes and other fees. Partnerships and partnership agreements between nongovernmental organizations and the Government of North Korea or other blocked persons that are necessary for nongovernmental organizations to provide authorized services are not permitted without a specific license from OFAC.

(e) Except as authorized in paragraph (d) of this section, this section does not authorize the exportation or reexportation of services to, charitable

donations to or for the benefit of, or any other transactions involving the Government of North Korea, the Workers' Party of Korea, or any other person whose property and interests in property are blocked pursuant to § 510.201(a). Specific licenses may be issued on a case-by-case basis for these purposes.

(f)(1) For purposes of this section, the term *food* means items that are consumed by and provide nutrition to humans and animals, and seeds, with the exception of castor bean seeds, that germinate into items that will be consumed by and provide nutrition to humans and animals. Examples of ''food'' include processed or unprocessed food items for human consumption, feed, vitamins, minerals, food additives, dietary supplements, and containers of drinking water. The term *food* does not include livestock, cigarettes, alcoholic beverages, gum, castor beans, castor bean seeds, certified pathogen-free eggs (unfertilized or fertilized), dried egg albumin, live animals (excluding cattle embryos), Rosary/Jequirity peas, non-food-grade gelatin powder, peptones and their derivatives, super absorbent polymers, western red cedar, and all fertilizers.

(2) The term *medicine* means an item that falls within the definition of the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and that, in the case of an item subject to the EAR, is designated as EAR99 or, in the case of an item not subject to the EAR, is not listed under any multilateral export control regime.

§ 510.513 Official business of the Federal Government.

All transactions otherwise prohibited by the provisions of this part, other than §§ 510.201(a)(1), (a)(3)(iv) through (vi), and (d), 510.206, and 510.208 through 510.211, that are for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof are authorized.

Note 1 to § 510.513: Section 510.213(e) exempts transactions for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof to the extent such transactions are subject to the prohibitions contained in §§ 510.201(a)(1), (a)(3)(iv) through (vi), and (d), 510.206, and 510.208 through 510.211.

§ 510.514 Official activities of international organizations.

All transactions and activities otherwise prohibited by the provisions of this part, other than §§ 510.201(a)(1), (a)(3)(iv) through (vi), and (d), 510.206, and 510.208 through 510.211, that are for the conduct of the official business of the United Nations and its Specialized Agencies, Programmes, Funds, and Related Organizations by employees, contractors, or grantees thereof are authorized.

Note 1 to § 510.514: For an organizational chart listing the Specialized Agencies, Programmes, Funds, and Related Organizations of the United Nations, see the following page on the United Nations website: *http://www.unsceb.org/directory.*

Note 2 to § 510.514: Section 510.213(e) exempts transactions for the conduct of the official business of the United Nations by employees, grantees, or contractors thereof to the extent such transactions are subject to the prohibitions contained in §§ 510.201(a)(1), (a)(3)(iv) through (vi), and (d), 510.206, and 510.208 through 510.211.

Note 3 to § 510.514: Separate authorization from the Department of Commerce may be required for the export or reexport of items related to such transactions and activities, if the items are subject to the Export Administration Regulations, 15 CFR parts 730 through 744.

§ 510.515 Third-country diplomatic and consular funds transfers.

(a) Except as provided in paragraph (b) of this section, U.S. depository institutions, U.S.-registered brokers or dealers in securities, and U.S.-registered money transmitters are authorized to process funds transfers necessary for the operating expenses or other official business of third-country diplomatic or consular missions in North Korea.

(b) This section does not authorize funds transfers involving accounts blocked pursuant to § 510.201(d).

§ 510.516 Transactions related to telecommunications and mail.

(a)(1) Except as provided in paragraph (a)(2) of this section, all transactions necessary for the receipt and transmission of telecommunications involving North Korea are authorized.

(2) This section does not authorize:

(i) The provision, sale, or lease of telecommunications equipment or technology; or

(ii) The provision, sale, or lease of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity).

(b) All transactions of common carriers incident to the receipt or transmission of mail and packages between the United States and North Korea are authorized provided that the importation or exportation of such mail and packages is exempt from or authorized pursuant to this part.

§ 510.517 Certain transactions related to patents, trademarks, copyrights, and other intellectual property.

(a) All of the following transactions in connection with a patent, trademark, copyright, or other form of intellectual property protection in the United States or North Korea are authorized, including exportation of services to North Korea, payment for such services, and payment to persons in North Korea directly connected to such intellectual property protection:

(1) The filing and prosecution of any application to obtain a patent, trademark, copyright, or other form of intellectual property protection;

(2) The receipt of a patent, trademark, copyright, or other form of intellectual property protection;

(3) The renewal or maintenance of a patent, trademark, copyright, or other form of intellectual property protection; and

(4) The filing and prosecution of any opposition or infringement proceeding with respect to a patent, trademark, copyright, or other form of intellectual property protection, or the entrance of a defense to any such proceeding.

(b) This section authorizes the payment of fees to the U.S. Government or the Government of North Korea, and of the reasonable and customary fees and charges to attorneys or representatives within the United States or North Korea, in connection with the transactions authorized in paragraph (a) of this section, except that payment effected pursuant to the terms of this paragraph (b) may not be made from a blocked account.

§ 510.518 Calling of certain vessels and landing of certain aircraft.

(a) Vessels and aircraft in which a foreign person has an interest that have called or landed at a port or place in North Korea within the previous 180 days, and vessels in which a foreign person has an interest that have engaged in a ship-to-ship transfer with such a vessel within the previous 180 days, are authorized to call or land at a port or place in the United States in the following circumstances only:

(1) The vessel is in distress and seeks refuge in the United States;

(2) The vessel's call at a port in North Korea was due solely to its distress and the resulting need to seek refuge;

(3) The aircraft is engaging in a nontraffic stop or an emergency landing in the United States; or

(4) The aircraft's landing in North Korea was due solely to an emergency landing.

(b) For purposes of this section, a *nontraffic stop* includes a stop for any purpose other than taking on or discharging cargo, passengers, or mail.

§ 510.519 Transactions related to closing a correspondent or payable-through account.

(a) During the 10-day period beginning on the effective date of the prohibition in § 510.210 on the opening or maintaining of a correspondent account or a payable-through account for a foreign financial institution listed on the Correspondent Account or Payable-Through Account Sanctions (CAPTA) List, U.S. financial institutions that maintain correspondent accounts or payable-through accounts for the foreign financial institution are authorized to:

(1) Process only those transactions through the account, or permit the foreign financial institution to execute only those transactions through the account, that are for the purpose of, and necessary for, closing the account; and

(2) Transfer the funds remaining in the correspondent account or the payable-through account to an account of the foreign financial institution located outside of the United States and close the correspondent account or the payable-through account.

(b) A report must be filed with OFAC within 30 days of the closure of an account, providing full details on the closing of each correspondent account or payable-through account maintained by a U.S. financial institution for a foreign financial institution whose name is added to the CAPTA List. Such report must include complete information on the closing of the account and on all transactions processed or executed through the account pursuant to this section, including the account outside of the United States to which funds remaining in the account were transferred. The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(1) *Email (preferred method): OFACReport@treasury.gov;* or

(2) *U.S. mail:* Attention: Office of Compliance and Enforcement, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

(c) Specific licenses may be issued on a case-by-case basis to authorize transactions outside the scope or time period authorized in paragraph (a) of this section by a U.S. financial institution with respect to a correspondent account or a payable-through account maintained by the U.S. financial institution for a foreign financial institution whose name is added to the CAPTA List. License applications should be filed in conformance with § 501.801 of the Reporting, Procedures and Penalties Regulations, 31 CFR part 501.

(d) Nothing in this section authorizes the opening of a correspondent account or a payable-through account for a foreign financial institution whose name appears on the CAPTA List.

Note 1 to § 510.519: This section does not authorize a U.S. financial institution to unblock property or interests in property, or to engage in any transaction or dealing in property or interests in property, blocked pursuant to any other part of this chapter in the process of closing a correspondent account or a payable-through account for a foreign financial institution whose name has been added to the CAPTA List. *See* § 510.101.

Subpart F—Reports

§ 510.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties and Finding of Violation

§ 510.701 Penalties.

(a) Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA) is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

Note 1 to paragraph (a)(1): IEEPA provides for a maximum civil penalty not to exceed the greater of $295,141 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b)(1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Pursuant to 18 U.S.C. 1001, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, imprisoned, or both.

(d) Section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (UNPA), provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

(e) Violations involving transactions described at section 203(b)(1), (3), and (4) of IEEPA shall be subject only to the penalties set forth in paragraph (d) of this section.

(f) Violations of this part may also be subject to other applicable laws.

§ 510.702 Pre-Penalty Notice; settlement.

(a) *When required.* If OFAC has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA) and determines that a civil monetary penalty is

warranted, OFAC will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see appendix A to part 501 of this chapter.

(b) *Response*—(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to OFAC. For a description of the information that should be included in such a response, see appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and include the OFAC identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to OFAC's Office of Compliance and Enforcement by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by OFAC, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by OFAC are contained in appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 510.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, OFAC determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, OFAC may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 510.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to OFAC, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

§ 510.705 Finding of Violation.

(a) *When issued.* (1) OFAC may issue an initial Finding of Violation that identifies a violation if OFAC:

(i) Determines that there has occurred a violation of any provision of this part, or a violation of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act;

(ii) Considers it important to document the occurrence of a violation; and

(iii) Based on the Guidelines contained in appendix A to part 501 of this chapter, concludes that an administrative response is warranted but that a civil monetary penalty is not the most appropriate response.

(2) An initial Finding of Violation shall be in writing and may be issued whether or not another agency has taken any action with respect to the matter. For additional details concerning issuance of a Finding of Violation, see appendix A to part 501 of this chapter.

(b) *Response*—(1) *Right to respond.* An alleged violator has the right to contest an initial Finding of Violation by providing a written response to OFAC.

(2) *Deadline for response; default determination.* A response to an initial Finding of Violation must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond, and the initial Finding of Violation will become final and will constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

(i) *Computation of time for response.* A response to an initial Finding of Violation must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the initial Finding of Violation was served. If the initial Finding of Violation was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to an initial Finding of Violation need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, contain information sufficient to indicate that it is in response to the initial Finding of Violation, and include the OFAC identification number listed on the initial Finding of Violation. A copy of the written response may be sent by facsimile, but the original also must be sent to OFAC by mail or courier and must be postmarked or date-stamped in

accordance with paragraph (b)(2) of this section.

(4) *Information that should be included in response.* Any response should set forth in detail why the alleged violator either believes that a violation of the regulations did not occur and/or why a Finding of Violation is otherwise unwarranted under the circumstances, with reference to the General Factors Affecting Administrative Action set forth in the Guidelines contained in appendix A to part 501. The response should include all documentary or other evidence available to the alleged violator that supports the arguments set forth in the response. OFAC will consider all relevant materials submitted in the response.

(c) *Determination*—(1) *Determination that a Finding of Violation is warranted.* If, after considering the response, OFAC determines that a final Finding of Violation should be issued, OFAC will issue a final Finding of Violation that will inform the violator of its decision. A final Finding of Violation shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

(2) *Determination that a Finding of Violation is not warranted.* If, after considering the response, OFAC determines a Finding of Violation is not warranted, then OFAC will inform the alleged violator of its decision not to issue a final Finding of Violation.

Note 1 to paragraph (c)(2): A determination by OFAC that a final Finding of Violation is not warranted does not preclude OFAC from pursuing other enforcement actions consistent with the Guidelines contained in appendix A to part 501 of this chapter.

(d) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific alleged violations contained in the initial Finding of Violation must be preceded by a written letter of representation, unless the initial Finding of Violation was served upon the alleged violator in care of the representative.

Subpart H—Procedures

§ 510.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 510.802 Delegation of certain authorities of the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13466 of June 26, 2008, Executive Order 13551 of August 30, 2010, Executive Order 13570 of April 18, 2011, Executive Order 13687 of January 2, 2015, Executive Order 13722 of March 15, 2016, Executive Order 13810 of September 20, 2017, and any further Executive orders relating to the national emergency declared in Executive Order 13466 of June 26, 2008, and any action that the Secretary of the Treasury is authorized to take pursuant to Presidential Memorandum of May 18, 2016: Delegation of Certain Functions and Authorities under the North Korea Policy Enhancement Act of 2016 and Presidential Memorandum of September 29, 2017: Delegation of Certain Functions and Authorities under the Countering America's Adversaries Through Sanctions Act of 2017, the Ukraine Freedom Support Act of 2014, and the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 510.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures, and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: February 22, 2018.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

Approved: February 22, 2018.

Sigal P. Mandelker,

Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. 2018–04113 Filed 3–1–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0147]

Drawbridge Operation Regulation; Nanticoke River, Seaford, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the SR 13 (Market Street) Bridge across Nanticoke River, mile 39.6, in Seaford, DE. The deviation is necessary to facilitate placement of an emergency temporary public water line on the bridge. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective without actual notice from March 5, 2018 through noon on March 23, 2018. For purposes of enforcement, actual notice will be used from noon on February 9, 2018, until March 5, 2018.

ADDRESSES: The docket for this deviation, [USCG–2018–0147] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Delaware Department of Transportation, who owns and operates the SR 13 (Market Street) Bridge across Nanticoke River, mile 39.6, in Seaford, DE, has requested a temporary deviation from the current operating regulation. This deviation is necessary to facilitate placement of an emergency temporary public water line on the bridge due to contamination of the town of Blades, DE water system. The bridge is a bascule bridge and has a vertical clearance in the closed-to-navigation position of 3 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.243(b). Under this temporary deviation, the bridge will remain in the closed-to-navigation position from noon on February 9, 2018, through noon on March 23, 2018. The Nanticoke River in the location of the bridge is predominantly used by small recreational vessels. The bridge has an

average of one or two bridge openings per month during the time period of this temporary deviation. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway, in relation to the emergency management purpose for maintaining the bridge in the closed-to-navigation position, in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will not be able to open for an emergency and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 22, 2018.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2018–04342 Filed 3–2–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0119]

RIN 1625–AA00

Safety Zone: St. Francis Yacht Club Fireworks, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone in the navigable waters of the San Francisco Bay near St. Francis Yacht Club in support of the St. Francis Yacht Club Fireworks Display on March 5, 2018. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective from 8 a.m. to 10:30 p.m. on March 5, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0119 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Emily Rowan, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7443 or email at *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Acronyms

APA Administrative Procedure Act
COTP U.S. Coast Guard Captain on the Port
DHS Department of Homeland Security
FR Federal Register
NOAA National Oceanic and Atmospheric Administration
NPRM Notice of Proposed Rulemaking
PATCOM U.S. Coast Guard Patrol Commander
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Since the Coast Guard received notice of this event on February 9, 2018, notice and comment procedures would be impracticable in this instance.

For similar reasons as those stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port (COTP) San Francisco has determined that potential hazards associated with the planned fireworks display on March 5, 2018, will be a safety concern for anyone within a 100-foot radius of the fireworks barge and anyone within a 560-foot radius of the fireworks firing site. This rule is needed to protect spectators, vessels, and other property from hazards associated with pyrotechnics.

IV. Discussion of the Rule

This rule establishes a temporary safety zone during the loading and transit of the fireworks barge, until after completion of the fireworks display. During the loading of the pyrotechnics onto the fireworks barge, scheduled to take place from 8:00 a.m. to 1:00 p.m. on March 5, 2018, at Pier 50 in San Francisco, CA, the safety zone will encompass the navigable waters around and under the fireworks barge within a radius of 100 feet.

The fireworks barge will remain at Pier 50 until the start of its transit to the display location. Towing of the barge from Pier 50 to the display location is scheduled to take place from 6:00 p.m. to 6:30 p.m. on March 5, 2018, where it will remain until the conclusion of the fireworks display.

At 9:10 p.m. on March 5, 2018, 30 minutes prior to the commencement of the 18-minute fireworks display, the safety zone will increase in size and encompass the navigable water around and under the fireworks barge within a radius of 560 feet in approximate position 37°48′37″ N, 122°26′49″ W (NAD 83) for the St. Francis Yacht Club Fireworks Display. The safety zone shall terminate at 10:30 p.m. on March 5, 2018.

The effect of the temporary safety zone is to restrict navigation in the vicinity of the fireworks loading, transit, and firing site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted areas. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks firing sites to ensure the safety of participants, spectators, and transiting vessels.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'')

direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. This regulatory action determination is based on the size, location, duration of the safety zone. The size of the zone is the minimum necessary to provide adequate protection for the waterways users, adjoining areas, and the public. This zone is of limited duration and is the minimum necessary to provide adequate protection for the waterways users, adjoining areas, and the public. The Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph L60(c) of Section L of the Department of Homeland Security Instruction Manual 023–01–001–01 (series). An environmental analysis checklist supporting this determination and Record of Environmental Consideration (REC) are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–916 to read as follows:

§ 165.T11–916 Safety Zone; St. Francis Yacht Club Fireworks Display, San Francisco Bay, San Francisco, CA.

(a) *Location.* The following area is a safety zone: All navigable waters of the San Francisco Bay within 100 feet of the fireworks barge during loading at Pier 50, as well as transit to and arrival at St. Francis Yacht Club. The safety zone will expand to all navigable waters around and under the fireworks barge within a radius of 560 feet in approximate position 37°48′37″ N, 122°26′49″ W (NAD 83) 30 minutes prior to the start of the 18 minute fireworks display, scheduled to begin at 9:40 p.m. on March 5.

(b) *Enforcement period.* The zone described in paragraph (a) of this section will be enforced from 8 a.m. until approximately 10:30 p.m. March 5, 2018. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which these zones will be enforced via Broadcast Notice to Mariners.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zones on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: February 23, 2018.

Patrick S. Nelson,

Captain, U.S. Coast Guard, Alternate Captain of the Port, San Francisco.

[FR Doc. 2018–04363 Filed 3–2–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 230

RIN 1855–AA15

Innovation for Teacher Quality; Troops-to-Teachers Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) is rescinding its Troops-to-Teachers (TTT) regulations because that program has been transferred to the Department of Defense (DoD) and is no longer administered or managed by the Department. Therefore, the associated regulations are outdated and unnecessary.

DATES: This action is effective March 5, 2018.

FOR FURTHER INFORMATION CONTACT: Margarita L. Meléndez, U.S. Department of Education, 400 Maryland Avenue SW, Room 4W115, Washington, DC 20202. Telephone: (202) 260–3548 or by email: *Margarita.Melendez@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The TTT program was established in 1994 to assist transitioning service members in beginning new careers as school teachers. The program provides counseling and referral services for participants to help them meet education and licensing requirements to teach and subsequently helps them secure a teaching position.

On February 24, 2017, President Trump signed Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. Section 3(a) of the Executive order directed each Federal agency to establish a Regulatory Reform Task Force, the duty of which is to evaluate existing regulations and ''make recommendations to the agency head regarding their repeal, replacement, or modification.'' Section 3(d)(ii) of the Executive order specifically instructs the Task Force to identify regulations that are ''are outdated, unnecessary, or ineffective.'' The Department is undertaking this regulatory action consistent with that objective.

The TTT program was jointly administered by the Department of Education and the Department of Defense Activity for Non-Traditional Education Support (DANTES) until fiscal year 2013, when full responsibility and authority for the TTT program was transferred from the Secretary of Education to the Secretary of Defense by the National Defense Authorization Act of 2013 (Pub. L. 112–239). For this reason, the Troops-to-Teachers program regulations in 34 CFR part 230 are obsolete and we are proposing to rescind those regulations.

Waiver of Proposed Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (5 U.S.C. 553) (APA) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this regulatory action merely rescinds regulations that have become obsolete due to statutory changes, and does not involve any exercise of discretion on the part of the Department. This regulatory action adopts no new regulations and does not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that obtaining public comment on the removal of the regulations in 34 CFR part 230 is unnecessary.

The APA also generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). Again, because this final regulatory action merely removes outdated regulations that are unnecessary because administration of the affected program has been transferred to another agency, the Secretary is also waiving the 30-day delay in the effective date of these regulatory changes under 5 U.S.C. 553(d)(3).

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final regulatory action only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. Because the rescission of these regulations comports with statutory changes that have already taken effect, this action will not result in any additional costs or benefits.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2018, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because this final rule is not a significant regulatory action, the requirement to offset new regulations in Executive Order 13771 does not apply.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. As detailed above, this regulatory action merely removes outdated regulations from the Code of Federal Regulations and imposes no costs.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 34 CFR Part 230

Armed forces, Education, Elementary and secondary education, Teachers, Vocational education.

Dated: February 28, 2018.

Margo Anderson,

Acting Assistant Deputy Secretary for Innovation and Improvement.

PART 230—[REMOVED]

■ For the reasons discussed in the preamble, and under the authority of section 414 of the Department of Education Organization Act, 20 U.S.C. 3474, the Secretary removes 34 CFR part 230.

[FR Doc. 2018–04437 Filed 3–2–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ01

Reimbursement of Qualifying Adoption Expenses for Certain Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulation to provide for reimbursement of qualifying adoption expenses incurred by a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment. Under the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act, VA may use funds appropriated or otherwise made available to VA for the ''Medical Services'' account to provide adoption reimbursement to these veterans. Under the law, reimbursement may be for the adoption-related expenses for an

adoption that is finalized after the date of the enactment of this Act under the same terms as apply under the adoption reimbursement program of the Department of Defense (DoD), as authorized in DoD Instruction 1341.09, including the reimbursement limits and requirements set forth in such instruction. This rulemaking implements the new adoption reimbursement benefit for covered veterans.

DATES:

Effective date: This rule is effective on March 5, 2018.

Comment date: Comments must be received on or before May 4, 2018.

ADDRESSES: Written comments may be submitted by email through *www.regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to ''RIN 2900–AQ01—reimbursement of qualifying adoption expenses for certain veterans.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia M. Hayes, Ph.D. Chief Consultant, Women's Health Services, Patient Care Services, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420. (202) 461–0373. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 260 of the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (Pub. L.114–223) allows VA to use appropriated funds available to VA for the Medical Services account to provide fertility counseling and treatment using assisted reproductive technology (ART) to a covered veteran or the spouse of a covered veteran, or adoption reimbursement to a covered veteran. On January 19, 2017, VA published an interim final rule at 82 FR 6275 addressing fertility counseling and treatment using ART, including in vitro fertilization (IVF) (which is a type of ART), for both covered veterans and spouses. We now address reimbursement of qualifying adoption expenses in this rulemaking.

Per the statute, veterans with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment are authorized to receive reimbursement for certain adoption-related expenses for an adoption that is finalized after September 29, 2016, (the date the law was enacted) under the same terms as apply under the adoption reimbursement program of DoD, as authorized in DoD Instruction 1341.09, including the reimbursement limits and requirements set forth in that DoD policy. DoD Instruction 1341.09, ''DoD Adoption Reimbursement Policy'' (July 5, 2016) establishes policy, assigns responsibilities within DoD, and provides procedures for the reimbursement of qualifying adoption expenses incurred by members of the Military Services (including document submission requirements) pursuant to 10 U.S.C. 1052. That statute was enacted in 1991 and establishes the parameters of DoD's adoption reimbursement program. VA amends part 17 by adding new section 17.390 to provide for reimbursement of qualifying adoption expenses to covered veterans, consistent with the policies and procedures established by DoD in implementing 10 U.S.C. 1052.

Paragraph (a) of new § 17.390 addresses general requirements for reimbursement. Except as noted, all of these requirements are terms of the adoption reimbursement program of DoD, as authorized in DoD Instruction 1341.09. A covered veteran may request reimbursement for qualifying adoption expenses incurred by the veteran in the adoption of a child under 18 years of age. To clarify the scope of adoptions that are contemplated, we state that reimbursement for qualifying adoption expenses includes expenses for an adoption by a married or single person, an infant adoption, an intercountry adoption, and an adoption of a child with special needs as defined in section 473(c) of the Social Security Act (42 U.S.C. 673(c)). A ''special needs'' child is generally assessed by considering whether the child has a specific factor or condition that prevents the child from being placed with adoptive parents without adoption assistance or medical assistance; or whether the child qualifies for disability supplemental security income benefits; and whether a reasonable, but unsuccessful, effort was made to place the child with adoptive parents without adoption assistance or medical assistance. Specific factors or conditions include the child's ethnic background, age, membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental or emotional disabilities. In accordance with section 260 of Public Law 114–223, reimbursement for qualifying adoption expenses may be requested only for an adoption that became final after September 29, 2016, the date Public Law 114–223 was enacted. In addition, the application for reimbursement must be submitted no later than 2 years after the adoption is final or, in the case of adoption of a foreign child, no later than 2 years from the date a certificate of United States citizenship is issued. In the case of adoption of a foreign child, reimbursement for qualifying adoption expenses may be requested only after United States citizenship has been granted to the adopted child. VA will not provide reimbursement for qualifying adoption expenses for any expense paid to or for a covered veteran under any other adoption benefits program administered by the Federal Government or under any such program administered by a State or local government.

In paragraph (b) of new § 17.390, based on the terms in DoD Instruction 1341.09, we address limitations on the amount of reimbursement for qualifying adoption expenses that a covered veteran, or two covered veterans who are spouses, may receive per adopted child, and the maximum amount that may be paid to such veterans in any calendar year. No more than $2,000 may be reimbursed to a covered veteran, or to two covered veterans who are spouses of each other, for expenses incurred in the adoption of a child. In the case of two married covered veterans, only one spouse may claim reimbursement for any one adoption. No more than $5,000 may be paid under this section to a covered veteran in any calendar year. In the case of two married covered veterans, the couple is limited to a maximum of $5,000 per calendar year.

Relevant definitions are found in paragraph (c) of new § 17.390. The term ''covered veteran'' is defined as it is in section 260 of Public Law 114–223: A veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment. The additional restrictions on the eligibility of covered veterans in § 17.380(a)(2) were required to implement the term ''assisted reproductive technology'' as defined in section 260(b)(3) of Public Law 114–

223, and do not apply to the adoption reimbursement benefit.

''Qualifying adoption expenses'' is defined based on the DoD Instruction to mean reasonable and necessary expenses that are directly related to the legal adoption of a child under 18 years of age, but only if such adoption is arranged by a qualified adoption agency. This definition includes several important elements. The expense must be ''reasonable and necessary.'' Based on the DoD Instruction, we define ''reasonable and necessary'' to include public and private agency fees, including adoption fees charged by an agency in a foreign country; placement fees, including fees charged to adoptive parents for counseling; and legal fees (including court costs). The term also includes medical expenses, including hospital expenses of the biological mother and medical care of the child to be adopted, as well as temporary foster care charges when payment of such charges is required before the adoptive child's placement.

The adoption expenses must be directly related to the legal adoption of a child under the age of 18. Certain items are not reimbursable including expenses such as clothing, bedding, toys and books; travel expenses; and expenses incurred in connection with an adoption arranged in violation of Federal, State, or local law.

To be reimbursable as a qualifying adoption expense the adoption must be arranged by a qualified adoption agency. We define ''qualified adoption agency'' as it is defined in the DoD Instruction. The term is broadly defined to include: a State or local government agency which has responsibility under State or local law for child placement through adoption; a nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption; and, any other source authorized by a State to provide adoption placement if the adoption is supervised by a court under State or local law. In addition the term ''qualified adoption agency'' includes a foreign government or an agency authorized by a foreign government to place children for adoption, in any case in which the adopted child is entitled to automatic citizenship under section 320 of the Immigration and Nationality Act (8 U.S.C. 1431); or a certificate of citizenship has been issued for such child under section 322 of that Act (8 U.S.C. 1433).

Definitions in paragraph (c) are consistent with Public Law 114–223 section 260, the DoD policy referenced in that statute, and the statute authorizing DoD to operate its adoption reimbursement program (10 U.S.C. 1052).

Paragraph (d) addresses documentation that a covered veteran must provide VA to obtain reimbursement of qualifying adoption expenses. It mirrors DoD's submission requirements found in the DoD Instruction. The request for reimbursement must be submitted on a form prescribed for such purpose by VA.

Paragraph (e) provides that if documents submitted by a covered veteran in support of an application for reimbursement do not establish eligibility for reimbursement or justify claimed expenses, VA will retain the application and advise the covered veteran of additional documentation needed. All requested documentation must be submitted to VA within 90 calendar days of VA request. This is consistent with the DoD Instruction, and VA believes that it provides sufficient time to allow a covered veteran to obtain and submit additional documentation to support the claim for reimbursement.

Section 260 of Public Law 114–223 provides that VA is authorized to use appropriated funds available to VA for the Medical Services account in the Public Law for reimbursement of qualifying adoption expenses. Paragraph (f) states that authority to provide reimbursement for qualifying adoption expenses incurred by a covered veteran in the adoption of a child under 18 years of age expires September 30, 2018, to reflect the limitations on the use of appropriated funds in the Medical Services account under section 260 of Public Law 114–223.

VA believes this rulemaking will benefit covered veterans. Whether IVF or other fertility treatments using ART are or are not a viable option, the covered veteran may elect to adopt. This rulemaking decreases the financial burden of making that choice.

VA is publishing this rulemaking as an interim final rule effective on the date of publication. We are providing a 60-day comment period to provide the public with an opportunity to submit comments and feedback.

Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs has concluded that there is good cause to publish this rule as an interim final rule without prior opportunity for public comment and to publish this rule with an immediate effective date. The Secretary finds that it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. VA is authorized to reimburse qualified adoption expenses incurred by covered veterans only through the end of Fiscal Year 2018. Pursuing the standard administrative process of publishing a proposed rule, soliciting public comment, followed by publication of a final rule with an effective date 30 days after publication would result in a significant delay in implementation. VA believes that electing to follow that course of action would severely limit the agency's ability to utilize this authority as provided by Congress under Public Law 114–223. VA has determined that it is in the public interest to publish this rulemaking as an interim final rule effective on the date of publication to ensure that covered veterans have access to this benefit for the greatest amount of time practicable. VA believes that publishing this rule as an interim final rule without prior opportunity for public comment and to publish this rule with an immediate effective date will give effect to congressional intent that covered veterans have access to this benefit in a timely fashion. Further, we note that Public Law 114–223 section 260(b)(4) establishes strict parameters on VA's administration of this benefit, requiring us to operate under the same terms as apply under the DoD's adoption reimbursement program, as authorized in DoD Instruction 1341.09, including the reimbursement limits and requirements set forth in such instruction. Given these restrictions, there is very little room for substantive changes to the rule based on public comment. For the above reasons, the Secretary issues this rule as an interim final rule with an immediate effective date. VA will consider and address comments that are received within 60 days of the date this interim final rule is published in the **Federal Register**.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This interim rule includes a provision constituting a collection of information

under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that requires approval by the Office of Management and Budget (OMB). VA has requested emergency clearance of information collection under this interim final rule. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking to OMB for review.

OMB assigns control numbers to collections of information it approves. VA 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. Section 17.390 contains a collection of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collection(s) of information as requested, VA will immediately remove the provision(s) containing a collection of information or take such other action as is directed by OMB.

Comments on the collection of information contained in this rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1068, Washington, DC 20420; fax to (202) 273–9026 (This is not a toll free no.); or through *www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AQ01 Reimbursement of qualifying adoption expenses for certain veterans.''

OMB is required to make a decision concerning the collections of information contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;
- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

The collections of information contained in regulatory section 38 CFR 17.390 are described immediately following this paragraph, under their respective titles.

Title: Reimbursement of qualifying adoption expenses for certain veterans.

Summary of collection of information: To receive reimbursement for qualifying adoption expenses a covered veteran must provide various types of documentation including a copy of the final adoption decree, certificate or court order granting the adoption; proof of citizenship of the adopted child in the case of a foreign adoption; documentation that the adoption was handled by a qualified adoption agency; and documentation to substantiate reasonable and necessary expenses paid by the covered veteran. In addition, the covered veteran must submit a full English translation of any foreign language document, to include the translator's certification that he or she is competent to translate the foreign language to English and that his or her translation is complete and correct. Finally, the covered veteran may be asked to provide information to facilitate electronic transfer of funds to effectuate the reimbursement. This information collection is consistent with DoD requirements imposed on a service member seeking reimbursement of qualifying adoption expenses.

Description of the need for information and proposed use of information: The information is needed to determine eligibility for reimbursement of qualifying adoption expenses.

Description of likely respondents: Veterans with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment who incurred qualifying adoption expenses related to an adoption that became final after September 29, 2016.

Estimated number of respondents per month/year: 80 annually.

Estimated frequency of responses per month/year: one response total.

Estimated average burden per response: 6 hours.

Estimated total annual reporting and recordkeeping burden: 480 hours.

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This interim final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by OMB, unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on August 25, 2017, for publication.

Dated: February 27, 2018.

Jeffrey Martin,

Impact Analyst, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 is revised to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

Section 17.38 is also issued under 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722, 1782, and 1786.

Section 17.169 is also issued under 38 U.S.C. 1712C.

Sections 17.380, 17.390 and 17.412 are also issued under sec. 260, Pub. L. 114–223, 130 Stat. 857.

Section 17.410 is also issued under 38 U.S.C. 1787.

Section 17.415 is also issued under 38 U.S.C. 7301, 7304, 7402, and 7403.

Sections 17.640 and 17.647 are also issued under sec. 4, Pub. L. 114–2, 129 Stat. 30.

Sections 17.641 through 17.646 are also issued under 38 U.S.C. 501(a) and sec. 4, Pub. L. 114–2, 129 Stat. 30.

Section 17.655 also issued under 38 U.S.C. 501(a), 7304, 7405.

■ 2. Revise the undesignated center heading immediately preceding § 17.380 to read as follows:

In Vitro Fertilization and Reimbursement of Adoption Expenses

■ 3. Add § 17.390 before the undesignated center heading ''Hospital Care and Medical Services for Camp Lejune Veterans and Families'' to read as follows:

§ 17. 390 Reimbursement for qualifying adoption expenses incurred by certain veterans.

(a) *General.* A covered veteran may request reimbursement for qualifying adoption expenses incurred by the veteran in the adoption of a child under 18 years of age.

(1) An adoption for which expenses may be reimbursed under this section includes an adoption by a married or single person, an infant adoption, an intercountry adoption, and an adoption of a child with special needs (as defined in section 473(c) of the Social Security Act (42 U.S.C. 673(c))).

(2) Reimbursement for qualifying adoption expenses may be requested only for an adoption that became final after September 29, 2016, and must be requested:

(i) No later than 2 years after the adoption is final; or,

(ii) In the case of adoption of a foreign child, no later than 2 years from the date the certificate of United States citizenship is issued.

(3) In the case of adoption of a foreign child, reimbursement for qualifying adoption expenses may be requested only after United States citizenship has been granted to the adopted child.

(4) Reimbursement for qualifying adoption expenses may not be made under this section for any expense paid to or for a covered veteran under any other adoption benefits program administered by the Federal Government or under any such program administered by a State or local government.

(b) *Limitations.* (1) Reimbursement per adopted child. No more than $2,000 may be reimbursed under this section to a covered veteran, or to two covered veterans who are spouses of each other, for expenses incurred in the adoption of a child. In the case of two married covered veterans, only one spouse may claim reimbursement for any one adoption.

(2) Maximum reimbursement in any calendar year. No more than $5,000 may be paid under this section to a covered veteran in any calendar year. In the case of two married covered veterans, the couple is limited to a maximum of $5,000 per calendar year.

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

(1) ''Covered veteran'' means a veteran with a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment.

(2) ''Qualifying adoption expenses'' means reasonable and necessary expenses that are directly related to the legal adoption of a child under 18 years of age, but only if such adoption is arranged by a qualified adoption agency. Such term does not include any expense incurred:

(i) For items such as clothing, bedding, toys and books;

(ii) For travel; or

(iii) In connection with an adoption arranged in violation of Federal, State, or local law.

(3) ''Reasonable and necessary expenses'' include:

(i) Public and private agency fees, including adoption fees charged by an agency in a foreign country;

(ii) Placement fees, including fees charged to adoptive parents for counseling;

(iii) Legal fees (including court costs) or notary expenses;

(iv) Medical expenses, including hospital expenses of the biological mother and medical care of the child to be adopted; and

(v) Temporary foster care charges when payment of such charges is

required before the adoptive child's placement.

(4) ''Qualified adoption agency'' means any of the following:

(i) A State or local government agency which has responsibility under State or local law for child placement through adoption.

(ii) A nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption.

(iii) Any other source authorized by a State to provide adoption placement if the adoption is supervised by a court under State or local law.

(iv) A foreign government or an agency authorized by a foreign government to place children for adoption, in any case in which:

(A) The adopted child is entitled to automatic citizenship under section 320 of the Immigration and Nationality Act (8 U.S.C. 1431); or

(B) A certificate of citizenship has been issued for such child under section 322 of that Act (8 U.S.C. 1433).

(d) *Applying for reimbursement of qualifying adoption* expenses. An application for reimbursement must be submitted on a form prescribed for such purpose by VA. Information and documentation must include:

(1) A copy of the final adoption decree, certificate or court order granting the adoption. For U.S. adoptions, the court order must be signed by a judge unless either State law or local court rules authorize that the adoption order may be signed by a commissioner, magistrate or court referee. The covered veteran must submit a full English translation of any foreign language document, to include the translator's certification that he or she is competent to translate the foreign language to English and that his or her translation is complete and correct.

(2) For foreign adoptions, proof of U.S. citizenship of the child, including any of the following:

(i) A copy of Certificate of Citizenship.

(ii) A copy of a U.S. court order that recognizes the foreign adoption, or documents the re-adopting of the child in the United States.

(iii) A letter from the United States Citizenship and Immigration Services, which states the status of the child's adoption.

(iv) A copy of the child's U.S. passport (page with personal information only).

(3) For U.S. adoptions, documentation to show that the adoption was handled by a qualified adoption agency or other source authorized by a State or local law to provide adoption placement. Acceptable forms of proof that the adoption was handled by a qualified adoption agency include:

(i) A copy of placement agreement from the adoption agency showing the agreement entered into between the member and the agency.

(ii) A letter from the adoption agency stating that the agency arranged the adoption and that the agency is a licensed child placing agency in the United States.

(iii) Receipts for payment to the adoption agency, as well as proof, (*e.g.,* a copy of the agency's web page), of the agency's status as a for-profit or non-profit licensed child placing agency.

(4) For foreign adoptions, documentation to show that the adoption was handled by a qualified adoption agency. In addition to the forms of acceptable proof that the adoption was handled by a qualified adoption agency listed in paragraph (d)(3) of this section, the documentation must also include:

(i) A document that describes the mission of the foreign agency and its authority from the foreign government to place children for adoption; and

(ii) A placement agreement from the adoption agency or letter from the adoption agency stating the specific services it provided for the adoption.

(5) Documentation to substantiate reasonable and necessary expenses paid by the covered veteran. Acceptable forms of documentation include receipts, cancelled checks, or a letter from the adoption agency showing the amount paid by the member. Receipts from a foreign entity should include the U.S. currency equivalency. Reconstruction of expense records is permissible when the original records are unavailable and the covered veteran submits a notarized affidavit stating the costs.

(6) Checking or savings account information to facilitate VA providing reimbursement to the covered veteran under this section.

(e) *Failure to establish* eligibility. If documents submitted by a covered veteran in support of an application for reimbursement do not establish eligibility for reimbursement or justify claimed expenses, VA will retain the application and advise the covered veteran of additional documentation needed. All requested documentation must be submitted to VA within 90 calendar days of VA request.

(f) *Authority.* Authority to provide reimbursement for qualifying adoption expenses incurred by a covered veteran in the adoption of a child under 18 years of age expires September 30, 2018.

(Approval for information collection under this section has been requested from the Office of Management and Budget)

[FR Doc. 2018–04245 Filed 3–2–18; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0404; FRL–9974–67–Region 9]

Approval of California Air Plan Revisions, Northern Sierra Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Northern Sierra Air Quality Management District (NSAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of particulate matter (PM) from wood burning devices. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on April 4, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2017–0404. All documents in the docket are listed on the *http://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 through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Incorporation by Reference

V. Statutory and Executive Order Reviews

I. Proposed Action

On November 3, 2017 (82 FR 51178) the EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
NSAQMD, City of Portola	Ordinance No. 344, Municipal Code Chapter 15.10 (except paragraphs 15.10.060(B), 15.10.090 and 15.10.100).	Wood Stove and Fireplace Ordinance.	06/22/16	01/24/17

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received 18 comments. One commenter supported the proposed rulemaking. The remaining commenters generally raised issues that are outside of the scope of this rulemaking, including forest management, wildfire suppression, greenhouse-gas and other emissions from wildfires, the Cross-State Air Pollution Rule, and litigation fees. Commenters did not raise any specific issues germane to the approvability of the rule.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the City of Portola ordinance described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where 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 pre-empt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 4, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 7, 2018.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(497)(i)(C) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(497) * * *

(i) * * *

(C) Northern Sierra Air Quality Management District.

(*1*) City of Portola.

(*i*) Ordinance No. 344, Portola Municipal Code, Chapter 15.10, ''Wood Stove and Fireplace Ordinance,'' adopted June 22, 2016, except paragraphs 15.10.060(B) and sections 15.10.090 and 15.10.100.

* * * * *

[FR Doc. 2018–04316 Filed 3–2–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R01–OAR–2017–0343; A–1–FRL–9972–97–Region 1]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to grant the Vermont Department of Environmental Conservation (VT DEC) the authority to implement and enforce, with respect to area sources only, the Vermont Perchloroethylene Dry Cleaning Rule in place of the National Emissions Standards for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities (Dry Cleaning NESHAP). Pursuant to the Clean Air Act (CAA), the VT DEC submitted a request for approval to implement and enforce the Perchloroethylene Dry Cleaning Rule of the Vermont Air Pollution Control Regulations as a partial substitution for the National Emissions Standards for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities (Dry Cleaning NESHAP), as it applies to area sources. EPA has reviewed this request and has determined that the Vermont Perchloroethylene Dry Cleaning Rule satisfies the requirements necessary for partial rule substitution. Thus, EPA is hereby granting VT DEC's request. This action does not affect the authority of any party to implement and enforce the Dry Cleaning NESHAP with respect to major source dry cleaners. This approval makes the Vermont Perchloroethylene Dry Cleaning Rule federally enforceable in Vermont.

DATES: This direct final rule will be effective June 4, 2018, unless EPA receives adverse comments by April 4, 2018. If EPA receives adverse comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 4, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2017–0343 at *http://www.regulations.gov,* or via email to *lancey.susan@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 *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, telephone number 617–918–1656, *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. General Information
- A. Why is the EPA using a direct final rule?
- B. Does this direct final rule apply to me?
- C. What should I consider as I prepare my comments for the EPA?

II. Background

III. What requirements must a State rule meet to substitute for a Section 112 rule?

IV. What if any material differences exist between the Vermont Dry Cleaning Rule and the Dry Cleaning NESHAP and what is EPA's evaluation?
- A. What are the differences in applicability?
- B. How does the Vermont Dry Cleaning Rule address the control requirements?
- C. How do the monitoring requirements differ?
- D. What are the differences in reporting and recordkeeping?
- E. Is the State's submittal separable?
- F. What is EPA's action regarding the Vermont Dry Cleaning Rule?

V. Final Action

VI. Incorporation by Reference

VII. Statutory and Executive Order Reviews

VIII. Judicial Reviews

I. General Information

A. Why is the EPA using a direct final rule?

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the state rule should adverse comments be filed.

If the EPA receives such comments, then EPA will publish a notice withdrawing the direct final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule

should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 4, 2018 and no further action will be taken on the proposed rule. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

B. Does this direct final rule apply to me?

Categories and entities potentially regulated by this direct final rule include:

Category	NAICS [1] code
Coin Operated Laundries and Dry Cleaners	812310
Dry Cleaning and Laundry Services (except coin operated)	812320
Industrial Laundries	812332

[1] North American Industry Classification System.

This Table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this direct final rule. To determine whether your facility is affected you should examine the applicability criteria in the Vermont Air Pollution Control Regulations, Chapter 5, Air Pollution Control, section 5–253.11 Perchloroethylene Dry Cleaning. If you have questions regarding the applicability of any aspect of this action to a particular entity, please contact the person identified in the ''For Further Information Contact'' section.

C. What should I consider as I prepare my comments for the EPA?

Do not submit information containing CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: ''EPA–R01–OAR–2017–0343'', Susan Lancey, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square (mail code OEP05–2), Boston, MA 02109–3912.

II. Background

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E. *See* 58 FR 62262 (November 26, 1993), as amended by 65 FR 55810 (September 14, 2000). Under these regulations, a state air pollution control agency has the option to request EPA's approval to substitute a state rule for the applicable Federal rule (*e.g.,* the National Emission Standards for Hazardous Air Pollutants). Upon approval by EPA, the state agency is authorized to implement and enforce its rule in place of the Federal rule, and the state rule becomes federally enforceable in that state.

EPA originally promulgated the Dry Cleaning NESHAP on September 22, 1993. *See* 58 FR 49354. The Dry Cleaning NESHAP has been amended several times and is codified at 40 CFR part 63, subpart M, ''National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.'' On May 26, 2017, EPA received VT DEC's request to implement and enforce Vermont Air Pollution Control Regulations (VT APCR) section 5–253.11 Perchloroethylene Dry Cleaning (Vermont Dry Cleaning Rule) in lieu of the Dry Cleaning NESHAP as applied to area sources.

III. What requirements must a State rule meet to substitute for a Section 112 rule?

A state must demonstrate that it has satisfied the general delegation/approval criteria contained in 40 CFR 63.91(d). The process of providing ''up-front approval'' assures that a state has met the delegation criteria in Section 112(l)(5) of the CAA as implemented by EPA's regulations at 40 CFR 63.91(d). These criteria require, among other things, that the state has demonstrated that its NESHAP program contains adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. Under 40 CFR 63.91(d)(3), interim or final Title V program approval under 40 CFR part 70 satisfies the criteria set forth in 40 CFR 63.91(d) for ''up-front approval.'' On November 29, 2001, EPA promulgated full approval of VT DEC's operating permits program with an effective date of November 30, 2001. *See* 66 FR 59535. Accordingly, VT DEC has satisfied the up-front approval criteria of 40 CFR 63.91(d).

Additionally, the regulations governing approval of state requirements that substitute for a section 112 rule require EPA to evaluate the state's submittal to ensure that it meets the stringency and other requirements of 40 CFR 63.93. A rule will be approved if the state requirements contain or demonstrate: (1) Applicability criteria that are no less stringent than the corresponding Federal rule; (2) levels of control and compliance and enforcement measures that result in emission reductions from each affected source that are no less stringent than would result from the otherwise applicable Federal rule; (3) a compliance schedule that requires each affected source to be in compliance within a time frame consistent with the deadlines established in the otherwise applicable Federal rule; and (4) the additional compliance and enforcement measures as specified in 40 CFR 63.93(b)(4). *See* 40 CFR 63.93(b).

A state may also seek, and EPA may approve, a partial delegation of the EPA's authorities. *See* CAA 112(l)(1). To obtain a partial rule substitution, the state's submittal must meet the otherwise applicable requirements in 40 CFR 63.91 and 63.93, and be separable from the portions of the program that the state is not seeking rule substitution for. *See* 64 FR 1889.

Before we can approve alternative requirements in place of a part 63 emissions standard, the state must submit to us detailed information that demonstrates how the alternative requirements compare with the otherwise applicable Federal standard. A detailed discussion of how EPA will determine equivalency for state alternative NESHAP requirements is provided in the preamble to EPA's proposed Subpart E amendments on January 12, 1999. *See* 64 FR 1908.

After reviewing VT DEC's partial rule substitution request and equivalency demonstration for the Dry Cleaning NESHAP as it applies to area sources, EPA has determined this request meets all the requirements necessary for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93.

IV. What if any material differences exist between the Vermont Dry Cleaning Rule and the Dry Cleaning NESHAP and what is EPA's evaluation?

The following discussion explains the major differences between the area source requirements in the Vermont Dry

Cleaning Rule and the area source requirements in the Dry Cleaning NESHAP and how EPA evaluated the Vermont Dry Cleaning Rule. A detailed side-by-side comparison of these requirements, as well as an equivalency narrative, are included in the public docket.

A. What are the differences in applicability?

The Dry Cleaning NESHAP applies to each dry cleaning facility that uses perchloroethylene (PCE), except for coin-operated dry cleaning machines. The Dry Cleaning NESHAP exempts existing dry cleaning machines from certain requirements if the total PCE consumption of the dry cleaning facility is less than 140 gallons per year. *See* 40 CFR 63.320(d). The Vermont Dry Cleaning Rule applies to all dry cleaning facilities that use PCE at area sources of HAP. The Vermont Dry Cleaning Rule has no exemption for coin-operated machines and no exemption based on PCE consumption. Under Vermont's rule, major sources of Hazardous Air Pollutants (HAP) must continue to comply with the Federal Dry Cleaning NESHAP. *See* VT APCR section 5–253.11(a). Consequently, EPA finds that the applicability of the Vermont Dry Cleaning Rule is no less stringent than that of the Dry Cleaning NESHAP.

B. How does the Vermont Dry Cleaning Rule address the control requirements?

The Dry Cleaning NESHAP requires the owner or operator of each dry cleaning system at area sources to equip each dry cleaning machine with a refrigerated condenser, except that certain existing dry cleaning systems installed between December 9, 1991, and September 22, 1993, may alternatively comply by routing the air-perchloroethylene gas-vapor stream of each dry cleaning machine through a carbon adsorber. *See* 40 CFR 63.322(a). The Dry Cleaning NESHAP requires new area source dry cleaning systems installed after December 21, 2005, to equip each dry cleaning machine with a refrigerated condenser and a non-vented carbon adsorber and to desorb the carbon adsorber in accordance with the manufacturer's instruction. *See* 40 CFR 63.322(o)(2). The Vermont Dry Cleaning rule requires all dry cleaning machines to be equipped with a refrigerated condenser without exception, and requires dry cleaning systems installed after December 21, 2005 to equip each dry cleaning machine with a refrigerated condenser and a non-vented carbon adsorber. The carbon adsorber must be desorbed in accordance with the manufacturer's instruction. The Vermont Dry Cleaning rule does not allow a primary carbon adsorber as a method of control. *See* VT APCR section 5–253.11(c)(2) and (4). Both the Vermont Dry Cleaning Rule and the Dry Cleaning NESHAP effectively prohibit transfer machines, prohibit dry cleaning systems installed after December 21, 2005 in a building with a residence, and prohibit any dry cleaning system in a building with a residence after December 21, 2020. *See* VT APCR section 5–253.11(c)(3), (5)–(6) and 40 CFR 63.322(o)(3)–(5). The Vermont Dry Cleaning Rule only allows equivalent control devices approved by the Vermont Air Pollution Control Officer and the EPA pursuant to 40 CFR 63.325. *See* VT APCR section 5–253.11(c)(2)(ii) and (3). Consequently, EPA finds that the Vermont Dry Cleaning control requirements are no less stringent than those of the Dry Cleaning NESHAP.

C. How do the monitoring requirements differ?

The Dry Cleaning NESHAP requires dry cleaning systems at area sources to be inspected weekly for perceptible leaks and requires a monthly inspection using a halogenated hydrocarbon detector or PCE gas analyzer. *See* 40 CFR 63.322(k) and (o)(1)(i). Instead, the Vermont Dry Cleaning Rule requires a weekly inspection for perceptible leaks and a weekly inspection using a halogenated hydrocarbon detector or PCE gas analyzer. *See* VT APCR section 5–253.11(e)(1). The Dry Cleaning NESHAP requires weekly temperature monitoring to determine if the temperature is equal to or less than 45 degrees Fahrenheit, or alternatively monitoring of refrigeration system high pressure and low pressure during the drying phase. *See* 40 CFR 63.323(a)(1). The Vermont Dry Cleaning Rule requires weekly temperature monitoring of the refrigerated condenser and requires the temperature to be maintained at less than or equal to 40 degrees Fahrenheit. The Vermont Dry Cleaning Rule does not allow refrigeration system high and low pressure monitoring as an alternative to temperature monitoring of the refrigerated condenser. *See* VT APCR section 5–253.11(c)(2)(i)(B) and (e)(2). Therefore, EPA finds that the Vermont Dry Cleaning Rule monitoring requirements are no less stringent than those of the Dry Cleaning NESHAP.

D. What are the differences in reporting and recordkeeping?

The Dry Cleaning NESHAP requires the owner or operator of any new dry cleaning facility to submit a notification of compliance status within 30 days after startup. *See* 40 CFR 63.324(b). The Vermont Dry Cleaning Rule also requires the owner or operator of any new dry cleaning facility to submit a notification of compliance status within 30 days of commencing operations. *See* VT APCR section 5–253.11(g)(2). Thus, the Vermont Dry Cleaning Rule reporting requirements are no less stringent than those of the Dry Cleaning NESHAP.

E. Is the State's submittal separable?

A state may also seek, and EPA may approve, a partial delegation of the EPA's authorities. *See* CAA 112(l)(1). To obtain a partial rule substitution, the state's submittal must meet the otherwise applicable requirements in 40 CFR 63.91 and 63.93, and be separable from the portions of the program that the state is not seeking rule substitution for. *See* 64 FR 1889. A separable portion of a state rule or program is a section(s) of a rule or a portion(s) of a program which can be acted upon independently without affecting the overall integrity of the rule or program as a whole.

Here, the state's rule applies to area source dry cleaners, while the NESHAP continues to apply to major source dry cleaners. EPA finds that there exists a logical and compelling distinction between area and major dry cleaning sources. That is, the state rule may independently regulate area source dry cleaners separate from major source dry cleaners, without affecting the overall integrity of the rule or program as a whole. EPA further finds that granting partial delegation would not create an overly cumbersome or unworkable scheme. For these reasons, EPA concludes that the portion of the NESHAP delegated under this partial rule substitution is separable from the remainder of the NESHAP. Therefore, partial delegation is appropriate.

F. What is EPA's action regarding the Vermont Dry Cleaning Rule?

After reviewing VT DEC's request for approval of the Vermont Dry Cleaning Rule, EPA has determined that the Vermont Dry Cleaning Rule meets all of the requirements necessary for partial rule substitution under section 112(l) of the CAA and 40 CFR 63.91 and 63.93. Therefore, EPA hereby approves VT DEC's request to implement and enforce VT APCR section 5–253.11 (as effective under state law on December 15, 2016), in place of the Dry Cleaning NESHAP for area sources in Vermont. As of the effective date of this action, the Vermont Dry Cleaning Rule is enforceable by EPA and by citizens under the CAA. Although VT DEC has primary

responsibility to implement and enforce the Vermont Dry Cleaning Rule, EPA retains the authority to enforce any requirement of the rule upon its approval under CAA 112. *See* CAA section 112(l)(7).

V. Final Action

EPA is approving the Vermont Air Pollution Control Regulations, Chapter 5, Air Pollution Control, section 5–253.11, Perchloroethylene Dry Cleaning (as effective under state law on December 15, 2016) as a partial rule substitution for the Dry Cleaning NESHAP for area sources in Vermont. The Federal Dry Cleaning NESHAP continues to apply to major source dry cleaners in Vermont. The applicability of the Federal NESHAP to major source dry cleaners is in no way affected by this action.

This rule will be effective June 4, 2018 without further notice unless the Agency receives relevant adverse comments by April 4, 2018.

VI. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Vermont Air Pollution Control Regulations, Chapter 5, Air Pollution Control, section 5–253.11, Perchloroethylene Dry Cleaning, effective December 15, 2016. The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov.*

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve section 112(l) submissions that comply with the provisions of the Act and applicable Federal regulations. In reviewing section 112(l) submissions, EPA's role is to approve state choices, provided that they meet the criteria and objectives of the CAA and of EPA's implementing regulations. Accordingly, this action merely approves the State's request as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the submitted rule is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 4, 2018.

VIII. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 4, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and record keeping requirements.

Dated: February 26, 2018.

Alexandra Dapolito Dunn,

Regional Administrator, EPA New England.

40 CFR part 63 is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 63.14 is amended by adding paragraph (l)(13) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(l) * * *

(13) Vermont Air Pollution Control Regulations, Chapter 5, Air Pollution Control, section 5–253.11, Perchloroethylene Dry Cleaning, effective as of December 15, 2016. Incorporation by reference approved for § 63.99(a).

* * * * *

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 3. Section 63.99 is amended by adding paragraph (a)(46) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(46) *Vermont.* (i) Affected area sources within Vermont must comply with Vermont Regulations applicable to Hazardous Air Pollutants (incorporated

by reference as specified in § 63.14) as described in paragraph (a)(46)(i)(A) of this section:

(A) The material incorporated into the Vermont Air Pollution Regulations at Chapter 5, Air Pollution Control, section 5–253.11, Perchloroethylene Dry Cleaning (effective as of December 15, 2016) pertaining to area source dry cleaning facilities in the State of Vermont jurisdiction, and approved under the procedures in § 63.93 to be implemented and enforced in place of the requirements for area source dry cleaning facilities in the Federal NESHAP for Perchloroethylene Dry Cleaning Facilities (subpart M of this part), effective as of July 11, 2008. For purposes of this paragraph (a)(46) the term ''area source dry cleaning facilities'' means any source that qualifies as an area source under § 63.320(h).

(*1*) *Authorities not delegated.* (*i*) Vermont is not delegated the Administrator's authority to implement and enforce Vermont Air Pollution Control Regulations, Chapter 5, Air Pollution Control, section 5–253.11, in lieu of those provisions of subpart M of this part which apply to major sources, as defined in § 63.320(g).

(*ii*) [Reserved]

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

* * * * *

[FR Doc. 2018–04277 Filed 3–2–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA–2008–0136, Notice No. 10]

RIN 2130–ZA16

Monetary Threshold for Reporting Rail Equipment Accidents/Incidents for Calendar Year 2018

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA's accident/incident reporting regulations require railroads to report to the agency all rail equipment accidents/incidents above the monetary reporting threshold (reporting threshold) for that calendar year (CY). There is no change to the CY 2017 reporting threshold ($10,700) for CY 2018 as the overall increase in wages and equipment costs were not great enough to cause the threshold to change when rounded to the nearest $100.

DATES: This final rule is effective March 5, 2018. This final rule is applicable January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Kebo Chen, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25, West Building 3rd Floor, Room W33–314, 1200 New Jersey Ave. SE, Washington, DC 20590 (telephone 202–493–6079); or Senya Waas, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, West Building 3rd Floor, Room W31–223, 1200 New Jersey Ave. SE, Washington, DC 20590 (telephone 202–493–0665).

SUPPLEMENTARY INFORMATION:

Background

A ''rail equipment accident/incident'' is a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that results in damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material, greater than the reporting threshold for the year in which the event occurs. *See* 49 CFR 225.19(c). A railroad must report each rail equipment accident/incident to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). *See* 49 CFR 225.19(b), (c), 225.21(a). Paragraphs (c) and (e) of 49 CFR 225.19 further provide that FRA will adjust the dollar figure constituting the reporting threshold, if necessary, every year under the procedures in 49 CFR part 225 Appendix B to reflect any cost increases or decreases.

Approximately one year has passed since FRA reviewed the reporting threshold. *See* 81 FR 94271, Dec. 23, 2016. Consequently, FRA has recalculated the reporting threshold under 49 CFR 225.19(c), using updated costs for labor and equipment. FRA has determined the current reporting threshold of $10,700, which applies to rail equipment accidents/incidents that occur during CY 2017, should remain the same for rail equipment accidents/incidents that occur during CY 2018. The specific inputs to the equation set forth in Appendix B ($Tnew = Tprior * [1 + 0.4(Wnew - Wprior)/Wprior + 0.6(Enew - Eprior)/100]$) are:

Tprior	*Wnew*	*Wprior*	*Enew*	*Eprior*
$10,700	$29.77918	$29.99942	203.83333	203.33333

Where:

Tnew = New threshold;

Tprior = Prior threshold (with reference to the threshold, ''prior'' refers to the previous threshold rounded to the nearest $100, as reported in the **Federal Register**);

Wnew = New average hourly wage rate, in dollars;

Wprior = Prior average hourly wage rate, in dollars;

Enew = New equipment average Producer Price Index (PPI) value;

Eprior = Prior equipment average PPI value.

See 49 CFR part 225 Appendix B. Using the above figures, the calculated new threshold, represented as *Tnew,* is $10,700.64, which is rounded to the nearest $100 for a final reporting threshold of $10,700 for CY 2018.[1]

FRA intends to publish a rulemaking (RIN 2130–AC49) to reexamine its method for calculating the reporting threshold in 2018 because more accurate methodologies for calculating the threshold are available. FRA believes updating its methodology will ensure the reporting threshold reflects changes in equipment and labor costs as accurately as possible.

[1] Wage statistics are available from the Surface Transportation Board (STB), ''Quarterly Wage Form A&B,'' at *https://www.stb.gov/stb/industry/econ_reports.html* (visited December 5, 2017). The average hourly wage rate is determined by dividing the compensation for time worked at straight time rates by the service hours worked at straight time rates (yielding dollars per hour). FRA averages the second-quarter data reported for the Group No. 300 Maintenance of Way and Structures employees, and the Group No. 400 Maintenance of Equipment and Stores employees.

The equipment PPI is available at the Bureau of Labor Statistics (BLS), U.S. Department of Labor, ''PPI Databases: Commodity Data,' at *https://www.bls.gov/ppi/* (visited December 5, 2017). Select Group 14 Transportation Equipment, then Item 144 Railroad Equipment, followed by checking Not Seasonally Adjusted. The complete Series ID is WPU144, base date 1982.

Notice and Comment Procedures

FRA is proceeding directly to a final rule as it finds public notice and comment to be unnecessary per the ''good cause'' exemption in 5 U.S.C. 553(b)(3)(B). FRA made this finding because it: (1) Is required under current regulations to establish the monetary reporting threshold; (2) Is utilizing a formula developed after notice and comment in a final rule published in 2005 (70 FR 75414, Dec. 20, 2005); and (3) is not exercising any discretion in calculating and applying the monetary threshold for 2018.

Regulatory Evaluation

Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

FRA evaluated this final rule under existing policies and procedures, and determined it is non-significant under both Executive Orders 12866 and 13563, and DOT policies and procedures. *See* 44 FR 11034, Feb. 26, 1979. Furthermore, this final rule is exempt from the regulatory budgeting and two-for-one requirements of Executive Order 13771 as it has been determined to be non-significant.

Regulatory Flexibility Act

FRA developed this rule under Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (RFA) to ensure potential impacts of rules on small entities are properly considered. *See* E.O. 13272; 5 U.S.C. 601.

The RFA requires an agency to review regulations to assess their impact on small entities, unless the Secretary certifies the rule will not have a significant economic impact on a substantial number of small entities. Under Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), Federal agencies may adopt their own size standards for small entities in consultation with both the Small Business Administration and public comment. Under that authority, FRA has published a final statement of agency policy formally establishing, for FRA's regulatory purposes, that ''small entities'' are railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1 ($20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less). See 49 CFR part 209 Appendix C. FRA used this definition for the current rulemaking.

About 748 of the approximately 799 railroads in the United States are considered small entities by FRA. FRA certifies this final rule will have no significant economic impact on a substantial number of small entities. To the extent this rule has any impact on small entities, the impact will be neutral or insignificant. The frequency of rail equipment accidents/incidents, and therefore also the frequency of required reporting, is generally proportional to the size of the railroad. A railroad employing thousands of employees and operating trains millions of miles is exposed to greater risks than one with a substantially smaller operation. Small railroads may go for months at a time without having a reportable occurrence of any type, and even longer without having a rail equipment accident/incident. Class III reported rail equipment accidents/incidents for a five-year period are shown below.

RAIL EQUIPMENT ACCIDENT/INCIDENTS (TRAIN ACCIDENTS) REPORTED BY SMALL RAILROADS

Year	Class III train accidents	All railroad train accidents	Percent Class III train accidents/all railroad train accidents
2012	289	1,766	16
2013	307	1,853	17
2014	272	1,887	14
2015	288	1,936	15
2016	249	1,646	15

Source: FRA Safety Data website at *http://safetydata.fra.dot.gov/OfficeofSafety/Default.aspx* (visited December 8, 2017), Agency query.

On average over those five calendar years, small railroads reported about 15% (ranging from 14% to 17%) of the total number of rail equipment accidents/incidents. FRA notes that these data are subject to minor changes due to additional reporting.

The monetary reporting threshold, when rounded, did not increase for CY 2018. In general, however, absent this rulemaking (*i.e.,* absent increasing the reporting threshold in future years), the number of reportable accidents/incidents in future years would likely increase, as keeping the same threshold in place would not allow it to keep pace with the likely increases in wages and rail equipment repair costs. (Note that the calculated monetary threshold (before rounding) for CY 2017 was $10,698 versus $10,701 for CY 2018.) Therefore, this rule will be neutral in effect (*i.e.,* accidents/incidents reportable by railroads in CY 2017 will be reportable in CY 2018). Any recordkeeping burden will not be significant, and will affect the large railroads more than the small railroads due to the higher proportion of reportable rail equipment accidents/incidents experienced by large entities.

Furthermore, FRA has determined the RFA does not apply to this rulemaking. As this rule updates the reporting threshold for CY 2018 using the formula developed through notice and comment rulemaking and published in Appendix B to 49 CFR part 225, FRA finds notice and public comment is unnecessary and would serve no public benefit. The Small Business Administration's *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, p. 55 (2017)* provides:

> If, under the APA or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)] . . . . If an NPRM is not required, the RFA does not apply.

As this rulemaking does not require a Notice of Proposed Rulemaking, the RFA does not apply.

Paperwork Reduction Act

There are no new or additional information collection requirements associated with this final rule. FRA's collection of accident/incident reporting and recordkeeping information is currently approved under OMB No.

2130–0500. Therefore, FRA is not required to provide an estimate of a public reporting burden in this document.

Federalism Implications

Executive Order 13132 (64 FR 43255, Aug. 10, 1999) requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' *See* E.O. 13132. Policies that have federalism implications are defined in Executive Order 13132 to include regulations that 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.'' *See* E.O. 13132. Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. *See* E.O. 13132. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA analyzed this final rule under the principles and criteria in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government. *See* Executive Order 13132. In addition, FRA determined this rule does not impose substantial direct compliance costs on State and local governments. Accordingly, FRA concluded the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism assessment is not required.

Environmental Impact

FRA evaluated this final rule under its *Procedures for Considering Environmental Impacts* (FRA Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined this final rule is not a major FRA action requiring the preparation of an environmental impact statement or environmental assessment because it is categorically excluded from detailed environmental review under FRA Procedures Section 4(c)(20), which addresses the promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation. *See* 64 FR 28547, May 26, 1999.

Consistent with FRA Procedures Section 4(c)(20), FRA concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds this rule is not a major Federal action that significantly affects the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Reform Act) (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law). *See* 2 U.S.C. 1531 Section 201. Section 202 of the Reform Act (2 U.S.C. 1532) further requires each agency to prepare a comprehensive written statement for any proposed or final rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year . . . .[2]

This final rule will not result in the expenditure of more than $156,000,000 (the value equivalent of $100,000,000 in 2015 dollars) by the public sector in any one year. Thus, preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under Executive Order 13211, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, advance notice of proposed rulemaking, and notice of proposed rulemaking) that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. *See* E.O. 13211. FRA has evaluated this rule under Executive Order 13211. FRA has determined this rule will not have a significant adverse effect on the supply, distribution, or use of energy, and, thus, is not a ''significant energy action'' under Executive Order 13211.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, FRA encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If one wishes to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, FRA amends part 225 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 225–[AMENDED]

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. In § 225.19, revise the first sentence of paragraph (c), and paragraph (e) to read as follows:

[2] See U.S. Department of Transportation, ''Guidance—Threshold of Significant Regulatory Actions under the Unfunded Mandates Reform Act of 1995,'' April 4, 2016, *https://www.transportation.gov/office-policy/transportation-policy/threshold-significant-regulatory-actions-under-unfunded-mandat-0,* as accessed December 12, 2017.

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (*i.e.,* $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, $8,500 for calendar year 2008, $8,900 for calendar year 2009, $9,200 for calendar year 2010, $9,400 for calendar year 2011, $9,500 for calendar year 2012, $9,900 for calendar year 2013, $10,500 for calendar year 2014, $10,500 for calendar year 2015, $10,500 for calendar year 2016, and $10,700 for calendar years 2017 and beyond, until revised) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material.

* * * * *

(e) The reporting threshold is $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, $8,500 for calendar year 2008, $8,900 for calendar year 2009, $9,200 for calendar year 2010, $9,400 for calendar year 2011, $9,500 for calendar year 2012, $9,900 for calendar year 2013, $10,500 for calendar year 2014, $10,500 for calendar year 2015, $10,500 for calendar year 2016, and $10,700 for calendar years 2017 and beyond, until revised. The procedure for determining the reporting threshold for calendar years 2006 and beyond appears as paragraphs 1–8 of appendix B to part 225.

* * * * *

Juan D. Reyes, III,

Chief Counsel.

[FR Doc. 2018–04349 Filed 3–2–18; 8:45 am]

BILLING CODE 4910–06–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1102

[Docket No. EP 739]

Ex Parte Communications in Informal Rulemaking Proceedings

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: In this decision, the Surface Transportation Board (the Board) modifies its regulations to permit, subject to disclosure requirements, ex parte communications in informal rulemaking proceedings. The Board also adopts other changes to its ex parte rules that would clarify and update when and how interested persons may communicate informally with the Board regarding pending proceedings other than rulemakings. The intent of the modified regulations is to enhance the Board's ability to make informed decisions through increased stakeholder communications while ensuring that the Board's record-building process in rulemaking proceedings remains transparent and fair.

DATES: This rule is effective on April 4, 2018.

ADDRESSES: Requests for information or questions regarding this final rule should reference Docket No. EP 739 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245–0368. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board's current regulations at 49 CFR 1102.2 generally prohibit most informal communications between the Board and interested persons concerning the merits of pending Board proceedings. These regulations require that communications with the Board or Board staff regarding the merits of an ''on-the-record'' Board proceeding not be made on an ex parte basis (*i.e.,* without the knowledge or consent of the parties to the proceeding).[1] *See* 49 CFR 1102.2(a)(3), (c). The current regulations detail the procedures required in the event an impermissible communication occurs and the potential sanctions for violations. *See* 49 CFR 1102.2(e), (f).

In 1977, the Board's predecessor agency, the Interstate Commerce Commission (ICC), determined that the general prohibition on ex parte communications in proceedings should include the informal rulemaking proceedings the Board uses to promulgate regulations.[2] *See Revised Rules of Practice,* 358 I.C.C. 323, 345 (1977).[3] At that time, several court decisions expressed the view that ex parte communications in informal rulemaking proceedings were inherently suspect.[4] Accordingly, it has long been the agency's practice to prohibit meetings with individual stakeholders on issues that are the topic of pending informal rulemaking proceedings.

At the same time, however, other court decisions were more tolerant of ex parte communications in informal rulemaking proceedings, so long as the proceedings were not quasi-adjudicative in nature and the process remained fair.[5] In 1981, in *Sierra Club* v. *Costle,* 657 F.2d 298 (D.C. Cir. 1981), the U.S. Court of Appeals for the District of Columbia Circuit significantly clarified and liberalized treatment of this issue. In that case, the court considered the ''timing, source, mode, content, and the extent of . . . disclosure'' of numerous written and oral ex parte communications received after the close of the comment period to determine whether those communications violated the governing statute or due process. *Id.* at 391. The court held that, because the agency docketed most of the ex parte communications and none of the comments were docketed ''so late as to

[1] ''On-the-record proceeding'' means ''any matter described in Sections 556–557 of the Administrative Procedure Act [(APA)] (5 U.S.C. 556–557) or any matter required by the Constitution, statute, Board rule, or by decision in the particular case, that is decided solely on the record made in a Board proceeding.'' 49 CFR 1102.2(a)(1).

[2] The APA, 5 U.S.C. 551–559, governs two categories of agency rulemaking: Formal and informal. Formal rulemaking is subject to specific procedural requirements, including hearings, presiding officers, and a strict ex parte prohibition. *See* 5 U.S.C. 556–57. But most federal agency rulemakings, including the Board's, are informal rulemaking proceedings subject instead to the less restrictive ''notice-and-comment'' requirements of 5 U.S.C. 553.

[3] In *Revised Rules of Practice,* the ICC stated ''ex parte communication during a rulemaking is just as improper as it is during any other proceeding. The Commission's decisions should be influenced only by statements that are a matter of public record.'' 358 I.C.C. at 345.

[4] *See, e.g., Home Box Office* v. *Fed. Commc'ns Comm'n,* 567 F.2d 9, 51–59 (D.C. Cir. 1977) (finding that ex parte communications that occurred after the notice of proposed rulemaking (NPRM) violated the due process rights of the parties who were not privy to the communications because the written administrative record would not reflect the possible ''undue influence'' exerted by those stakeholders who had engaged in ex parte communications); *Nat'l Small Shipments Traffic Conference* v. *ICC,* 590 F.2d 345, 351 (D.C. Cir. 1978) (finding ex parte communications ''violate[d] the basic fairness of a hearing which ostensibly assures the public a right to participate in agency decision making,'' foreclosing effective judicial review); *Sangamon Valley Television Corp.* v. *United States,* 269 F.2d 221, 224 (D.C. Cir. 1959) (finding that undisclosed ex parte communications between agency commissioners and a stakeholder were unlawful because the informal rulemaking involved ''resolution of conflicting private claims to a valuable privilege, and that basic fairness requires such a proceeding to be carried on in the open'').

[5] *See, e.g., Action for Children's Television* v. *Fed. Commc'ns Comm'n,* 564 F.2d 458 (D.C. Cir. 1977) (upholding the agency's decision not to issue proposed rules and finding no APA violation for ex parte discussions where the agency provided a meaningful opportunity for public participation and the proceeding did not involve competing claims for a valuable privilege).

preclude any effective public comment,'' the agency satisfied its statutory requirements. *Id.* at 398. The court also declined to prohibit ex parte communications in informal rulemakings on constitutional due process grounds, and even held that not all ex parte communications must necessarily be docketed (implicitly concluding that whether such communications require docketing depends on case-specific circumstances). *Id.* at 402–04. Today, *Sierra Club* is considered the most recent influential decision on ex parte communications in informal rulemakings and is often cited by courts for the proposition that ex parte communications in informal agency rulemaking are generally permissible.[6]

More recently, in 2014, the Administrative Conference of the United States (ACUS), the body charged by Congress with recommending agency best practices, provided guidance to agencies indicating that a general prohibition on ex parte communications in informal rulemaking proceedings is neither required nor advisable. *Ex Parte Commc'ns in Informal Rulemaking Proceedings* (*2014 ACUS Recommendation*), 79 FR 35988, 35994 (June 25, 2014). ACUS concluded that ex parte communications in informal rulemaking proceedings ''convey a variety of benefits to both agencies and the public,'' although it acknowledged that fairness issues can arise if certain groups have, or are perceived to have, ''greater access to agency personnel than others.'' *Id.* However, in balancing these competing considerations, ACUS urged agencies to consider placing few, if any, restrictions on ex parte communications that occur *before* an NPRM is issued because communications at this early stage are less likely to cause harm and more likely to ''help an agency gather essential information, craft better regulatory proposals, and promote consensus building among interested persons.'' *Id.* ACUS further recommended that agencies establish clear procedures ensuring that all ex parte communications occurring *after* an NPRM is issued, whether planned or unplanned, be disclosed.

Starting in 2015, the Board began to look at the possibility of conducting ex parte meetings to gain more stakeholder input in the informal rulemaking process. As a result, the Board waived the ex parte prohibition to permit Board Members or designated Board staff to participate in ex parte communications in two proceedings.[7] *See Reciprocal Switching,* EP 711 (Sub-No. 1), slip op. at 28–29 (STB served July 27, 2016);[8] *U.S. Rail Serv. Issues—Performance Data Reporting,* EP 724 (Sub-No. 4), slip op. at 2–3 (STB served Nov. 9, 2015). Many stakeholders in these proceedings expressed appreciation for the opportunity to meet with Board Members or Board staff regarding the merits of the proposed rules and expressed the hope to interact with the Board informally in the future as well.[9] In these meetings, parties have been able to respond directly to questions from Board Members and Board staff on the feasibility and utility of certain aspects of the Board's proposals.

Based on the developments in case law related to ex parte communications and the Board's own experiences waiving its ex parte prohibitions in the two recent proceedings, the Board determined that it was appropriate to revisit the agency's strict prohibition on ex parte communications in informal rulemaking proceedings. The Board also determined that certain other aspects of its ex parte regulations that apply to proceedings other than rulemakings could be clarified and updated to reflect current practices and better guide stakeholders and agency personnel. Accordingly, the Board issued an NPRM on September 28, 2017, proposing to: (1) Modify its regulations to permit, subject to disclosure requirements, ex parte communications in informal rulemaking proceedings, and (2) change its ex parte rules to clarify and update when and how interested persons may communicate informally with the Board regarding pending proceedings other than rulemakings. *See Ex Parte Commc'ns in Informal Rulemaking Proceedings* (*NPRM*), EP 739 (STB served Sept. 28, 2017). The Board received nine opening comments and three reply comments on the *NPRM.*[10]

Below, the Board addresses the comments submitted by parties in response to the *NPRM* and discusses clarifications and modifications being adopted in the final rule. The text of the final rule is also below.

Changes to Definitions. In the *NPRM,* the Board proposed to add two new definitions to section 1102.2(a): ''informal rulemaking proceeding'' and ''covered proceedings.'' ''Informal rulemaking proceeding'' would include any proceeding to issue, amend, or repeal rules pursuant to 49 CFR part 1110 and 5 U.S.C. 553. ''Covered proceedings'' would encompass both on-the-record proceedings and informal rulemaking proceedings following the issuance of an NPRM.[11] The Board

[6] *See, e.g., Tex. Office of Pub. Util. Counsel* v. *Fed. Commc'ns Comm'n,* 265 F.3d. 313, 327 (5th Cir. 2001) (''Generally, *ex parte* contact is not shunned in the administrative agency arena as it is in the judicial context. In fact, agency action often demands it.''); *Ammex, Inc.* v. *United States,* 23 Ct. Int'l Trade 549, 569 n.16 (1999) (noting that the decision at issue ''constitutes an exercise of 'informal' rulemaking under the [APA] and, as such, is not subject to the prohibition on ex parte communications set forth in 5 U.S.C. 557(d)(1) (1994)''); *Portland Audubon Soc.* v. *Endangered Species Comm.,* 984 F.2d 1534, 1545–46 (9th Cir. 1993) (''The decision in [*Sierra Club*] that the contacts were not impermissible was based explicitly on the fact that the proceeding involved was *informal* rulemaking to which the APA restrictions on ex parte communications are not applicable.'').

[7] Greater use of ex parte meetings in Board rulemaking proceedings was also a topic of the U.S. Senate Committee on Commerce, Science, and Transportation's August 11, 2016 hearing. *See* Freight Rail Reform: Implementation of the STB Reauthorization Act of 2015: Field Hearing Before the S. Comm. on Commerce, Sci., & Transp., 114th Cong. 32, 35, 46, 50–52, 57, 69, 72 (2016), *https://www.gpo.gov/fdsys/pkg/CHRG-114shrg23228/pdf/CHRG-114shrg23228.pdf.*

[8] In the Board's July 27, 2016 decision, which embraced *Petition for Rulemaking to Adopt Revised Competitive Switching Rules,* Docket No. EP 711, the Board terminated the proceeding in Docket No. EP 711, and all meetings with Board Members are taking place under *Reciprocal Switching,* Docket No. EP 711 (Sub-No. 1).

[9] *See, e.g.,* Summary of Ex Parte Meeting Between Packaging Corp. of Am. & Board Member Begeman at 3, Aug. 3, 2017, *Reciprocal Switching,* EP 711 (Sub-No. 1); Summary of Ex Parte Meeting Between the Am. Chemistry Council & Board Member Miller at 1, Mar. 22, 2017, *Reciprocal Switching,* EP 711 (Sub-No. 1); Summary of Ex Parte Meeting Between CSX Transp. & STB Staff at 1, Dec. 16, 2015, *U.S. Rail Serv. Issues—Performance Data Reporting,* EP 724 (Sub-No. 4).

[10] Comments were received from the following organizations: The American Chemistry Council, the Fertilizer Institute, the National Industrial Transportation League, American Fuel and Petrochemical Manufacturers, Independent Lubricant Manufacturers Association, International Warehouse Logistics Association, American Forest & Paper Association, Alliance for Rail Competition, Private Railcar Food and Beverage Association, Glass Packaging Institute, National Association of Chemical Distributors, the Chlorine Institute, Alliance of Automobile Manufacturers, Association of Global Automakers, American Petroleum Institute, American Malting Barley Association, Corn Refiners Association, Portland Cement Association, and Plastics Industry Association (collectively the Rail Customer Coalition or RCC); the American Short Line and Regional Railroad Association (ASLRRA); the Association of American Railroads (AAR); BNSF Railway Company (BNSF); the Freight Rail Customer Alliance (FRCA); the George Mason University Antonin Scalia Law School Administrative Law Clinic (GMU); the National Grain and Feed Association (NGFA); Samuel J. Nasca on behalf of SMART/Transportation Division, New York State Legislative Board (SMART); and the Western Coal Traffic League (WCTL). On November 1, 2017, the Board also received a letter from NGFA informing the Board that the following national agricultural producer and agribusiness organizations notified NGFA that they support NGFA's opening comments: National Association of State Departments of Agriculture, National Council of Farmer Cooperatives, National Farmers Union, National Oilseed Processors Association, and North American Millers' Association.

[11] Accordingly, the Board proposed to replace references to ''on-the-record proceedings'' with

Continued

further proposed, as discussed in more detail below, that ex parte communications would be permitted in informal rulemaking proceedings (subject to disclosure requirements for those communications occurring post-NPRM), but would remain prohibited in on-the-record proceedings.

Additionally, the Board proposed redefining an ''ex parte communication'' as ''an oral or written communication that concerns the merits or substantive outcome of a pending proceeding; is made without notice to all parties and without an opportunity for all parties to be present; and could or is intended to influence anyone who participates or could reasonably be expected to participate in the decision.'' This proposed new definition would alter the existing definition in two ways; first, by removing the existing concept that communications are only ex parte if made ''by or on behalf of a party'' and second, by removing the suggestion that an ex parte communication that is made with the ''consent of any other party'' could be permissible.

The Board noted in the *NPRM* that these revisions would not change the generally understood concept that certain communications, by their very nature, do not concern the merits or substantive outcome of pending proceedings or are not made to Board Members or staff who are reasonably expected to participate in Board decisions. Such permissible communications include, for example, communications about purely procedural issues; public statements or speeches by Board Members or staff that merely provide general and publicly available information about a proceeding; communications that solely concern the status of a proceeding; and communications with the Board's Rail Customer and Public Assistance Program.

ASLRRA, NGFA, and RCC support the proposed changes to the definitions. (ASLRRA Comments 3; NGFA Comments 5; RCC Comments 7.) ASLRRA argues that the proposed definitions and amendments preserve the transparency and fairness of the rulemaking process. (ASLRRA Comments 3.)

WCTL supports the Board's proposed changes to the definition of ''ex parte communication.'' (WCTL Comments 23; WCTL Reply 9.) WCTL agrees with the Board that ex parte communications can be made by non-parties and that the definition of ''ex parte communication'' should encompass communications made by these non-parties. (WCTL Reply 9.) WCTL argues, however, that the Board should amend the definition of ''on-the-record proceeding'' to expressly include rate reasonableness and unreasonable practice adjudications. (WCTL Comments 19.) According to WCTL, rate reasonableness and unreasonable practice cases may not technically be formal ''on-the-record'' proceedings within the meaning of the APA, and adding the suggested text would remove any uncertainty. (*Id.* at 20.) AAR states that it does not oppose WCTL's suggestion. (AAR Reply 5.)

The final rule will adopt the proposal as set forth in the *NPRM.* It is not necessary to amend the definition of ''on-the-record proceeding'' to specifically include rate reasonableness and unreasonable practice adjudications, as WCTL suggests. Although rate reasonableness and unreasonable practice formal complaints may not technically be covered by the APA definition of on-the-record proceedings, the definition of that term in the Board's regulations is sufficient to cover those types of proceedings, which are decided solely on the record. *See* 49 CFR 1102.2(a)(1).

Communications That Are Not Prohibited. The Board also proposed in the *NPRM* to modify section 1102.2(b) to include additional categories of ex parte communications that are permissible *and* would not be subject to the disclosure requirements of proposed section 1102.2(e) and (g), discussed in more detail below. Specifically, the Board proposed adding to this category communications related to an informal rulemaking proceeding prior to the issuance of an NPRM; [12] communications related to the Board's implementation of the National Environmental Policy Act and related environmental laws; and communications concerning judicial review of a matter that has already been decided by the Board made between parties to the litigation and the Board or Board staff involved in that litigation. Additionally, the Board proposed to modify the existing regulations to remove from section 1102.2(b)(1) the language permitting any communication ''to which all the parties to the proceeding agree.''

NGFA, RCC, and WCTL support including environmental review and judicial review communications within the scope of permitted ex parte communications. (NGFA Comments 5; RCC Comments 7; WCTL Comments 2; WCTL Reply 2, 10.) ASLRRA, NGFA, and RCC also support the proposal to permit ex parte communications prior to the issuance of an NPRM. (ASLRRA Comments 3; NGFA Comments 3; RCC Comments 7.) ASLRRA argues that allowing undisclosed ex parte communications prior to the issuance of an NPRM would enable the Board to obtain helpful stakeholder input, particularly in the preliminary stages of a rulemaking proceeding, without adversely implicating due process or raising administrative concerns. (ASLRRA Comments 3.) NGFA likewise supports permitting undisclosed ex parte communications before the issuance of an NPRM. (NGFA Comments 3.) According to NGFA, the information the Board gathers prior to the issuance of an NPRM would be evident within the NPRM itself. (*Id.*) NGFA, however, suggests that the Board adopt the practice of including in the NPRM a list of the identities of all stakeholders who provided input, as the Board did in *Expediting Rate Cases,* EP 733, slip op. at 2 n.3 (STB served June 15, 2016). (*Id.*)

AAR, FRCA, SMART, and WCTL object to the Board's proposal to permit undisclosed ex parte communications prior to the issuance of an NPRM. (*See* AAR Comments 5–6; FRCA Comments 1; SMART Comments 10; WCTL Comments 21; AAR Reply 4.) AAR argues that the Board should require the disclosure of ex parte contacts occurring after the issuance of an ANPRM. (AAR Comments 5–6.) For cases initiated by a petition for rulemaking, AAR suggests that ex parte communications should be permitted, subject to disclosure requirements, once that petition has been filed and docketed. (AAR Reply 5.) AAR argues that such a rule would be consistent with Department of Transportation (DOT) policy that recommends disclosure of ex parte communications upon issuance of an ANPRM, and Federal Aviation Administration rules that require disclosure of ex parte communications before an ANPRM or an NPRM. (AAR Comments 6.) According to AAR, permitting such ex parte communications without disclosure may discourage stakeholder participation on the record. (AAR Comments 6; AAR Reply 4–5.) [13]

''covered proceedings,'' as appropriate, throughout section 1102.2.

[12] For example, informal communications following a notice of intent to institute a rulemaking proceeding or an advance notice of proposed rulemaking (ANPRM) would not be prohibited. *See* 49 CFR 1110.3(b).

[13] AAR also asks the Board to clarify whether ex parte communications would be permitted in major rail merger proceedings and suggests that the Board add a new paragraph section 1102.2(b)(7) permitting, as a communication that is not prohibited, ''[a]ny communication permitted by statute.'' (AAR Comments 7.) WCTL objected to

WCTL likewise argues that the Board should apply ex parte communication disclosure rules and limitations to all publicly-docketed informal rulemaking proceedings where the Board has sought public comments (*e.g.,* if the Board initiates a docketed proceeding using an ANPRM, the ex parte communication rules would apply starting when the ANPRM is docketed). (WCTL Comments 21; WCTL Reply 3–4.) WCTL argues that this would better advance the Board's objective of ''free flowing'' communications by allowing all interested members of the public to see what others are saying in ex parte meetings and to then respond to these communications. (WCTL Comments 21; WCTL Reply 4.) According to WCTL, permitting undisclosed ex parte communications prior to the issuance of an NPRM would discourage parties from filing detailed comments in response to ANPRMs and similar forms of pre-NPRM notices when those comments may be rejected based on ex parte communications that the parties were unaware of and had no opportunity to rebut. (WCTL Comments 21.) FRCA agrees with WCTL that disclosure requirements ''should not become operative only after an [NPRM] is served.'' (FRCA Comments 1.) Lastly, SMART argues that the *2014 ACUS Recommendation* raises potential harms that would apply to ex parte communications prior to issuance of an NPRM (although the alleged potential harms are not specified by SMART). (SMART Comments 9–10 (citing *2014 ACUS Recommendation,* 79 FR 35993–95).)

Having reviewed the comments, the Board continues to believe that the benefits of not requiring disclosure for ex parte communications prior to the issuance of an NPRM outweigh the potential harms. Regarding the benefits, the Board agrees with ASLRRA that such communication would enable the Board to obtain helpful stakeholder input in crafting proposed regulations. Informal communications with stakeholders prior to issuance of an NPRM provide an opportunity for the Board to obtain useful information and input that would inform the development of the Board's proposal and help identify the issues the agency should consider. In fact, the final report to ACUS, on which the *2014 ACUS Recommendation* is based, states that ''pre-NPRM ex parte communications are generally beneficial and do not implicate administrative and due process principles.'' Esa L. Sferra-Bonistalli, *Ex Parte Commc'ns in Informal Rulemaking Final Report* (*Final Report*), 69 (May 1, 2014) (prepared for consideration of the Admin. Conference of the U.S.), *https://www.acus.gov/report/final-ex-parte-communications-report.* The report continued, stating that ''[r]ather than restricting [ex parte] communications, agencies should experiment with how they can capitalize on the communications' value.'' *Id.* at 85. Thus, permitting informal communications pre-NPRM, without restrictions, such as disclosure and timing requirements, could lead to better policy-making by enabling a freer flow of communication during the preliminary, exploratory phase of a rulemaking proceeding.

The Board believes that these benefits outweigh any potential harms. SMART's claim—that the ACUS report raises some important potential and anticipated harms that would apply to ex parte communications prior to issuance of an NPRM—is inconsistent with the conclusion of ACUS's recommendations. ACUS expressly states that ''[b]efore an agency issues [an NPRM], few if any restrictions on ex parte communications are desirable.'' *2014 ACUS Recommendation,* 79 FR 35994. ACUS further states that pre-NPRM communications are ''less likely'' to pose the same harms as ex parte communications that take place later in the process, and ''can help an agency gather essential information, craft better regulatory proposals, and promote consensus building among interested persons.'' *Id.*

In addition, the potential harm identified by both WCTL and AAR—that commenters would be less likely to file comments on the record during a proceeding—seems unlikely. In a recent case where the Board invited and/or received informal stakeholder communications prior to the initiation of a proceeding, participation in the subsequent proceeding remained at a high level. *See, e.g., Expediting Rate Cases,* Docket No. EP 733 (25 comments received following informal communications). The Board believes that stakeholders will continue to weigh in on proposed rules (through written comments and/or disclosed ex parte communications) even where they have had an opportunity to share general and preliminary views with the agency pre-NPRM. Additionally, as the Board noted in the *NPRM,* any information gathered in a pre-NPRM meeting that the Board incorporates or relies upon in its proposal will be evident in the NPRM itself. *See NPRM,* EP 739, slip op. at 10. The public would have an opportunity to examine and respond to that information.[14] The Board believes that parties will still have the incentive to participate through written comments following informal ex parte communications to ensure that the Board has a record that reflects their views.

For these reasons, the final rule will adopt the proposal regarding communications that are not prohibited as set forth in the *NPRM.*

Communications That Are Prohibited. In the *NPRM,* the Board proposed to modify section 1102.2(c)(1) by adding the introductory clause, ''[e]xcept to the extent permitted by these rules'' to reflect the fact that the revised rules would now govern, but not entirely prohibit, ex parte communications.

The Board also proposed amending section 1102.2(d) to clarify when ex parte prohibitions would take effect and how long they would remain in effect. Specifically, the *NPRM* provided that the prohibitions against ex parte communications in on-the-record proceedings would begin when the first filing or Board decision in a proceeding is posted to the public docket or when the person responsible for a communication knows that the first filing has been filed with the Board, whichever occurs first. The Board further proposed that, in informal rulemaking proceedings, except as provided in the new section 1102.2(g), discussed in more detail below, the prohibitions on ex parte communications would begin when the Board issues an NPRM. Lastly, the Board proposed to clarify that ex parte prohibitions in covered proceedings would remain in effect until the proceeding is no longer subject to administrative reconsideration under 49 U.S.C. 1322(c) or judicial review.

AAR's suggestion, arguing that it does not comply with the provisions of 49 U.S.C. 11324(f) and conflicts with the Board's 1996 determination not to exercise its statutory authority under section 11324(f) to permit ex parte communications in merger cases. (WCTL Reply 8–9 (citing *Pet. of Fieldston Co. to Establish Procedures Regarding Ex Parte Commc'ns in R.R. Merger Proceedings,* 1 S.T.B. 1083, 1084–85 (1996)).) The Board finds that this request, related to major merger proceedings, is outside the scope of this proceeding, which focuses primarily on informal rulemaking proceedings; however, parties are free to raise the issue of the permissibility of ex parte communications in individual major merger proceedings.

[14] For example, as the Board noted in the *NPRM,* in Docket No. EP 733, *Expediting Rate Cases,* where Board staff held informal meetings with stakeholders with the goal of enhancing the Board staff's perspective on strategies and pathways to expedite and streamline rate cases, parties were permitted to comment on the details of the proposal, including those stemming from feedback gathered in the informal meetings. *See NPRM,* EP 739, slip op. at 10 n.12; *see also Expediting Rate Cases,* EP 733, slip op. at 1 (STB served June 15, 2017).

Commenters generally support this proposal. ASLRRA states that it supports the proposed changes to section 1102.2(d), which clarify when ex parte prohibitions would begin. (ASLRRA Comments 3.) Likewise, NGFA states that it supports changing the provision on when ex parte prohibitions begin to better reflect the various ways Board proceedings are initiated. (NGFA Comments 5.) NGFA and RCC also both support application of the ex parte prohibitions when the first filing or Board decision is posted to the public docket in an on-the-record proceeding. (*Id.;* RCC Comments 7–8.) No commenters raised specific objections to this aspect of the Board's proposal. Accordingly, the final rule will adopt the proposal as set forth in the *NPRM.*

Procedures Upon Receipt of Prohibited Ex Parte Communications. The Board also proposed to revise section 1102.2(e) and (f), which entail the procedures required of Board Members and employees upon receipt of prohibited ex parte communications and sanctions, to reflect the fact that some ex parte communications would now be permissible under the revised regulation. First, the proposed rules clarified that the procedures in section 1102.2(e)(1) and (2) would apply to ''[a]ny Board Member, hearing officer or Board employee'' who receives an ex parte communication. Second, the proposal clarified that the procedures set forth in the existing section 1102.2(e) and (f) would apply only to communications not otherwise permitted by the regulation. Lastly, the Board proposed to amend the provision in section 1102.2(e)(1)—that currently requires the Chief of the Office of Proceedings' Section of Administration to place any written communication or a written summary of an oral communication not permitted by these regulations in the public correspondence file—to also require that such placements be made ''promptly'' and contain a label indicating that the prohibited ex parte communication is not part of the decisional record of the proceeding.

The only comment in response to this aspect of the proposal was from WCTL, which states that it agrees with the Board's proposal to clarify the procedures the Board should follow if a Board Member or Board staff receives a prohibited ex parte communication. (WCTL Comments 24; WCTL Reply 10.) No commenters objected to the proposal. Accordingly, the final rule will adopt the proposal as set forth in the *NPRM.*

Ex Parte Communications in Informal Rulemaking Proceedings. In the *NPRM,* the Board proposed to add a new section 1102.2(g) specifically governing ex parte communications in informal rulemaking proceedings that occur following the issuance of an NPRM, at which point disclosure requirements would attach. Under the proposed rule, ex parte communications with Board Members in informal rulemaking proceedings following the issuance of an NPRM would be permitted, subject to disclosure requirements, until 20 days before the deadline for reply comments to the NPRM, unless otherwise specified by the Board. The proposed rules provided that Board Members may delegate their participation in such ex parte communications to Board staff.

Under the proposed rules, ex parte communications in informal rulemaking proceedings that occur outside of the permitted meeting period, that are made to Board staff where such participation has not been delegated by the Board, or that do not comply with the required disclosure requirements would be subject to the sanctions provided in section 1102.2(f). Further, the proposed rules provided that, to schedule an ex parte meeting, parties should contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or the Board Member office with whom the meeting is requested, unless otherwise specified by the Board.

The proposed rules also required that the substance of each ex parte meeting be disclosed by the Board by posting in the docket of the proceeding a written meeting summary of the arguments, information, and data presented at each meeting and a copy of any handouts given or presented. The proposed meeting summary would also disclose basic information about the meeting, including the date and location of the ex parte communication (or means of communication in the case of telephone calls or video-conferencing) and a list of attendees/participants. The proposed rules further provided that the meeting summaries would have to be sufficiently detailed to describe the substance of the ex parte communication. Under the proposed rules, presenters could be required to resubmit summaries that are insufficiently detailed or that contain inaccuracies as to the substance of the presentation.

The proposed rules also provided that a single meeting summary could be submitted to the Board even if multiple parties, persons, or counsel were involved in the same ex parte meeting. In such instances, it would be the responsibility of the person submitting the summary to ensure that all other parties at the meeting agree to the form and content of the summary. The proposed rules would permit parties to present confidential information during ex parte meetings. Under the proposed rules, if the presentations contain material that a party asserts is confidential under an existing protective order governing the proceeding, parties would be required to present a public version and a confidential version of ex parte summaries and any handouts. If a protective order has not been issued in the proceeding at the time the presenter seeks to file a meeting summary or handout containing confidential information, the proposed rules provided that the presenting party would have to file a request with the Board seeking such an order no later than the date it submits its meeting summary. The proposed rules also required parties to submit summaries within two business days of an ex parte presentation or meeting. Under the proposed rules, the Board would post the summaries within seven days of submission of a summary that is complete for posting.

Comments in Support. Most commenters were supportive of the Board's proposal to permit, subject to disclosure requirements, ex parte communications in informal rulemaking proceedings. (*See* AAR Comments 2; ASLRRA Comments 1; BNSF Comments 1; GMU Comments 1; RCC Comments 3.) AAR and ASLRRA state that the Board should adopt the proposed rules because they will lead to better reasoned decision-making and more informed rules. (AAR Comments 3; *see also* ASLRRA Comments 4.) AAR argues that the relatively modest burdens that ex parte meetings might place on stakeholders participating in rulemaking proceedings would be outweighed by the benefits of improved flow of relevant information to Board decision makers. (AAR Reply 3.) According to AAR, face-to-face communications would allow the Board to ensure that its data and information have not grown stale over time, and even when communications do not provide new information, face-to-face conversations summarizing and highlighting points of emphasis can provide value to decision-makers. (AAR Comments 4.) AAR also noted that the *NPRM* is responsive to stakeholder requests for more interaction with Board Members and staff. (*Id.*) ASLRRA also supports the proposed process for ex parte communications during informal rulemaking proceedings, stating that it

would ensure transparency and fairness. (ASLRRA Comments 3.) According to ASLRRA, the Board's proposal meets its goals of enhancing its ability to make informed decisions in informal proceedings while ensuring its record-building in rulemaking proceedings remains transparent and fair. (*Id.* at 1.)

BNSF likewise supports the Board's proposal, stating that increased communications with the Board regarding informal rulemakings will provide value to both the Board and its stakeholders. (BNSF Comments 2.) According to BNSF, the Board's current ex parte regulations reflect the outdated and overly restrictive view of the Board's predecessor agency, the ICC, and are ''out of step'' with long-held doctrines of administrative law, the ex parte rules generally under the APA, and procedures of other federal agencies. (*Id.* at 1–2; *see also* AAR Comments 1 (''[T]he Board's application of its current regulations unnecessarily prohibits most informal communications with the Board and its staff in the informal rulemaking context.'').) BNSF argues that modernizing the Board's ex parte rules to permit an increased flow of information and technical expertise between the Board and its stakeholders during informal rulemaking proceedings will enable the Board to engage in more reasoned policymaking and should produce regulatory policies that are more grounded in the complex operational and market realities currently facing the rail industry. (BNSF Comments 1.)

GMU asserts that the Board's proposed changes to the procedures for ex parte communications would promote responsible governance by facilitating promulgation of informed substantive rules while preserving transparency. (GMU Comments 1.) According to GMU, relaxing the Board's ex parte regulations would remove a procedural hurdle, making it easier for the Board to engage in informed notice-and-comment proceedings, which in turn encourages transparency. (*Id.* at 2.) GMU further argues that the Board has the statutory authority to change its ex parte communications regulations in the context of a notice-and-comment rulemaking, noting that both the APA notice-and-comment requirements and the statutory provisions governing the Board permit ex parte communications during informal rulemaking proceedings. (*Id.* at 2–3.)

RCC agrees that ex parte communications should be permitted in informal rulemaking proceedings if appropriate safeguards to preserve fairness and transparency also are adopted. (RCC Comments 3.) RCC states that ex parte communications in informal rulemakings would ultimately produce better outcomes. (*Id.*) According to RCC, face-to-face dialogue facilitates a more efficient exchange of information, development of ideas, explanation of concepts, and responsiveness to questions and would allow the Board to probe more deeply into subjects based upon the comments submitted. (*Id.* at 3–4.) RCC further states that the Board would also benefit from clarification of concepts and proposals submitted in written comments, especially in proceedings that implicate complex technical matters. (*Id.* at 4.)

As further support for the Board's proposal, a number of commenters cite their positive experiences participating in ex parte meetings in recent Board proceedings where the agency waived the ex parte prohibition. (*See, e.g.,* BNSF Comments 2 (noting that the ex parte meetings in *U.S. Rail Serv. Issues—Performance Data Reporting,* Docket No. EP 724 (Sub-No. 4), better informed the Board about highly technical service reporting issues and resulted in regulations that were more efficiently tailored to the realities of railroad operations); NGFA Comments 2–3 (stating that its ex parte meeting in *U.S. Rail Serv. Issues—Performance Data Reporting,* Docket No. EP 724 (Sub-No. 4), was extremely beneficial because it allowed NGFA to explain the details of their railroad service needs and concerns and to answer Board staff's questions in a more effective manner); RCC Comments 1–2 (noting positive experiences with ex parte meetings in *Reciprocal Switching,* Docket No. EP 711 (Sub-No. 1), and *U.S. Rail Serv. Issues—Performance Data Reporting,* Docket No. EP 724 (Sub-No. 4), as well as the informal meetings in *Expediting Rate Cases,* Docket No. EP 733).)

Comments Requesting Modifications. Several commenters, while expressing overall support for the Board's proposal, suggest modifications that they argue would improve the rule. RCC urges the Board to be mindful of informal rulemaking proceedings that are closely associated with pending adjudicatory proceedings. (RCC Comments 6.) In that regard, RCC suggests that the Board establish safeguards against parties using permissible ex parte communications in the rulemaking proceedings to circumvent the prohibition of the same in adjudicatory proceedings. (*Id.; see also* WCTL Comments 18; AAR Reply 5.) RCC suggests that the most effective potential modifications would be to either: (1) Not allow ex parte communications in rulemakings that are closely associated with pending cases, or (2) not apply any rules that were developed in a rulemaking that utilized ex parte communications in pending adjudications. (RCC Comments 6.)

NGFA and RCC both suggest that the Board modify the period during which ex parte communications would be permitted. (NGFA Comments 4; RCC Comments 5–6.) Specifically, they suggest that the Board permit ex parte communications for a specified time (*e.g.,* 30 days) after the deadline for filing reply comments—subject to the same disclosure requirement contained in the *NPRM*—and permit written responses confined specifically to the content of the ex parte communication within 10 days thereafter. (NGFA Comments 4; RCC Comments 5–6.) According to both commenters, under the Board's proposal, which would prohibit ex parte communications within 20 days of the deadline for written reply comments, stakeholders would not have enough time to both participate in ex parte meetings and also review and prepare responses to other parties' written comments. (NGFA Comments 4; RCC Comments 4–5.) RCC adds that, in those proceedings where the Board solicits three rounds of comments, rather than the usual two rounds, the Board could apply its 20-day rule to the third round of comments and still preserve most of the benefits from ex parte communications. (RCC Comments 6.) RCC requests that, at a minimum, the Board express its willingness to extend the 20-day deadline on a case-by-case basis when appropriate to realize the benefits of ex parte communications in informal rulemakings. (*Id.*) AAR concurs in a modification that would permit ex parte communications for a specific time after the submission of at least two rounds of comments, stating that this change would allow meetings held with Board Members or staff to reflect all the issues in the record and would not create any incentives for parties to hold evidence or arguments back for the reply round. (AAR Reply 4.)

WCTL, however, opposes allowing ex parte communications following the written comment period because it claims that doing so would add unnecessary cost and delay to rulemaking proceedings. (WCTL Reply 7–8.) WCTL also notes that ex parte communications conducted after the comment period has closed are disfavored by ACUS. (*Id.* at 8 (citing *2014 ACUS Recommendation,* 79 FR 35994).)

Additionally, AAR states that the proposal in section 1102.2(g)(1), which authorizes the Board to delegate its participation in such ex parte communications to Board staff, implies that such a delegation would require an entire board decision, which AAR argues would be unnecessarily formalistic. (AAR Comments 7.) AAR suggests that the Board should expand the proposed rules to indicate that communications with staff during the appropriate period are permissible, subject to disclosure rules. (*Id.*) AAR indicates there are many instances where technical information could be best explained to staff responsible for the subject matter, like financial reporting, costing, or railroad operations. (*Id.*)

Regarding the proposed disclosure requirements, NGFA states that it supports the Board's proposals concerning the preparation and disclosure of ex parte meeting summaries that are detailed sufficiently to describe the substance of the communication, but recommends that the Board shorten the period for posting the meeting summaries from seven calendar days (as the Board proposed) to two business days. (NGFA Comments 4–5.) NGFA argues that this change would align with the two-business-day requirement for meeting summaries to be submitted by the participants in the ex parte communication and would provide for more timely transparency and opportunity for review by interested parties. (*Id.* at 5.)

Comments in Opposition. Some commenters object to the idea of allowing ex parte communication in informal rulemaking proceedings or suggest that, if allowed, such communications be utilized more sparingly. SMART states that railroad employees, represented by SMART, would be adversely affected by a '' 'closed door' and secret [Board] tribunal.'' (SMART Comments 4.) According to SMART, the Board's proposal would ''abolish[ ]'' the prohibition on ex parte communications in most, if not all rulemakings, since the terms ''informal'' and ''formal'' rulemakings are not in the APA. (SMART Comments 3 n.2.) SMART argues that ''unrestricted'' and ''wide-ranging'' ex parte communications would be ''prejudicial to parties and counsel situated at a distance,'' because the Board does not have regional offices and rarely sets hearings outside the Washington, DC area. (SMART Comments 7.) It contends that telephonic communications are ''not a satisfactory alternative for face-to-face participation.'' (*Id.*) SMART further argues that ''[t]here is nothing to suggest that face-to-face communication will better promote efficiency so as to substitute for the written word in the decisionmaking process''; rather, the ''real impact of ex parte communication repeal would be to limit the audience, restrict the spread of knowledge, and * * * impair the final action.'' (SMART Reply 4.) SMART also argues that joint meetings conducted with other parties and agency personnel could be problematic. (SMART Comments 8.) According to SMART, the Board need not adopt the proposed rule because it may continue to waive its ex parte prohibition, as it has done in two recent proceedings. (*Id.* at 7.) SMART also argues that the benefit of oral communication can be achieved through oral argument. (SMART Reply 5.)

WCTL argues that the Board's proposal would increase the cost of participating in a rulemaking proceeding, (WCTL Comments 15), and likely result in substantial administrative delay, (*Id.* at 16). WCTL argues that the proposal would lead parties to believe they must participate in the ex parte communication process or they will be ''left out.'' (*Id.* at 15.) WCTL also argues that shippers, unlike large railroads, frequently lack the time and financial resources to participate in ex parte meetings, which can create the perception of an unlevel playing field. (*Id.* at 17.) WCTL further argues that, in many proceedings, the Board may have more efficient administrative tools to address concerns with the record, such as the use of technical conferences. (*Id.* at 16.) According to WCTL, unless the Board requires that ex parte sessions be video-taped and then makes the tapes publicly available, the perception may continue to be that deals are being done ''behind closed doors,'' not in open fora. (*Id.* at 17.) WCTL argues that the Board should instead continue to allow ex parte communications in informal rulemaking proceedings on a case-by-case basis. (*Id.* at 1, 14, 18; WCTL Reply 2, 5.) WCTL asserts that a case-by-case approach would address concerns raised by other commenters in this proceeding. (WCTL Reply 6–7.)

FRCA agrees with WCTL that the Board should determine whether to permit ex parte communications on a case-by-case basis, although FRCA also acknowledges the benefits of ex parte communications in rulemakings generally. (FRCA Comments 1.) According to FRCA, permitting ex parte communications should not be the ''automatic default'' until the Board has accumulated more experience with ex parte communications. (*Id.*)

AAR disagrees with WCTL that ex parte communications could result in administrative delay. (AAR Reply 5.) According to AAR, WCTL's suggestion of using technical conferences instead of ex parte meetings does not have to be an ''either/or'' proposition, as greater use of technical conferences could supplement NPRM proposals. (*Id.* at 3.) AAR also disagrees with WCTL's suggestion that the Board should permit ex parte communications in informal rulemaking proceedings on a case-by-case basis. (*Id.* at 2.) AAR argues that stakeholders will be best equipped to fully participate in a rulemaking when the rules for such participation are known in advance. (*Id.*) AAR notes that pre-established rules would save the Board from expending its limited time and resources on ad hoc determinations related to ex parte communications in every rulemaking proceeding on its docket. (*Id.* at 2–3.) AAR further asserts that the proposed rules would allow the Board, on a case-by-case basis, to restrict communications in a particular proceeding, if the concerns cited by WCTL or others present themselves. (*Id.* at 3.)

Board Determination. After considering all of the comments, the Board concludes that direct communications with stakeholders in informal rulemaking proceedings, in accordance with a transparent and fair record-building process, would enhance the Board's consideration of issues and better enable it to promulgate the most effective regulations. The Board will first address the arguments of commenters that oppose the proposed rule. Then, the Board will address the suggested modifications to the proposed rule.

The commenters that urge the Board to withdraw the proposal in favor of continuing to prohibit ex parte communications in rulemakings have not identified a potential or likely harm that outweighs the benefits of such communications. Specifically, the Board disagrees with SMART that permitting ex parte communications in informal rulemaking proceedings would create a ''secret [Board] tribunal'' and with WCTL that ex parte sessions must be video-taped and made publicly available in order not to be perceived as ''behind closed doors.'' The final rule incorporates safeguards to ensure the rulemaking process remains fair and transparent, such as requiring the written and public disclosure of ex parte communications received after a rule is proposed and providing parties an opportunity to submit written comments in response to those summaries. The Board agrees with RCC

that the safeguards the Board has proposed are sufficient to preserve fairness and transparency in informal rulemakings. As noted above, the Board has gained familiarity in recent proceedings with developing such safeguards and has used that experience to develop the proposed rules. Additionally, as several commenters noted, the final rule is consistent with the practices of other agencies and the best practices guidelines published by ACUS.[15]

The Board also disagrees that the proposal would disadvantage witnesses and counsel located outside the Washington, DC area, as SMART asserts. As indicated in the *NPRM,* EP 739, slip op. at 8, 13, parties will be permitted to participate in ex parte meetings via telephone or videoconferencing. Indeed, ex parte meetings have been conducted remotely, and the Board does not believe that there is any significant difference in the effectiveness of the interaction between face-to-face meetings and meetings occurring via telephone or videoconferencing. Additionally, in response to SMART's argument that there is no evidence that direct communication will promote more efficiency in the decision-making process than written comments, the Board notes that ex parte communications are not intended to replace written comments in a rulemaking. Rather, ex parte communications are a supplement to the written record and provide parties with yet another avenue for communicating their needs and concerns to the Board. Ex parte communications would actually enhance the usefulness of written comments, as such communications would allow Board Members to obtain clarification and seek additional information regarding arguments contained in the written opening comments.

The Board is not persuaded that WCTL's argument that parties will believe they must participate in the ex parte communication process to avoid having less access than others warrants limiting all parties' access to this communication tool. A party's decision whether or not to engage in ex parte communications is not much different than having to decide whether to participate through more traditional means, such as submitting written comments or participating in a hearing. In fact, unlike a traditional hearing, the proposal here would allow parties to participate remotely, as the Board is permitting ex parte meetings to be conducted via telephone and videoconference, which could reduce a party's cost to participate in a proceeding. The Board is confident that parties will be able to assess the appropriate level of participation for their organization based on their particularized interest in the subject matter. The Board's intention here is to provide stakeholders with increased access to the Board while maintaining a fair and transparent record-building process, and, for the reasons discussed in this decision, the Board believes the final rule achieves that goal.

Additionally, the Board is not persuaded that permitting ex parte communications in informal rulemaking proceedings will result in ''significant administrative delay,'' as WCTL claims. While WCTL is correct that permitting ex parte communications necessarily will add some time to rulemaking proceedings, the Board believes that the benefit of the additional information provided will outweigh the disadvantages of a slightly longer procedural schedule. Based on the Board's experiences, incorporating ex parte communication into the informal rulemaking process results in final rules that better reflect the needs and concerns of the Board's stakeholders. (*See* AAR Comments 3; ASLRRA Comments 4; BNSF Comments 2; NGFA Comments 2–3; RCC Comments 1–2, 3; AAR Reply 3); *see also 2014 ACUS Recommendation,* 79 FR 35994. Contrary to SMART's and WCTL's arguments, the Board does not intend ex parte communications to be a substitute for oral argument or technical conferences in informal rulemaking proceedings. Rather, ex parte communications would supplement the tools currently available in rulemaking proceedings. If the Board believes oral argument or technical conferences would be useful, it may decide to include those steps as a supplement to (or even in lieu of, if the circumstances warrant) ex parte communications.

To the extent that SMART and WCTL argue that the Board's recent practice of waiving the ex parte prohibition in particular proceedings is superior to the proposed rules, the Board agrees with AAR that stakeholders will be better equipped to fully participate in an informal rulemaking when the rules for participation are well-established. As AAR notes, pre-established rules would save the Board from expending time and resources on ex parte determinations in every rulemaking proceeding. Additionally, as several parties note, the Board by decision could restrict communications in a particular proceeding, where appropriate. Thus, the Board will not accept WCTL's and SMART's recommendation that the Board continue to waive its ex parte regulations on a case-by-case basis, rather than adopting changes to its ex parte regulations permitting ex parte regulations in informal rulemaking proceedings.

Several parties proposed modifications to the Board's proposed ex parte communication procedures, which the Board addresses below. With regard to the most appropriate deadline for the conclusion of ex parte meetings in an informal rulemaking proceeding, the Board continues to believe that the cutoff should be 20 days before the reply comment deadline. NGFA's, RCC's, and AAR's suggestions—that the Board permit ex parte communications for a specified time after the deadline for filing reply comments—would add an additional round of comments and result in a longer proceeding than under the Board's proposal. Indeed, as WCTL argues, post-comment period ex parte communications are disfavored by ACUS given the propensity of those communications to delay proceedings if significant information is presented to the agency late in the process. (*See* WCTL Reply 8; *see also 2014 ACUS Recommendation,* 79 FR 35994.) ACUS notes in *2014 ACUS Recommendation* that ''the dangers associated with agency reliance on privately-submitted information become more acute'' after the comment period closes and may require an agency to reopen the comment period. Post-comment period ex parte communications are also generally discouraged at several other agencies. *See Final Report* at 57, 59–60, 64 (noting prohibition or discouragement of post-comment period ex parte contacts at DOT, the U.S. Coast Guard, the Department of Education and the Federal Trade Commission). In addition, RCC's suggestion that the Board could permit written responses limited to just the ex parte communication meeting summaries could lead to disputes between commenters as to whether the response is properly limited to the summaries and put the Board in the position of having to resolve such disputes, which

[15] SMART's assertion that the proposed rule improperly would ''abolish[]'' the prohibition on ex parte communications in most, if not all, rulemakings is not relevant to this proceeding. The APA prohibits ex parte communications in formal proceedings, but not in informal rulemaking proceedings. *See Sierra Club,* 657 F.2d at 402 (noting that Congress declined to extend the ex parte prohibition applicable to formal rulemakings to informal rulemakings despite being urged to do so). Should the Board conduct a rulemaking that is subject to the APA restriction, the rules proposed here would not apply.

would only add to the complexity of the rulemaking process.

However, considering NGFA's and RCC's arguments that parties may have insufficient time during the comment period to both prepare written comments and participate in ex parte meetings, the Board will be cognizant of such constraints when establishing reply comment period deadlines in rulemaking proceedings. Also, in particular proceedings, if a party is unable to both prepare written comments and participate in ex parte meetings within this deadline, it may seek an extension. Additionally, if the Board concludes in a particular proceeding that ex parte discussions would be more beneficial following the submission of written comments (*e.g.,* in highly technical rulemakings where post comment ex parte communication would be beneficial to ensure the Board understands the complex, technical data and arguments), the Board may modify the procedural schedule to permit such discussion. *See infra* App. A, section 1102.2(g)(1) (''unless otherwise specified by the Board in procedural orders governing the proceeding'').

The Board agrees with RCC that the Board must be mindful of informal rulemaking proceedings that are closely associated with pending adjudicatory proceedings to ensure that permissible ex parte communications in the rulemaking proceedings are not used to circumvent the prohibition of the such communications in the related adjudicatory proceedings. If the Board determines that ex parte communications are not appropriate for a particular rulemaking proceeding based on this concern, it can issue an order declining to permit such meetings in that particular proceeding. And if the Board concludes that ex parte meetings can be used, the Board may provide additional guidelines in its procedural order and inform parties of its expectations at the beginning of ex parte meetings.

AAR raises a concern that the proposed language in section 1102.2(g)(1) implies that Board staff may only participate in ex parte communications after a delegation of authority through an ''entire board'' decision. The Board clarifies here that, under the proposal, no delegation would be required for Board staff to attend ex parte meetings scheduled with a Board Member (at that Member's request). A delegation of authority would be required only where the ex parte meetings would occur solely with staff (*i.e.,* no Board Member in attendance), such as the ex parte meetings that occurred in *U.S. Rail Service Issues—Performance Data Reporting,* Docket No. EP 724 (Sub No. 4). Thus, it is the Board's determination that ex parte meetings will be conducted under the auspices of the Board Members' offices, unless the Board determines otherwise. AAR's suggestion that the Board permit, as a default option, ex parte communications with any Board staff could render the disclosure process—which is essential to maintaining fairness and transparency—unduly complicated. Under the AAR's proposal, the number of potential stakeholder meetings could increase exponentially, and after every such meeting, each individual staff contact would be required to be summarized and disclosed in a meeting summary that would be posted to the public docket, to which other parties would then have to review and possibly file responses. The Board, however, recognizes AAR's concern that there may be instances where interaction with Board technical staff would be beneficial. The Board anticipates that individual Members will make a concerted effort to include relevant staff in ex parte meetings or delegate the meetings to Board staff, when appropriate.

In response to NGFA's request that the Board shorten the time permitted for meeting summaries to be posted by the Board, the Board will reduce the allotted time from within seven days of submission to within five days of submission. The Board believes that fewer than five days would not provide sufficient time for the Board to confirm that a meeting summary is sufficiently detailed to describe the substance of the presentation and request resubmissions, if necessary. However, the Board will endeavor to post meeting summaries as soon as they are ready. Thus, the final rule will adopt the proposal as set forth in the *NPRM* with this one modification.

Application of the Final Rule. In its comments, WCTL argues that new ex parte communication rules should not be retroactively applied to pending proceedings. (WCTL Comments 22.) WCTL is concerned generally that the retroactive application of the new rules in pending proceedings would delay Board action in those proceedings. (*Id.* at 23; WCTL Reply 9 n.22.) AAR states that it does not disagree with WCTL and notes that if the Board believes that further communications would be beneficial in ongoing proceedings, the Board could issue waivers in those proceedings on a going-forward basis. (AAR Reply 5.) RCC, however, requests that the Board retroactively apply its new ex parte communications rules in one pending rulemaking proceeding, *Review of Commodity, Boxcar, and TOFC/COFC Exemptions,* Docket No. EP 704. (RCC Comments 7.) According to RCC, permitting ex parte meetings to occur in that rulemaking proceeding would ensure that the benefits and impacts of any final Board decision are fully understood by the Board and would, given the anticipated changes to the make-up of the Board since the proceeding was first instituted, help in briefing and educating any newly confirmed Board Members in their understanding of the issues. (*Id.*)

The final rule will not be applied retroactively to pending proceedings. Rather, the final rule adopted here will apply to proceedings newly initiated following the effective date of the final rule. The Board, however, may waive the prohibition on ex parte communications in pending informal rulemaking proceedings on a case-by-case basis, as it did prior to the final rule. In such instances, the Board will set out the procedures that will govern such communications in an order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. Sections 601–604. In its final rule, the agency must either include a final regulatory flexibility analysis, section 604(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). The impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

In the *NPRM,* the Board certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.[16] The Board

[16] Effective June 30, 2016, for the RFA analysis for rail carriers subject to Board jurisdiction, the Board defines a ''small business'' as only those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual operating revenues of $20 million or less in 1991 dollars, or $35,809,698 or less when adjusted for inflation using 2016 data. Class II rail carriers have

explained that the proposed regulations provide for participation in ex parte communications with the Board in informal rulemaking proceedings to provide stakeholders with an alternative means of communicating their interests to the Board in a transparent and fair manner. When a party chooses to engage in ex parte communications with the Board in an informal rulemaking proceeding, the requirements contained in these proposed regulations do not have a significant impact on participants, including small entities. The Board noted that, while the proposed rules would require parties to provide written summaries of the ex parte communications, based on the Board's experiences in *Reciprocal Switching,* Docket No. EP 711 (Sub-No. 1), and *U.S. Rail Service Issues—Performance Data Reporting,* Docket No. EP 724 (Sub-No. 4), the summary documentation is a minimal burden. The meeting summaries are generally only a few pages long (excluding copies of handouts from the meetings that were attached). For example, the meeting summaries the Board received in *U.S. Rail Service Issues—Performance Data Reporting,* Docket No. EP 724 (Sub-No. 4), ranged from two to six pages in length. Of those summaries, nearly half were just two pages long. Likewise, in *Reciprocal Switching,* Docket No. EP 711 (Sub-No. 1), the meeting summaries ranged from one to four pages in length, with the majority of those summaries being three or fewer pages long. Therefore, the Board certified under 5 U.S.C. 605(b) that these proposed rules, if promulgated, would not place any significant burden on a substantial number of small entities.

The final rule adopted here revises the rules proposed in the *NPRM;* however, the same basis for the Board's certification of the proposed rule applies to the final rule. Thus, the Board again certifies under 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

List of Subjects in 49 CFR part 1102

Administrative practice and procedure.

It is ordered:

1. The Board adopts the final rule as set forth in this decision. Notice of the adopted rule will be published in the **Federal Register**.

2. This decision is effective April 4, 2018.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

Decided: February 27, 2018.

By the Board, Board Members Begeman and Miller.

Brendetta S. Jones,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends 49 CFR part 1102 as follows:

PART 1102—COMMUNICATIONS

■ 1. The authority citation for part 1102 is revised to read as follows:

Authority: 49 U.S.C. 1321.

■ 2. Amend § 1102.2 as follows:
■ a. Revise the section heading;
■ b. Redesignate paragraphs (a)(2) and (3) as paragraphs (a)(4) and (5) and add new paragraphs (2) and (3);
■ c. Revise newly redesignated paragraph (a)(5);
■ d. Revise paragraphs (b) through (e);
■ e. In paragraph (f)(1), remove ''concerning the merits of a proceeding'';
■ f. In paragraph (f)(2), add ''covered'' before the word ''proceeding'';
■ g. Revise paragraph (f)(3); and
■ h. Add paragraph (g).

The revisions and additions read as follows:

§ 1102.2 Procedures governing ex parte communications.

(a) * * *

(2) ''Informal rulemaking proceeding'' means a proceeding to issue, amend, or repeal rules pursuant to 5 U.S.C. 553 and part 1110 of this chapter.

(3) ''Covered proceedings'' means on-the-record proceedings and informal rulemaking proceedings following the issuance of a notice of proposed rulemaking.

* * * * *

(5) ''Ex parte communication'' means an oral or written communication that concerns the merits or substantive outcome of a pending proceeding; is made without notice to all parties and without an opportunity for all parties to be present; and could or is intended to influence anyone who participates or could reasonably be expected to participate in the decision.

(b) *Ex parte communications that are not prohibited and need not be disclosed.* (1) Any communication that the Board formally rules may be made on an ex parte basis;

(2) Any communication occurring in informal rulemaking proceedings prior to the issuance of a notice of proposed rulemaking;

(3) Any communication of facts or contention which has general significance for a regulated industry if the communicator cannot reasonably be expected to have known that the facts or contentions are material to a substantive issue in a pending covered proceeding in which it is interested;

(4) Any communication by means of the news media that in the ordinary course of business of the publisher is intended to inform the general public, members of the organization involved, or subscribers to such publication with respect to pending covered proceedings;

(5) Any communications related solely to the preparation of documents necessary for the Board's implementation of the National Environmental Policy Act and related environmental laws, pursuant to part 1105 of this chapter;

(6) Any communication concerning judicial review of a matter that has already been decided by the Board made between parties to the litigation and the Board or Board staff who are involved in that litigation.

(c) *General prohibitions.* (1) Except to the extent permitted by the rules in this section, no party, counsel, agent of a party, or person who intercedes in any covered proceeding shall engage in any ex parte communication with any Board Member, hearing officer, or Board employee who participates, or who may reasonably be expected to participate, in the decision in the proceeding.

(2) No Board Member, hearing officer, or Board employee who participates, or is reasonably expected to participate, in the decision in a covered proceeding shall invite or knowingly entertain any ex parte communication or engage in any such communication to any party, counsel, agent of a party, or person reasonably expected to transmit the communication to a party or party's agent.

(d) *When prohibitions take effect.* In on-the-record proceedings, the prohibitions against ex parte communications apply from the date on which the first filing or Board decision in a proceeding is posted to the public docket by the Board, or when the person responsible for the communication has knowledge that such a filing has been filed, or at any time the Board, by rule or decision, specifies, whichever occurs first. In informal rulemaking proceedings, except as provided in

annual operating revenues of less than $250 million in 1991 dollars or less than $447,621,226 when adjusted for inflation using 2016 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its website. 49 CFR 1201.1–1.

paragraph (g) of this section, the prohibitions against ex parte communications apply following the issuance of a notice of proposed rulemaking. The prohibitions in covered proceedings continue until the proceeding is no longer subject to administrative reconsideration under 49 U.S.C. 1322(c) or judicial review.

(e) *Procedure required of Board Members and Board staff upon receipt of prohibited ex parte communications.* (1) Any Board Member, hearing officer, or Board employee who receives an ex parte communication not permitted by these regulations must promptly transmit either the written communication, or a written summary of the oral communication with an outline of the surrounding circumstances to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board. The Section Chief shall promptly place the written material or summary in the correspondence section of the public docket of the proceeding with a designation indicating that it is a prohibited ex parte communication that is not part of the decisional record.

(2) Any Board Member, hearing officer, or Board employee who is the recipient of such ex parte communication may request a ruling from the Board's Designated Agency Ethics Official as to whether the communication is a prohibited ex parte communication. The Designated Agency Ethics Official shall promptly reply to such requests. The Chief, Section of Administration, Office of Proceedings, shall promptly notify the Chairman of the Board of such ex parte communications sent to the Section Chief. The Designated Agency Ethics Official shall promptly notify the Chairman of all requests for rulings sent to the Designated Agency Ethics Official. The Chairman may require that any communication be placed in the correspondence section of the docket when fairness requires that it be made public, even if it is not a prohibited communication. The Chairman may direct the taking of such other action as may be appropriate under the circumstances.

(f) * * *

(3) The Board may censure, suspend, dismiss, or institute proceedings to suspend or dismiss any Board employee who knowingly and willfully violates the rules in this section.

(g) *Ex parte communications in informal rulemaking proceedings; disclosure requirements.* (1) Notwithstanding paragraph (c) of this section, ex parte communications with Board Members in informal rulemaking proceedings are permitted after the issuance of a notice of proposed rulemaking and until 20 days before the deadline for reply comments set forth in the notice of proposed rulemaking, unless otherwise specified by the Board in procedural orders governing the proceeding. The Board may delegate its participation in such ex parte communications to Board staff. All such ex parte communications must be disclosed in accordance with paragraph (g)(4) of this section. Any person who engages in such ex parte communications must comply with any schedule and additional instructions provided by the Board in the proceeding. Communications that do not comply with this section or with the schedule and instructions established in the proceeding are not permitted and are subject to the procedures and sanctions in paragraphs (e) and (f) of this section.

(2) To schedule ex parte meetings permitted under paragraph (g)(1) of this section, parties should contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance or the Board Member office with whom the meeting is requested, unless otherwise specified by the Board.

(3) Parties seeking to present confidential information during an ex parte communication must inform the Board of the confidentiality of the information at the time of the presentation and must comply with the disclosure requirements in paragraph (g)(4)(iv) of this section.

(4) The following disclosure requirements apply to ex parte communications permitted under paragraph (g)(1) of this section:

(i) Any person who engages in ex parte communications in an informal rulemaking proceeding shall submit to the Board Member office or delegated Board staff with whom the meeting was held a memorandum that states the date and location of the communication; lists the names and titles of all persons who attended (including via phone or video) or otherwise participated in the meeting during which the ex parte communication occurred; and summarizes the data and arguments presented during the ex parte communication. Any written or electronic material shown or given to Board Members or Board staff during the meeting must be attached to the memorandum.

(ii) Memoranda must be sufficiently detailed to describe the substance of the presentation. Board Members or Board staff may ask presenters to resubmit memoranda that are not sufficiently detailed.

(iii) If a single meeting includes presentations from multiple parties, counsel, or persons, a single summary may be submitted so long as all presenters agree to the form and content of the summary.

(iv) If a memorandum, including any attachments, contains information that the presenter asserts is confidential, the presenter must submit a public version and a confidential version of the memorandum. If there is no existing protective order governing the proceeding, the presenter must, at the same time the presenter submits its public and redacted memoranda, file a request with the Board seeking such an order pursuant to § 1104.14 of this chapter.

(v) Memoranda must be submitted to the Board in the manner prescribed no later than two business days after the ex parte communication.

(vi) Ex parte memoranda submitted under this section will be posted on the Board's website in the docket for the informal rulemaking proceeding within five days of submission. If a presenter has requested confidential treatment for all or part of a memorandum, only the public version will appear on the Board's website. Persons seeking access to the confidential version must do so pursuant to the protective order governing the proceeding.

[FR Doc. 2018–04411 Filed 3–2–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066–5717–02]

RIN 0648–XG061

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category Fishery

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

ACTION: Temporary rule; General category January fishery for 2018; inseason bluefin tuna quota transfer and closure.

SUMMARY: NMFS transfers 10 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the January 2018 subquota period (from January 1 through March 31, 2018, or until the available subquota for this period is reached, whichever comes

first) and closes the General category fishery for large medium and giant BFT until the General category reopens on June 1, 2018. The quota transfer is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT. The intent of the closure is to prevent overharvest of the available General category January 2018 BFT subquota as adjusted in this action.

DATES: The quota transfer is effective February 28, 2018, through March 2, 2018. The closure is effective 11:30 p.m., local time, March 2, 2018, through May 31, 2018.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

NMFS is required, under regulations at § 635.28(a)(1), to file a closure notice for publication with the Office of the Federal Register when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notification, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

The base quota for the General category is 466.7 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a ''subquota'' or portion of the annual General category quota. Although it is called the ''January'' subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. The subquotas for each time period are as follows: 24.7 mt for January; 233.3 mt for June through August; 123.7 mt for September; 60.7 mt for October through November; and 24.3 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods. Effective January 1, 2017, NMFS transferred 14.3 mt of the 24.3-mt General category quota allocated for the December 2018 period to the January 2018 period, resulting in an adjusted subquota of 39 mt for the January period and a subquota of 10 mt for the December 2017 period (82 FR 60680, December 22, 2017).

Although the 2017 ICCAT recommendation regarding western BFT management would result in an increase to the baseline U.S. BFT quota (*i.e.,* from 1,058.79 mt to 1,247.86 mt) and subquotas for 2018 (including an expected increase in General category quota from 466.7 mt to 555.7 mt, consistent with the annual BFT quota calculation process established in Amendment 7), domestic implementation of that recommendation will take place in a separate rulemaking, likely to be finalized in mid-2018.

Transfer of 10 mt From the Reserve Category to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided to researchers by tuna dealers give NMFS valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status.

NMFS also considered the catches of the General category quota to date (including during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)). As of February 26, 2018, the General category landed 31.3 mt (80 percent) of its adjusted January 2018 subquota of 39 mt. Although this Notice also closes the fishery, without a quota transfer, closure may have been necessary sooner or the subquota category could have exceeded its available quota, while some quota is available in the Reserve category and while commercial-sized bluefin tuna may remain available in the areas where General category permitted vessels operate at this time of year. Transferring 10 mt of quota from the Reserve category would result in 49 mt being available for the January fishery, thus providing limited additional opportunities to harvest the U.S. bluefin tuna quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS anticipates that all of the 10 mt of qutoa will be used by March 2, based on current figures and the relatively small amount of quota being transferred. In the unlikely event that any of this quota is unused, by March 31, such quota will roll forward to the next subperiod within the calendar year (*i.e.,* the June–August time period), and NMFS anticipates that it would be used before the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2018 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. In 2016 and 2017, the General category exceeded its adjusted quota (discussed below) but sufficient quota was available to cover the exceedance without affecting the other categories. NMFS will need to account for 2018 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that, even with the 10 mt transfer to the General category for the January fishery.

This transfer would be consistent with the current quotas, which were established and analyzed in the 2015 BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments. (§ 635.27(a)(8)(v) and (vi)). At this time, there is a relatively small amount of quota in the Reserve category available to transfer to other categories or use for scientific research and for prudent responsive management. In the past, we have conducted the annual reallocation of unused Purse Seine category quota to the Reserve category earlier in the year, which resulted in more Reserve category quota available at this time of year. Even if more quota were available, however, we likely would limit the amount of transferred quota, given considerations related to prudent longer-term management for all categories of the fishery this year. Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)).

NMFS also anticipates that some underharvest of the 2017 adjusted U.S. BFT quota will be carried forward to 2018 and placed in the Reserve category, in accordance with the regulations, later this year. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, as well as the anticipated increase in the U.S. quota and subquotas for 2018 as a result of ICCAT recommendations and NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2018 for December fishery participants, after the fishery re-opens later this year. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as NMFS did for late 2017 (*i.e.,* transferred 156.4 mt from the Reserve category, effective October 1, 2017 (82 FR 46000, October 3, 2017)), and later transferred another 25.6 mt from the Harpoon category, effective December 1 (82 FR 55520, November 22, 2017). NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2018, through active inseason management such as retention limit adjustments and/or the timing of quota transfers, as practicable. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount transferrable quota and other management objectives, while avoiding quota exceedance.

Based on the considerations above, NMFS is transferring 10 mt of the 24.8-mt Reserve category quota to the General category for the January 2018 fishery, resulting in a subquota of 49 mt for the January 2018 fishery and 14.8 mt in the Reserve category.

Closure of the January 2018 General Category Fishery

Based on the best available bluefin tuna General category landings information (*i.e.,* 31.3 mt landed as of February 26, 2018) as well as average catch rates and anticipated fishing conditions, NMFS projects that the General category January subquota of 49 mt, as adjusted in this action, will be reached by March 2, 2018, and that the fishery should be closed to avoid exceedance of the enhanced quota. Through this action, we are closing the General category bluefin tuna fishery effective 11:30 p.m., March 2, 2018, through May 31, 2018. The fishery will reopen on June 1, 2018, with a quota of 233.3 mt available for the June through August time period. Therefore, retaining, possessing, or landing large medium or giant BFT by persons aboard vessels permitted in the Atlantic tunas General and HMS Charter/Headboat categories must cease at 11:30 p.m. local time on March 2, 2018. The General category will reopen automatically on June 1, 2018, for the June through August 2018 subquota period. This action applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT, and is taken consistent with the regulations at § 635.28(a)(1). The intent of this closure is to prevent overharvest of the available General category January BFT subquota.

Fishermen may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *www.nmfs.noaa.gov/sfa/hms/.*

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting App.

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*e.g.,* quota adjustment, daily retention limit adjustment, or closure) is necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason quota transfers and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. These fisheries are currently underway and the currently available quota for the subcategory is projected to be reached shortly. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would likely result in exceedance of the General category January fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. Subquota exceedance may result in the

need to reduce quota for the General category later in the year and thus could affect later fishing opportunities. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.27(a)(9) and 635.28(a)(1), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: February 28, 2018.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–04397 Filed 2–28–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG048

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule.

SUMMARY: NMFS is reallocating the projected unused amounts of the Aleut Corporation's and the Community Development Quota pollock directed fishing allowances from the Aleutian Islands subarea to the Bering Sea subarea directed fisheries. These actions are necessary to provide opportunity for harvest of the 2018 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 28, 2018, until 2400 hrs, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Aleutian Islands subarea, the portion of the 2018 pollock total allowable catch (TAC) allocated to the Aleut Corporation's directed fishing allowance (DFA) is 14,700 metric tons (mt) and the Community Development Quota (CDQ) DFA is 1,900 mt as established by the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8369, February 27, 2018) .

As of February 27, 2018, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 12,200 mt of Aleut Corporation's DFA and 1,900 mt of pollock CDQ DFA in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 12,200 mt of Aleut Corporation's DFA and 1,900 mt of pollock CDQ DFA from the Aleutian Islands subarea to the 2018 Bering Sea subarea allocations. The 1,900 mt of pollock CDQ DFA is added to the 2018 Bering Sea CDQ DFA. The remaining 12,200 mt of pollock is apportioned to the AFA Inshore sector (50 percent), AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). The 2018 Bering Sea subarea pollock incidental catch allowance remains at 47,888 mt. As a result, the 2018 harvest specifications for pollock in the Aleutian Islands subarea included in the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8369, February 27, 2018) are revised as follows: 2,500 mt to Aleut Corporation's DFA and 0 mt to CDQ DFA. Furthermore, pursuant to § 679.20(a)(5), Table 4 of the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8369, February 27, 2018) is revised to make 2018 pollock allocations consistent with this reallocation. This reallocation results in adjustments to the 2018 Aleut Corporation and CDQ pollock allocations established at § 679.20(a)(5).

TABLE 4—FINAL 2018 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2018 Allocations	2018 A season [1]		2018 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,378,441	n/a	n/a	n/a
CDQ DFA	138,334	62,250	38,734	76,084
ICA [1]	47,888	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,192,219	536,499	333,821	655,720
AFA Inshore	596,109	268,249	166,911	327,860
AFA Catcher/Processors [3]	476,888	214,599	133,529	262,288
Catch by C/Ps	436,352	196,358	n/a	239,994
Catch by CVs [3]	40,535	18,241	n/a	22,294
Unlisted C/P Limit [4]	2,384	1,073	n/a	1,311
AFA Motherships	119,222	53,650	33,382	65,572
Excessive Harvesting Limit [5]	208,638	n/a	n/a	n/a
Excessive Processing Limit [6]	357,666	n/a	n/a	n/a
Aleutian Islands subarea ABC	40,788	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	4,900	n/a	n/a	n/a
CDQ DFA	0	0	n/a	0
ICA	2,400	1,200	n/a	1,200
Aleut Corporation	2,500	2,500	n/a	0
Area harvest limit [7]	n/a	n/a	n/a	n/a

TABLE 4—FINAL 2018 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2018 Allocations	2018 A season [1]		2018 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
541	12,236	n/a	n/a	n/a
542	6,118	n/a	n/a	n/a
543	2,039	n/a	n/a	n/a
Bogoslof District ICA [8]	450	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (3.9 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) through (*iii*), the annual Aleutian Islands pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the ABC, and the B season is allocated the remainder of the pollock directed fishery.

[2] In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by AFA catcher vessels with catcher/processor sector endorsements delivering to listed catcher/processors, unless there is a C/P sector cooperative contract for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

[8] Pursuant to § 679.22(a)(7)(i)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of AI pollock. Since the pollock fishery opened January 20, 2018, it is important to immediately inform the industry as to the final Bering Sea subarea pollock allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased seasonal pollock allocations while value is optimum. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 25, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 28, 2018.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–04389 Filed 2–28–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 160920866–7167–02]

RIN 0648–XF892

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 50 Feet Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 50 feet length overall (LOA) using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2018 Pacific cod total allowable catch apportioned to catcher vessels less than 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 2, 2018,

through 1200 hours, A.l.t., June 10, 2018.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2018 Pacific cod total allowable catch (TAC) apportioned to catcher vessels less than 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA is 562 metric tons (mt), as established by the final 2017 and 2018 harvest specifications for groundfish of the GOA (82 FR 12032, February 27, 2017) and inseason adjustment (82 FR 60327, December 20, 2017).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2018 Pacific cod TAC apportioned to catcher vessels less than 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 487 mt and is setting aside the remaining 75 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels less than 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 27, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 28, 2018.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–04388 Filed 2–28–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 43
Monday, March 5, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0162; Product Identifier 2017–NM–116–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2016–18–01, which applies to certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. AD 2016–18–01 requires repetitive lubrication of the forward and aft trunnion pin assemblies of the right and left main landing gears (MLGs); repetitive inspection of these assemblies for corrosion and chrome damage, and related investigative and corrective actions, if necessary; and installation of new or modified trunnion pin assembly components, which terminates the repetitive lubrication and repetitive inspections. Since we issued AD 2016–18–01, we have determined that rotable parts were not addressed in that AD and that all airplanes of the affected models, excluding those with a certain configuration, should be inspected to determine if affected MLG trunnion pin assemblies are installed. This proposed AD would therefore add airplanes to the applicability. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by April 19, 2018.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0162.

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–2018–0162; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Alan Pohl, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3527; email: *alan.pohl@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0162; Product Identifier 2017–NM–116–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

We issued AD 2016–18–01, Amendment 39–18631 (81 FR 59830, August 31, 2016) (''AD 2016–18–01''), for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. AD 2016–18–01 requires repetitive lubrication of the forward and aft trunnion pin assemblies of the right and left MLGs; repetitive inspection of these assemblies for corrosion and chrome damage, and related investigative and corrective actions, if necessary; and installation of new or modified trunnion pin assembly components, which terminates the repetitive lubrication and repetitive inspections. AD 2016–18–01 resulted from reports of heavy corrosion and chrome damage on the forward and aft trunnion pin assemblies of the right and left MLGs. We issued AD 2016–18–01 to detect and correct heavy corrosion and chrome damage on the forward and aft trunnion pin assemblies of the right and left MLGs, which could result in cracking of these assemblies and collapse of the MLGs.

Actions Since AD 2016–18–01 Was Issued

To support operations, many operators have put processes in place that, given certain conditions, allow them to rotate or transfer parts or equipment within their fleets to different aircraft than what is defined in the manufacturer's type design. We have determined that the parts or equipment subject to the unsafe condition addressed by this proposed AD may have been rotated or transferred in this manner, due to similarity with parts or equipment not subject to the unsafe condition addressed by this proposed AD. Therefore, AD 2016–18–01 is being superseded to include all Model 737–600, –700, –700C, –800, –900, and –900ER airplanes.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 737–32–1448, Revision 2, dated August 2, 2017 (''BSASB 737–32–1448, R2''). This service information describes procedures for determining the part numbers of the forward and aft trunnion pin assemblies installed on the right and left MLGs, inspections for corrosion or damage on the forward and aft trunnion pin assemblies and related investigative and corrective actions, repetitive lubrication of these assemblies, and installation of new or modified trunnion pin assembly components. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2016–18–01. This proposed AD would add airplanes to the applicability. This proposed AD would also prohibit the installation of a MLG or MLG trunnion pin assembly on any airplane identified in paragraph (c) of the proposed AD unless certain actions are accomplished. In addition, this proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.'' For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0162.

The phrase ''related investigative actions'' is used in this proposed AD. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

The effectivity specified in BSASB 737–32–1448, R2 consists of Model 737–600, –700, –700C, –800, –900, and –900ER airplanes identified as line numbers 1 through 6510 inclusive. Expanding the applicability of this proposed AD to all Model 737–600, –700, –700C, –800, –900, and –900ER airplanes addresses the rotability of the MLG trunnion pin assembly.

In this proposed AD, operators would need to accomplish the actions required by paragraphs (g), (h), (i), (j) and (k) of this proposed AD, and comply with the parts installation prohibition in paragraph (m) of this proposed AD, on any Model 737–600, –700, –700C, –800, –900, and –900ER airplanes with an original Certificate of Airworthiness or an original Export Certificate of Airworthiness dated on or before the effective date of the final rule. We have confirmed with Boeing that the accomplishment instructions in BSASB 737–32–1448, R2 are applicable to these expanded groups of airplanes.

For Model 737–600, –700, –700C, –800, –900, and –900ER airplanes with an original Certificate of Airworthiness or an original Export Certificate of Airworthiness dated after the effective date of the final rule, operators would not be required to comply with the requirements of paragraphs (g), (h), (i), (j), and (k) of this proposed AD, but would be required to comply with the parts installation prohibition in paragraph (m) of this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects up to 1,814 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Lubrication (retained actions from AD 2016–18–01).	2 work-hours × $85 per hour = $170 per lubrication cycle.	0	$170 per lubrication cycle	$173,910, per lubrication cycle (1,023 airplanes).
Inspection (Groups 1 and 2, Configuration 1 airplanes; retained actions from AD 2016–18–01).	51 work-hours × $85 per hour = $4,335 per inspection cycle.	0	$4,335 per inspection cycle ...	$4,282,980 per inspection cycle (988 airplanes).
Inspection (Group 3 airplanes; retained actions from AD 2016–18–01).	93 work-hours × $85 per hour = $7,905 per inspection cycle.	0	$7,905 per inspection cycle ...	$276,675 per inspection cycle (35 airplanes).
Replacement/overhaul (Groups 1 and 2 airplanes; retained actions from AD 2016–18–01).	84 work-hours × $85 per hour = $7,140.	0	$7,140	$7,054,320 (988 airplanes).
Replacement/overhaul (Group 3 airplanes retained actions from AD 2016–18–01).	86 work-hours × $85 per hour = $7,310.	0	$7,310	$255,850 (35 airplanes).
Lubrication pin assemblies (new proposed action, Work Packages 1 and 2).	2 work-hours × $85 per hour = $170 per lubrication cycle.	0	$170 per lubrication cycle	$308,380, per lubrication cycle (up to 1,814 airplanes).
Inspection (new proposed action; Groups 1, 2, 4, and 5, Configuration 1 airplanes; Work Package 2).	51 work-hours × $85 per hour = $4,335 per inspection cycle.	0	$4,335 per inspection cycle ...	$7,594,920 per inspection cycle (1,752 airplanes).
Inspection (new proposed action; Groups 3 and 6 airplanes; Work Package 2).	93 work-hours × $85 per hour = $7,905 per inspection cycle.	0	$7,905 per inspection cycle ...	$490,110 per inspection cycle (62 airplanes).

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement/overhaul trunnion pin assembly (Groups 1, 2, 4, and 5 airplanes; new proposed action; Work Package 2).	84 work-hours × $85 per hour = $7,140.	0	$7,140	$12,509,280 (up to 1,752 airplanes).
Replacement/overhaul trunnion pin assembly (Groups 3 and 6 airplanes; new proposed action; Work Package 2).	86 work-hours × $85 per hour = $7,310.	0	$7,310	$453,220 (62 airplanes).

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed 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 proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 the proposed regulation:

(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.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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) 2016–18–01, Amendment 39–18631 (81 FR 59830, August 31, 2016), and adding the following new AD:

The Boeing Company: Docket No. FAA–2018–0162; Product Identifier 2017–NM–116–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by April 19, 2018.

(b) Affected ADs

This AD replaces AD 2016–18–01, Amendment 39–18631 (81 FR 59830, August 31, 2016) (''AD 2016–18–01'').

(c) Applicability

This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, as specified in paragraphs (c)(1) through (c)(7) of this AD

(1) Airplanes in Groups 1 and 2, Configuration 1, as identified in Boeing Special Attention Service Bulletin 737–32–1448, Revision 2, dated August 2, 2017 (''BSASB 737–32–1448, R2'').

(2) Airplanes in Groups 1 and 2, Configuration 2, as identified in BSASB 737–32–1448, R2.

(3) Airplanes in Group 3, as identified in BSASB 737–32–1448, R2.

(4) Airplanes in Groups 4 and 5, Configuration 1, as identified in BSASB 737–32–1448, R2, except where this service bulletin specifies the groups as line numbers 3527 through 6510 inclusive, this AD specifies those groups as line number 3527 through any line number of an airplane with an original Certificate of Airworthiness or an original Export Certificate of Airworthiness dated on or before the effective date of this AD.

(5) Airplanes in Groups 4 and 5, Configuration 2, as identified in BSASB 737–32–1448, R2, except where this service bulletin specifies the groups as line numbers 3527 through 6510 inclusive, this AD specifies those groups as line number 3527 through any line number of an airplane with an original Certificate of Airworthiness or an original Export Certificate of Airworthiness dated on or before the effective date of this AD.

(6) Airplanes in Groups 6 as identified in BSASB 737–32–1448, R2, except where this service bulletin specifies the groups as line numbers 3527 through 6510 inclusive, this AD specifies those groups as line number 3527 through any line number of an airplane with an original Certificate of Airworthiness or an original Export Certificate of Airworthiness dated on or before the effective date of this AD.

(7) All Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes with an original Certificate of Airworthiness or an original Export Certificate of Airworthiness dated after the effective date of this AD.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by reports of heavy corrosion and chrome damage on the forward and aft trunnion pin assemblies of the right and left main landing gears (MLGs). We are issuing this AD to detect and correct heavy corrosion and chrome damage on the forward and aft trunnion pin assemblies of the right and left MLGs, which could result in cracking of these assemblies and collapse of the MLGs.

(f) Compliance

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

(g) Inspection To Determine Part Number of MLG Trunnion Pin Assembly

For airplanes identified in paragraphs (c)(1), (c)(3), (c)(4), and (c)(6) of this AD: Except as required by paragraph (l) of this AD, at the applicable time specified in Table 1, Table 2, Table 4, or Table 5, of paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2, do an inspection to determine if any of the MLG trunnion pin assembly part numbers identified in paragraph 2.C.3., ''Parts Modified and Reidentified,'' of BSASB 737–32–1448, R2, are installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of each MLG trunnion pin assembly can be conclusively determined from that review.

(h) Repetitive Lubrication of MLG Trunnion Pin Assemblies

For airplanes identified in paragraphs (c)(1), (c)(3), (c)(4), or (c)(6) of this AD, having any part number identified in paragraph 2.C.3., ''Parts Modified and Reidentified,'' of BSASB 737–32–1448, R2, installed: Except as required by paragraph (l) of this AD, at the applicable time specified in Table 1, Table 2, Table 4, or Table 5, of paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2, lubricate the applicable forward and aft trunnion pin assemblies of the right and left MLGs, in accordance with Work Package 1 of the Accomplishment Instructions of BSASB 737–32–1448, R2. Repeat the lubrication thereafter at intervals not to exceed those specified in Table 1, Table 2, Table 4, or Table 5, of paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2. Accomplishment of the actions specified in paragraph (j) of this AD terminates the repetitive lubrication required by this paragraph.

(i) Repetitive Inspections, Corrective Actions, and Lubrication

For airplanes identified in paragraphs (c)(1), (c)(3), (c)(4), or (c)(6) of this AD, having any part number identified in paragraph 2.C.3., ''Parts Modified and Reidentified,'' BSASB 737–32–1448, R2, installed: Except as required by paragraph (l) of this AD, at the applicable time specified in Table 1, Table 2, Table 4, or Table 5, of paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2, do a general visual inspection of the left and right MLGs at the forward and aft trunnion pin locations and the visible surfaces of the forward and aft trunnion pin assemblies for discrepancies including signs of corrosion or chrome plating damage, and lubricate the forward and aft trunnion pin assemblies as applicable, in accordance with Work Package 2 of the Accomplishment Instructions of BSASB 737–32–1448, R2. Repeat the general visual inspection thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2. If any discrepancy is found during any inspection required by this paragraph, before further flight, do all applicable related investigative and corrective actions in accordance with Work Package 2 of the Accomplishment Instructions of BSASB 737–32–1448, R2. Accomplishment of the actions required by paragraph (j) of this AD terminates the repetitive inspections required by this paragraph.

(j) Modification of MLG Trunnion Pin Assemblies

For airplanes identified in paragraphs (c)(1), (c)(3), (c)(4), or (c)(6) of this AD, having any part number identified in paragraph 2.C.3., ''Parts Modified and Reidentified,'' BSASB 737–32–1448, R2 installed: Except as required by paragraph (l) of this AD, at the time specified in Table 1, Table 2, Table 4, or Table 5, as applicable, of paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2, modify the left and right MLG trunnion pin assemblies, including all applicable related investigative and corrective actions, in accordance with Work Package 3 of the Accomplishment Instructions of BSASB 737–32–1448, R2. All applicable related investigative and corrective actions must be done at the time specified in paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2. Accomplishment of the actions in Work Package 3 of the Accomplishment Instructions of BSASB 737–32–1448, R2 terminates the repetitive lubrication required by paragraph (h) of this AD and the repetitive inspections required by paragraph (i) of this AD.

(k) Replacement of MLG Forward Trunnion Pin Housing Assembly, Seal, and Retainer

For airplanes identified in paragraphs (c)(2) and (c)(5) of this AD: Except as required by paragraph (l) of this AD, at the time specified in Table 3 or Table 6, as applicable, of paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2, replace the seal, retainer, and support ring assembly with a new seal and retainer configuration; install the forward trunnion pin assembly into the housing assembly; and lubricate the forward and aft trunnion pin assemblies for the left and right MLGs; in accordance with Work Package 4 of the Accomplishment Instructions of BSASB 737–32–1448, R2.

(l) Exception to Service Information Specification

Where paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2 specifies a compliance time ''after the Revision 2 date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(m) Parts Installation Limitation

As of the effective date of this AD, no person may install a MLG or MLG trunnion pin assembly on any airplane identified in paragraphs (c)(1) through (c)(7) of this AD unless the actions required by paragraphs (j) or (k), as applicable, of this AD have been accomplished on the MLG or MLG trunnion pin assembly.

(n) Credit for Previous Actions

(1) This paragraph provides credit for the requirements of paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 737–32–1448, dated May 19, 2011; or Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015.

(2) This paragraph provides credit for the requirements of paragraphs (i), (j), and (k) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015.

(o) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously for AD 2016–18–01 are approved as AMOCs for the corresponding provisions of this AD.

(p) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3527; email: *alan.pohl@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information

on the availability of this material at the FAA, call 206–231–3195.

Issued in Renton, Washington, on February 20, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–04228 Filed 3–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0062; Airspace Docket No. 18–ASO–3]

Proposed Amendment of Class D Airspace and Class E Airspace; Pensacola, FL, and Proposed Establishment of Class E Airspace; Milton, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace and Class E airspace extending upward from 700 feet above the surface at Choctaw Naval Outlying Field (NOLF), Milton, FL, by changing the city associated with the airport name in the above airspace classes and adjusting the geographic coordinates of the airport and the Santa Rosa TACAN navigation aid to match the FAA's aeronautical database. Additionally, Class E surface airspace would be established at Choctaw NOLF for the safety of aircraft landing and departing the airport when the air traffic control tower is closed. Also, an editorial change would be made to the Class D airspace legal description replacing ''Airport/Facility Directory'' with the term ''Chart Supplement''. This action would enhance the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before April 19, 2018.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Bldg. Ground Floor Rm W12–140, Washington, DC 20590; Telephone: 1 (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2018–0062; Airspace Docket No. 18–ASO–3, at the beginning of your comments. You may also submit and review received comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. You may also submit comments through the internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0062; Airspace Docket No. 18–ASO–3.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas,

air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 by:

Amending Class D airspace at Choctaw NOLF, Milton, FL, by adjusting the geographic coordinates of the airport and the Santa Rosa TACAN navigation aid to be in concert with the FAA's aeronautical database. This proposal also would make an editorial change replacing the city associated with the airport name in the airspace designation from Pensacola, to Milton, to comply with a recent change to FAA Order 7400.2L, Procedures for Handling Airspace Matters, dated October 12, 2017. Also, this action would replace the outdated term ''Airport/Facility Directory'' with the term ''Chart Supplement'' in the airspace legal description;

Establishing Class E surface area airspace at Choctaw NOLF, Milton, FL, for the safety of aircraft landing and departing the airport after the air traffic control tower closes; and

Amending Class E airspace extending upward from 700 feet above the surface at Choctaw NOLF, Milton, FL, by adjusting the geographic coordinates of the airport to be in concert with the FAA's aeronautical database. This proposal also would make an editorial change in the airspace designation from Choctaw Outlying Field, FL, to Milton, FL.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Milton, FL [Amended]

Choctaw NOLF, FL
(Lat. 30°30′25″ N, long. 86°57′35″ W)
Santa Rosa TACAN
(Lat. 30°36′55″ N, long. 86°56′15″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 2.5-mile radius of Choctaw NOLF and within 1.5 miles each side of the Santa Rosa TACAN 188° radial, extending from the 2.5-mile radius to 10.5 miles south of the TACAN; excluding that airspace within Restricted Area R–2915A. This Class D airspace area is effective during the specific dates and times established by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ASO FL E2 Milton, FL [New]

Choctaw NOLF, FL
(Lat. 30°30′25″ N, long. 86°57′35″ W)
Santa Rosa TACAN
(Lat. 30°36′55″ N, long. 86°56′15″ W)

That airspace extending upward from the surface within a 2.5-mile radius of Choctaw NOLF and within 1.5 miles each side of the Santa Rosa TACAN 188° radial, extending from the 2.5-mile radius to 10.5 miles south of the TACAN; excluding that airspace within Restricted Area R–2915A. This Class E airspace area is effective during the specific dates and times established by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO FL E5 Milton, FL [Amended]

Choctaw NOLF, FL
(Lat. 30°30′25″ N, long. 86°57′35″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Choctaw NOLF.

Issued in College Park, Georgia, on February 23, 2018.

Ryan W. Almasy,

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

[FR Doc. 2018–04324 Filed 3–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–1159; Airspace Docket No. 17–ASO–23]

Proposed Amendment of Class D and E Airspace; Jacksonville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace associated with New River Marine Corps Air Station (MCAS), at Jacksonville, NC, by establishing controlled airspace at Albert J. Ellis Airport. This proposal would provide the controlled airspace required for the new air traffic control tower at Albert J. Ellis Airport for the safety and management of instrument flight rules (IFR) operations. This action also would update the geographic coordinates of New River MCAS in Class D and E airspace, replace the outdated term ''Airport/Facility Directory'' with the term ''Chart Supplement'', and make an editorial change to the airspace designation.

DATES: Comments must be received on or before April 19, 2018.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Bldg, Ground Floor, Rm. W12–140, Washington, DC 20590; Telephone: (202) 366–9826. You must identify the Docket Number FAA–2017–1159; Airspace Docket No. 17–ASO–23, at the beginning of your comments. You may also submit and review received comments through the internet at *http://www.regulations.gov.*

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class D airspace at Albert J. Ellis Airport, Jacksonville, NC, to support the new air traffic control tower at the airport.

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number.) You may also submit comments through the internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–1159; Airspace Docket No. 17–ASO–23.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class D airspace associated with New River MCAS, Jacksonville, NC. This proposal would establish Class D airspace up to and including 2,600 feet MSL within a 4.2-mile radius of Albert J. Ellis Airport, Jacksonville, NC, providing the controlled airspace required for IFR operations supporting the new air traffic control tower.

The geographic coordinates of New River MCAS also would be adjusted to coincide with the FAA's aeronautical database.

Additionally, an editorial change would be made, removing the city associated with New River MCAS, in the airspace designation for Class D airspace and Class E airspace designated as an extension, to comply with a recent change to FAA Order 7400.2L, Procedures for Handling Airspace Matters, dated October 12, 2017.

Finally, this action would make an editorial change in the legal description for the classes above replacing ''Airport/Facility Directory'' with ''Chart Supplement''.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February

26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASO NC D Jacksonville, NC [Amended]

New River MCAS, NC
(Lat. 34°42′30″ N, long. 77°26′23″ W)
Albert J. Ellis Airport, NC
(Lat. 34°49′45″ N, long. 77°36′44″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5-mile radius of New River MCAS, and that airspace extending upward from the surface to and including 2,600 feet MSL within a 4.2-mile radius of Albert J. Ellis Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO NC E4 Jacksonville, NC [Amended]

New River MCAS, NC
(Lat. 34°42′30″ N, long. 77°26′23″ W)
New River TACAN
(Lat. 34°42′26″ N, long. 77°26′25″ W)

That airspace extending upward from the surface within 3.2 miles each side of New River TACAN 239° radial, extending from the 5-mile radius of New River MCAS to 7 miles southwest of the TACAN. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Chart Supplement.

Issued in College Park, Georgia, on February 23, 2018.

Ryan W. Almasy,

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

[FR Doc. 2018–04326 Filed 3–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0032]

RIN 1625–AA00

Safety Zone; Cooper River Bridge Run, Cooper River, and Town Creek Reaches, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on the waters of Cooper River and Town Creek Reaches in Charleston, South Carolina during the Cooper River Bridge Run. The Cooper River Bridge Run is a 10–K run across the Arthur Ravenel Bridge. The safety zone is necessary for the safety of the runners and the general public during this event. This proposed rulemaking would prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 20, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0032 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Justin.C.Heck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

On January 11, 2018, the Coast Guard was notified by the City of Charleston about the Cooper River Bridge 10–K Run, which will be held on April 7, 2018, and will impact waters of the Cooper River and Town Creek Reaches in Charleston, South Carolina. The purpose of this proposed rule is to ensure the safety of the runners, the general public, and vessels on the navigable waters during the scheduled event.

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of a standard 30 days for this notice of proposed rulemaking.

The Coast Guard believes a shortened comment period is necessary and reasonable because the safety zone is necessary to ensure the safety of event participants, the general public, vessels and these navigable waters during the race. Any delay in making this final rule effective by allowing comments for more than 15 days would not be in the best interest of public safety.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone on the waters of the Cooper River and Town Creek Reaches in Charleston, South Carolina from 7:30 a.m. to 10:30 a.m. on April 7, 2018, during the Cooper River Bridge Run. The duration of the zone is intended to ensure the safety of event participants,

the general public, vessels and these navigable waters during the race scheduled from 7:30 a.m. to 10:30 a.m. Approximately 40,000 runners are anticipated to participate in the race. No vessel or person would be permitted to enter the safety zone without obtaining permission from the Captain of the Port Charleston or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on: (1) The safety zone will only be enforced for a total of three hours; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, (5 U.S.C. 601–612), as amended requires Federal agencies to consider the potential impact of regulations on ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We have considered the impact of this proposed rule on small entities. This rule may affect the following entities, some of which may be small entities: the owner or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons discussed in Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone prohibiting vessel traffic from a limited area surrounding the Cooper River Bridge on the waters of the Cooper River and Town Creek Reaches for a 3 hour period. Normally such actions are categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; and Department of Homeland Security Delegation No. 0170.

■ 2. Add a temporary § 165.35T07–0032 to read as follows:

§ 165.T07–0032 Safety Zone; Cooper River Bridge Run, Charleston SC.

(a) *Location.* All waters of the Cooper River, and Town Creek Reaches encompassed within the following points: beginning at 32°48′32″ N, 079°56′08″ W, thence east to 32°48′20″ N, 079°54′20″ W, thence south to 32°47′20″ N, 079°54′29″ W, thence west to 32°47′20″ N, 079°55′28″ W, thence north to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Period.* This proposed rule will be enforced from 7:30 a.m. until 10:30 a.m. on April 7, 2018.

Dated: February 27, 2018.

John W. Reed,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2018–04367 Filed 3–2–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0081]

RIN 1625–AA00

Safety Zone; Xterra Swim, Intracoastal Waterway; Myrtle Beach, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on certain waters of the Atlantic Intracoastal Waterway in Myrtle Beach, South Carolina. This proposed safety zone is necessary to provide for the safety of the swimmers, participant vessels, spectators, and the general public during the swim portion of the Xterra Triathlon. This rule is intended to prohibit non-participant vessels and persons from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 4, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0081 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Justin.C.Heck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of Proposed Rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

On January 22, 2018, Go Race Productions notified the Coast Guard that it would be sponsoring the Xterra Myrtle Beach Triathlon from 8 a.m. to 9 a.m. on April 22, 2018. Approximately 75 swimmers are anticipated to participate in the swim portion of the event, which is located on certain waters of the Atlantic Intracoastal Waterway in Myrtle Beach, South Carolina. The Captain of the Port Charleston (COTP) has determined that the potential hazards associated with the swim portion of the Triathlon constitute a safety concern for anyone within the proposed safety zone. The purpose of this rulemaking is to ensure safety of life on the navigable water of the United States during the event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone on the Atlantic Intracoastal Waterway in Myrtle Beach, South Carolina during the Xterra Myrtle Beach Triathlon, on April 22, 2018. The duration of the safety zone is intended to ensure the safety of life on the navigable waters of the Intracoastal before, during, and after the scheduled 8 a.m. to 9 a.m. swim portion of the Triathlon. Approximately 75 participants are expected to participate in the swim portion of the race. No vessel or person would be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives. The proposed regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for one hour; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

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

We have considered the impact of this proposed rule on small entities. This rule may affect the following entities, some of which may be small entities: The owner or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons stated in section IV.A. above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01,

which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a temporary safety zone with a two-hour enforcement period that would prohibit entry to certain waters of the Atlantic Intracoastal Waterway during the swim portion of a Triathlon. Normally such actions are categorically excluded from further review under paragraph L 60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165. T07–0081 to read as follows:

§ 165.T07–0081 Safety Zone; Xterra Swim, Myrtle Beach SC

(a) *Location.* The following is a safety zone: Certain waters of the Atlantic Intracoastal Waterway within the following two points of position and the North shore: 33°45′03″ N, 78°50′47″ W to 33°45′18″ N, 78°50′14″ W, located in Myrtle Beach, South Carolina. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Period.* This rule will be enforced on from 7:30 a.m. until 9:30 a.m. on April 22, 2018.

Dated: February 20, 2018.

John W. Reed,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2018–04368 Filed 3–2–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0056]

RIN 1625–AA00

Safety Zone; Charleston Race Week, Charleston Harbor, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of the Charleston Harbor in Charleston, South Carolina during Charleston Race Week. Charleston Race Week is a series of sail boat races throughout Charleston Harbor. The safety zone is necessary to ensure the safety of participants, spectators, and the general public during the event. This regulation prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within the safety zones unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before March 20, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0056 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the

SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Justin.C.Heck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of Proposed Rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

On January 14, 2018, the Charleston Ocean Racing Association notified the Coast Guard that it will be sponsoring a series of sailboat races from 9 a.m. until 5 p.m., on April 12, 2018 through April 15, 2018. The purpose of the rule is to ensure the safety of the event participants, the general public, vessels and the navigable waters during Charleston Race Week.

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of a standard 30 days for this notice of proposed rulemaking. The Coast Guard believes a shortened comment period is necessary and reasonable because the safety zone is necessary to ensure the safety of event participants, the general public, vessels and these navigable waters during the race. Any delay in making this final rule effective by allowing comments for more than 15 days would not be in the best interest of public safety.

The legal basis for the proposed rule is the Coast Guard's authority to establish regulated safety zones and other limited access areas is 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone on the waters of the Charleston Harbor in Charleston, South Carolina during Charleston Race Week. The races are scheduled to take place from 9 a.m. to 5 p.m., on April 12, 2018, through April 15, 2018. Approximately 250 sailboats are anticipated to participate in the races, and approximately 30 spectator vessels are expected to attend the event. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16 to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on: (1) Although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; and (2) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or

more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the waters of the Charleston Harbor. Normally such actions are categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0056 to read as follows:

§ 165.T07–0056 Safety Zone; Charleston Race Week, Charleston Harbor, Charleston, SC.

(a) *Location.* The rule consists of the following four race areas.

(1) *Race Area #1.* All waters of the Charleston Harbor encompassed within a 700 yard radius of position 32°46′10″ N, 079°55′15″ W.

(2) *Race Area #2.* All waters of the Charleston Harbor encompassed within a 700 yard radius of position 32°46′02″ N, 079°54′15″ W.

(3) *Race Area #3.* All waters of the Charleston Harbor encompassed within a 700 yard radius of position 32°45′55″ N, 079°53′39″ W.

(4) *Race Area #4.* All waters of the Charleston Harbor encompassed within a 600 yard radius of position 32°47′40″ N, 079°55′10″ W.

(5) *Race Area #5.* All waters of the Charleston Harbor and Entrance Channel encompassed within a 500 yard radius of position 32°45′34″ N, 79°52′09″ W continuing to Charleston Entrance Channel Buoys Green 11 (LLN 2395.5) and Red 12 (LLN 2400).

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced from 9 a.m. until 5 p.m., on April 12, 2018, through April 15, 2018.

Dated: February 27, 2018.

J.W. Reed,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2018–04366 Filed 3–2–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0015]

RIN 1625–AA08

Safety Zone; Black Warrior River, Tuscaloosa, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for all navigable waters of the Black Warrior River, extending the entire width of the river between Mile Marker (MM) 335.0 and MM 337.0 in Tuscaloosa, AL. The proposed rulemaking is necessary to provide for the safety of life and property on these navigable waters during the Tuscaloosa Air Show. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless specifically authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 4, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0015 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, 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:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Mobile
DHS Department of Homeland Security
FR Federal Register
MM Mile Marker
NPRM Notice of Proposed Rulemaking
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On November 30, 2017, the sponsor for the Tuscaloosa Air Show submitted an application for a marine event permit for the Tuscaloosa Air Show that will take place every day from 10 a.m. through 5 p.m. from April 12, 2018 through April 15, 2018. The air show will consist of various flight demonstrations over the Black Warrior River between Mile Marker (MM) 335.0 and MM 337.0 in Tuscaloosa, AL. Over the years, there have been unfortunate instances of aircraft mishaps that involve crashing during performances at various air shows around the world. Occasionally, these incidents result in a wide area of scattered debris in the water that can damage property or cause significant injury or death to the public observing the air shows. The Captain of the Port Sector Mobile (COTP) has determined a safety zone is necessary to protect the general public from hazards associated with aerial flight demonstrations.

The purpose of this proposed rulemaking is to ensure the safety of vessels and persons during the air show on the navigable waters of the Black Warrior River between MM 335.0 and 337.0 in Tuscaloosa, AL. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone on the Black Warrior River, extending the entire width of the river between MM 335.0 and 337.5 in Tuscaloosa, AL every day from 10 a.m. through 5 p.m. from April 12, 2018 through April 15, 2018. The proposed rulemaking is needed to provide for the safety of life and property on these navigable waters during the Tuscaloosa Air Show. This proposed rulemaking restricts transit into, through, and within the zone unless specifically authorized by the COTP. No vessel or person would be permitted to enter the zone without obtaining permission from the COTP or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM would be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''. All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP to patrol the zone.

Spectator vessels desiring to transit the zone may do so only with prior approval of the PATCOM and when so directed by that officer would be operated at a minimum safe navigation speed in a manner which will not endanger any other vessels. No spectator vessel shall anchor, block, loiter, or impede the through transit of official patrol vessels in the zone during the effective dates and times, unless cleared for entry by or through an official patrol vessel. Any spectator vessel may anchor outside the zone, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the zone in such a way that they shall not interfere with the progress of the air show. Such mooring must be complete at least 30 minutes prior to the establishment of the zone and remain moored through the duration of the air show.

The COTP or a designated representative may forbid and control the movement of all vessels in the zone. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the zone, citation for failure to comply, or both.

The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative would terminate enforcement of the safety zone at the conclusion of the air show.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not

been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location, and duration of the proposed rulemaking. The proposed safety zone would take place on a two mile stretch of the on the Black Warrior River between MMs 335.0 and 337.0, during a short duration of only seven hours, lasting for only four days from April 12, 2018 through April 15, 2018, which is a time of year of lower than normal traffic. Additionally, the Coast Guard would issue Broadcast Notices to Mariners via VHF–FM marine channel 16 about the safety zone so that waterway users may plan accordingly for transits during this restriction. The proposed rule also allows vessels to seek permission from the COTP or a designated representative to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone on the Black Warrior River, extending the entire width of the river, between MMs 335.0 and 337.0. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under **ADDRESSES**.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov*

and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1; 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add§ 165.T08–0015 to read as follows:

§ 165.T08–0015 Safety Zone; Black Warrior River, Tuscaloosa, AL.

(a) *Location.* The following area is a proposed safety zone: All navigable waters of the Black Warrior River, extending the entire width of the river, between mile marker (MM) 335.0 and MM 337.5 in Tuscaloosa, AL.

(b) *Enforcement period.* This section is effective from 10 a.m. on April 12, 2018 through 5 p.m. on April 15, 2018.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting through, or exiting from this area is prohibited unless authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''.

(2) All persons and vessels not registered with the event sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and when so directed by that officer will be operated at a minimum safe navigation speed in a manner that will not endanger participants in the zone or any other vessels.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(6) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

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

(8) The Patrol Commander will terminate enforcement of the safety zone at the conclusion of the event.

(9) Entry into this zone is prohibited unless authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative.

(10) Persons or vessels seeking to enter into or transit through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM channels 16 or by telephone at 251–441–5976.

(11) If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: February 2, 2018.

M.R. Mclellan,

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

[FR Doc. 2018–04253 Filed 3–2–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R01–OAR–2017–0343; A–1–FRL–9974–77–Region 1]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant the Vermont Department of Environmental Conservation (VT DEC) the authority to implement and enforce, with respect to area sources only, the Vermont Perchloroethylene Dry Cleaning Rule in place of the National Emissions Standards for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities (Dry Cleaning NESHAP). Pursuant to the Clean Air Act (CAA), the VT DEC submitted a request for approval to implement and enforce Vermont's Perchloroethylene Dry Cleaning Rule of the Vermont Air Pollution Control Regulations as a partial substitution for the National Emissions Standards for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities (Dry Cleaning NESHAP), as it applies to area sources. EPA has reviewed this request and is proposing to determine that the Vermont Perchloroethylene Dry Cleaning Rule satisfies the requirements necessary for partial rule substitution. Thus, EPA is hereby proposing to grant VT DEC's request. This action would not affect the authority of any party to implement and enforce the Dry Cleaning NESHAP with respect to major source dry cleaners. This approval would make the Vermont Perchloroethylene Dry Cleaning Rule federally enforceable in Vermont.

DATES: Written comments must be received on or before April 4, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2017–0343 at *http://www.regulations.gov,* or via email to *lancey.susan@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 *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, telephone number 617–918–1656, *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the Vermont Perchloroethylene Dry Cleaning Rule in place of the Dry Cleaning NESHAP for area sources as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: February 26, 2018.

Alexandra Dapolito Dunn,

Regional Administrator, EPA New England.

[FR Doc. 2018–04276 Filed 3–2–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XF947

Atlantic Highly Migratory Species; Shortfin Mako Shark Management Measures

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

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS); request for comments.

SUMMARY: NMFS announces the availability of an Issues and Options document and its intent to prepare an EIS under the National Environmental Policy Act (NEPA) analyzing impacts of potential new management measures for shortfin mako sharks. Such measures would be implemented through rulemaking to address overfishing and to implement, as necessary and appropriate, measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT) (ICCAT Recommendation 17–08) in response to the 2017 shortfin mako shark stock assessment. Based on that assessment, NMFS determined that North Atlantic shortfin mako sharks were overfished and experiencing overfishing in December 2017. Management alternatives considered would be to meet NMFS's obligations related to ending overfishing and establishing a foundation for rebuilding the shortfin mako shark stock consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Scoping is underway for this action, and NMFS requests comments on a preliminary Issues and Options document that presents range of commercial and recreational management measures, in both directed and incidental fisheries, including, but not limited to, commercial and recreational retention limits, quota levels, minimum size limits, gear modifications, and electronic reporting.

DATES: Four scoping meetings and a conference call will be held from March through May 2018. See **SUPPLEMENTARY INFORMATION** for meeting and call dates and locations. Scoping comments must be received no later than 5 p.m., local time, on May 7, 2018.

ADDRESSES: You may submit comments on the Issues and Options document, identified by NOAA–NMFS–2018–0011, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0011,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Randy Blankinship, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the 2018 shortfin mako shark Issues and Options document and supporting documents are available from the HMS Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or constituents can contact Guý DuBeck by phone at 301–427–8503 for hard copies. Copies of the 2017 ICCAT Standing Committee on Research and Statistics (SCRS) shortfin mako shark benchmark stock assessment can be found online at *http://iccat.int/Documents/Meetings/Docs/2017_SCRS_REP_ENG.pdf.*

FOR FURTHER INFORMATION CONTACT: Guý DuBeck or Karyl Brewster-Geisz at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the Atlantic shark fisheries through the 2006 Consolidated Atlantic HMS Fishery Management Plan and its amendments as required under the Magnuson-Stevens Act. ICCAT manages sharks caught in association with ICCAT species (tuna and tuna-like species) throughout the Atlantic and the adjacent seas, and NMFS implements ICCAT measures as necessary and appropriate under ATCA.

The North Atlantic shortfin mako shark (*Isurus oxyrinchus*) is a highly migratory species that ranges across the entire North Atlantic Ocean and is

caught by numerous countries. These sharks are a small but valued component of U.S. recreational and commercial shark fisheries. In recent years, U.S. catch has represented only approximately 11 percent of the total catch of the species in the North Atlantic by all reporting countries. International measures are, therefore, critical to the species' effective conservation and management.

In August 2017, ICCAT's SCRS conducted a new benchmark stock assessment on the North Atlantic shortfin mako stock. At its November 2017 annual meeting, ICCAT accepted this stock assessment and determined the stock to be overfished with overfishing occurring. On December 13, 2017, based on this assessment, NMFS issued a status determination finding the stock to be overfished and experiencing overfishing using domestic criteria. The assessment specifically indicated that biomass (B_{2015}) is substantially less than the biomass at maximum sustainable yield (B_{MSY}) for eight of the nine models used for the assessment (B_{2015}/B_{MSY} = 0.57–0.85). In the ninth model, spawning stock fecundity (SSF) was less than SSF_{MSY} (SSF_{2015}/SSF_{MSY} = 0.95). Additionally, the assessment indicated that fishing mortality (F_{2015}) was greater than F_{MSY} (1.93–4.38), with a combined 90-percent probability from all models that the population is overfished with overfishing occurring.

The 2017 assessment estimated that total North Atlantic shortfin mako catches across all ICCAT parties are currently between 3,600 and 4,750 mt per year, and that total catches would have to be at 1,000 mt or below (72–79 percent reductions) to prevent further population declines and that catches of 500 t or less currently are expected to stop overfishing and begin to rebuild the stock. The projections indicate that a total allowable catch of 0 mt would produce a greater than 50 percent probability of rebuilding the stock by the year 2040, which is approximately equal to one mean generation time. Research indicates that post-release survival rates of Atlantic shortfin mako sharks are high (70 percent); however, the assessment could not determine if requiring live releases alone would reduce landings sufficiently to end overfishing and rebuild the stock.

ICCAT Recommendation 17–08

Based on the stock assessment information, ICCAT adopted new management measures for Atlantic shortfin mako (Recommendation 17–08) at its annual meeting in November 2017. The United States must implement those measures as necessary and appropriate under ATCA. These measures largely focus on maximizing live releases of Atlantic shortfin mako sharks, allowing retention only in certain limited circumstances, increasing minimum size limits, and improving data collection in ICCAT fisheries. In November 2018, ICCAT will review the catches from the first six months of 2018 and decide whether these measures should be modified. In 2019, the SCRS will evaluate the effectiveness of these measures in ending overfishing and beginning to rebuild the stock. SCRS will also provide rebuilding information that reflects rebuilding timeframes of at least two mean generation times. Also in 2019, ICCAT will establish a rebuilding program that will have a high probability of avoiding overfishing and rebuilding the stock to B_{MSY} within a timeframe that takes into account the biology of the stock.

2018 Shortfin Mako Shark Interim Final Rule

Consistent with these requirements, NMFS published an interim final rule using emergency Magnuson-Stevens Act authority to temporarily and immediately implement the following measures: (1) Commercial fishermen on vessels deploying pelagic longline gear must release all live shortfin mako sharks and can only retain a shortfin mako shark if it is dead at haulback, (2) commercial fishermen using gear other than pelagic longline commercial gear (*e.g.,* bottom longline, gillnet, handgear, etc.) must release all shortfin mako sharks, whether they are dead or alive, and (3) recreational fishermen must release any shortfin mako sharks smaller than the minimum size of 83 inches fork length (FL). The interim final rule expires on August 29, 2018, and may be extended for an additional 186 days under the Magnuson-Stevens Act provisions.

Request for Comments

Both commercial and recreational fishing activities interact with and as allowable have retained shortfin mako sharks. Under the interim final rule, commercial fishermen with a limited access commercial shark permit may retain shortfin mako sharks caught on pelagic longline gear provided the shark was dead at haulback. Shortfin mako sharks caught on any other commercial gear type may not be retained. Similarly, under the interim final rule, vessels with an HMS Angling or Charter/Headboat permit may retain one shortfin mako shark greater than the minimum size of 83 inches FL per vessel.

NMFS anticipates changes to shark management as a result of the 2017 shortfin mako shark stock assessment through the rulemaking process and requests comments on potential future management options for this action. NMFS prepared an Issues and Options paper detailing potential management measures to meet its ATCA and Magnuson-Stevens Act obligations and to address overfishing of and begin rebuilding shortfin mako sharks. The Issues and Options paper is available online at the HMS website: *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species.* Potential management measures in the Issues and Options paper include commercial and recreational fishing requirements. Four scoping meetings and a conference call will be held (see Table 2 for meeting times and locations) to provide the opportunity for public comment on potential shortfin mako shark management measures. These comments will be used to assist in the development of the upcoming amendment to the 2006 Consolidated Atlantic HMS FMP.

TABLE 1—TIME AND LOCATIONS OF THE FOUR SCOPING MEETINGS AND CONFERENCE CALL

Date	Time	Meeting location	Meeting address
March 15, 2018	4–8 p.m	Panama City, FL	National Marine Fisheries Service, Southeast Fisheries Science Center, 3500 Delwood Beach Road, Panama City, FL 32408.
March 21, 2018	4–8 p.m	Manteo, NC	Commissioners Meeting Room, Dare County Administration Building, 954 Marshall C. Collins Dr., Manteo, NC 27954.

TABLE 1—TIME AND LOCATIONS OF THE FOUR SCOPING MEETINGS AND CONFERENCE CALL—Continued

Date	Time	Meeting location	Meeting address
April 4, 2018	2–4 p.m	Conference Call	To participate in the conference call, please call: (800) 779–3136. Passcode: 9421185. To participate in the webinar, RSVP at: *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=e0e45a6863a2dec162452b2b6240ef3e3*, A confirmation email with webinar log-in information will be sent after RSVP is registered.
April 12, 2018	4–8 p.m	Manahawkin, NJ	Stafford Branch Public Library, 129 North Main St., Manahawkin, NJ 08050.
April 19, 2018	5–8 p.m	Gloucester, MA	National Marine Fisheries Service, Greater Atlantic Regional Office, 55 Great Republic Dr., Gloucester, MA 01930.

The public is reminded that NMFS expects participants at public scoping meetings and on conference calls to conduct themselves appropriately. At the beginning of the scoping meetings and conference call, a representative of NMFS will explain the ground rules (*e.g.,* all comments are to be directed to the Agency; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The meeting locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Guý DuBeck at 301–427–8503, at least 7 days prior to the meeting. A NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment if they so choose, regardless of the controversial nature of the subject matter. If attendees do not respect the ground rules they will be asked to leave the scoping meeting or conference call.

Because the rulemakings overlap for some gear types, the public scoping meetings being held in Panama City, FL, Manteo, NC, and Manahawkin, NJ will be held in conjunction with public scoping meetings for pelagic longline bluefin tuna area-based and weak hook management. The shortfin mako shark management measure presentation will likely be given first unless polling of the audience indicates another approach is appropriate. After each presentation, public comment for that issue will be received. Meeting attendees interested in this issue are encouraged to show up at the beginning of the meeting to help determine the order of the presentations. The second presentation will not start any later than 6 p.m.

In addition to the four scoping meetings and conference call, NMFS has requested to present the issues and options document to the five Atlantic Regional Fishery Management Councils (the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Fishery Management Councils) and the Atlantic and Gulf States Marine Fisheries Commissions during the public comment period. Please see the Councils' and Commissions' spring meeting notices for times and locations.

Based on the 2017 shortfin mako shark stock assessment, implementation of new management measures via an amendment to the 2006 Consolidated HMS FMP is necessary to address overfishing and rebuild the stock. NMFS anticipates completing this amendment and any related documents in early 2019.

Dated: February 28, 2018.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–04430 Filed 3–1–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–XF559

Fisheries of the Exclusive Economic Zone Off Alaska; Essential Fish Habitat Amendments

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

ACTION: Notification of availability of fishery management plan amendments; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendment 115 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area, Amendment 105 to the FMP for Groundfish of the Gulf of Alaska, Amendment 49 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs, Amendment 13 to the FMP for the Salmon Fisheries in the EEZ Off Alaska, and Amendment 2 to the FMP for Fish Resources of the Arctic Management Area, (collectively Amendments) to the Secretary of Commerce for review. If approved, these Amendments would revise the FMPs by updating the description and identification of essential fish habitat (EFH), and updating information on adverse impacts to EFH based on the best scientific information available. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable laws.

DATES: Comments on the amendments must be submitted on or before May 4, 2018.

ADDRESSES: You may submit your comments, identified by NOAA–NMFS–2017–0087, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0087,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record,

and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the Amendments, maps of the EFH areas, the Environmental Assessment (the analysis), and the Final EFH five-year Summary Report prepared for this action may be obtained from *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that Amendment 115 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI Groundfish FMP); Amendment 105 to the FMP for Groundfish of the Gulf of Alaska (GOA Groundfish FMP); Amendment 49 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP); Amendment 13 to the FMP for the Salmon Fisheries in the EEZ Off Alaska (Salmon FMP); and Amendment 2 to the FMP for Fish Resources of the Arctic Management Area (Arctic FMP) are available for public review and comment.

The Council prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600, 679, and 680. Section 303(a)(7) of the Magnuson-Stevens Act requires that each FMP describe and identify EFH, minimize to the extent practicable the adverse effects of fishing on EFH, and identify other measures to promote the conservation and enhancement of EFH. The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Implementing regulations at § 600.815 list the EFH contents required in each fishery management plan and direct councils to conduct a complete review of all EFH information at least once every five years (referred to here as ''the 5-year review'').

The Council developed the Amendments as a result of a new information available through the 5-year review that began in 2014 (2015 5-year review) and adopted the Amendments in April 2017. The 2015 5-year review is the Council's third review of EFH in the FMPs. Prior 5-year reviews were conducted in 2005 and 2010. The Council recommended amendments to the description and identification of EFH in the FMPs with new information and improved mapping as described in the Final EFH 5-year Summary Report for the 2015 5-year review (Summary Report, see **ADDRESSES**). The Council also recommended updates to EFH information based on the best available information in the Summary Report (see **ADDRESSES**). The Council recommended updates to EFH for all FMPs except for the Scallop FMP because no new information is available to update EFH descriptions for scallops.

The Amendments would make the following changes to the FMPs:

- Amendment 115 to the BSAI Groundfish FMP and Amendment 105 to the GOA Groundfish FMP (Amendments 115/105) would update the EFH descriptions for all managed species and update the identification of EFH for those managed species for which new population density or habitat suitability information is available. Sections 4.2.1 and 5.2.1 of the Environmental Assessment (see **ADDRESSES**) describe which EFH updates would be made for each species and life stage. Amendments 115/105 would also update information in Appendix F on adverse impacts to EFH based on the best scientific information available in the Summary Report (see **ADDRESSES**).
- Amendment 49 to the Crab FMP would update the EFH descriptions for all managed species and update the identification of EFH for those managed species for which new population density or habitat suitability information is available. Section 6.2.1 of the Environmental Assessment (See **ADDRESSES**) describes which EFH updates would be made for each species and life stage. Amendment 49 would also update information in Appendix F on adverse impacts to EFH based on the best scientific information available in the Summary Report (see **ADDRESSES**).
- Amendment 13 to the Salmon FMP would replace Appendix A, ''Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC),'' with a new Appendix A based on the best available information in the Summary Report (see **ADDRESSES**). Amendment 13 to the Salmon FMP would update the marine EFH descriptions for all salmon species and update the identification of marine EFH for each species and life stage for which new population density or habitat suitability information is available. Section 7.2.1 of the Environmental Assessment (see **ADDRESSES**) describes which EFH updates would be made for each species and life stage. Amendment 13 would also update information in Appendix A on adverse impacts to EFH based on the best scientific information available in the Summary Report (see **ADDRESSES**).
- Amendment 2 to the Arctic FMP would update the EFH descriptions for all managed species for which new information is available, and update the identification of EFH for snow crab. Section 8.2.1 of the Environmental Assessment (See **ADDRESSES**) describes which EFH updates would be made for each species and life stage. Amendment 2 would also update information in Appendix C on adverse impacts to EFH based on the best scientific information available in the Summary Report (see **ADDRESSES**).

NMFS is soliciting public comments on the Amendments through the end of the comment period (see **DATES**). All relevant written comments received by the end of the applicable comment period will be considered by NMFS in the approval/disapproval decision for the Amendments and addressed in the response to comments in the final decision. Comments received after end of the applicable comment period will not be considered in the approval/disapproval decision on the Amendments. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period (see **DATES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2018–04351 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 83, No. 43
Monday, March 5, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 28, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 4, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Foot-and-Mouth Disease; Prohibition on Importation of Farm Equipment.

OMB Control Number: 0579–0195.

Summary of Collection: The Animal Health Protection Act of 2002 is the primary Federal law governing the protection of animal health. Regulations contained in 9 CFR chapter 1, subchapter D, parts 91 through 99 prohibits the importation of used farm equipment into the United States from regions in which foot-and-mouth (FMD) disease or rinderpest exist, unless the equipment is accompanied by an original certificate signed by an unauthorized official of the national animal health service of the exporting region that states that the equipment was steam-cleaned prior to export to the United States so that it is free of exposed dirt and other particulate matter. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products.

Need and Use of the Information: APHIS will collect information through the use of a certification statement completed by the farm equipment exporter and signed by an authorized official of the national animal health service of the region of origin, stating that the steam-cleaning of the equipment was done prior to export to the United States. This is necessary to help prevent the introduction of FMD into the United States. If the information were not collected APHIS would be forced to discontinue the importation of any used farm equipment from FMD affected regions; a development that could have a damaging financial impact on exporters and importers of the equipment.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 71.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,492.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–04421 Filed 3–2–18; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Correction: Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Correction: Announcement of meeting.

SUMMARY: The Commission on Civil Rights published a document February 23, 2018, announcing an upcoming Arizona Advisory Committee. The document contained incorrect public access to the meeting.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, DFO, at *afortes@usccr.gov,* 213–894–3437.

Correction: In the **Federal Register** of February 23, 2018, in FR Doc. 2018–03705, on page 8046, in the first, second and third columns, correct the Dates caption by deleting the Public Call Information. The meeting will be in person only.

Dated: February 27, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–04353 Filed 3–2–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket Number 15–BIS–0005 (consolidated)]

In the Matters of: Trilogy International Associates, Inc., William Michael Johnson, Respondents; Final Decision and Order

This matter is before me upon a Recommended Decision and Order (''RDO'') of an Administrative Law Judge (''ALJ''), as further described below.[1]

[1] I received the certified record from the ALJ, including the original copy of the RDO, for my review on January 25, 2018. The RDO is dated

Continued

I. Background

On October 2, 2015, the Bureau of Industry and Security (''BIS'') issued a Charging Letter to Respondent Trilogy International Associates, Inc. (''Trilogy International'' or ''Trilogy''), alleging that Trilogy committed three violations of Section 764.2(a) of the Export Administration Regulations (''EAR'' or ''Regulations''),[2] by exporting national-security-controlled items to Russia without the required BIS licenses. On the same date, BIS also issued a Charging Letter to William Michael Johnson (''Johnson''), Trilogy's President and General Manager, alleging that Johnson committed three violations of Section 764.2(b) of the Regulations by causing, aiding, and/or abetting Trilogy's unlawful exports.

The Charging Letter issued against Trilogy (''Trilogy Charging Letter'') included the following specific allegations:

Charges 1–3 15 CFR 764.2(a)—Engaging in Prohibited Conduct

1. On or about January 23, 2010, April 6, 2010, and May 14, 2010, respectively, Trilogy International engaged in conduct prohibited by the Regulations by exporting items subject to the Regulations and controlled on national security grounds to Russia without the required BIS export licenses.

2. The items involved were an explosives detector and a total of 115 analog-to-digital converters. The items were classified under Export Control Classification Numbers 1A004 and 3A001, respectively, controlled as indicated above on national security grounds, and valued in total at approximately $76,035.

3. Each of the items required a license for export to Russia pursuant to Section 742.4 of the Regulations.

4. Trilogy International exported the items to TAIR R&D Co. Ltd. (''TAIR R&D Co.''), a Russian company. TAIR R&D Co. employed Alexander Volkov, who had previously formed Trilogy International along with William Michael Johnson (''Johnson''). At all times pertinent hereto, Johnson was President and General Manager of Trilogy International, directed or controlled its operations, and participated in the export transactions at issue.

5. After receiving requests for the items from TAIR R&D Co., Trilogy International procured the items from suppliers in the U.S. and abroad. Once in possession of the items, Trilogy International issued invoices, signed by Johnson and dated January 20, March 4, and April 15, 2010, respectively, to TAIR R&D Co. for the sale and export of the items from the United States to Russia.

6. Trilogy then exported the items from the United States to TAIR R&D Co. in Russia on or about January 23, 2010, April 6, 2010, and May 14, 2010, respectively.

7. As alleged above, each of the national-security-controlled items at issue required a license for export to Russia pursuant to Section 742.4 of the Regulations. However, no license was sought or obtained by Trilogy International in connection with any of the exports at issue.

8. By exporting these items without the required BIS export licenses, Trilogy International committed three violations of Section 764.2(a) of the Regulations.

Trilogy Charging Letter at 1–2.[3]

The Charging Letter against Johnson (''Johnson Charging Letter'') included the following specific allegations:

Charges 1–3 15 CFR 764.2(b)—Causing, Aiding, or Abetting a Violation

1. Between on or about January 20, 2010, and May 14, 2010, Johnson caused, aided, and/or abetted three violations of the Regulations, specifically, three exports from the United States to Russia of items subject to the Regulations without the required BIS export licenses.

2. The items involved were an explosives detector and a total of 115 analog-to-digital converters, classified under Export Control Classification Numbers 1A004 and 3A001, respectively, controlled on national security grounds, and valued in total at approximately $76,035.

3. Each of the items at issue required a BIS license for export to Russia pursuant to Section 742.4 of the Regulations.

4. At all times pertinent hereto, Johnson was President and General Manager of Trilogy International Associates Inc. (''Trilogy International'''), of Modesto, California, and directed or controlled Trilogy International's operations.

5. Johnson also participated in and facilitated the transactions at issue, including, inter alia, procuring the items from suppliers after receiving requests from TAIR R&D Co. Ltd. (''TAIR R&D Co.''), a Russian company that employed Alexander Volkov, with whom Johnson had previously formed Trilogy International.

6. Johnson placed orders with U.S. suppliers for the analog-to-digital converters at issue and was listed as the purchaser of those items on supplier invoices dated January 21, 2010, and May 12, 2010, respectively.

7. Johnson also signed Trilogy International invoices dated January 20, March 4, and April 15, 2010, respectively, in connection with the sales and exports to TAIR R&D Co. at issue, and provided these invoices along with the items to a freight forwarder.

8. The items were then shipped on behalf of Trilogy International to TAIR R&D Co. in Russia on or about January 23, 2010, April 6, 2010, and May 14, 2010, respectively.

9. As alleged above, each of the national-security-controlled items at issue required a license for export to Russia pursuant to Section 742.4 of the Regulations. However, no license was sought or obtained by Johnson or Trilogy International in connection with any of the exports at issue.

10. By causing, aiding, and/or abetting the export of these items without the required BIS export licenses, Johnson committed three violations of Section 764.2(b) of the Regulations.

Johnson Charging Letter at 1–2.[4]

On June 17, 2016, Respondent Trilogy and Respondent Johnson (collectively, ''Respondents'') filed a joint answer to the Charging Letters, and the proceedings against Trilogy and Johnson were subsequently consolidated.

Following discovery, BIS filed its Motion for Summary Decision pursuant to Section 766.8 of the Regulations on January 13, 2017, as to all charges against Trilogy and all charges against Johnson. On the same date, Respondents filed their Motion for Summary Dismissal as to all charges against them, relying upon the argument that a third party, the freight forwarder, bore responsibility for the unlicensed exports.

On February 8, 2017, the ALJ issued an ''Initial Decision'' denying Respondents' Motion for Summary Dismissal and granting summary decision for BIS on the three Section 764.2(a) unlicensed export charges against Trilogy. However, the ALJ denied summary decision for BIS with respect to the three Section 764.2(b) causing, aiding, or abetting charges against Johnson. The ALJ treated Trilogy and Johnson as a single, collective party and as a result concluded that the Section 764.2(b) charges were ''multiplicious'' of the underlying Section 764.2(a) unlicensed export charges.

Following opportunity for briefing on sanctions issues, the ALJ issued an ''Initial Decision Imposing Sanctions''

January 24, 2018. BIS submitted a timely response to the RDO, while Respondent has not filed a response to the RDO.

[2] The Regulations are codified at 15 CFR parts 730–774 (2017). The violations charged occurred in 2010. The Regulations governing the violations at issue are found in the 2010 version of the Code of Federal Regulations. The 2017 Regulations govern the procedural aspects of this case.

The Regulations issued pursuant to the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*) (the ''Act'' or ''EAA''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 FR 39,005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, et seq. (2012)).

[3] The Trilogy Charging Letter also includes a Schedule of Violations that provides additional detail concerning the underlying transactions. The Charging Letter, including the Schedule of Violations, will be posted on BIS's ''eFOIA'' webpage along with a copy of this Order (and a copy of the RDO).

[4] The Johnson Charging Letter, like the Trilogy Charging Letter, also includes a Schedule of Violations that provides additional detail concerning the underlying transactions and that will be included as part of the Charging Letter posted on BIS's eFOIA webpage. See note 3, *supra*.

on April 24, 2017, in which the ALJ also treated Respondents as a single, collective entity or individual, and indicated that a civil penalty of $100,000 and a seven-year denial of export privileges would be imposed. On April 28, 2017, a ''Notice of Errata'' issued, signed by a paralegal specialist that was designed to correct the title of the ALJ's April 24, 2017 decision from ''Initial Decision Imposing Sanctions,'' to ''Recommended Decision Imposing Sanctions,'' and to make corresponding changes to some of the text of that decision.

The case was thereafter referred to the Under Secretary's Office as of May 2, 2017. On May 30, 2017, then-Acting Under Secretary Daniel O. Hill issued an order (''Remand Order'') vacating the Notice of Errata and remanding this consolidated proceeding for the ALJ to, *inter alia,* issue a single RDO in accordance with the provisions of Section 766.17(b)(2) of the Regulations and address all charges on the merits against each of the respondents. In the Remand Order, the Acting Under Secretary determined that the ALJ had erred in treating the two respondents collectively, and directed that on remand the ALJ treat the respondents as distinct parties and reconsider his denial of summary decision with regard to the Section 764.2(b) charges against Respondent Johnson. In this regard, the Acting Under Secretary determined that it is ''well established that a corporate officer can be charged with causing, aiding or abetting the corporation's underlying violations.'' Remand Order, at 2.

On January 24, 2018, after providing the parties opportunity for further briefing and based upon the record before him, the ALJ issued the RDO, in which he concluded that Respondent Trilogy had committed the three violations of Section 764.2(a) of the Regulations alleged in the Trilogy Charging Letter, and that Respondent Johnson committed the three violations of Section 764.2(b) alleged in the Johnson Charging Letter. The ALJ determined that, in accordance with Section 766.8 of the Regulations, BIS established that there are no genuine issues of material fact and that BIS is entitled to summary decision as a matter of law as to all the charges at issue. The ALJ set out detailed findings of undisputed material fact in the RDO regarding each of the charges, RDO, at 5–7, including that ''Johnson directed, controlled, and performed Trilogy's operations at all times relevant to the charges . . . and acted on behalf of Trilogy.'' *Id.* at 5, ¶ 3.[5] In addition to finding that Johnson directed and controlled Trilogy's operations, the ALJ also found that Johnson took specific actions in connection with each of the unlawful unlicensed exports, including in connection with procuring the items, preparing and signing documentation for the sale of the items to TAIR R&D Co., and/or providing directions to the freight forwarder regarding the export of the items to Russia. *See id.* at 5–7, ¶¶ 3, 6, 10–11, 14–15, 17–18.

The ALJ determined that Respondents had not provided any evidence showing the existence of any genuine issues of material fact and that Respondents had failed to factually or legally substantiate their argument that it was the freight forwarder, rather than Respondents, that bore responsibility for the unlawful unlicensed exports. RDO, at 8–12. The ALJ rejected Respondents' purported defense, which was based primarily on an unsigned power of attorney form that Respondents asserted authorized the forwarder ''to handle necessary export paperwork,'' RDO, at 10 (quoting, in part, Respondents' Answer), because Trilogy, as the USPPI/exporter, had the legal obligation to determine any license requirements and obtain the necessary licenses in connection with the exports at issue. RDO, at 10 and n. 14 (discussing and quoting, in part, Section 758.3 of the Regulations).

With regard to sanctions, the ALJ recommended that I impose a $50,000 civil penalty against Trilogy and a $50,000 civil penalty against Johnson, and that I should also issue denial orders suspending the export privileges of both Respondents for a period of seven years. In making this recommendation, the ALJ reiterated and expanded upon his previous finding, in his April 24, 2017 decision, that Respondents engaged in a willful and reckless course of conduct involving unlicensed exports of national-security-controlled items to TAIR R&D Co. in Russia. RDO, at 13–14; April 24, 2017 Decision at 7–8. ''The undisputed facts show Respondents maneuvered to procure national security items and then to export them from the United States, without seeking authorization from BIS or procuring the requisite license. As the April 24, 2017 Order recognizes, Respondents were willful and reckless.'' RDO, at 13–14. The ALJ also found that in addition to failing to fulfill their licensing obligations regarding the export of the items at issue to Russia, Respondents also failed to seek pertinent information regarding these export transactions and the foreign parties interested in them. ''Moreover, the record shows Respondents failed to learn details related to the financing of the illicit transactions, provided through Trilogy Netherlands, with the ultimate source of the financing being unknown to Respondents.'' RDO, at 15 (citing Respondents' deposition testimony).[6]

The ALJ, in making his sanctions recommendations, also rejected Respondents' efforts throughout this proceeding to shift responsibility to the freight forwarder. *See* RDO, at 14. The ALJ further found that Respondents generally exhibited a ''flippant attitude towards regulatory control'' and ''have yet to acknowledge the seriousness of the violations nor shown any remorse for these failures.'' RDO, at 15. The ALJ also saw no evidence that the Respondents have taken any corrective compliance measures or that they possess the ability or willingness to comply with the Regulations. *See id.*

Finally, the ALJ found that BIS precedent supported his recommended sanctions against Respondents. RDO, at 15–16.

II. Review Under Section 766.22

The RDO, together with the entire record in this case, has been referred to me for final action under Section 766.22

[5] In connection with transaction at issue in the Charge 1 of the Charging Letters, RDO Finding of Fact No. 12 states that on or about January 23, 2010, ''Johnson was the U.S. Principal Party in Interest (''USPPI'')/exporter that exported the E–3500 explosives detector at issue from the United States to Russia.'' RDO, at 6, ¶ 12 (footnote omitted; parenthetical in original). After a review of the RDO, I find that the reference to Johnson there, rather than Trilogy, as the USPPI/exporter, clearly was not intended by the ALJ. Throughout the rest of the RDO, the ALJ refers to Trilogy as the USPPI/exporter. *See, e.g.,* RDO, at 10 (''Trilogy, as the USPPI/exporter, had the legal obligation to determine any license requirements and obtain the needed export licenses in connection with each of the exports at issue here.''); at 11 (''The record is undisputed, Respondent Trilogy sent three shipments . . . [and] Respondent Trilogy violated 15 CFR 764.2(a) by shipping these materials to Russia on three separate occasions.''); *see generally* RDO, at 8–11. Moreover, BIS alleged and submitted evidence to show that Trilogy was the USPPI/exporter for each of the transactions and charges at issue, *see* Charging Letters and BIS's Motion for Summary Decision, and the ALJ found that Trilogy was the USPPI/exporter for the exports at issue in Charges 2 and 3. RDO, at 7, ¶¶ 16 and 19.

[6] In the deposition testimony cited by the ALJ, Respondents asserted that although they believed that an investor group paid TAIR R&D Co. for the items, they did not know the identity of the investor group. Johnson Deposition Transcript, at page 91, line 5 to page 92, line 10, filed as part of Exhibit 3 to BIS's Brief on Sanctions dated March 17, 2017. Respondents asserted that after they procured the items, Trilogy Netherlands, a Dutch company, paid for the items that Respondent Trilogy ordered, while Trilogy Netherlands, in turn, received funds from TAIR R&D Co. to pay the manufacturers and suppliers. *See* Exhibit 3 to BIS's Brief on Sanctions, dated March 17, 2017, at page 94, line 1 to page 95, line 14. Respondents also asserted that they had no role in Trilogy Netherlands. *See id.*

of the Regulations. BIS submitted a timely response to the RDO pursuant to Section 766.22(b). Respondents have not submitted any response to the RDO, nor have they submitted any reply to BIS's response.

The RDO contains a detailed review of the record relating to both merits and sanctions issues in this case, including in light of the Remand Order. I find that the record amply supports the ALJ's findings of fact and conclusions of law that Respondent Trilogy committed the three violations of Section 764.2(a) of the Regulations alleged in the Charging Letter issued to Trilogy, and that Respondent Johnson committed the three violations of Section 764.2(b) of the Regulations alleged in the Charging Letter issued to Johnson. The ALJ correctly concluded that BIS is entitled to summary decision pursuant to Section 766.8 of the Regulations as to all of the charges at issue based upon the indisputable evidence of record. In doing so, the ALJ correctly determined that Respondent Trilogy was the USPPI/exporter and thus had the legal obligation under the Regulations to determine licensing requirements and obtain the necessary licenses for the export transactions at issue, rightly rejecting Respondents' persistently proffered, but unsubstantiated, defense that the freight forwarder bore responsibility for the unlawful exports at issue. The ALJ also correctly determined that Respondent Johnson caused, aided, or abetted Trilogy's unlawful exports, finding in that regard that Johnson directed and controlled Trilogy and its operations, and also finding that Johnson took one or more specific actions in connection with each of the exports at issue.

After further consideration of the penalties initially assessed, I find that they are not sufficient considering the serious nature of the violations. Therefore I am modifying both the civil penalty and the denial order. I am modifying the civil penalty assessed against each Respondent from $50,000 to $100,000, and adding an additional three years to the seven-year denial order bringing it to ten years. The RDO and the record indicate that Respondents participated in sustained procurement and export activities with at least one known Russian entity regarding national-security-controlled items, while willfully ignoring, or, at best, blinding themselves to their compliance obligations. The RDO and record also show that Respondents have refused to acknowledge their compliance obligations during this proceeding or accept responsibility for their actions despite their clear violations of the Regulations. The ALJ also correctly determined that Respondents' rejection of their export control responsibilities and apparent failure to adopt corrective measures raises additional concerns about their ability and willingness to comply with the Regulations now or in the future. Thus, in sum, given the high degree of culpability exhibited by Respondents' willful and/or reckless conduct, the serious nature of the violations at issue, and the importance of deterring the Respondents and others from violating the Regulations in the future, I agree that the imposition of both preventive relief and monetary penalties against Respondents are necessary and appropriate to sanction Respondents and prevent and deter future violations of the Regulations. Therefore, I modify the seven-year denial order against each Respondent to ten years, as well as modifying the civil penalty by increasing to $100,000 per Respondent to reflect seriousness of the conduct at issue as described above.[7]

Accordingly, based on my review of the RDO and entire record, I affirm the findings of fact and conclusions of law in the RDO and modify the recommended sanctions as described above.[8]

Accordingly, it is therefore ordered:

First, a civil penalty of $100,000 shall be assessed against Trilogy International Associates Inc. (''Trilogy''), the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

Second, a civil penalty of $100,000 shall be assessed against William Michael Johnson (''Johnson''), the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

Third, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalties owed under this Order accrue interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, the party that fails to make payment will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and administrative charge.

Fourth, for a period of ten years from the date of this Order, Trilogy International Associates, Inc. and William Michael Johnson, both with last known addresses of P.O. Box 342, Altaville, CA 95221 and 552 Lee Lane, Box 342/21, Angels Camp, CA 95222, and when acting for or on their behalf, their successors, assigns, employees, agents, or representatives (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is

[7] The ALJ did not specifically address the terms of the denial orders to be imposed against Respondents. I conclude that the standard denial order found in Supplement No. 1 to Part 764 of the Regulations is appropriate in this situation. Nothing in the RDO suggests that the ALJ intended to recommend a non-standard denial order.

[8] As noted, *supra,* my review of the RDO indicates that the ALJ clearly intended to indicate in the RDO that Respondent Trilogy was the USPPI/exporter with regard to each of the transactions at issue. See note 5 *supra.* My determination to affirm the findings of fact and conclusions of law is based on this understanding of the RDO.

intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to a Denied Person or the Denied Persons by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

Sixth, this Order shall be served on Respondents Trilogy International Associates, Inc. and William Michael Johnson and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order shall be published in the **Federal Register**.

This Order, which constitutes final agency action in this matter, is effective immediately.

Issued this 26th day of February 2018.

Mira R. Ricardel,

Under Secretary of Commerce for Industry and Security.

UNITED STATES DEPARTMENT OF COMMERCE BUREAU OF INDUSTRY AND SECURITY WASHINGTON, DC 20230

In the Matters of: Trilogy International Associates, Inc., William Michael Johnson, Respondents

Docket Number 15–BIS–0005 (consolidated)

RECOMMENDED DECISION AND ORDER GRANTING SUMMARY DECISION ON REMAND

This matter comes before the undersigned administrative law judge (ALJ) pursuant to a remand order issued by the Acting Under Secretary of Commerce for Industry and Security (Under Secretary) on May 30, 2017. The Under Secretary's order vacated in part, affirmed in part, and remanded two rulings issued by the undersigned on February 8, 2017 and April 24, 2017.[1] The remand order primarily directs the ALJ to reconsider its partial denial of the Bureau of Industry and Security's (BIS or Agency) January 13, 2017 Motion for Summary Decision, and orders the ALJ to issue a single Decision and Order in accordance with Section 766.17(b)(2).

As set forth below, upon reconsideration, the undersigned finds there are no genuine issues as to any material facts and BIS is entitled to summary decisions against Trilogy International Associates, Inc. and William Michael Johnson. Therefore, BIS' January 13, 2017 Motion for Summary Decision is **GRANTED**. Furthermore, because this Order Granting Summary Decision disposes of this matter entirely, the undersigned issues this Recommended Decision and Order to the Under Secretary as permitted by 15 CFR 766.8.[2]

Procedural Background

On October 2, 2015, the Agency filed separate Charging Letters against Respondent Trilogy International Associates, Inc. (Respondent Trilogy) (docket number 15–BIS–0004) and Respondent William Michael Johnson (Respondent Johnson) (docket number 15–BIS–0005).[3] Respondent Trilogy's Charging Letter alleges the corporation violated Section 764.2(a) of the Export Administration Regulations (EAR or Regulations) by exporting national-security controlled items to Russia on three separate occasions in 2010, without the requisite BIS licenses.[4] Respondent Johnson's Charging Letter alleges he violated Section 764(b) of the regulations by aiding and abetting Respondent Trilogy's three unlicensed exports to Russia, in his capacity as president of the corporation.[5]

On December 21, 2015, Respondents filed an e-mail response to the Agency's Charging Letters, but did not address all of the allegations. Subsequently, on June 17, 2016, Respondents filed a lengthy written denial (Answer) alleging the Charging Letters are politically-motivated and that a third-party was responsible for any violations of law or regulation.

The Agency filed a Motion for Summary Decision on January 13, 2017, in accordance with the provisions of 15 C.F.R. § 766.8. On the same day, Respondents filed a competing Motion for Summary Dismissal (Cross Motion). Respondents supplemented the Cross Motion with a three-page attachment to an e-mail to the undersigned and the Agency.[6] On February 1, 2017, the Agency filed its response to the Cross Motion.

On February 8, 2017, the undersigned ALJ issued an Initial Decision, granting in part and denying in part BIS' Motion for Summary Decision.[7] The February 8, 2017 Order considered the two charging letters (issued separately to Respondents) multiplicious, and referred to the two Respondents in the collective. Essentially, the ALJ held Respondent Johnson's actions to be those of Respondent Trilogy, and found the Agency could only sanction Respondent Trilogy as a company, not Respondent Johnson as an individual. To this end, the ALJ denied Summary Decision against Respondent Johnson, but granted Summary Decision against Respondent Trilogy. The February 8, 2017 Order directed the parties to submit additional briefing on the appropriate amount of sanctions against Respondent Trilogy.

After receiving the parties' briefs on sanction, the undersigned issued a separate order on April 24, 2017, levying a fine in the amount of $100,000.00 against Respondent Trilogy and denying Respondent Trilogy's export privileges for a period of seven years. However, the undersigned inadvertently titled the April 24, 2017 Order as an ''Initial Decision.'' To correct the error, among others, the undersigned directed a Notice of Errata be entered on May 10, 2017, which changed the title of the undersigned's decision from ''Initial Decision Imposing Sanctions'' to ''Recommended Decision Imposing Sanction.''

On May 10, 2017, BIS filed a ''Response to Notice of Errata'' which asked the Under Secretary to vacate the ALJ's decisions and remand with instructions. On May 30, 2017, the Under Secretary Vacated the ALJ's Erratum Order, affirmed the ALJ's ultimate finding that Respondent Trilogy committed three violations of Section 764.2(a), but reversed the ALJ's conclusion that the charges against Respondent Trilogy and Respondent Johnson were multiplicious. The Under Secretary also held ''a corporate officer can be charged with causing, aiding or abetting the corporations' underlying violations.'' The remand order instructed the ALJ to treat the charges against Respondent Johnson distinct from those against Respondent Trilogy. Ultimately, the Under Secretary ordered the ALJ to reconsider BIS' Motion for Summary Decision, but only to the charges against Respondent Johnson. If the ALJ recommended denial of the Summary Decision against Respondent Johnson, the Under Secretary instructed the ALJ to resolve the remaining charges pursuant to Part 766 of the regulations. The Order also required the ALJ to ''provide the parties opportunity for briefing, including as to proposed sanctions.''

[1] The Under Secretary's Order affirmed the ALJ's findings of fact and partial issuance of summary decision and instructed the ALJ not to disturb the factual findings made in the ALJ's April 24, 2017 and February 7, 2017 decisions.

[2] Title 15 C.F.R. § 766.8 permits the ALJ to issue a recommended decision if granting a motion for summary decision.

[3] Trilogy International Associates, Inc. was, apparently, a lawfully constituted corporation under the laws of the State of California and the State of Nevada at times relevant to the Complaint. The undersigned ALJ gleans from the discovery that Trilogy is not presently a lawfully constituted corporation in either state. (Response to Interrogatories Nos. 1–5).

[4] Those items consisted of an explosives detector and several analog-to-digital converters; items listed under Agency Export Control Classification as Numbers 1A004 and 3A001, respectively, and controlled for reasons of national security).

[5] The Charging Letters allege the International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110–96, 121 Stat. 1011 (2007) and 15 C.F.R. part 766 allows the imposition of a civil penalty ''up to the greater of $250,000.00 per violation or twice the value of the transaction that is the basis of the violation.'' By contrast, the Agency's Motion alleges that 15 C.F.R. § 764.3 allows the imposition of a monetary sanction of up to $289,238.00 per violation.

[6] The undersigned considers the attachment as part of the Cross Motion.

[7] The February 8, 2017 Order denied Respondent's cross Motion for Summary Decision. The Under Secretary's Remand did not disturb the ruling against Respondent, and it is not revisited here. Respondent's request for Summary Decision remains **DENIED**.

Pursuant to the Under Secretary's Order, the undersigned issued an Order on September 12, 2017, directing the parties to submit briefs addressing the appropriate sanction that should be levied against Respondent Johnson. BIS, through counsel, filed its brief concerning a Respondent Johnson sanction on September 25, 2017. To date, Respondents have not filed any reply, nor otherwise complied with the undersigned's September 12, 2017 Order.

FINDINGS OF FACTS

Upon review of the record, the ALJ finds the following facts undisputed and admitted by Respondents.

1. At all times relevant to this matter, Trilogy International Associates, Inc. (''Trilogy'') was a California and Nevada corporation, headquartered in California at William Michael Johnson's personal residence. (Deposition Transcript (''Tr.''), at 38; Responses to Interrogatories Nos. 1 and 2).

2. William Michael Johnson (''Johnson'') was the president and general manager of Trilogy at all times relevant to the charges in the Complaint. (Response to Interrogatory No. 3; Responses to Requests for Admissions Nos. 1 and 2).

3. Johnson directed, controlled, and performed Trilogy's operations at all times relevant to the charges in the Complaint and acted on behalf of Trilogy. (Response to Request for Admission No. 3).

4. TAIR R&D Co. (''TAIR'') is a Russian company and was at all times relevant to the Complaint Respondents' sole customer. (Tr. at 29; Response to Requests for Admission, Nos. 5–6).

5. Periodically, TAIR would request to purchase items from Respondents, who then procured those items for export to TAIR; some of which were manufactured and located in the United States. (Tr. at 21, 29; Answer, p. 1–2; International Invoice dated January 20, 2010; International Invoice dated March 4, 2010, International Invoice dated April 15, 2010).

6. On or about December 7, 2009, Johnson obtained an E–3500 explosives detector from Scintrex Trace Corp. (''Scintrex''), located in Ottawa, Canada. (Declaration of Agency Special Agent (''S/A'') Patrick Tinling at ¶ 5; Purchase Order).[8] On or about that same date, Johnson signed and issued to Scintrex a purchase order for the E–3500 explosives detector. *Id.*

7. On or about December 30, 2009, Scintrex sent the E–3500 explosives detector to Trilogy in Tuolumne, California. (Tr. at 46; UPS Waybill; Scintrex Packing List; S/A Tinling Declaration at ¶ 5).

8. The E–3500 explosives detector is an item subject to 15 C.F.R. § 734.3(a)(1) and is classified on the Commerce Control List (''CCL'') under Export Control Classification Number (''ECCN'') 1A004.d. (Agency License Determination E1025550; S/A Tinling Declaration; ¶ 8).[9]

9. Export of an E–3500 explosives detector to Russia is controlled on national security grounds and required an Agency license for export to Russia at all times relevant to the charges in the Complaint. (Agency License Determination E1025550).

10. On or about January 20, 2010, Johnson prepared an international invoice to TAIR for the E–3500 explosives detector. (Tr. at 54–55; International Invoice dated January 20, 2010; Response to Request for Admission No. 10; S/A Tinling Declaration at ¶ 4.a).

11. On or about January 22, 2010, Johnson delivered an E–3500 explosives detector and a related international invoice to Mainfreight, Inc. for export to TAIR in Russia. (Tr. at. 46, 54–55; E-mail from Johnson to Kalief Brown of Mainfreight, Inc.; S/A Tinling Declaration, at ¶ 4; Response to Request for Admission No. 7).

12. On or about January 23, 2010, Johnson was the U.S. Principal Party in Interest (''USPPI'')/exporter,[10] that exported the E–3500 explosives detector at issue from the United States to Russia. (Tr. at 46, 54—55; Automated Export System (''AES'') Record for January 23, 2010 export; Air Waybill; S/A Tinling Declaration, at ¶¶ 3, 4.a, 7).

13. No export license was obtained for the export of the E–3500 explosives detector to Russia. (Tr. at 56—57; S/A Tinling Declaration, at ¶ 10).

14. On or about January 21, 2010, Johnson, on behalf of Trilogy, placed an order with a United States supplier for 115 analog-to-digital converter devices,[11] of which 28 were eventually obtained by Respondents. (Responses to Requests for Admission Nos. 20–22; Analog Devices Invoice; S/A Tinling Declaration, at ¶¶ 4.b, 6).

15. On or about March 4, 2010, Johnson signed and issued an international invoice for the analog-to-digital converters. (Response to Request for Admission No. 24; International Invoice; S/A Tinling Declaration, at ¶ 4.b).

16. On or about April 6, 2010, Trilogy was the United States Principal Party in Interest (''USPPI''), that exported 28 analog-to-digital converters from the United States to Russia (AES Record for April 6, 2010 export; Air Waybill; S/A Tinling Declaration at ¶¶ 3, 4.b, 7).

17. On or about May 11, 2010, Johnson, on behalf of Trilogy, placed an order with another U.S. supplier for additional analog-to-digital converters, which were then obtained by Respondents. (Response to Requests for Admissions Nos. 34–36; Arrow Electronics, Inc. Invoice; S/A Tinling Declaration at ¶¶ 4.b, 6).

18. On or about April 15, 2010, Johnson, on behalf of Trilogy, signed and issued an international invoice for the additional analog-to-digital converters. (Response to Request for Admission No. 38; International Invoice dated April 15, 2010; S/A Tinling Declaration at ¶ 4.c).

19. On or about May 14, 2010, Trilogy, as the United States Principal Party in Interest (''USPPI''), exported an additional 87 analog-to-digital converters from the United States to Russia. (Tr. at 69; AES Record for Trilogy International Export to TAIR on or about May 14, 2010; Air Waybill; S/A Tinling Declaration at ¶¶ 3, 4.c, 7).[12]

20. The analog-to-digital converters at issue are items subject to 15 C.F.R. § 734.3(a)(1), classified on the CCL under ECCN 3A001.a.5.a.5. (Agency License Determination E1020930; S/A Tinling Declaration at ¶ 8).

21. Export of the analog-to-digital converters to Russia is controlled on national security grounds and required an Agency license for export to Russia at all times relevant to the Complaint. (Agency License Determination E1020930).

22. Neither Trilogy, nor Johnson obtained an Agency export license for the export of either the E–3500 explosives detector or the analog-to-digital converters before exporting same to TAIR in Russia. (S/A Tinling Declaration at ¶ 10).

Analysis

Having made the foregoing findings of fact largely based on Respondents' admissions, the undersigned now turns to whether BIS is entitled to summary decision as a matter of law. 15 C.F.R. § 766.8.

The Agency bears the burden of proving the allegations in the Complaint by the ''preponderance of the evidence'' standard of proof typically applicable in administrative or civil litigation. *See In the Matter of Ihsan Medhat Elashi,* 71 Fed. Reg. 38843, 38847 (July 10, 2006). Applying this standard of proof, the Agency is entitled to summary decision pursuant 15 C.F.R. § 766.8 upon a showing ''there is no genuine issue as to any material fact,'' and thus, it ''is entitled to a summary decision as a matter of law.'' *Id.*

As set forth below, the record demonstrates there remain no genuine issues of material fact and the Agency is entitled to summary decision as a matter of law as to *all* of the charges at against Respondents. All the evidence in this case shows Respondents

[8] The E–3500 explosive detector is the item at issue in Charge 1 of the Complaint. Respondent referred to this item as ''E–3500 and accessories, a. Trace detector spectrometer'' in its e-mail to freight forwarder Mainfreight, Inc., regarding this export. (Email from Respondent to Kalief Brown of Mainfreight, Inc.) The item was listed as a ''Trace Detector Spectrometer'' in the Automated Export System (''AES'') Record for this export, with a stated value of $46,135. The stated value matched the amount Respondents invoiced TAIR for their sale of the item to TAIR. (Respondent's Response to Request for Admission No. 10). A copy of the Trilogy-TAIR invoice was attached to the email that Respondent sent Mainfreight, Inc. with Respondent's direction concerning export of the item to TAIR.

[9] The item and its related export by Respondent were subject to the regulations given that the item was located in the United States. 15 C.F.R. § 734.3(a)(1). The item became subject to the Agency once Respondent procured it and had it shipped to it in California. *Id.*

[10] Under the regulations, ''principal parties in interest'' are ''[t]hose persons in a transaction that receive the primary benefit, monetary or otherwise, of the transaction. Generally, the principals in a transaction are the seller and the buyer. In most cases, the forwarding or other agent is not a principal party in interest.'' 15 C.F.R. § 772.1.

[11] These 28 converters are the items at issue in Charge 2 of the Complaint. (The same type of AD9268 converters are at issue in Charge 3. *Id.*). Respondent exported these AD9268 converters to TAIR along with other computer/electronics goods, including an AD9910 synthesizer. (Trilogy International Invoice dated March 4, 2010).

[12] These AD9268 converters are the items at issue in Charge 3 of the Complaint. The Trilogy International invoice for these converters items lists their sale price as $22,620.

Trilogy and Johnson violated 15 C.F.R. § 764.2(a) and 15 C.F.R. § 764.2(b).

Trilogy Violations of 15 C.F.R. § 764.2(a)

The Charging Letters allege Respondent Trilogy violated 15 C.F.R. § 764.2(a) on three instances when it sent explosives detectors and analog-to-digital converters to Russia on January 22, 2010, April 6, 2010, and May 14, 2010. Pursuant to section 764.2(a), the Agency argues Respondents were not permitted to make these three shipments without a license or authorization from BIS. Specifically, Section §764.2(a), provides:

Engaging in prohibited conduct. No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.

Similarly, Title 15 C.F.R. § 742.4 specifically requires a license for ''all items in ECCN [Export Control Classification Number] on the CCL [Commerce Control List] that include NS Column 1 in the Country Chart column of the License Requirements'' section.[13] BIS contends the three Russian shipments falls under sections 764.2(a) and 742.4 because: 1) the explosive detectors and converters are listed on the Commerce Control List, classified under ECCN 1A004.d, and controlled on national security grounds for export to Russia; and 2) the analog-to-digital converters are items subject to the Regulations and at all times relevant were listed on the Commerce Control List, classified under ECCN 3A001.a.5.a.5, and controlled on national security grounds for export to Russia.

Respondent Trilogy provided no evidence showing the corporation made these shipments with a license, makes no argument the items were outside the scope of the licensure requirements in 764.2(a) and 742.4, nor provides any evidence to dispute BIS' evidence. Instead, Respondent argues that the corporation secured a third-party, Mainfreight, Inc., to properly comply with BIS regulations and claims Trilogy ''only initiated'' the export transactions. In support of his position, Respondent notes the corporation gave power of attorney to Mainfreight, Inc. in 2009, authorizing ''Mainfreight SFO to handle necessary export paperwork'' and when doing so he assumed competence on the part of Mainfreight SFO. While recognizing Mainfreight, Inc, ''failed in their responsibilities on three occasions'' Respondent Trilogy insists the corporation in no way authorized Mainfreight SFO ''to violate federal [law] on [Respondents'] behalf.'' Respondent's Answer, *Id.* Respondent's argument ultimately asserts Mainfreight, Inc. is the culpable party here, not Trilogy. *See* Respondent's Counter Motion. Respondent's arguments are not persuasive.

Assuming, *for the sake of argument,* that Mainfreight, Inc., agreed to take on all licensing responsibilities, Trilogy, as the USPPI/exporter, remained obligated, as a matter of law, to determine whether a license was required under the regulations and to seek any such required license from BIS. Title 15 C.F.R. § 758.3(a) clearly states:

Export transactions. The United States principal party in interest is the exporter, except in certain routed transactions. The exporter must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization. The exporter may hire forwarding or other agents to perform various tasks, but doing so does not necessarily relieve the exporter of compliance responsibilities.

Respondent does not allege that these export transactions were routed transactions;[14] therefore, per the regulations, Trilogy, as the USPPI/exporter, had the legal obligation to determine any license requirements and obtain the needed export licenses in connection with each of the exports at issue here. Trilogy's failure to do so resulted in three violations of 15 C.F.R. § 764.2(a).

Ultimately, Respondent Trilogy's defense does not create a dispute of a material fact; it does not counter the evidence cited by BIS. Because Respondent Trilogy failed to produce any evidence to counter the evidence cited by BIS showing the three violations of 15 C.F.R. § 764.2(a), the undersigned will **GRANT** BIS' motions for Summary Decision on these charges. The record is undisputed, Respondent Trilogy sent three shipments on January 22, 2010, April 6, 2010, and May 14, 2010 respectively. These shipments are controlled by 764.2(a) and 742.4 because: 1) the explosive detectors and converters are listed on the Commerce Control List, classified under ECCN 1A004.d, and controlled on national security grounds for export to Russia; and 2) the analog-to-digital converters are items subject to the Regulations and at all times relevant were listed on the Commerce Control List, classified under ECCN 3A001.a.5.a.5, and controlled on national security grounds for export to Russia. Respondent Trilogy violated 15 C.F.R. § 764.2(a) by shipping these materials to Russia on three separate occasions.

Johnson Violation of 15 C.F.R. § 764.2(b)

The Agency also alleges Respondent Johnson violated the regulations when he facilitated the corporation's three unlawful shipments. Specifically, the Agency claims Respondent Johnson caused aided or abetted Respondent Trilogy, through his actions as president of the company, when he took action to initiate the unauthorized shipments in January 20, 2010, March 4, 2010, and April 15, 2010.

Pursuant to 15 C.F.R. § 764.2(b), ''[n]o person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder.'' Here, Respondent Johnson's actions facilitated the corporation's violations. At a minimum, Respondent Johnson aided Respondent Trilogy by simply preparing the international invoices to TAIR for the explosives detectors on January 20, 2010. Similarly, Respondent Johnson aided and abetted Respondent Trilogy when he prepared the invoices for the converters on March 4, 2010, and April 15, 2010. However, the Agency correctly notes all of the actions taken by

[13] (a)License requirements. It is the policy of the United States to restrict the export and reexport of items that would make a significant contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States. *Accordingly, a license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include NS Column 1 in the Country Chart column of the ''License Requirements'' section.* A license is required to all destinations except those in Country Group A:1 (see supplement no. 1 to part 740 of the EAR), for all items in ECCNs on the CCL that include NS column 2 in the Commerce Country Chart column of the ''License Requirements'' section except those cameras in ECCN 6A003.b.4.b that have a focal plane array with 111,000 or fewer elements and a frame rate of 60 Hz or less. A license is required to all destinations except those in Country Group A:1 (see supplement no. 1 to part 740) for those cameras in ECCN 6A003.b.4.b that have a focal plane array with 111,000 or fewer elements and a frame rate of 60 Hz or less and for cameras being exported or reexported pursuant to an authorization described in § 742.6(a)(2)(iii) or (v) of the EAR. The purpose of the controls is to ensure that these items do not make a contribution to the military potential of countries in Country Group D:1 (see supplement no. 1 to part 740 of the EAR) that would prove detrimental to the national security of the United States. License Exception GBS is available for the export and reexport of certain national security controlled items to Country Group B (see § 740.4 and supplement no. 1 to part 740 of the EAR). (emphasis added).

[14] In order for these transactions to have been routed export transactions, Respondent Trilogy International, as the USPPI, would had to have obtained from TAIR, as the foreign principal party in interest, ''a writing wherein the foreign principal party in interest expressly assumes responsibility for determining licensing requirements and obtaining license authority.'' 15 C.F.R. § 758.3(b). Respondent could not have proven that these transactions constituted routed export transactions even if it had raised such a defense.

Respondent Trilogy were done through Respondent Johnson.

Pursuant to the Under Secretary's May 30, 2017 Remand Order, BIS can take action against Respondents separate and apart from each other, even for the same acts. BIS correctly notes at least one federal court acknowledges an agent's action can constitute both proof of a company's primary violations and proof of the agent aiding and abetting violations. *S.E.C. v. Koenig*, 2007 WL 1074901 (N.D. ILL. Apr. 5, 2007). Accordingly, the undersigned concludes Respondent Johnson aided and abetted Respondent Trilogy when it took steps to further the illegal shipments for the company.

Respondent Johnson provides no evidence to counter the Agency's evidence, and makes no argument that he did not take the alleged actions to further the shipments to Russia. Again, his only defense, discussed above, is that Mainfreight, Inc., bore the responsibility to comply with Agency regulations, but ''failed in their responsibilities on three occasions.'' This defense failed as applied to Respondent Trilogy's three violations of 15 C.F.R. § 764.2(a) and for similar reasons, fails when applied to Respondent Johnson's violations of 15 C.F.R. § 764.2(b).

SANCTION

Title 15 C.F.R. § 764.3 sets forth the permissible sanctions BIS may seek against regulatory violators and permits up to $289,238 per violation, or twice the value of the transaction upon which the penalty is imposed, and a denial of Respondents' export privileges under the regulations. The maximum total civil penalty which can be imposed upon Respondent would be $867,894 and/or a denial of export privileges for the three proved violations. The regulations do not place any limit on the length of the time period for denial of export privilege orders under 15 C.F.R. § 764.3.

In its post-remand brief, the Agency argues BIS guidance on pre-litigation settlements and the outcomes of previous BIS export control cases provide useful guideposts to determine the sanction in this case. BIS also relies on the guidance in Supplement No. 1 to Part 766 of the Regulations (Penalty Guidance) to determine the appropriate sanction. Under the Penalty Guidance, the undersigned may consider factors such as: the degree of culpability (including whether reckless, knowing, or willful conduct was involved), whether there were multiple violations, and the timing of settlement. 15 C.F.R. Party 766, Supp. No. 1. The Penalty Guidance also discusses aggravating factors that may be accorded ''great weight,'' including whether the party's conduct demonstrated a serious disregard for export compliance responsibilities, and whether the violation was significant in view of the sensitivity of the items involved and/or the reason for controlling them to the destination in questions.

The undersigned agrees Respondents' violations warrant sanctions. The undisputed facts show Respondents maneuvered to procure national security items and then to export them from the United States, without seeking authorization from BIS nor procuring the requisite license. As the April 24, 2017 Order recognizes, Respondents were willful and reckless. Given the Under Secretary did not disturb this finding, the undersigned again finds the willfulness and recklessness relevant actions when determining a sanction in this matter. Even if the undersigned determined there was neither willful nor reckless activity, the record supports a finding that Respondents acted with gross negligence. Indeed, one of Respondents' defenses demonstrates the point.[15]

Specifically, as noted above, Respondents argue that Mainfreight, Inc., agreed to take on all licensing responsibilities, and it was Mainfreight that failed to comply with BIS regulations in this case. While the undersigned need not revisit why this is not a tenable defense, it is relevant to point out that even assuming there was some delegable duty under the regulations, Respondents would still be at fault for failing to identify Mainfreight's deficiencies.

For example, had Respondents produced evidence that the agent, Mainfreight, Inc., fraudulently informed Respondent Johnson that it acquired the requisite license, and produced evidence reasonably showing it complied with BIS regulations, the undersigned could potentially consider this mitigating evidence. However, Respondents produced no evidence of this and instead relies on the blanket argument that Mainfreight, Inc., bore responsibility. What is more, Respondents produced no evidence showing it monitored Mainfreight, Inc., set forth any procedures to detect and deter noncompliance, nor show why it was reasonable to rely on Mainfreight to fulfill BIS' requirements in any way. Therefore, not only does Respondents' delegation argument not excuse the conduct in this matter, it does not mitigate the severity of the actions.

Moreover, the record shows Respondents failed to learn details related to the financing of the illicit transactions, provided through Trilogy Netherlands, with the ultimate source of financing being unknown to Respondents. Johnson Depo. Tr., Exh. 3 to BIS's Brief on Sanctions, at page 91, line 5 to page 92, line 10. Such avoidance of these details shows Respondents' failure to act diligently to prevent these export transactions, or to seek proper permission from BIS. Tinling Declaration, Exh. 2 to BIS's Brief on Sanctions, at ¶ 5.

The undersigned also observes Respondent Johnson's conduct illustrates a flippant attitude toward regulatory control. As an example, Respondent Johnson straightaway acknowledged he failed to comply with California state regulations in a separate instance because ''simply not complying appropriately with whatever in the hell the regulations were'' because ''[y]ou know, I didn't pay much attention to them.'' Johnson Depo. Tr. Exh. 3 to BIS' Brief on Sanctions, p. 11, 3–12.

Finally, Respondents' have yet to acknowledge the seriousness of the violations nor shown any remorse for these failures. Again, Respondents fail to even make arguments to the undersigned concerning the appropriate sanction here, show how he has corrected these issues, or might correct these issues in the future.

Ultimately, after considering the regulations, the Penalty Guidance and other BIS authority, the undersigned finds a $50,000.00 sanction against Respondent Trilogy, and a $50, 000.00 sanction against Respondent Johnson appropriate. Furthermore, the undersigned finds both Respondent Trilogy and Johnson's export privileges should be suspended for seven years. BIS authority in similar cases supports such a sanction by analogy. *See Matter of Yavuz Cizmeci* (Order dated March 23, 2015); *In the Matter of Gregorio L. Salazar* (Order dated Dec. 10, 2015), *In the Matter of Manoj Bhayana* (Final Decision and Order dated March 28, 2011).

CONCLUSION AND RECOMMENDATION

The undersigned issues this Recommended Decision and Order pursuant to 15 C.F.R. § 766.17(b)(2). The Agency's Motion for Summary Decision against Respondent Trilogy and Johnson is **GRANTED**.

The undersigned recommends the Under Secretary find each of the Section

[15] Although Respondents did not respond to the court's instruction to file a brief addressing sanctions, the court considers his other defenses as arguments in mitigation.

764.2(b) charges **PROVED**. The undersigned further recommends the Under Secretary levy a fine in the amount of 50,000.00 against Respondent Trilogy; levy a fine in the Amount of 50,000.00 against Respondent Johnson; and suspended both Trilogy and Johnson's exporting privileges for seven years.

Done and dated this 24th day of January, 2018, Baltimore, MD.

Bruce Tucker Smith,

Administrative Law Judge, United States Coast Guard.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Recommended Decision and Order Granting Summary Decision on Remand the following:

Zachary Klein, Esq., Attorney for Bureau of Industry and Security, Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, Room H–3839, 14th Street & Constitution Avenue NW, Washington, D.C. 20230, Email: *zklein@doc.gov*, (Electronically and first class mail).

Trilogy International Associates, Inc. Attn: William Michael Johnson, President and General Manager, P.O. Box 342, Altaville, CA 95221, Email: *mjohnson@trilogy-inc.com*, (Electronically and first class mail).

ALJ Docketing Center, Attention: Hearing Docket, Clerk 40 South Gay Street, Room 412, Baltimore, MD 21202–4022, (Hand delivered).

Done and dated this 24th day of January 2018, Baltimore, MD.

Lauren M. Meus,

Hearing Docket Clerk, United States Coast Guard.

[FR Doc. 2018–04404 Filed 3–2–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967/C–570–968]

Aluminum Extrusions From the People's Republic of China: Initiation of Anti-Circumvention Inquiries

AGENCY: Enforcement & Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the Aluminum Extrusions Fair Trade Committee (the petitioner), the Department of Commerce (Commerce) is initiating anti-circumvention inquiries to determine whether extruded aluminum products that are exported from the Socialist Republic of Vietnam (Vietnam) by China Zhongwang Holdings Ltd. and its affiliates (collectively, Zhongwang) are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (China).

DATES: Applicable March 5, 2018.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Erin Kearney, AD/CVD Operations, Office VI, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4947 or (202) 482–0167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 2018, pursuant to sections 781(b) and (c) and 19 CFR 351.225(h) and (i) of the Tariff Act of 1930, as amended (the Act), the petitioner requested that Commerce initiate anti-circumvention inquiries on imports of certain aluminum extrusions from Vietnam by Zhongwang.[1] In its request, the petitioner contends that Zhongwang's Vietnamese aluminum extrusions are circumventing the scope of the *Orders,*[2] because the aluminum extrusions at issue are Chinese extrusions being completed in Vietnam and the processes involved (re-melting and re-extruding) constitute a minor alteration. Therefore, the petitioner requests that Commerce address this alleged circumvention by initiating both a ''merchandise completed or assembled in other foreign countries'' anti-circumvention inquiry pursuant to section 781(b) of the Act, as well as a ''minor alterations'' anti-circumvention inquiry pursuant to section 781(c) of the Act.[3]

Scope of the Orders

The merchandise covered by the *Orders* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.,* without any coating or further finishing), brushed, buffed, polished, anodized (including brightdip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, etc.), fabricated, or any combination thereof.

---

[1] *See* Petitioner's Circumvention Request ''Aluminum Extrusions from the People's Republic of China: Request for Anti-Circumvention Inquiry,'' dated January 9, 2018 (Anti-Circumvention Request).

[2] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011), and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (collectively, the *Orders*).

[3] *See* Anti-Circumvention Request, at 23–50.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.,* by welding or fasteners) to form subassemblies, *i.e.,* partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation. The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a ''finished goods kit.'' A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ''as is'' into a finished product. An imported product will not be considered a ''finished goods kit'' and therefore excluded from the scope of the *Orders* merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) Length of 37 millimeters (''mm'') or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of the *Orders* are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

Merchandise Subject to the Anti-Circumvention Inquiries

These anti-circumvention inquiries cover extruded aluminum products that meet the description of the *Orders* exported from Vietnam by Zhongwang.[4]

[4] The petitioner provided names of known, and potential, entities involved in Zhongwang's import and export of Vietnamese aluminum extrusions. The entities involved in the exportation Vietnamese aluminum extrusions are Chinese, Mexican, Singaporean, U.S., and Vietnamese affiliates of Zhongwang. Through the course of inquiry, we intend to examine in addition to Zhongwang the

Commerce intends to consider whether these inquiries should apply to all exports of extruded aluminum products from Vietnam that meet the description of the *Orders.*

Allegations Supporting Initiation of Anti-Circumvention Proceeding: Merchandise Completed or Assembled in Other Foreign Countries

Section 781(b)(1) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind subject to an order is completed or assembled in a foreign country other than the country to which the order applies. In conducting an anti-circumvention inquiry under section 781(b)(1) of the Act, Commerce will evaluate whether: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD or CVD duty order or finding; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or merchandise which is produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) action is appropriate to prevent evasion of such order or finding.

A. Merchandise of the Same Class or Kind

The petitioner claims that the aluminum extrusions exported to the United States from Vietnam are the same class or kind as that covered by the *Orders*.[5] The petitioner provided evidence to show that the merchandise from Vietnam enters the United States under the same tariff classification as subject merchandise.[6]

B. Completion of Merchandise in a Foreign Country

The petitioner notes that section 781(b)(l)(B)(ii) of the Act requires that ''{Commerce} must also assess whether, prior to importation into the United States, the merchandise in the third country is completed from merchandise produced in the country subject to the antidumping or countervailing duty order.'' [7] In its request, the petitioner submitted evidence of Zhongwang's long history of using its extensive network of global affiliates to circumvent and evade the *Orders.* According to the petitioner, Zhongwang began shipping subject merchandise from its affiliates in the United States and China to Vietnam for reprocessing after Commerce made a scope ruling on Zhongwang's pallets.[8] The petitioner also provided information which indicates that imports into Vietnam, and imports into the United States, of aluminum extrusions from Vietnam significantly increased after the imposition of the *Orders.*[9]

C. Minor or Insignificant Process

The petitioner maintains that the process for completing Vietnamese aluminum extrusions from Zhongwang's Chinese aluminum extrusions is minor or insignificant.[10] Under section 781(b)(2) of the Act, Commerce considers the five factors set out below to determine whether the process of assembly or completion is minor or insignificant. The petitioner argues that processing done in Vietnam is minor and must be viewed relative to: (1) The value of the aluminum extrusions produced in China, (2) the AD/CVD duties avoided, and (3) the export tax rebate received from exporting aluminum extrusions from China to Vietnam.[11]

(1) Level of Investment

The petitioner contends that the level of investment by Zhongwang in Vietnam is insignificant when compared to the value of investment in China to produce the billets and extrusions in the first place.[12] In support of its argument, the petitioner points to Zhongwang's 2016 financial report which indicates that the level of investment by Zhongwang in China consists of 90 aluminum extrusion production lines and orders for an additional 99 extrusion presses.[13] The petitioner also submitted evidence that Zhongwang built a ''world-leading'' aluminum tilt smelting and casting facility at its extrusion facility and possesses the largest customized aluminum extrusions product die design manufacturing center in Asia.[14] According to the petitioner, the level of Zhongwang's investment in its Vietnamese affiliate GVA is minimal when compared to Zhongwang's total aluminum extrusions investments across its company and all of its affiliates.[15] Additionally, the petitioner asserts that Zhongwang's level of investment is minimal when compared to China's semi-finished aluminum goods export rebate that it received on aluminum extrusions exports from China and the avoidance of 400 percent AD/CVD duties on U.S. imports.[16]

(2) Level of Research and Development

The petitioner states that, in comparison with Zhongwang's Chinese operations, the level of research and development (R&D) in Vietnam is minimal.[17] The petitioner points out that Zhongwang's financial reports indicate that it invested heavily in R&D in China.[18] The petitioner also points to Zhongwang's financial reports, which show an integrated production line and its 1,288 R&D and quality control personnel (which account for 7.7 percent of all Zhongwang employees).[19] The petitioner also states that, conversely, Zhongwang's Vietnamese operation (as well as those of and other Vietnamese extruders) consists of merely re-melting and re-extruding; neither of which requires unique technology or significant R&D.[20]

(3) Nature of Production Process

According to the petitioner, the production process undertaken by Vietnamese producers of aluminum extrusions provides minimal value added.[21] The petitioner points out that the that the process requires re-melting the Chinese aluminum extrusions in a furnace and then pushing the reheated extrusion through a die for a desired

following affiliated companies: Aluminicaste Fundicion de Mexico (Aluminicaste); Dalian Liwan Trade Co., Ltd.; Tianjin Boruxin Trading Co., Ltd.; Dragon Luxe Limited; Perfectus Aluminum Inc, Perfectus Aluminum Acquisitions LLC Pencheng Aluminum Enterprise Inc. USA; Transport Aluminum Inc.; Aluminum Source Inc.; Aluminum Industrial Inc.; Global Aluminum (USA) Inc.; Aluminum Shapes, LLC; Century American Aluminum Inc.; and American Apex Aluminum Inc.; Global Vietnam Aluminum Co., Ltd. (GVA); Global Tower Worldwide Ltd. We also intend to examine whether any Zhongwang's affiliates are the producers of the merchandise at issue.

[5] *See* Anti-Circumvention Request, at 25; *see also* sections 781(b)(1)(A)(i) and (iii) of the Act.

[6] *See* Anti-Circumvention Request, at 25 and Exhibits 20, and 23.

[7] *Id.* at 25–26 and Exhibits 2, 6, 9, 10, 12 13, and 29.

[8] *Id.* at 26–27 and Exhibits 9, 13, 16, 30, 31, and 32.

[9] *Id.* at 28 and Exhibit 20.

[10] *Id.* at 28.

[11] *Id.* 28–39

[12] *Id.* at 29–30.

[13] *Id.* at 30 and Exhibit 33.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 30–31 and Exhibit 33.

[17] *Id.* at 31.

[18] *Id.* at 31 and Exhibit 33.

[19] *Id.*

[20] *Id.*

[21] *Id.* at 32.

end shape; the costs incurred by Vietnamese extruders for the process are labor, energy, and overhead, which account for allegedly only 8.8 percent of total extrusion cost.[22] In contrast, the petitioner provides information suggesting that 90 percent of the cost of production of aluminum extrusions in China is the metal material (*i.e.,* aluminum ingot, aluminum scrap, and additional elements) which is extruded for export to Vietnam.[23]

(4) Extent of Production Facilities in Vietnam

The petitioner provided information indicating that production facilities in Vietnam are more limited compared to facilities in China.[24] The petitioner states that Zhongwang is using its affiliate GVA to keep its Chinese facilities running at full production and to continue flooding the world with extrusions, now from Vietnam.[25]

(5) Value of Processing in Vietnam

The petitioner asserts that producing aluminum extrusions in China accounts for a large percentage of the total value of the aluminum extrusions reprocessed in Vietnam.[26] Using a cost of production model with standard consumption rates and surrogate costs for the production of billets and extrusions, the petitioner states that the value of reprocessing performed in Vietnam is a small fraction of the value of merchandise shipped to the United States.[27] The petitioner argues that the vast majority of the value of the merchandise consists of the processing done in China and the value of the aluminum itself. Additionally, the petitioner argues that, from a qualitative analysis standpoint, primary direct material inputs (*i.e.,* Chinese aluminum extrusions) converted by producers in Vietnam show no other significant costs incurred by Vietnamese producers.[28] Thus, petitioner concludes that the value of the merchandise produced in China comprises the vast majority of total value of the inquiry merchandise shipped to the United States.[29]

D. Additional Factors To Consider in Determining Whether Action Is Necessary

Section 781(b)(3) of the Act directs Commerce to consider additional factors in determining whether to include merchandise assembled or completed in a foreign country within the scope of an order, such as: ''{1} the pattern of trade, including sourcing patterns, {2} whether the manufacturer or exporter of the merchandise . . . is affiliated with the person who uses the merchandise . . . to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and {3} whether imports into the foreign country of the merchandise . . . have increased after the initiation of the investigation which resulted in the issuance of such order or finding.''

(1) Pattern of Trade

In its request, the petitioner provides evidence that Vietnam's imports of aluminum extrusions from China, as well as Vietnam's exports of aluminum extrusions to the United States, have surged since the petitions were filed for the original investigations of aluminum extrusions from China.[30] The petitioner points to Zhongwang's 2017 interim financial report, which reveals that the ''sales volume of {Zhongwang}'s deep processing business'' decreased by 80.7 percent compared to the same period in 2016 ''due to the declined sales volume of deep-processed product exporting to the United States . . . caused by the increasingly heating up trade friction in aluminum industry between U.S. and China.'' [31] Thus, the petitioner concludes that there is a pattern of trade of Vietnam imports of Chinese aluminum extrusions and export of inquiry merchandise which indicates circumvention of the *Orders.*

(2) Affiliation

The petitioner provided the following to support its allegation that GVA is affiliated with Zhongwang: (1) Zhongwang's employees have been seconded to GVA; [32] (2) containers of Zhongwang's aluminum from China can be traced to GVA in Vietnam; [33] (3) most of GVA's imports into Vietnam come from Zhongwang; [34] (4) GVA is owned in part by Jacky Cheung, who has been involved with Zhongwang affiliated companies PCA/Perfectus and Alumincaste; [35] and (5) GVA is a supplier to Zhongwang's U.S. affiliate PCA/Perfectus.[36] The petitioner concludes that the evidence supports its allegation that GVA is affiliated with Zhongwang in an effort to circumvent the *Orders.*

(3) Increase of Aluminum Extrusions Shipments From China to Vietnam After Initiations of the AD and CVD Investigations of Aluminum Extrusions From China

The petitioner presented evidence indicating that imports of aluminum extrusions from China to Vietnam have increased since the initiation of the investigations of aluminum extrusions from China.[37] No other factual information on the record contradicts this claim.

Allegations Supporting Initiation of Anti-Circumvention Proceeding: Minor Alterations

Section 781(c)(1) of the Act provides that Commerce may find circumvention of an AD or CVD order when products which are of the class or kind of merchandise subject to an AD or CVD 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 or CVD} order{.}''

Although 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 there are certain factors which should be considered before reaching an anti-circumvention determination. In conducting an anti-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 product.'' [38] Commerce will examine these factors in evaluating an allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i). Still, because each case is highly dependent on the facts on the record, each must be analyzed in light of the specific facts. Moreover, although not specified in the statute, Commerce has also considered additional factors as part of its anti-circumvention analysis,

[22] *Id.* at 32–33 and Exhibits 32 and 34.
[23] *Id.* at 33 and Exhibits 32 and 34.
[24] *Id.* at 34–35.
[25] *Id.* at 35, and Exhibit 16.
[26] *Id.* at 35.
[27] *Id.* at 35, and Exhibit 35.
[28] *Id.* at 36.
[29] *Id.* at 36–37.
[30] *Id.* at 38.
[31] *Id.* at 38–39 and Exhibit 36.
[32] *Id.* at 39.
[33] *Id.*
[34] *Id.* at 39–40 and Exhibits 2 and 3.
[35] *Id.* at 40 and Exhibits 2, 3, 10, and 14.
[36] *Id.* at 40 and Exhibits 3 and 16.
[37] *Id.* at 40 and Exhibits 17 and 18.
[38] *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'').

including the circumstances under which the products at issue entered the United States, and the timing and quantity of said entries during the circumvention review period.[39]

A. Overall Physical Characteristics

The petitioner contends that the aluminum extrusions being imported into the United States from Vietnam are indistinguishable in any meaningful sense from subject extrusions produced in China.[40] Indeed, the petitioner provided evidence that the aluminum ''pallets'' exported from China to GVA in Vietnam are the same as subject merchandise as determined by Commerce in two separate scope rulings.[41] Additionally, the petitioner provided evidence showing that aluminum extrusions from Vietnam are entering the United States under the same HTS subheadings as subject Chinese extrusions.[42] As such, the petitioner argues that the only difference between Chinese aluminum extrusions and extrusions from Vietnam is that the extrusions from Vietnam are being re-extruded from Chinese subject merchandise.

B. Expectations of the Ultimate Users

The petitioner alleges that the expectations of the purchasers, and ultimate use of aluminum extrusions from Vietnam, are the same as those of products produced in China.[43] The petitioner cites to Commerce's scope ruling on pallets that aluminum ''pallets'' could not be differentiated from aluminum extrusions based on their end use because the ''pallets'' at issue were not functional as ordinary pallets.[44] The petitioner avers that the ''pallets'' (or other extruded aluminum products that have been re-melted and re-extruded) would serve the same expected end use, because the underlying aluminum in these extrusions is exactly the same.[45] The petitioner provided evidence that aluminum extrusion producers in Vietnam do not distinguish between aluminum billet feedstock produced in one location from another when marketing their extrusions to the public.[46] Therefore, the petitioner argues that the end-users of these products do not distinguish between those produced entirely in China and those re-extruded in Vietnam.

C. Channels of Marketing

The petitioner maintains that there is no difference between the channels of marketing for aluminum extrusions from China and for aluminum extrusion from Vietnam.[47] For example, the petitioner provided evidence that the marketing pages of companies' websites do not differentiate between the aluminum extrusions produced in Vietnam and those produced in China and melted and re-extruded in Vietnam.[48] The petitioner alleges that if there were a difference between those extrusions, then one would expect companies to highlight the difference.[49]

D. Cost of Modification

The petitioner claims that the cost of the minor alterations to make aluminum extrusions in Vietnam is small when compared to the total cost of production and the total value of the aluminum extrusions.[50] As discussed above, the petitioner contends that, since the Vietnamese producers are only melting and re-extruding the aluminum, the production which takes place in Vietnam amounts to minimal additional processing.[51] The petitioner alleges that this processing (*i.e.,* re-melting and re-extruding) takes place in two steps: (1) GVA melts the Chinese extrusion into a billet, and (2) GVA extrudes the billet.[52] It claims that GVA avoids the metal costs of billet production in Vietnam by simply melting aluminum extrusions that are already at the desired aluminum alloy.[53] According to the petitioner, this allows GVA to save over 90 percent of the cost of producing a billet, which comprises 80 percent of the cost of producing an extrusion.[54] For that reason, the petitioner avers that the remaining processing which takes place in Vietnam is 10 percent of total aluminum extrusions; these costs are broken down between labor, energy, and additional overhead, and are insignificant in comparison to the AD/CVD duties avoided.[55]

E. Additional Factors To Consider in Determining Whether Action Is Necessary

In addition to the factors described above, Commerce has considered additional factors in determining whether a producer or exporter has used a minor alteration to circumvent an order.[56]

i. Circumstance Under Which the Subject Products Entered the United States

The petitioner states that, at the completion of the original investigations, the China-wide AD/CVD rate was nearly 400 percent.[57] According to the petitioner, these considerable margins give Zhongwang a tremendous financial incentive to circumvent the *Orders,* thereby not incurring the costs associated with the duties levied on the entries of subject merchandise.[58] The petitioner alleges that Zhongwang has a long history of evading the *Orders.*[59]

ii. Timing of Entries

The petitioner asserts that the timing of the entries of Vietnamese aluminum extrusions shows that Zhongwang has attempted to circumvent the *Orders.*[60] To support its contention, the petitioner provided import data showing that aluminum extrusions shipments to Vietnam from China, and aluminum extrusion shipments to the United States from Vietnam, both increased after the imposition of the *Orders* in 2011.[61]

Analysis of the Allegations

Based on our analysis of the information provided by the petitioner, Commerce finds that there exists a sufficient basis to initiate anti-circumvention inquiries, pursuant to sections 781(b) and (c) of the Act. Commerce will determine whether the merchandise subject to the inquiries (identified in the ''Merchandise Subject to the Anti-Circumvention Inquiries'' section, above) involves merchandise

[39] *See, e.g., Brass Sheet and Strip from West Germany; Negative Preliminary Determination of Circumvention of Antidumping Duty Order,* 55 FR 32655 (August 10, 1990) (*Brass Sheet and Strip from West Germany Prelim*), unchanged in *Brass Sheet and Strip from Germany; Negative Final Determination of Circumvention of Antidumping Duty Order,* 56 FR 65884 (December 19, 1991); *see also Small Diameter Graphite Electrodes from the People's Republic of China: Initiation of Anticircumvention Inquiry,* 77 FR 37873, 37876 (June 25, 2012).

[40] *See* Anti-Circumvention Request, at 42.

[41] *Id.* at 42 and Exhibits 2, 3, and 20.

[42] *Id.* at 42 and Exhibit 20.

[43] *Id.* at 43.

[44] *Id.* (citing Memorandum, ''Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Certain Aluminum Pallets,'' dated December 7, 2016; and Memorandum, ''Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Certain Aluminum Pallets,'' dated June 13, 2017).

[45] *Id.* at 43.

[46] *Id.* at 43 and Exhibits 22, 37, and 38.

[47] *Id.* at 44.

[48] *Id.* at 44 and Exhibits 22, 37, and 38.

[49] *Id.* at 44 and Exhibit 22.

[50] *Id.* at 44.

[51] *Id.*

[52] *Id.* at 44–45 and Exhibits 32 and 34.

[53] *Id.* at 44–46 and Exhibits 32 and 34.

[54] *Id.*

[55] *Id.* at 46–47 and Exhibit 34.

[56] *See, e.g., Brass Sheet and Strip from West Germany Prelim,* 55 FR at 32655, 32658.

[57] *See* Anti-Circumvention Request, at 47–48.

[58] *Id.* at 48.

[59] *Id.*

[60] *Id.*

[61] *Id.* at 48–50 and Exhibits 9, 17, and 20.

either completed or assembled in other foreign countries which can be considered subject to the *Orders,* and/or represents a minor alteration to subject merchandise in such minor respects that it should be subject to the *Orders.*

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, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption, on or after the date of initiation of the inquiries.

In the event we issue a preliminary affirmative determination of circumvention pursuant to section 781(b) of the act (Merchandise Completed or Assembled in Other Foreign Countries), we intend to notify the International Trade Commission, in accordance with section 781(b)(1) of the Act and 19 CFR 351.225(f)(7)(i)(B), if applicable.

Commerce will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. Commerce intends to issue its final determination within 300 days of this initiation, in accordance with section 781(f) of the Act.

This notice is published in accordance with sections 781(b) and (c) of the Act and 19 CFR 351.225(h) and (i).

Dated: February 26, 2018.

Prentiss Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2018–04390 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Notice of Covered Merchandise Referral

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to the Enforce and Protect Act of 2015 (EAPA), the Department of Commerce (Commerce) received a covered merchandise referral from U.S. Customs and Border Protection (CBP) in connection with a CBP Enforce and Protect Act (EAPA) investigation concerning the antidumping duty (AD) order on wooden bedroom furniture (WBF) from the People's Republic of China (China). In accordance with EAPA, Commerce intends to determine whether the merchandise subject to the referral is covered by the scope of the order and promptly transmit its determination to CBP. Commerce is providing notice of the referral and inviting participation from interested parties.

DATES: Applicable March 5, 2018.

FOR FURTHER INFORMATION CONTACT: Ariela Garvett at (202) 482–3609 or Howard Smith at (202) 482–5193, AD/CVD Operations Office IV, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law, which contains Title IV-Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title ''Enforce and Protect Act of 2015'' or ''EAPA'') (Pub. L. 114–125, 130 Stat. 122, 155, Feb. 24, 2016). Effective August 22, 2016, section 421 of the EAPA added section 517 to the Tariff Act of 1930, as amended (the Act), which establishes a formal process for CBP to investigate allegations of the evasion of antidumping and countervailing duty (AD/CVD) orders. Section 517(b)(4)(A) of the Act provides a procedure whereby if, during the course of an EAPA investigation, CBP is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act, it shall refer the matter to Commerce to make such a determination. Section 517(a)(3) of the Act defines covered merchandise as merchandise that is subject to an antidumping duty order issued under section 736 of the Act or a countervailing duty order issued under section 706 of the Act. Section 517(b)(4)(B) of the Act states that Commerce, after receiving a covered merchandise referral from CBP, shall determine whether the merchandise is covered merchandise and promptly transmit its determination to CBP. The Act does not establish a deadline within which Commerce must issue its determination.

On December 22, 2017, Commerce received a covered merchandise referral from CBP regarding CBP EAPA Investigation No. 7189 [1] which concerns the AD order on WBF from China.[2] Specifically, based on an allegation by the American Furniture Manufacturers Committee for Legal Trade, CBP has requested that Commerce issue a determination as to whether certain merchandise imported by Aspects Furniture International, Inc. is subject to the AD order on WBF from China:

(1) Desk/Console table with drawers;

(2) Credenza/Trunk Storage/Cabinet with minibar;

(3) Consoles/Custom Dresser/Console; and

(4) Bed Bench Base.

Notification to Interested Parties

Commerce is hereby notifying interested parties that it has received the covered merchandise referral referenced above, will begin a new segment of the proceeding, and intends to issue a determination regarding whether the merchandise subject to the referral is covered merchandise within the meaning of section 517(a)(3) of the Act. Additionally, Commerce intends to provide interested parties with the opportunity to participate in this segment of the proceeding, including through the submission of comments, and, if appropriate, new factual information and verification. Specifically, Commerce will notify parties on the segment-specific service list for this segment of the proceeding of a schedule for comments. In addition, Commerce may request factual information from any person to assist in making its determination and may verify submissions of factual information, if Commerce determines that such verification is appropriate. Commerce intends to issue a final determination within 120 days of the publication of this notice (this deadline may be extended if it is not practicable to complete the final determination within 120 days), and will promptly transmit its final determination to CBP in accordance with section 517(b)(4)(B) of the Act.

[1] *See* Letter from CBP, ''EAPA Case Number: 7189; Scope Referral Request for merchandise under EAPA Investigation 7189, imported by Aspects Furniture International, Inc. and concerning evasion of the antidumping duty order on Wooden Bedroom Furniture from the People's Republic of China,'' dated December 22, 2017. This document and any supporting documents will be available electronically on Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS) within five days of publication of this notice.

[2] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005).

Parties are also hereby notified that this is the only notice that Commerce intends to publish in the **Federal Register** concerning this covered merchandise referral. Therefore, interested parties that wish to participate in this segment of the proceeding, and receive notice of the final determination, must submit their letters of appearance as discussed below. Further, any party desiring access to business proprietary information in this segment of the proceeding must file an application for access to business proprietary information under administrative protective order (APO), as discussed below.

Finally, we note that covered merchandise referrals constitute a new type of segment of a proceeding at Commerce and, therefore, Commerce will continue to develop its practice and procedures in this area.

Scope of the AD Order Wooden Bedroom Furniture From People's Republic of China

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[3] highboys,[4] lowboys,[5] chests of drawers,[6] chests,[7] door chests,[8] chiffoniers,[9] hutches,[10] and armoires;[11] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;[12] (9) jewelry armories;[13] (10) cheval mirrors;[14] (11) certain metal parts;[15] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds;[16] (14) toy boxes;[17] (15) certain enclosable wall

[3] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[4] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[5] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[6] A chest of drawers is typically a case containing drawers for storing clothing.

[7] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[8] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[9] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[10] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[11] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[12] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

[13] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door or one front door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, concerning ''Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China,'' dated August 31, 2004. *See also Wooden Bedroom Furniture from the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part,* 71 FR 38621 (July 7, 2006).

[14] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.,* a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture from the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part,* 72 FR 948 (January 9, 2007).

[15] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.,* wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form.

[16] Upholstered beds that are completely upholstered, *i.e.,* containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 72 FR 7013 (February 14, 2007).

[17] To be excluded the toy box must: (1) Be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (''ASTM'') standard F963–03. Toy boxes are boxes

Continued

bed units;[18] (16) certain shoe cabinets;[19] and (17) certain bed bases.[20]

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the HTSUS as ''wooden . . . beds'' and under subheading 9403.50.9080 of the HTSUS as ''other . . . wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may be entered under subheadings 9403.90.7005 or 9403.90.7080 of the HTSUS. Subject merchandise may also be entered under subheadings 9403.50.9041, 9403.60.8081, 9403.20.0018, or 9403.90.8041. Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as ''glass mirrors . . . framed.'' The order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

generally designed for the purpose of storing children's items such as toys, books, and playthings. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum ''Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box,'' dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

[18] Excluded from the scope are certain enclosable wall bed units, also referred to as murphy beds, which are composed of the following three major sections: (1) A metal wall frame, which attaches to the wall and uses coils or pistons to support the metal mattress frame; (2) a metal frame, which has euro slats for supporting a mattress and two legs that pivot; and (3) wood panels, which attach to the metal wall frame and/or the metal mattress frame to form a cabinet to enclose the wall bed when not in use. Excluded enclosable wall bed units are imported in ready-to-assemble format with all parts necessary for assembly. Enclosable wall bed units do not include a mattress. Wood panels of enclosable wall bed units, when imported separately, remain subject to the order.

[19] Excluded from the scope are certain shoe cabinets 31.5–33.5 inches wide by 15.5–17.5 inches deep by 34.5–36.5 inches high. They are designed strictly to store shoes, which are intended to be aligned in rows perpendicular to the wall along which the cabinet is positioned. Shoe cabinets do not have drawers, rods, or other indicia for the storage of clothing other than shoes. The cabinets are not designed, manufactured, or offered for sale in coordinated groups or sets and are made substantially of wood, have two to four shelves inside them, and are covered by doors. The doors often have blinds that are designed to allow air circulation and release of bad odors. The doors themselves may be made of wood or glass. The depth of the shelves does not exceed 14 inches. Each shoe cabinet has doors, adjustable shelving, and ventilation holes.

[20] Excluded from the scope are certain bed bases consisting of: (1) A wooden box frame, (2) three wooden cross beams and one perpendicular center wooden support beam, and (3) wooden slats over the beams. These bed bases are constructed without inner springs and/or coils and do not include a headboard, footboard, side rails, or mattress. The bed bases are imported unassembled.

Filing Requirements

All submissions to Commerce must be filed electronically using ACCESS.[21] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date of receipt by the applicable deadlines.

Letters of Appearance and Administrative Protective Order

Interested parties that wish to participate in this segment of the proceeding and be added to the public service list for this segment of the proceeding must file a letter of appearance in accordance with 19 CFR 351.103(d)(1), with one exception: the parties publicly identified by CBP in the covered merchandise referral (referenced above) are not required to submit a letter of appearance, and will be added to the public service list for this segment of the proceeding by Commerce.

Commerce placed an APO on the record on January 11, 2018,[22] and established the APO service list for use in this segment. Commerce intends to place the business proprietary versions of the documents contained in the covered merchandise referral on the record of this proceeding in ACCESS within five days of publication of this notice.

Interested parties must submit applications for disclosure under the APO in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to this segment of the proceeding, with one exception: APO applicants representing the parties that have been identified by CBP as an importer in the covered merchandise referral (referenced above) are exempt from the additional filing requirements for importers pursuant to 19 CFR 351.305(d).

[21] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), as amended in *Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

[22] *See* the Administrative Protective Order ''In the Matter of the Scope Inquiry of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China (A–570–890) (CBP EAPA Inv. No. 7189)'', dated January 11, 2018.

Dated: February 22, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–04392 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–054]

Countervailing Duty Investigation of Certain Aluminum Foil From the People's Republic of China: Final Affirmative Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain aluminum foil (aluminum foil) from the People's Republic of China (China). The period of investigation is January 1, 2016, through December 31, 2016. For information on the estimated subsidy rates, *see* the ''*Final Determination and Suspension of Liquidation*'' section of this notice.

DATES: Applicable March 5, 2018.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3813.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Determination* on August 14, 2017.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by

[1] *See Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 82 FR 37844 (August 14, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

parties for this final determination, may be found in the Issues and Decision Memorandum [2] issued concurrently with this notice. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Scope Comments

We invited parties to comment on Commerce's Preliminary Scope Memorandum.[3] Commerce has reviewed the briefs submitted by interested parties, considered the arguments therein, and has made changes to the scope of the investigation. For further discussion, *see* Commerce's Final Scope Decision Memorandum.[4]

Methodology

Commerce is conducting this countervailing duty (CVD) investigation in accordance with section 701 of the Tariff Act of 1930, as amended (Act). For each of the subsidy programs found to be countervailable, we determine that there is a subsidy (*i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient) and that the subsidy is specific. For a full description of the methodology underlying our final determination, *see* the Issues and Decisions Memorandum.

Scope of the Investigation

The merchandise covered by this investigation is aluminum foil from China. For a complete description of the scope of this investigation, *see* Appendix II.

Verification

As provided in section 782(i) of the Act, in November 2017, we conducted verification of the questionnaire responses submitted by Dingsheng Aluminum (Hong Kong) Trading Co., Ltd. (Dingsheng HK) and Jiangsu Zhongji Lamination Materials Co., Ltd. (Zhongji). We issued verification reports on November 25, 2017.[5] We used standard verification procedures, including an examination of relevant accounting and financial records, and original source documents provided by Dingsheng HK and Zhongji.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs submitted by the parties, are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix I.

Use of Adverse Facts Available (AFA)

For purposes of this final determination, we relied on facts available, and because certain respondents did not act to the best of their ability in responding to Commerce's requests for information, we drew an adverse inference, where appropriate, in selecting from among the facts otherwise available.[6] The subsidy rates for Loften Aluminum (Hong Kong) Limited and Manakin Industries, LLC, are based totally on AFA. A full discussion of our decision to rely on adverse facts available is presented in the ''Use of Facts Otherwise Available and Adverse Inferences'' section of the Issues and Decisions Memorandum.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to the respondents' subsidy rate calculations since the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum and the Final Calculation Memoranda.[7]

All-Others Rate

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise individually investigated.

In accordance with section 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an ''all-others'' rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the ''all-others'' rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as rates based entirely on facts otherwise available. Where the rates for the individually investigated companies are all zero or *de minimis,* or determined entirely using facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs Commerce to establish an ''all-others'' rate using ''any reasonable method.''

Pursuant to section 705(c)(5)(A)(i) of the Act, we have calculated the ''all-others'' rate using the subsidy rates of Dingsheng HK and Zhongji, the only two mandatory respondents not receiving a subsidy rate based totally on section 776 of the Act. However, we have not calculated the ''all-others'' rate by weight-averaging these two rates because doing so risks disclosure of proprietary information. Therefore, and consistent with Commerce's practice, for the ''all-others'' rate, we calculated a simple average of these two mandatory respondents' subsidy rates.

Final Determination

Company	Subsidy rate (percent)
Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.[8]	19.98
Jiangsu Zhongji Lamination Materials Co., Ltd.[9]	17.14
Loften Aluminum (Hong Kong) Limited	80.97
Manakin Industries, LLC [10]	80.97

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China,'' dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Certain Aluminum Foil from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 26, 2017, and filed to ACCESS on October 30, 2017.

[4] *See* Memorandum, ''Certain Aluminum Foil from the People's Republic of China: Final Scope Decision Memorandum,'' dated concurrently with this memorandum.

[5] *See* Commerce Memoranda, ''Verification of the Questionnaire Responses of Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.: Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China,'' (Dingsheng Verification Report) and ''Verification of the Questionnaire Responses of Jiangsu Zhongji Lamination Materials Co., Ltd.: Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China,'' (Zhongji Verification Report), both dated November 25, 2017.

[6] *See* sections 776(a) and (b) of the Act.

[7] *See* Memoranda, ''Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Determination Calculation Memorandum for Dingsheng Aluminum (Hong Kong) Trading Co., Ltd.,'' dated February 26, 2018 (Dingsheng Final Calculation Memorandum) and ''Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Determination Calculation Memorandum for Zhongji Lamination Materials Co., Ltd,'' dated February 26, 2018 (Zhongji Final Calculation Memorandum).

Company	Subsidy rate (percent)
All-Others	18.56

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from the PRC that were entered or withdrawn from warehouse, for consumption, on or after August 14, 2017, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, on December 12, 2017, we instructed CBP to discontinue the suspension of liquidation of all entries at that time.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order, will reinstate the suspension of liquidation under section 706(a) of the Act, and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Return or Destruction of Proprietary Information

In the event the ITC issues a final negative injury determination, this notice serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: February 26, 2018.

Prentiss Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Scope Comments
V. Application of the Countervailing Duty Law to Imports from the PRC
VI. Subsidies Valuation Information
VII. Benchmarks and Discount Rates
VIII. Use of Facts Otherwise Available and Adverse Inferences
IX. Analysis of Programs
X. Analysis of Comments
- Comment 1: Whether Commerce Erred in Its Treatment of Manakin
- Comment 2: Whether the Record Supports a Finding of Policy Lending
- Comment 3: Whether Chinese Commercial Banks Are Government Authorities
- Comment 4: Whether Commerce's Policy Lending Benchmark Interest Rate Computations Are Supported by the Record and Lawful
- Comment 5: Whether Commerce's Investigation of Uninitiated Programs Is Lawful
- Comment 6: Whether Commerce Should Change Its Export Buyer's Credit Determination
- Comment 7: Whether Commerce Should Use the USD Interest Rate Benchmark for Hong Kong Loans
- Comment 8: Whether Loans Issued in Hong Kong to Hong Kong Companies Are Countervailable
- Comment 9: Whether Commerce Should Revise Dingsheng's Sales Denominator
- Comment 10: Whether Commerce Should Correct Calculation Errors for Dingsheng's Loans
- Comment 11: Whether Commerce Should Correct Calculation Errors for Dingsheng's Aluminum and Coal Purchases
- Comment 12: Whether Commerce Should Place Interest Rate Benchmarks on the Record That Are Contemporaneous to the POI
- Comment 13: Whether Commerce Should Rely on AFA for Subsidies Discovered at Zhongji's Verification
- Comment 14: Whether Commerce Should Grant Zhongji an Export Value Adjustment
- Comment 15: Whether Commerce Improperly Rejected Dingsheng's Benchmark Data
- Comment 16: Whether Commerce Should Revise the Benchmarks for Primary Aluminum
- Comment 17: Whether the GOC Provided Sufficient Evidence To Find That Input Suppliers Were Not Government Authorities
- Comment 18: Whether CCP Affiliations or Activities by Company Officials Make a Company a Government Authority
- Comment 19: Whether the Primary Aluminum and Steam Coal for LTAR Programs Are Specific
- Comment 20: Whether Commerce Must Use a Tier-One Benchmark for the Primary Aluminum and Steam Coal for LTAR Programs
- Comment 21: Whether Dingsheng's Income Tax Deductions for R&D Expenses Are Understated
- Comment 22: Whether Commerce Selected the Highest Electricity Rate Benchmarks
- Comment 23: Whether Commerce Should Apply AFA for Electricity

[8] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Dingsheng HK: Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd.; Hangzhou Teemful Aluminum Co., Ltd.; Hangzhou Five Star Aluminum Co., Ltd.; Hangzhou DingCheng Aluminum Co., Ltd.; Luoyang Longding Aluminum Co., Ltd.; Hangzhou Dingsheng Industrial Group Co., Ltd.; Hangzhou Dingsheng Import & Export Co., Ltd.; and Walson (HK) Trading Co., Limited.

[9] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Zhongji: Shantou Wanshun Package Material Stock Co., Ltd.; Jiangsu Huafeng Aluminum Industry Co., Ltd.; and Jiangsu Zhongji Lamination Materials Co., (HK) Ltd.

[10] As discussed in the Preliminary Decision Memorandum, Commerce finds that Manakin Industries and Suzhou Manakin Aluminum Processing Technology Co., Ltd., effectively function by joint operation as a trading company. Therefore, the rate for Manakin Industries also applies to Suzhou Manakin Aluminum Processing Technology Co., Ltd. For additional information, *see* Preliminary Decision Memorandum and Issues and Decision Memorandum.

Comment 24: Whether Commerce Should Adjust the Electricity Benchmark for VAT
Comment 25: Whether Electricity Constitutes General Infrastructure and Provides a Financial Contribution
Comment 26: Whether Commerce Should Rely on Xeneta Data for Freight Benchmark
Comment 27: Whether Commerce Should Find Non-Use of Steam Coal
XI. Recommendation

Appendix II

Scope of the Investigation

The merchandise covered by this investigation is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope, including aluminum foil to which lubricant has been applied to one or both sides of the foil.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[FR Doc. 2018–04402 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Hydrofluorocarbon Blends From the People's Republic of China: Notice of Covered Merchandise Referral

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to the Enforce and Protect Act of 2015 (EAPA), the Department of Commerce (Commerce) received a covered merchandise referral from U.S. Customs and Border Protection (CBP) in connection with a CBP Enforce and Protect Act (EAPA) investigation concerning the antidumping duty (AD) order on hydrofluorocarbon (HFC) blends from the People's Republic of China (China). In accordance with EAPA, Commerce intends to determine whether the merchandise subject to the referral is covered by the scope of the order and promptly transmit its determination to CBP. Commerce is providing notice of the referral and inviting participation from interested parties.

DATES: Applicable March 5, 2018.

FOR FURTHER INFORMATION CONTACT: Manuel Rey at (202) 482–5518, AD/CVD Operations Office II, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law, which contains Title IV-Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title ''Enforce and Protect Act of 2015'' or ''EAPA'') (Pub. L. 114–125, 130 Stat. 122, 155, Feb. 24, 2016). Effective August 22, 2016, section 421 of the EAPA added section 517 to the Tariff Act of 1930, as amended (the Act), which establishes a formal process for CBP to investigate allegations of the evasion of antidumping and countervailing duty (AD/CVD) orders. Section 517(b)(4)(A) of the Act provides a procedure whereby if, during the course of an EAPA investigation, CBP is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act, it shall refer the matter to Commerce to make such a determination. Section 517(a)(3) of the Act defines covered merchandise as merchandise that is subject to an antidumping duty order issued under section 736 of the Act or a countervailing duty order issued under section 706 of the Act. Section 517(b)(4)(B) of the Act states that Commerce, after receiving a covered merchandise referral from CBP, shall determine whether the merchandise is covered merchandise and promptly transmit its determination to CBP. The Act does not establish a deadline within which Commerce must issue its determination.

On December 4, 2017, Commerce received a covered merchandise referral from CBP regarding CBP EAPA Investigation No. 7212 [1] which concerns the AD order on HFCs from China.[2] Specifically, based on an allegation by RMS of Georgia d/b/a Choice

Refrigerants, CBP has requested that Commerce issue a determination as to whether certain merchandise imported by LM Supply, Inc. (LM Supply) is subject to the AD order on HFCs from China. Specifically, CBP asked Commerce to clarify: (1) If the scope exclusion for Choice® R–421A is limited to only merchandise that is licensed by the rights holder or does it apply to any HFC blends that satisfy the terms of the patents, and (2) if the scope exclusion is limited to only that merchandise that also carries the trademarks indicated in the scope exclusion.

Notification to Interested Parties

Commerce is hereby notifying interested parties that it has received the covered merchandise referral referenced above, will begin a new segment of the proceeding, and intends to issue a determination regarding whether the merchandise subject to the referral is covered merchandise within the meaning of section 517(a)(3) of the Act. Additionally, Commerce intends to provide interested parties with the opportunity to participate in this segment of the proceeding, including through the submission of comments, and, if appropriate, new factual information and verification. Specifically, Commerce will notify parties on the segment-specific service list for this segment of the proceeding of a schedule for comments. In addition, Commerce may request factual information from any person to assist in making its determination and may verify submissions of factual information, if Commerce determines that such verification is appropriate. Commerce intends to issue a final determination within 120 days of the publication of this notice (this deadline

---

[1] *See* Letter from CBP, ''EAPA Case Number: 7212; Scope Referral Request for merchandise under EAPA Investigation 7212, imported by LM Supply, Inc. and concerning the investigation of evasion of the antidumping duty order on hydrofluorocarbon blends from the People's Republic of China (A–570–028),'' dated December 4, 2017. This document and any supporting documents will be available electronically on Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS) within five days of publication of this notice.

[2] *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016).

may be extended if it is not practicable to complete the final determination within 120 days), and will promptly transmit its final determination to CBP in accordance with section 517(b)(4)(B) of the Act.

Parties are also hereby notified that this is the only notice that Commerce intends to publish in the **Federal Register** concerning this covered merchandise referral. Therefore, interested parties that wish to participate in this segment of the proceeding, and receive notice of the final determination, must submit their letters of appearance, as discussed below. Further, any party desiring access to business proprietary information in this segment of the proceeding must file an application for access to business proprietary information under administrative protective order (APO), as discussed below.

Finally, we note that covered merchandise referrals constitute a new type of segment of a proceeding at Commerce and, therefore, Commerce will continue to develop its practice and procedures in this area. Additionally, we note that Commerce has received a scope ruling request concerning merchandise which may be similar to the merchandise at issue in the covered merchandise referral referenced above.[3] Thus, Commerce may consider any potential overlapping issues in these separate segments of the proceeding.

Scope of the AD Order Hydrofluorocarbon Blends From People's Republic of China

The merchandise covered by this order is HFC blends. HFC blends covered by the scope are R–404A, a zeotropic mixture consisting of 52 percent 1,1,1 Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R–407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R–407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R–410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R–507A, a zeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R–507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.[4]

Any blend that includes an HFC component other than R–32, R–125, R–143a, or R–134a is excluded from the scope of this order.

Excluded from this order are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from this order are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99™ (R–438A), MO79 (R–422A), MO59 (R–417A), MO49Plus™ (R–437A) and MO29™ (R–4 22D), Genetron® Performax™ LT (R–407F), Choice® R–421A, and Choice® R–421B.

HFC blends covered by the scope of this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Filing Requirements

All submissions to Commerce must be filed electronically using ACCESS.[5] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date of receipt by the applicable deadlines.

Letters of Appearance and Administrative Protective Order

Interested parties that wish to participate in this segment of the proceeding and be added to the public service list for this segment of the proceeding must file a letter of appearance in accordance with 19 CFR 351.103(d)(1), with one exception: The parties publicly identified by CBP in the covered merchandise referral (referenced above) are not required to submit a letter of appearance, and will be added to the public service list for this segment of the proceeding by Commerce.

Commerce placed an APO on the record on December 22, 2017,[6] (amended on January 16, 2018),[7] and established the APO service list for use in this segment. Commerce intends to place the business proprietary versions of the documents contained in the covered merchandise referral on the record of this proceeding in ACCESS within five days of publication of this notice.

Interested parties must submit applications for disclosure under the APO in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to this segment of the proceeding, with one exception: APO applicants representing the parties that have been identified by CBP as an importer in the covered merchandise referral (referenced above) are exempt from the additional filing requirements for importers pursuant to 19 CFR 351.305(d).

Dated: February 22, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–04393 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Letter on behalf of Kenneth Ponder and Choice Refrigerants ''Application for Scope Ruling on Exclusion of Patented HFC Blends from Antidumping Duty Order A–570–028: Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China,'' dated November 30, 3017.

[4] R–404A is sold under various trade names, including Forane® 404A, Genetron® 404A, Solkane® 404A, Klea® 404A, and Suva®404A. R–407A is sold under various trade names, including Forane® 407A, Solkane® 407A, Klea®407A, and Suva®407A. R–407C is sold under various trade names, including Forane® 407C, Genetron® 407C, Solkane® 407C, Klea® 407C and Suva® 407C. R–410A is sold under various trade names, including EcoFluor R410, Forane® 410A, Genetron® R410A and AZ–20, Solkane® 410A, Klea® 410A, Suva® 410A, and Puron®. R–507A is sold under various trade names, including Forane® 507, Solkane® 507, Klea®507, Genetron®AZ–50, and Suva®507. R–32 is sold under various trade names, including Solkane®32, Forane®32, and Klea®32. R–125 is sold under various trade names, including Solkane®125, Klea®125, Genetron®125, and Forane®125. R–143a is sold under various trade names, including Solkane®143a, Genetron®143a, and Forane®125.

[5] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), as amended in *Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

[6] *See* the Administrative Protective Order ''In the Matter of the Scope Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends (A–570–028) (CBP EAPA Inv. No. 7212),'' dated December 22, 2017.

[7] *See* Amendment of the Administrative Protective Order ''In the Matter of the Scope Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends (A–570–028) (CBP EAPA Inv. No. 7212),'' dated January 16, 2018.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the Commission) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

DATES: Applicable March 1, 2018.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–570–983	731–TA–1201	China	Drawn Stainless Steel Sinks (1st Review).	James Terpstra (202) 482–3965.
C–570–984	731–TA–489	China	Drawn Stainless Steel Sinks (1st Review).	James Terpstra (202) 482–3965.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerces's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *http://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[1]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties must use the certification formats provided in 19 CFR 351.303(g).[3] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: February 27, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–04395 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Covered Merchandise Referral

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to the Enforce and Protect Act of 2015 (EAPA), the Department of Commerce (Commerce) received a covered merchandise referral from U.S. Customs and Border Protection (CBP) in connection with a CBP Enforce and Protect Act (EAPA) investigation concerning the antidumping duty (AD) order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China). In accordance with EAPA, Commerce intends to determine whether the merchandise subject to the referral is covered by the scope of the order and promptly transmit its determination to CBP. Commerce is providing notice of the referral and inviting participation from interested parties.

DATES: Applicable March 5, 2018.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun at (202) 482–5760 or Minoo Hatten at (202) 482–1690, AD/CVD Operations Office I, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law, which contains Title IV—Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title ''Enforce and Protect Act of 2015'' or ''EAPA'') (Pub. L. 114–125, 130 Stat. 122, 155, Feb. 24, 2016). Effective August 22, 2016, section 421 of the EAPA added section 517 to the Tariff Act of 1930, as amended (the Act), which establishes a formal process for CBP to investigate allegations of the evasion of antidumping and countervailing duty (AD/CVD) orders. Section 517(b)(4)(A) of the Act provides a procedure whereby if, during the course of an EAPA investigation, CBP is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act, it shall refer the matter to Commerce to make such a determination. Section 517(a)(3) of the Act defines covered merchandise as merchandise that is subject to an antidumping duty order issued under section 736 of the Act or a countervailing duty order issued under section 706 of the Act. Section 517(b)(4)(B) of the Act states that Commerce, after receiving a covered merchandise referral from CBP, shall determine whether the merchandise is covered merchandise and promptly transmit its determination to CBP. The Act does not establish a deadline within which Commerce must issue its determination.

On November 21, 2017, Commerce received a covered merchandise referral from CBP regarding CBP EAPA Investigation No. 7184 [1] which concerns the AD order on diamond sawblades from China.[2] Specifically, based on an allegation by Diamond Sawblades Manufacturers Coalition (DSMC), CBP has requested that Commerce issue a determination as to whether diamond sawblades, imported by Diamond Tools Technology LLC (''DTT USA''), that are laser welded in Thailand by Diamond Tools Technology (Thailand), Ltd. (''DTT Thailand'') from: (1) Cores from Thailand and segments from China, (2) segments and cores that are both produced in China, and/or (3) cores from China and segments from Thailand, are merchandise subject to the AD order on diamond sawblades from China.

Notification to Interested Parties

Commerce is hereby notifying interested parties that it has received the covered merchandise referral referenced above, will begin a new segment of the proceeding, and intends to issue a determination regarding whether the merchandise subject to the referral is covered merchandise within the meaning of section 517(a)(3) of the Act. Additionally, Commerce intends to provide interested parties with the opportunity to participate in this segment of the proceeding, including through the submission of comments, and, if appropriate, new factual information and verification. Specifically, Commerce will notify parties on the segment-specific service list for this segment of the proceeding of a schedule for comments. In addition, Commerce may request factual information from any person to assist in making its determination and may verify submissions of factual information, if Commerce determines that such verification is appropriate. Commerce intends to issue a final determination within 120 days of the publication of this notice (this deadline

[1] *See* Letter from CBP, ''Scope Referral Request for merchandise under EAPA Investigation 7184, imported by Diamond Tools Technology LLC and concerning the investigation of evasion of the antidumping duty order on diamond sawblades from the People's Republic of China (A–570–900),'' dated November 21, 2017. Commerce intends to make available this document and any supporting documents on Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS) within five days of publication of this notice.

[2] *See Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders,* 74 FR 57145 (November 4, 2009).

may be extended if it is not practicable to complete the final determination within 120 days), and will promptly transmit its final determination to CBP in accordance with section 517(b)(4)(B) of the Act.

Parties are also hereby notified that this is the only notice that Commerce intends to publish in the **Federal Register** concerning this covered merchandise referral. Therefore, interested parties that wish to participate in this segment of the proceeding, and receive notice of the final determination, must submit their letters of appearance as discussed below. Further, any party desiring access to business proprietary information in this segment of the proceeding must file an application for access to business proprietary information under administrative protective order (APO), as discussed below.

Finally, we note that covered merchandise referrals constitute a new type of segment of a proceeding at Commerce and, therefore, Commerce will continue to develop its practice and procedures in this area. Additionally, we note that Commerce has recently initiated an anti-circumvention inquiry pursuant to section 781 of the Act concerning merchandise which may be similar to the merchandise at issue in the covered merchandise referral referenced above.[3] Thus, Commerce may consider any potential overlapping issues in these separate segments of the proceeding.

Scope of the AD Order on Diamond Sawblades From China

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order. Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, Commerce included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by CBP.[4]

The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Filing Requirements

All submissions to Commerce must be filed electronically using ACCESS.[5] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date of receipt by the applicable deadlines.

Letters of Appearance and Administrative Protective Order

Interested parties that wish to participate in this segment of the proceeding and be added to the public service list for this segment of the proceeding must file a letter of appearance in accordance with 19 CFR 351.103(d)(1), with one exception: The parties publicly identified by CBP in the covered merchandise referral (referenced above) are not required to submit a letter of appearance, and will be added to the public service list for this segment of the proceeding by Commerce.

Commerce placed an APO on the record on December 20, 2017,[6] and established the APO service list for use in this segment. Commerce intends to place the business proprietary versions of the documents contained in the covered merchandise referral on the record of this proceeding in ACCESS within five days of publication of this notice.

Interested parties must submit applications for disclosure under the APO in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to this segment of the proceeding, with one exception: APO applicants representing the parties that have been identified by CBP as an importer in the covered merchandise referral (referenced above) are exempt from the additional filing requirements for importers pursuant to 19 CFR 351.305(d).

Dated: February 22, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–04391 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Initiation of Anti-circumvention Inquiry,* 82 FR 57709 (December 7, 2017).

[4] *See Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 76128, 76130 (December 6, 2011).

[5] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), as amended in *Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

[6] *See* the Administrative Protective Order ''In the Matter of the Scope Inquiry of the Antidumping Duty Order on Diamond Sawblades from the People's Republic Of China (A–570–900) (CBP EAPA Inv. No. 7148),'' dated December 20, 2017.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–053]

Certain Aluminum Foil From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of certain aluminum foil from the People's Republic of China (China) were being sold in the United States at less-than-fair value during the period of investigation (POI), July 1, 2016, through December 31, 2016.

DATES: Applicable March 5, 2018.

FOR FURTHER INFORMATION CONTACT: Tom Bellhouse or Michael J. Heaney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2057 or (202) 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 2017, Commerce published the preliminary determination of this investigation in the **Federal Register.**[1] We invited parties to comment on the *Preliminary Determination.* On January 31, 2018, we received case briefs from the following parties: The Aluminum Association Trade Enforcement Working Group and its individual members [2] (the petitioners); Hangzhou Dingsheng Import & Export Co. Ltd., Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd., Jiangsu Zhongji Lamination Materials Co., (HK) Ltd., Inner Mongolia Liansheng New Energy Material Joint-Stock Co., Ltd., Hangzhou Teemful Aluminium Co., Ltd., Hangzhou Five Star Aluminium Co., Ltd., and Walson (HK) Trading Co., Limited (collectively, Dingsheng); and Jiangsu Zhongji Lamination Materials Co., (HK) Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminium Industry Co., Ltd. (collectively, Zhongji).[3]

On February 6, 2018, we received rebuttal briefs from the petitioners, Dingsheng, and Zhongji.[4] Commerce held a hearing on February 9, 2018, at the request of Dingsheng and Zhongji.[5] Based on the events following the *Preliminary Determination* and an analysis of the comments received, Commerce has made changes to the *Preliminary Determination.*

Scope Comments

We invited parties to comment on Commerce's Preliminary Scope Memorandum.[6] Commerce has reviewed the briefs submitted by interested parties, considered the arguments therein, and has made changes to the scope of the investigation. For further discussion, see Commerce's Final Scope Decision Memorandum.[7]

Scope of the Investigation

The merchandise covered by this investigation is aluminum foil from China. For a complete description of the scope of this investigation, *see* Appendix II.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in December 2017, we conducted verification of the sales and factors of production information submitted by Dingsheng and Zhongji. We issued verification reports on January 24, 2018.[8] We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Dingsheng and Zhongji.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice as Appendix I.

Changes Since the Preliminary Determination

Based on Commerce's analysis of the comments received and findings at verification, we made certain changes to our dumping margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that if certain necessary information is not on the record or an interested party has withheld information that was requested or provided information that cannot be verified, Commerce may apply ''facts otherwise available.'' Furthermore, if Commerce determines pursuant to section 776(b) that a respondent has not acted to the best of its ability in complying with a request for information, Commerce may apply an adverse inference in selecting the facts otherwise available. For this final determination, Commerce has determined that Dingsheng did not act to the best of its ability in providing Commerce with requested information that could be verified and that the application of partial adverse facts available is therefore warranted. For Commerce's analysis, see the Issues and Decision Memorandum at Comment 8.

Combination Rates

In the *Initiation Notice,* Commerce stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[9] Accordingly, we have assigned combination rates to Dingsheng and Zhongji, along with 24 other companies receiving a separate rate.[10]

---

[1] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858 (November 2, 2017) (*Preliminary Determination*), and the accompanying Preliminary Decision Memorandum.

[2] The individual members of The Aluminum Association Trade Enforcement Working-Group are JW Aluminum Company, Novelis Corporation, and Reynolds Consumer Products LLC.

[3] *See* Case Briefs submitted by the petitioners, Dingsheng, and Zhongji, dated January 31, 2018. Zhongji has indicated that subsequent to the period of investigation (POI), the name of the producer of subject merchandise was changed from ''Jiangsu Zhongji Lamination Materials Stock Co., Ltd.'' to ''Jiangsu Zhongji Lamination Materials Co., Ltd.'' As explained in the Issues and Decision Memorandum, we find in this instance that it is appropriate to recognize both names for the purposes of this final determination and related cash deposit instructions.

[4] *See* Rebuttal Briefs submitted by the petitioners, Dingsheng, and Zhongji, dated February 6, 2017.

[5] *See* Letters from Dingsheng and Zhongji requesting hearings, dated December 4, 2017.

[6] *See* Memorandum, ''Certain Aluminum Foil from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 26, 2017, and filed to ACCESS on October 30, 2017.

[7] *See* Memorandum, ''Certain Aluminum Foil from the People's Republic of China: Final Scope Decision Memorandum,'' dated concurrently with this memorandum.

[8] *See* Memorandum, ''Verification of the Questionnaire Responses of Hangzhou Dingsheng Import & Export Co., Ltd., Jiangsu Dingsheng New Materials Joint Stock Co., Ltd, Dingsheng Aluminum Industries (Hong Kong) Trading Co., Limited, Walson (HK) Trading Co., Ltd, Hangzhou Teemful Aluminum Co., Ltd., Hangzhou Five Star Aluminum Co., Ltd and Inner Mongolia Liansheng New Energy Material Joint Stock Co., Ltd. in the Antidumping Investigation of Certain Aluminum Foil from China,'' dated January 24, 2018; *see also* Verification of the Questionnaire Responses of Zhongji in the Antidumping Investigation of Aluminum Foil from the People's Republic of China,'' dated January 24, 2018.

[9] *See Certain Aluminum Foil from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 82 FR 15691 (March 30, 2017) (*Initiation Notice*).

[10] *See* Enforcement and Compliance Policy Bulletin No. 05.1 ''Separate-Rates Practice and

Final Determination

Commerce determines, as provided in section 735 of the Act, that the following estimated weighted-average dumping margins exist for the period between July 1, 2016, through December 31, 2016:

Producer	Exporter	Weighted-average margin (percent)	Cash deposit adjusted for subsidy offset (percent)
Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd./Hangzhou Teemful Aluminum Co., Ltd./Hangzhou Five Star Aluminum Co., Ltd./Dingsheng Aluminum Industries (Hong Kong) Trading Co. Ltd./Walson (HK) Trading Co., Ltd.	Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd./Hangzhou Teemful Aluminum Co., Ltd./Hangzhou Five Star Aluminum Co., Ltd./Dingsheng Aluminum Industries (Hong Kong) Trading Co. Ltd./Walson (HK) Trading Co., Ltd.	106.09	94.73
Jiangsu Zhongji Lamination Materials Stock Co., Ltd/Jiangsu Zhongji Lamination Materials Co., Ltd/Jiangsu Huafeng Aluminium Industry Co., Ltd.	Jiangsu Zhongji Lamination Materials Co., (HK) Ltd	48.64	37.99
Jiangsu Alcha Aluminum Co., Ltd	Alcha International Holdings Limited	84.94	73.84
Baotou Alcha Aluminum Co., Ltd	Alcha International Holdings Limited	84.94	73.84
Jiangyin Dolphin Pack Ltd. Co	Jiangyin Dolphin Pack Ltd. Co	84.94	73.84
Granges Aluminum (Shanghai) Co., Ltd	Granges Aluminum (Shanghai) Co., Ltd	84.94	73.84
Huafon Nikkei Aluminium Corporation	Huafon Nikkei Aluminium Corporation	84.94	73.84
Suntown Technology Group Limited	Hunan Suntown Marketing Limited	84.94	73.84
Luoyang Longding Aluminium Industries Co., Ltd	Luoyang Longding Aluminium Industries Co., Ltd	84.94	73.84
Shandong Yuanrui Metal Material Co., Ltd	Shandong Yuanrui Metal Material Co., Ltd	84.94	73.84
Suntown Technology Group Limited	SNTO International Trade Limited	84.94	73.84
North China Aluminum Co., Ltd., Hunan Suntown Marketing Limited, and Guangxi Baise Xinghe Aluminum Industry Co., Ltd.	Suzhou Manakin Aluminum Processing Technology Co., Ltd.	84.94	73.84
Xiamen Xiashun Aluminium Foil Co. Ltd	Xiamen Xiashun Aluminium Foil Co. Ltd	84.94	73.84
Yantai Donghai Aluminum Foil Co., Ltd	Yantai Jintai International Trade Co., Ltd	84.94	73.84
Yinbang Clad Material Co., Ltd	Yinbang Clad Material Co., Ltd	84.94	73.84
Zhejiang Zhongjin Aluminum Industry Co., Ltd	Zhejiang Zhongjin Aluminum Industry Co., Ltd	84.94	73.84
PRC-wide entity		106.09	95.44

Disclosure

We will disclose to interested parties the calculations performed in this proceeding within five days of the date of announcement of this preliminary determination in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of subject merchandise, as described in the ''Scope of the Investigation'' section of this notice, from China that were entered or withdrawn from warehouse for consumption on or after November 2, 2017, the publication date of the *Preliminary Determination* in the **Federal Register**.

Further, pursuant to section 735(c)(1)(B)(ii) of the Act, Commerce will instruct CBP to require a cash deposit [11] equal to the amount by which the normal value exceeds U.S. price, adjusted where appropriate for export subsidies and estimated domestic subsidy pass-through. For all combinations of Chinese exporters/producers of merchandise under consideration, the cash deposit rate will be equal to the dumping margin established for the China-wide entity.

Consistent with our practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we will instruct CBP to require a cash deposit equal to the amount by which the normal value exceeds the export price or constructed export price, adjusted where appropriate for export subsidies and estimated domestic subsidy pass-through.[12] In the companion CVD proceeding, Commerce found an export subsidy of 11.36 percent *ad valorem* for Dingsheng and an export subsidy of 10.65 percent *ad valorem* for Zhongji.[13] In this LTFV investigation, for the China-wide entity, which received an AFA rate, pursuant to section 776(b) of the Act, Commerce has adjusted the China-wide entity's AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD proceeding.[14] Thus, we will offset the China-wide rate of 106.09 by the countervailing duty rate attributable to export subsidies of Zhongji (*i.e.,* 10.65 percent) to calculate the cash deposit rate.[15] These adjustments are reflected in the final column of the rate chart, above. Furthermore, we are not adjusting the final determination for estimated domestic subsidy pass-through because the respondents failed to substantiate a

Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[11] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[12] *See* sections 772(c)(1)(C) and 777A(f) of the Act, respectively. Unlike in administrative reviews, Commerce makes an adjustment for export subsidies in an LTFV investigation not in the calculation of the weighted-average dumping margin, but in the cash deposit instructions issued to U.S. Customs and Border Protection. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[13] *See Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination,* and accompanying Issues and Decision Memorandum. The final determination in this companion CVD proceeding is being released concurrently with this final determination.

[14] *Id.*

[15] *Id.*

cost-to-price-link.[16] In the event that a countervailing duty order is issued and suspension of liquidation continues in the companion countervailing duty investigation on aluminum foil from China, Commerce will continue to instruct CBP to require cash deposits adjusted by the amount of export subsidies, as appropriate.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of sales at less than fair value. Because the final determination in this proceeding is affirmative, the ITC will make its final determination, in accordance with section 735(b)(2) of the Act, as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain aluminum foil from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, then Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Return or Destruction of Proprietary Information

In the event the ITC issues a final negative injury determination, this notice serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination and notice are issued and published in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: February 26, 2018.

Prentiss Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

Contents of the Accompanying Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Scope Comments
VI. Discussion of the Issues
Comment 1: Surrogate Country and Surrogate Values
Comment 2: International Freight
Comment 3: Marine Insurance
Comment 4: Value Added Tax Calculation
Comment 5: Deferral of Preliminary Determination and Deadline for Final Determination
Comment 6: Ministerial Errors
Comment 7: Affiliation and Collapsing Status of Liansheng and an Upstream Producer
Comment 8: Application of Partial Adverse Facts Available (AFA)
Comment 9: Double Remedy Adjustment
Comment 10: Surrogate Value Adjustment for Steam
Comment 11: Surrogate Value for Aluminum Scrap
VII. Recommendation

Appendix II

Scope of the Investigation

The merchandise covered by this investigation is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope, including aluminum foil to which lubricant has been applied to one or both sides of the foil.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[FR Doc. 2018–04401 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–DS–P

[16] *See* Issues and Decision Memorandum.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for

the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when Commerce will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after March 2018, Commerce does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Commerce is providing this notice on its website, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which Commerce intends to exercise its discretion in the future.

Opportunity To Request a Review: Not later than the last day of March 2018,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

	Period of review
Antidumping Duty Proceedings	
Australia: Uncoated Paper, A–602–807	3/1/17–2/28/18
Brazil: Uncoated Paper, A–351–842	3/1/17–2/28/18
Canada: Iron Construction Castings, A–122–503	3/1/17–2/28/18
France: Brass Sheet & Strip, A–427–602	3/1/17–2/28/18
Germany: Brass Sheet & Strip, A–428–602	3/1/17–2/28/18
India:	
Off-The-Road Tires, A–533–869	2/2/17–2/28/18
Sulfanilic Acid, A–533–806	3/1/17–2/28/18
Indonesia: Uncoated Paper, A–560–828	3/1/17–2/28/18
Italy: Brass Sheet & Strip, A–475–601	3/1/17–2/28/18
Portugal: Uncoated Paper, A–471–807	3/1/17–2/28/18
Russia: Silicon Metal, A–821–817	3/1/17–2/28/18
Spain: Stainless Steel Bar, A–469–805	3/1/17–2/28/18
Taiwan: Light-Walled Rectangular Welded Carbon Steel Pipe and Tube, A–583–803	3/1/17–2/28/18
Thailand: Circular Welded Carbon Steel Pipes and Tubes, A–549–502	3/1/17–2/28/18
The People's Republic of China:	
Ammonium Sulfate, A–570–049	11/9/16–2/28/18
Amorphous Silica Fabric, A–570–038	9/1/16–2/28/18
Biaxial Integral Geogrid Products, A–570–036	8/22/16–2/28/18
Carbon and Alloy Steel Cut-To-Length Plate, A–570–047	11/14/16–2/28/18
Chloropicrin, A–570–002	3/1/17–2/28/18
Circular Welded Austenitic Stainless Pressure Pipe, A–570–930	3/1/17–2/28/18
Glycine, A–570–836	3/1/17–2/28/18
Sodium Hexametaphosphate, A–570–908	3/1/17–2/28/18
Certain Tissue Paper Products, A–570–894	3/1/17–2/28/18

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
Uncoated Paper, A–570–022	3/1/17–2/28/18
Countervailing Duty Proceedings	
India:	
Sulfanilic Acid, C–533–807	1/1/17–12/31/17
Off-The-Road Tires, C–533–870	6/20/16–12/31/17
Indonesia: Uncoated Paper, C–560–829	1/1/17–12/31/17
Iran: In-Shell Pistachios, C–507–501	1/1/17–12/31/17
Sri Lanka:	
Off-The-Road Tires, C–542–801	6/20/16–12/31/17
The People's Republic of China: Ammonium Sulfate, C–570–050	11/2/16–12/31/17
Amorphous Silica Fabric, C–570–038	7/5/16–12/31/17
Biaxial Integral Geogrid Products, C–570–037	6/24/16–12/31/17
Carbon and Alloy Steel Cut-To-Length Plate, C–570–048	9/13/16–12/31/17
Circular Welded Austenitic Stainless Pressure Pipe, C–570–931	1/1/17–12/31/17
Uncoated Paper, C–570–023	1/1/17–12/31/17
Turkey: Circular Welded Carbon Steel Pipes and Tubes, C–489–502	1/1/17–12/31/17
Suspension Agreements	
Mexico: Fresh Tomatoes, A–201–820	3/1/17–2/28/18

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[3] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[4] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *http://access.trade.gov*.[5] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of March 2018. If Commerce does not receive, by the last day of March 2018, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping

[2] *See also* the Enforcement and Compliance website at *http://trade.gov/enforcement/*.

[3] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[4] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[5] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 27, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–04394 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF582

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Bravo Wharf Recapitalization Project, Year 2

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Naval Facilities Engineering Command Southeast and Naval Facilities Engineering Command Atlantic (the Navy) to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with recapitalization of Bravo Wharf, Year 2, in Naval Station Mayport (NSM), Jacksonville, Florida.

DATES: This Authorization is effective from March 13, 2018, to March 12, 2019.

FOR FURTHER INFORMATION CONTACT: Brianna Elliott, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On July 12, 2017, NMFS received a request from the Navy for an IHA to take marine mammals incidental to pile driving in association with the Bravo Wharf recapitalization project at NSM, FL. The Navy's request is for take of bottlenose dolphins (*Tursiops truncatus truncatus*) by only Level B harassment. Neither the Navy nor NMFS expect mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued IHAs to the Navy for similar work at Bravo Wharf (81 FR 52637, 1 December 2016; revised IHA for this activity: 82 FR 11344, 13 March 2017) and Wharf C–2, also located within NSM (80 FR 55598, 8 September 2015; 78 FR 71566, 1 December 2013 and revised IHA for this activity: 79 FR 27863, 1 September 2014). The Navy complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of previous IHAs at Bravo Wharf (revised IHA for this activity: 82 FR 11344, 13 March 2017) and at Wharf C–2 (80 FR 55598, 8 September 2015; 79 FR 27863, 1 September 2014) and information regarding their monitoring results may be found at *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

This IHA covers one year of a larger project for which the Navy obtained a prior IHA at Bravo Wharf (81 FR 52637, 1 December 2016; revised IHA for this activity: 82 FR 11344, 13 March 2017). The larger project involves recapitalization of Bravo Wharf at three berths in NSM spread across Phase I and Phase II, which involves installing 880 single sheet piles through the two phases and two years of authorizations; this IHA authorizes the second year of construction at Bravo Wharf.

Description of Proposed Activity

Bravo Wharf is a medium draft, general purpose berthing wharf that was constructed in 1970 and lies at the western edge of the NSM turning basin at the mouth of the St. Johns River and adjacent to the Atlantic Ocean. Bravo Wharf is approximately 2,000 feet (ft) long, 125 ft wide, and has a berthing depth of 50 ft mean lower low water. Bravo Wharf is currently in poor condition, and therefore, the Navy requested an IHA in order to conduct necessary repairs at the Wharf via vibratory pile driving, and contingency impact driving if necessary.

This IHA covers one year of construction from March 13, 2018, to March 12, 2019, during which the Navy plans a maximum of 40 days of construction, including 30 days of vibratory pile driving and 10 days of impact driving, to install 234 steel sheet piles. A detailed description of the planned Bravo Wharf recapitalization project is provided in the **Federal Register** notice for the proposed IHA (82 FR 55990; 27 November 2017). Since

that time, no changes have been made to the planned activities reflected in the proposed IHA. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

We published a notice of receipt of the Navy's application and proposed IHA in the **Federal Register** on November 27, 2017 (82 FR 55990). We received one comment, a letter from the Marine Mammal Commission (''the Commission''). The Commission concurred with NMFS's preliminary findings to issue the proposed IHA, but had a comment regarding NMFS's take estimation methodology.

Comment: The Commission wrote that NMFS's methodology for estimating marine mammal takes incidental to this activity does not account for NMFS's 24-hour reset policy when counting takes. The Commission added that this is a policy issue rather than computational error, and notes that NMFS has yet to share new criteria for rounding marine mammal takes as NMFS did in this scenario. They recommended that NMFS share this new methodology and policy with the Commission as soon as possible.

Response: NMFS values the Commission's insight and diligence in ensuring NMFS is operating with the best science and policy information, which NMFS believes it is doing. NMFS has received similar comments from the Commission in the past and has provided responses (*e.g.,* 82 FR 50628, 1 November 2017; 82 FR 458 11, 2 October 2017; 82 FR 10747, 15 February 2017). NMFS will share rounding criteria with the Commission as soon as possible, and looks forward to engaging with the Commission on this issue in the future.

Description of Marine Mammals in the Area of Specified Activities

There are four marine mammal species which may inhabit or transit through the waters nearby NSM at the mouth of the St. Johns River and in nearby nearshore Atlantic waters. These include the bottlenose dolphin (*Tursiops truncatus truncatus*), Atlantic spotted dolphin (*Stenella frontalis*), North Atlantic right whale (*Eubalaena glacialis*), and humpback whale (*Megaptera novaeangliae*). Multiple additional cetacean species occur in south Atlantic waters but would not be expected to occur in shallow nearshore waters of the action area. In addition, the West Indian manatees may be found in the vicinity of NSM. However, West Indian manatees are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Table 1 lists all species with expected potential for occurrence in the vicinity of NSM and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2017). Sections 3 and 4 of the Navy's application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*www.nmfs.noaa.gov/pr/species/mammals/*). Please also refer to the Navy's Marine Resource Assessment for the Charleston/Jacksonville Operating Area, which documents and describes the marine resources that occur in Navy operating areas of the Southeast (DoN 2008). The document is publicly available at *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed October 12, 2017). A detailed description of the species likely to be affected by pile driving at Bravo Wharf, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (82 FR 55990; 27 November 2017). Since that time, NMFS published Draft Stock Assessment Reports with several new abundances and information for several species occurring in the vicinity of NSM (82 FR 60181; 19 December 2017); therefore, information in Table 1 below reflects any new information in the draft SARs. Please refer to the proposed **Federal Register** notice for descriptions of the species below (82 FR 55990; 27 November 2017).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NSM

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
North Atlantic Right Whale	*Eubalaena glacialis*	Western North Atlantic	E/D; Y	458 (0; 455; n/a)	1.4	5.36
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-; Y	335 (0; 239; 2011)	3.7	8.5
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Atlantic Spotted Dolphin	*Stenella frontalis*	Western North Atlantic	-; N	44,715 (0.43; 31,610; 2011).	316	0
Common bottlenose dolphin.	*Tursiops truncatus truncatus*	Jacksonville Estuarine System	-; Y	412 (0.06; unk; 1994–97) [4].	unk	1.2
Common bottlenose dolphin.	*Tursiops truncatus truncatus*	Western North Atlantic, northern Florida coastal.	-/D; Y	877 (0.49; 595; 2016)	6	0.46
Common bottlenose dolphin.	*Tursiops truncatus truncatus*	Western North Atlantic, offshore.	-; N	77,532 (0.40; 56,053; 2011).	561	39.4 (0.29)
Common bottlenose dolphin.	*Tursiops truncatus truncatus*	Western North Atlantic, southern migratory coastal.	-/D; Y	3,751 (0.60; 2,353; 2016)	23	0–14.3

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] This abundance estimate is considered an overestimate because it includes non- and seasonally-resident animals.

Note: *Italicized species are not expected to be taken or proposed for authorization.*

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from vibratory and impact pile driving at Bravo Wharf have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area and temporary increases in underwater noise levels around the turning basin. However, construction activity is not expected to cause serious injury or mortality to marine mammals, nor will it permanently elevate sound levels in the turning basin. Furthermore, the turning basin is an industrialized, developed basin and is thus not known to be an important foraging site or other habitat; therefore, any temporary impacts to the turning basin and surrounding ensonified waters are not expected to have significant or long-lasting impacts to marine mammals. The **Federal Register** notice for the proposed IHA (82 FR 55990; 27 November 2017) included a discussion of the effects of anthropogenic noise on marine mammals, and therefore, that information is not repeated here; please refer to the **Federal Register** notice for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS's consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to vibratory and impact pile driving. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized.

In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the authorized take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment) (Table 2).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Recapitalization of Bravo Wharf includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS's Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive) (Table 2). The Navy's proposed recapitalization of Bravo Wharf includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (Lpk) has a reference value of 1 μPa, and cumulative sound exposure level (LE) has a reference value of 1μPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

Distance to Sound Thresholds

Underwater Sound Propagation Formula—Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

TL = B * log10 (R1/R2),

Where:

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20 * log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of fifteen is often used under conditions, such as at the NSM turning basin, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

Underwater Sound—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A number of studies, primarily on the west coast, have measured sound produced during underwater pile driving projects. However, these data are largely for impact driving of steel pipe piles and concrete piles as well as vibratory driving of steel pipe piles. Vibratory driving of steel sheet piles was monitored during the first year of construction at the nearby Wharf C–2 at Naval Station Mayport during 2015. Measurements were conducted from a small boat in the turning basin and from the construction barge itself. Average SPLs for steel sheet piles ranged from 135 to 158 dB (DoN 2015) and SPLs for a 10-second period of driving averaged 156 dB re 1μPa rms (DoN, 2017a). No impact driving was measured at this location; therefore, proxy levels for impact driving have been calculated from other available source levels.

In order to determine reasonable SPLs and their associated effects on marine mammals that are likely to result from impact pile driving at NSM, we considered existing measurements from similar physical environments (sandy sediments and water depths greater than 15 ft) for driving of steel sheet piles (all measured at 10 m; *e.g.,* Laughlin, 2005a, 2005b; Illingworth and Rodkin, 2010, 2012, 2013; CalTrans 2012; CalTrans 2015). Proxy source values based on similarity to the physical environment at NSM and measurement location in the mid-water column were selected for acoustic modeling: 156 dB for vibratory driving (DoN 2017a) and 190 dB for impact driving (CalTrans 2015). All calculated distances to and the total area encompassed by the marine mammal sound thresholds are provided in Table 3.

TABLE 3—DISTANCE TO RELEVANT UNDERWATER SOUND TRESHOLDS AND AREAS OF ENSONIFICATION

Pile type	Method	Threshold	Distance (m)	Area (km2)
Steel sheet piles	Vibratory	MF Level A (injury): 198 dB SEL_{cum}	0.1	
		Level B (behavior): 120 dB re 1μPa rms	2,512	1.3550776
	Impact (contingency only)	MF Level A (injury): 185 dB SEL_{cum}	1.7	
		Level B (behavior): 160 dB re 1μPa rms	1,000	0.5313217

[1] Sound pressure levels used for calculations are 156 dB rms and 190 dB rms for vibratory and impact driving, respectively.

[2] Level B areas of ensonification were calculated using the practical spreading loss model described above.

[3] Level A areas of ensonfication were calculated using NOAA's Acoustic Criteria Spreadsheet (see Appendix D of the Navy's application). To calculate the distance to Level A injury for vibratory driving, the Navy assumed a source level of 156 dB rms at 10 m, a transmission loss of 15logR, 20 minutes of activity within a 24-hour period, a weighting factor adjustment (WFA) of 2.5, and transmission loss of 15logR. To calculate Level A injury for impact driving, the Navy assumed a SL of 190 dB rms at 10 m, a 100 msec pulse duration, 1 pile driven per day with 20 strikes, a WFA of 2.0, and transmission loss of 15logR.

The Mayport turning basin does not represent open water, or free field, conditions. Therefore, sounds would attenuate as per the confines of the basin, and may only reach the full estimated distances to the harassment thresholds via the narrow, east-facing entrance channel. Distances shown in Table 3 are estimated for free-field conditions, but areas are calculated per the actual conditions of the action area. See Figures 6–1 and 6–2 of the Navy's application for a depiction of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Marine Mammal Densities

For all species, the best scientific information available was considered for use in the marine mammal take assessment calculations. All densities for marine mammals with the possibility of occurring in the project area were calculated from the Navy's Marine Species Density Database and Technical Report (DoN 2017b). Density for bottlenose dolphins is derived from site-specific surveys conducted by the Navy (see Appendix C of the Navy's application for more information); it is not currently possible to identify observed individuals to stock. This survey effort consists of 24 half-day observation periods covering mornings and afternoons during four seasons (December 10–13, 2012, March 4–7, 2013, June 3–6, 2013, and September 9–12, 2013). During each observation period, two observers (a primary observer at an elevated observation point and a secondary observer at ground level) monitored for the presence of marine mammals in the turning basin (0.712 km^2) and an additional grid east of the basin entrance. Observers tracked marine mammal movements and behavior within the observation area, with observations recorded for five-minute intervals every half-hour. Morning sessions typically ran from 7 to 11:30 and afternoon sessions from 1 to 5:30.

Most observations of bottlenose dolphins were of individuals or pairs, although larger groups were occasionally observed (median number of dolphins observed ranged from 1–3.5 across seasons). Densities were calculated using observational data from the primary observer supplemented with data from the secondary observer for grids not visible by the primary observer. Season-specific density was then adjusted by applying a correction factor for observer error (*i.e.,* perception bias). The seasonal densities range from 1.98603 (winter) to 4.15366 (summer) dolphins/km^2. We conservatively use the largest density value to assess take, as the Navy does not have specific information about when in-water work may occur during the period of validity.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

The following assumptions are made when estimating potential incidents of take:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period;
- There will be 30 total days of vibratory driving and 10 days of contingency of impact pile driving;
- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

The estimation of marine mammal takes typically uses the following calculation:

Exposure estimate (rounded to the nearest whole number) = n * ZOI * total activity days

Where:

n = density estimate used for each species/season

ZOI = sound threshold ZOI area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated

The ZOI impact area is estimated using the relevant distances in Table 3, taking into consideration the possible affected area with attenuation due to the constraints of the basin. Because the basin restricts sound from propagating outward, with the exception of the east-facing entrance channel, the radial distances to thresholds are not generally reached.

There are a number of reasons why estimates of potential incidents of take may be conservative, assuming that available density or abundance estimates and estimated ZOI areas are accurate. We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number more realistically represents the number of incidents of take that may accrue to a smaller number of individuals. While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. The potential effectiveness of mitigation measures in reducing the number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates may be conservative.

The quantitative exercise described above indicates that no incidents of Level A harassment would be expected, independent of the implementation of required mitigation measures. See Table 4 for total estimated incidents of take.

TABLE 4—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Species	n (animals/km^2)	Activity	ZOI	Authorized takes [1]
Phase II (40 days)				
Bottlenose dolphin [2]	4.15366	Vibratory driving (30 days)	1.350776	169
Bottlenose dolphin [2]	4.15366	Contingency impact driving (10 days)	0.5313217	22

TABLE 4—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION—Continued

Species	n (animals/ km²)	Activity	ZOI	Authorized takes [1]
Total exposures				191

[1] The product of n * ZOI * total activity days (rounded to the nearest whole number) is used to estimate the number of takes.
[2] It is impossible to estimate from available information which stock these takes may accrue to.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see *Estimated Take*); these values were used to develop mitigation measures for pile driving activities at NSM. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, the Navy would conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Monitoring and Shutdown for Pile Driving

Shutdown Zone—For all pile driving activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the acoustic injury criteria for mid-frequency hearing specialists (*e.g.,* bottlenose dolphins) at 198 dB SEL_{cum} for vibratory driving and 185 dB SEL_{cum} for impact driving. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals (as described previously under *Potential Effects of the Specified Activity on Marine Mammals,* serious injury or death are unlikely outcomes even in the absence of mitigation measures). Modeled radial distances for shutdown zones are shown in Table 3. However, a minimum shutdown zone of 15 m (which is larger than the maximum predicted injury zone) will be established during all pile driving activities, regardless of the estimated zone. Vibratory pile driving activities are not predicted to produce sound exceeding 198 dB SEL_{cum} threshold, but these precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to further reduce any possibility of acoustic injury.

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see *Monitoring and Reporting*). Nominal radial distances for disturbance zones are shown in Table 3. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (*e.g.,* what may be reasonably observed by visual observers stationed within the turning basin) would be observed.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring would be conducted before, during, and after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence within the

ZOI and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from 15 minutes prior to initiation through 30 minutes post-completion of pile driving activities. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Monitoring Plan (*www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*), developed by the Navy in agreement with NMFS, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Marine mammal observer (MMO) requirements for this construction action are as follows:

(a) The Navy will use two MMOs during all construction activity.

(b) At least one observer must have prior experience working as an observer.

(c) Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience.

(d) Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer.

(2) Qualified MMOs are trained biologists, and need the following additional minimum qualifications:

(a) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(b) Ability to conduct field observations and collect data according to assigned protocols

(c) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(d) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(e) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

(f) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, *etc.*). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes (30 minutes in the case of a large whale) have passed without re-detection of the animal. Should any marine mammal not authorized for Level B harassment in this IHA enter the ensonified area, pile driving will cease until the animal(s) leaves the area and will resume after the observer has determined through re-sighting or by waiting 15 minutes that the animal moved outside the ensonified area. Monitoring will be conducted throughout the time required to drive a pile.

(4) Monitoring of the shutdown zone will continue for 30 minutes following completion of construction activity.

(5) If a species for which authorization has not been granted (*i.e.,* North Atlantic right whales, Atlantic spotted dolphins, and humpback whales) or for which authorization has been granted but meets take limits approaches or enters the Level B harassment zone, construction activity must cease and the Navy shall contact the Office of Protected Resources, NMFS.

Soft-Start—The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes.'' For impact driving, we require an initial set of three strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then two subsequent three strike sets. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or

environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat);
- Mitigation and monitoring effectiveness.

The Navy's proposed monitoring and reporting is also described in their Marine Mammal Monitoring Plan, on the internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All marine mammal observers (MMOs) will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Navy would implement the following procedures for pile driving:

- The two MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible;
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals;
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted; and
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.
- In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), the Navy shall report the incident to the Office of Protected Resources, NMFS, and the Southeast Fisheries Science Center Stranding Coordinator, NMFS, within 24 hours of the discovery. Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. The Navy can continue its operations under such a case.
- Likewise, if the Navy discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), the Navy shall immediately report the incident to the Office of Protected Resources, NMFS, and the Southeast Fisheries Science Center Stranding Coordinator, NMFS.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. The monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel, and if possible, the correlation to SPLs;
- Duration of marine mammals within the shutdown area;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Description of implementation of mitigation measures (*e.g.,* shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report would be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or sixty days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within thirty days following resolution of comments on the draft report.

Prior Monitoring

As required, the Navy submitted a monitoring report for the first year of construction at Bravo Wharf in advance of sixty days prior to the requested date of issuance for this IHA. They met all mitigation, monitoring, and reporting protocols. Sixty takes occurred by Level B harassment to bottlenose dolphins—the only species for which take was authorized—and takes were below the 111 authorized number of takes for this particular stage (Phase II) of construction. Additionally, the Navy met all monitoring requirements for similar construction activity at nearby Wharf C–2 in NSM (80 FR 55598, 8 September 2015; 78 FR 71566, 1 December 2013 and revised IHA for this activity: 79 FR 27863, 1 September 2014). During the course of both IHAs at Wharf C–2, the Navy did not exceed authorized take levels. The first IHA (covering the period of May 26 to August 17, 2015) authorized incidental take of 365 bottlenose dolphins and 95

Atlantic spotted dolphins by Level B harassment. Observers documented 272 bottlenose dolphins based on derived correction factors, and no Atlantic spotted dolphins were observed (DoN 2015b). As mentioned in the *Estimated Take* section, the Navy also monitored underwater acoustics during vibratory installation of king piles and steel sheet piles during the period of this IHA at NSM; the sound pressure level average ranged from 135 to 158 dB and averaged 21 seconds to install a sheet pile (DoN 2015b). Collection of underwater sound and production of a subsequent report was not required under the respective IHA, and is thus not discussed below for the second IHA at Wharf C–2.

An IHA for the second year of construction at Wharf C–2 (covering a period from September 8, 2015 to September 7, 2016) authorized incidental take of 304 total bottlenose dolphins. After applying correction factors to derive a total number of estimated takes, estimated Level B takes were calculated to be 128 bottlenose dolphins (DoN 2016).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving activities associated with the wharf construction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening.

No injury, serious injury, or mortality is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation (impact driving is included only as a contingency). Vibratory pile driving does have the potential to cause injury to marine mammals, but sound pressure levels in this activity (156 dB rms) do not exceed the threshold for injury in mid-frequency cetaceans. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact driving is necessary, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient ''notice'' through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious. Environmental conditions in the confined and protected Mayport turning basin mean that marine mammal detection ability by trained observers is high, enabling a high rate of success in implementation of shutdowns to avoid injury.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR Inc. 2012). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in San Francisco Bay and in the Puget Sound region, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. These activities are also nearly identical to the pile driving activities that took place at Wharf C–2 at NSM, which also reported zero injuries or mortality to marine mammals and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the turning basin while the activity is occurring.

The turning basin is not considered important habitat for marine mammals, as it is a man-made, semi-enclosed basin with frequent industrial activity and regular maintenance dredging. The surrounding waters may be an important foraging habitat for the dolphins, but the small area of ensonification does not extend outside of the turning basin and into this foraging habitat (see Figure 6–1 in the Navy's application). Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals that may venture near the turning basin, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or injury is anticipated or authorized;
- Behavioral disturbance is possible, but the significance to the affected stocks is expected to be minimal due to:
  - No more than 40 days of pile driving during the authorized year;

○ The time required to drive each pile is brief, with no more than 60 seconds per pile via vibratory driving and no more than 10 minutes per pile via impact driving;

○ Mitigation (*e.g.* shut-downs and soft start) would reduce acoustic impacts to species in the area of activities;

• The absence of any significant habitat within the project area, including known areas or features of special significance for foraging or reproduction; Noise associated with pile driving will ensonify relatively small areas, the majority of which are within the industrialized turning basin.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Of the 191 incidents of behavioral harassment proposed to be authorized for bottlenose dolphins, we have no information allowing us to parse the predicted incidents amongst the four stocks that may occur in the project area. Therefore, we assessed the total number of predicted incidents of take against the best abundance estimate for each stock, as though the total would occur for the stock in question. For two of the bottlenose dolphin stocks—Western North Atlantic Southern Migratory Coastal and Western North Atlantic Northern Florida coastal stock—the total predicted number of incidents of take authorized would be considered small at 5.09 percent and 21.78 percent, respectively. This estimate assumes that estimated take occurs to a new individual, which is an extremely unlikely scenario and therefore a conservative estimate, as there is likely to be some overlap in both bottlenose dolphin stocks and individuals from day to day. Likelihood of actual take to the latter Northern Florida coastal stock is relatively low, and this estimate assumes all takes would occur to this one stock. In the western North Atlantic, the Northern Florida Coastal Stock is present in coastal Atlantic waters from the Georgia/Florida border south to 29.4° N. (Waring *et al.,* 2014), a span of more than 90 miles. There is no obvious boundary defining the offshore extent of this stock. They occur in waters less than 20 m deep; however, they may also occur in lower densities over the continental shelf (waters between 20 m and 100 m depth) and overlap spatially with the offshore morphotype (Waring *et al.,* 2014).

For the other stock, the Jacksonville Estuarine System stock, if all takes occurred to this one stock, this could take 46.36 percent of the stock (n=412). It is, however, highly unlikely that all takes would occur to this one stock due to their distribution relative to Bravo Wharf and social patterns within stock range. JES bottlenose dolphins range from Cumberland Sound at the Georgia-Florida border south to approximately Jacksonville Beach, FL, an area consisting of coastline and complex estuarine habitat of riverines and tidal marshes. Three behaviorally different communities exist within the JES stock: in estuarine waters north of St. Johns River (termed the Northern area), estuarine waters south of St. Johns River to Jacksonville Beach (the Southern area), and the coastal area (Caldwell 2001). Caldwell (2001) found that dolphins in the northern area exhibit year-round site fidelity and are the most isolated of the three communities. They are also not known to socialize with dolphins in the Southern area, which show summer site fidelity but traverse in and out of the Jacksonville area each year (Caldwell 2001). Dolphins in the coastal area are much more mobile, exhibit fluid social patterns, and show no long-term site fidelity. Furthermore, genetic analysis also supports differentiation from JES dolphins between the Northern and Southern areas (Caldwell 2011). Although members of both groups have been observed outside their preferred areas, it is likely that the majority of JES dolphins would not occur within waters ensonified by project activities. In summary, JES dolphins largely comprise two predominant groups and exhibit strong site fidelity to those areas, which does not significantly overlap with the larger ZOI, which is almost entirely confined within NSM.

Furthermore, assessing potential impacts to individuals or stocks based on take estimates alone, in the absence of further context (*e.g.* quality of surrounding habitat, site fidelity, etc.), has limitations. It is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound, given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, it can be difficult to distinguish between the number of individuals harassed and the instances of harassment and, when duration of the activity is considered, it can result in a take estimate that overestimates the number of individuals harassed. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.,* because of foraging opportunities) is stronger than the deterrence presented by the harassing activity. Given stock distribution, site fidelity, social patterns, the small likelihood that all takes would occur to new individuals within this stock, and that fact that NSM does not include any particularly unique habitat to aggregate dolphins, the majority of JES dolphins are not expected to occur within ensonified waters of project activities. Therefore, proposed takes are not expected to exceed small numbers relative to stock abundance.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of

such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of this Authorization was categorically excluded from further NEPA review.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that consultation under Section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the Navy for the harassment of small numbers of bottlenose dolphins incidental to the Bravo Wharf recapitalization project in NSM, Jacksonville, FL, provided the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: February 27, 2018.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–04381 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG057

Endangered Species; File No. 21366

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Margaret Lamont, Ph.D., U.S. Geological Survey, 7320 NW 71st St., Gainesville, FL 32653, has applied in due form for a permit to take green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*) and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before April 4, 2018.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 21366 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Erin Markin, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Dr. Lamont proposes to study green, Kemp's ridley, loggerhead, and hawksbill sea turtles in the northern Gulf of Mexico. The objectives of the work are to (1) assess spatial habitat use by sea turtles, (2) define vital rates for juvenile turtles, and (3) examine impacts of cold stunning on turtle ecology. Up to 60 loggerhead, 210 green, 200 Kemp's ridley and 10 hawksbill sea turtles annually would be captured by hand, dip net, tangle net, or strike net. Upon capture, researchers would examine, temporarily mark, measure, and biologically sample sea turtles before release. A subset of turtles would also receive up to two transmitters prior to release and may be manually tracked after release. The permit would be valid for up to 10 years from the date of issuance.

Dated: February 27, 2018.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–04360 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG037

Endangered Species; File No. 21467

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Karen Holloway-Adkins, Ph.D., East Coast Biologists, Inc., P.O. Box 37715, Indialantic, Florida 32903, has applied in due form for a permit to take green (*Chelonia mydas*) and loggerhead (*Caretta caretta*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before April 4, 2018.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 21467 from the list of available applications.

These documents are also available upon written request or by appointment

in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Erin Markin or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Karen Holloway-Adkins proposes to continue to characterize the population of green and loggerhead sea turtles in nearshore reefs in Brevard County, Florida to determine: (1) Spatial and temporal distribution, (2) mean size, (3) foraging habitats, (4) body conditions and fibropapillomatosis ratios, (5) genetic origin, and (6) home-range, site fidelity, and residency times. Up to 80 green and six loggerhead sea turtles would be captured by hand or using dip or tangle nets, annually. All captured green sea turtles would be measured, weighed, and photographed and released. Annually, up to 65 green sea turtles also would be tagged (passive integrated transponder [PIT] and flipper), and biologically sampled (blood and tissue) and a subset would receive a transmitter (drill carapace or epoxy attachment) or undergo lavage prior to release. Loggerhead sea turtles would be tagged (PIT and flipper), biologically sampled (blood and tissue), photographed, measured, and weighed prior to release.

Dated: February 27, 2018.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–04361 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF960

Determination of Overfishing or an Overfished Condition

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

ACTION: Notice.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has found that the following stocks are subject to overfishing, overfished, or approaching an overfished condition. Gulf of Mexico gray triggerfish is now subject to overfishing. The southern Georges Bank/Mid-Atlantic stock of red hake and North Atlantic shortfin mako shark are now both subject to overfishing and overfished. The following Atlantic stocks are still overfished: Atlantic wolffish, ocean pout, the Southern New England/Mid-Atlantic stock of winter flounder, the Gulf of Maine/Georges Bank stock of windowpane flounder, and witch flounder. In addition, three stocks of yellowtail flounder (Georges Bank, Cape Cod/Gulf of Maine and Southern New England/Mid-Atlantic), and two stocks of Atlantic cod (Georges Bank and Gulf of Maine) are all still subject to overfishing and overfished. NMFS, on behalf of the Secretary, notifies the appropriate fishery management council (Council) whenever it determines that a stock is subject to overfishing, is in an overfished condition, or is approaching an overfished condition.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, (301) 427–8568.

SUPPLEMENTARY INFORMATION: Pursuant to section 304(e)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2), NMFS, on behalf of the Secretary, must notify Councils, and publish in the **Federal Register**, whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

NMFS has determined that Gulf of Mexico gray triggerfish is now subject to overfishing. In years in which this stock is assessed, Gulf of Mexico gray triggerfish is subject to overfishing if the fishing mortality rate (F) is greater than the maximum fishing mortality threshold (MFMT). In non-assessment years, the stock is subject to overfishing if total landings exceed the overfishing limit (OFL). While the most recent stock assessment (from 2015, using data from 2013) supported a determination that the stock was not subject to overfishing, landings data from 2016, finalized in 2017, support a determination that gray triggerfish is subject to overfishing because total landings in 2016 were greater than the OFL. NMFS has informed the Gulf of Mexico Fishery Management Council that it must take action to end overfishing immediately on this stock.

NMFS has determined that the Southern Georges Bank/Mid-Atlantic stock of red hake and North Atlantic shortfin mako shark are now both subject to overfishing and overfished. The Northeast Fisheries Science Center completed the most recent assessment of the Southern Georges Bank/Mid-Atlantic stock of red hake in 2017, using data through 2016. This assessment supports a determination that the stock is now subject to overfishing because the exploitation rate exceeds targets, and overfished because survey indices are below the minimum stock size threshold. NMFS has informed the New England Fishery Management Council (New England Council) that it must take action to end overfishing immediately on, and rebuild, this stock.

The latest stock assessment for North Atlantic shortfin mako shark was finalized in 2017 by the International Commission for the Conservation of Atlantic Tuna's (ICCAT's) Standing Committee for Research and Statistics, using data through 2015. This assessment supports a recommendation of subject to overfishing because fishing mortality exceeds targets and overfished because estimates of biomass in 2015 are less than the biomass targets. Under the Atlantic Tunas Convention Act, NMFS will implement new ICCAT management measures to address overfishing and begin rebuilding this stock.

NMFS has also determined that the following Atlantic stocks are still overfished: Atlantic wolffish, ocean pout, the Southern New England/Mid-Atlantic stock of winter flounder, and the Gulf of Maine/Georges Bank stock of windowpane flounder. Determinations are based on the most recent stock assessments, completed in 2017, using data through 2016, which indicate that biomass estimates remain below targets for these stocks. The status of Atlantic witch flounder could not be quantitatively determined and was qualitatively determined to be overfished based on poor stock condition.

NMFS has determined that the Cape Cod/Gulf of Maine and Southern New England/Mid-Atlantic stocks of yellowtail flounder and Gulf of Maine Atlantic cod are still subject to overfishing and overfished. These determinations are based on the most recent stock assessments, completed in 2017, using data through 2016, which indicate that biomass remains below targets and fishing mortality remains above thresholds. The 2017 assessment provided no accepted models and no qualitative information to recommend stock status for Georges Bank yellowtail flounder and Georges Bank cod. Thus, status for these stocks continues to be listed as subject to overfishing and overfished, based on the last accepted assessment conducted in 2013. These assessments continue status determinations made previously and NMFS has informed the New England Council that it must take action to end overfishing and rebuild these stocks.

Dated: February 28, 2018.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries Service, National Marine Fisheries Service.

[FR Doc. 2018–04398 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DOD.

ACTION: Notice of open Subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army War College Board of Visitors, a subcommittee of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The U.S. Army War College Board of Visitors Subcommittee will meet from 8:00 a.m. to 2:00 p.m. on April 6, 2018.

ADDRESSES: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, PA 17013.

FOR FURTHER INFORMATION CONTACT: Dr. David Dworak, the Alternate Designated Federal Officer for the subcommittee, in writing at Office of the Provost, 122 Forbes Ave., Carlisle, PA 17013, by email at *david.d.dworak.civ@mail.mil,* or by telephone at (717) 245–3365.

SUPPLEMENTARY INFORMATION: The subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act 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 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide the subcommittee with an overview of the U.S. Army War College Academic Campaign Plan, discuss Middle States and JPME II accreditation matters, and to address other administrative matters.

Agenda: The subcommittee will review and evaluate information related to the continued academic growth, accreditation, and development of the U.S. Army War College. General deliberations leading to provisional findings will be referred to the Army Education Advisory Committee for deliberation by the Committee under the open-meeting rules.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their, name, affiliation, and daytime phone number seven business days prior to the meeting to Dr. David Dworak, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Because the meeting of the subcommittee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeing to enter and exit the installation. Root Hall is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Dr. David Dworak, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Dr. David Dworak, the subcommittee Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The Alternate Designated Federal Official will review all submitted written comments or statements and provide them to members of the subcommittee for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Official at least seven business days prior to the meeting to be considered by the subcommittee. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting.

Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least seven business days in advance to the subcommittee's Alternate Designated

Federal Official, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The Alternate Designated Federal Officer will log each request, in the order received, and in consultation with the subcommittee Chairperson, determine whether the subject matter of each comment is relevant to the Subcommittee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three minutes during the period, and will be invited to speak in the order in which their requests were received by the Alternate Designated Federal Official.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–04409 Filed 3–2–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

The release of the Final Environmental Impact Statement (FEIS) for the Bogue Banks Master Beach Nourishment Plan, on Bogue Banks Barrier Island, Carteret County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Wilmington Regulatory Field Office has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, from Carteret County to implement, under an inter-local agreement between the towns on Bogue Banks barrier island, a comprehensive 50-year beach and inlet management plan for the protection of approximately 25 miles of Bogue Banks shoreline. The island's shoreline has been managed in some capacity for over 35 years by Federal projects administered through the COE Civil Works program and by non-federal projects implemented by the County, and/or local municipalities through the COE Regulatory permit program. Since 1978, roughly 11 million cubic yards of sand have been placed upon the beaches of Bogue Banks at a total cost of approximately $95 million. Past management efforts have largely consisted of stand-alone projects that were undertaken to address site-specific erosional problems. This stand-alone approach has limited the efficiency and effectiveness of past and current efforts by the County and island municipalities to implement shore protection projects and to maintain the beaches. In order to address ongoing shoreline erosion in a more effective manner, the County and island municipalities (Towns of Atlantic Beach, Pine Knoll Shores, Indian Beach, and Emerald Isle) are proposing to combine their shore protection efforts under a more efficient comprehensive 50-year beach and inlet management plan known as the Bogue Banks Master Beach Nourishment Plan (BBMBNP).

DATES: Written comments on the FEIS must be received at (see **ADDRESSES**) no later than 5 p.m. on April 2, 2018.

ADDRESSES: Copies of comments and questions regarding the FEIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division, ATTN: File Number SAW–2009–00293, 69 Darlington Avenue, Wilmington, NC 28403. Copies of the FEIS can be reviewed on the Corps homepage at, *http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/MajorProjects.aspx,* under Bogue Banks 50-Year Project: Corps ID # SAW–2009–00293.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and FEIS and/or to request a CD or written copies of the FEIS can be directed to Mr. Mickey Sugg, Wilmington Regulatory Field Office, telephone: (910) 251–4811 or *mickey.t.sugg@usace.army.mil*.

SUPPLEMENTARY INFORMATION:

1. *Project Purpose and Need.* The proposed action is to establish and implement a comprehensive, long-term, non-federal beach and inlet management program that would preserve Bogue Banks' tax base, protect its infrastructure, and maintain its tourism-based economy. The COE Civil Work's investigation of a long-term federal Coastal Storm Damaged Reduction (CSDR) project for Bogue Banks has been ongoing for nearly 30 years. As federal funding for shore protection projects has declined, the future of a long-term federal CSDR project has grown increasingly uncertain. The proposed action would address the ongoing trend of declining federal shore protection funding by establishing a non-federal management program under the autonomous control of the County and the island municipalities. An island wide regional strategy was developed to do the following: (1) Establish a regional approach by consolidating local community resources, both financially and logistically, to manage Bogue Inlet and the beaches on Bogue Banks in an effective manner, (2) Provide long-term shoreline protection stabilization and an equivalent level of protection along Bogue Banks' 25-mile oceanfront/inlet shorelines addressing long-term erosion, (3) Provide long-term protection to Bogue Banks' tourism industry, (4) Provide short and long-term protection to residential and commercial structures and island infrastructure, (5) Provide long-term protection to the local tax base by protection existing and future tax bases and public access/use, (6) Maintain and improve natural resources along Bogue Banks' oceanfront and inlet shoreline by using compatible beach material in compliance with the North Carolina State Sediment Criteria for shore protection, (7) Maintain and improve recreational uses of Bogue Banks' oceanfront/inlet shorelines, (8) Maintain navigation conditions within Bogue Inlet, and (9) Balance the needs of the human environment with the protection of existing natural resources.

2. *Proposed Action.* Within the County's preferred alternative, known as Alternative 4 (or the BBMBNP), the County would manage all of the approximately 18 miles of beaches along Pine Knoll Shores, Indian Beach/Salter Path, and Emerald Isle, along with the eastern shoreline of Bogue Inlet. The oceanfront of Atlantic Beach is an on-going recipient of regular USACE placements of navigation dredged material and this is expected to be sufficient in for the needs of its approximate 5.0-mile shoreline. However, the County's 50-year plan would provide for interim maintenance nourishment should the USACE placements cease or if storm-response nourishment for Atlantic Beach is needed.

The 50-year management would employ a regular and recurring cycle of nourishment events, in combination with periodic realignments of the Bogue Inlet ebb tide channel, to continuously maintain beach profile sand volumes at a 25-year Level of Protection (LOP). This LOP equates to protection for upland structures against a 25-year storm event, and nourishment events would be implemented according to 25-year LOP beach profile volumetric triggers. Volumetric triggers were developed by analyzing and adjusting design beach profiles in a series of iterative SBEACH numerical modeling runs. The final modeling results indicated appropriate volumetric triggers ranging from 211–266 cubic yards/foot along Bogue Banks, averaging 238 cubic yards/foot. Based on variability in the volumetric triggers, the project shoreline was divided into management reaches ranging in length from 2.4 to 4.5 miles. Reaches include Pine Knoll Shores, Indian Beach/Salter Path, Emerald Isle (EI) East, EI Central, EI West, and Bogue Inlet. Based on the SBEACH modeling results and observed background erosional loss rates, EI Central, EI West, and Bogue Inlet management reaches are expected to require recurring nourishment of approximately 0.06 to 0.23 million cubic yards of material at intervals of six or nine years to offset background erosion. For Pine Knoll Shores, Indian Beach/Salter Path, and EI East, recurring maintenance events would place approximately 0.2 to 0.5 million cubic yards of material at intervals of three or six years to offset background erosion. Actual maintenance nourishment intervals would be expected to vary in response to background erosion rate variability over the course of the 50-year project.

For Bogue Inlet management, the proposal has designated a ''safe box'' within the inlet throat where the ebb channel would be allowed to migrate freely so long as it remains within the boundaries of the safe box. If the channel migrates beyond the eastern boundary of the safe box (or toward Emerald Isle), this would trigger a preemptive event to realign the ebb channel mid-center within the established boundary. The limits of the safe box were developed and evaluated through empirical analysis of historical inlet changes and supplemental numerical modeling. Historical ebb channel alignments and corresponding inlet shoreline positions were analyzed through GIS analysis of historical aerial photography, National Ocean Service (NOS) T-sheet maps, and LIDAR topographic maps. Past migration rates and corresponding shoreline changes indicate that once eastward migration accelerates toward Emerald Isle, the migrating channel has the potential to threaten structures along the shoreline within two to three years. Based on the historical patterns, a safe box was established with boundaries corresponding to the location where acceleration of the ebb channel towards the west end of Emerald Isle has occurred in the past. The validity of the boundaries were then evaluated by modeling a series of six idealized inlet configurations encompassing the range of most relevant historical ebb channel alignments. Modeling results did not show any additional geomorphological indicators of an impending shift to accelerated migration that warranted modifications to the initial safe box. Once the boundary threshold is triggered, the relocation event would entail the construction of a channel approximately 6,000-feet long with variable bottom widths ranging from 150 to 500 feet. The dimensions of the channel would be similar to the footprint of the ebb tide channel realignment construction completed in 2005. Maintenance events of Bogue Inlet are expected approximately every ten to fifteen years, with corresponding placement of dredged material on the beaches of Emerald Isle.

Beach fill for all the proposed nourishment activities on Bogue Banks would be acquired from a combination of sources including offshore borrow sites, Atlantic Intracoastal Waterway disposal areas, upland sand mines, and the management of the Bogue Inlet. The offshore borrow sites consist of the Old Offshore Dredge Material Disposal Site (ODMDS) and the current ODMDS, which are located approximately 3 nautical miles offshore from Beaufort Inlet, and Area Y, which is located over 1.0 mile offshore from EI West reach. It is expected that hopper dredge plants will be used to extract beach fill material from the offshore borrow sites. Material would be transported from the hopper dredges to offshore booster pumps and carried to the appropriate nourishment reaches via pipeline. A hydraulic cutterhead dredge will likely be used during the management of the inlet bar channel event, which would transport the dredge material directly from the dredge plant onto the beach via pipelines.

3. *Alternatives.* Several alternatives have been identified and evaluated through the scoping process, and further detailed description of all alternatives is disclosed in Section 3.0 of the FEIS.

4. *Scoping Process.* To date, a public scoping meeting was held on September 30, 2010 in Morehead City; several Project Delivery Team (PDT) meetings have been held, which were comprised of local, state, and federal government officials, local residents and nonprofit organizations; and the Draft EIS was released and published in the **Federal Register** on April 14, 2017 (82 FR 17984).

The COE has coordinated closely with Bureau of Ocean Energy and Management (BOEM), which is a cooperating agency, in the development of the FEIS to ensure the process complies with the requirements of the Outer Continental Shelf Lands Act (OCSLA) and with the National Environmental Policy Act (NEPA). Additionally, the COE has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service Protected Resources Division under the Endangered Species Act; with U.S. Fish and Wildlife and National Marine Fisheries Service Habitat Conservation Division under the Fish and Wildlife Coordination Act; and with the National Marine Fisheries Service Habitat Conservation Division under the Magnuson-Stevens Act. The FEIS assesses the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and is coordinated with the North Carolina Division of Coastal Management (DCM) to ensure consistency with the Coastal Zone Management Act.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–04408 Filed 3–2–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of The Natural Gas Act During January 2018

	FE Docket Nos.
PUGET SOUND ENERGY, INC	17–149–NG; 17–24–NG
SIERRA PACIFIC POWER COMPANY d/b/a NV ENERGY	17–158–NG
COLONIAL ENERGY, INC	17–162–NG
CONSOLIDATED EDISON ENERGY, INC	17–157–NG
HOUSTON PIPE LINE COMPANY LP	17–163–NG
REV LNG LLC	17–155–LNG
SABINE PASS LIQUEFACTION, LLC	17–161–LNG
PASO NORTE GAS EXPORT, LLC	17–160–NG
EQT ENERGY, LLC	17–156–NG
UNIPER TRADING CANADA LTD	17–165–NG
BG LNG SERVICES, LLC	18–04–LNG
PEMCORP, S.A.P.I. DE C.V	18–02–NG
ENSTOR ENERGY SERVICES, LLC	18–01–NG
ENSTOR ENERGY SERVICES, LLC	18–05–NG
IRVING OIL COMMERICAL GP	18–09–NG
GOLDEN PASS LNG TERMINAL LLC	18–06–LNG
MACQUARIE ENERGY LLC	17–152–LNG
PHILLIPS 66 COMPANY	18–07–NG
CITADEL ENERGY MARKETING LLC	18–08–NG; 17–45–NG

	FE Docket Nos.
SABINE PASS LIQUEFACTION, LLC	17–161–LNG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during January 2018, it issued orders granting or vacating authority to import and export natural gas, and to import and export liquefied natural gas (LNG). These orders are summarized in the attached appendix and may be found on the FE website at *http://energy.gov/fe/listing-doefe-authorizationsorders-issued-2018.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 28, 2018.

Robert J. Smith,

Deputy Assistant Secretary for Oil and Natural Gas (Acting).

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

4131; 4002–A	01/04/18	17–148–NG; 17–24–NG	Puget Sound Energy, Inc	Order 4131 and Order 4002–A granting blanket authority to import/export natural gas from/to Canada, and vacating prior authorization.
4132	01/04/18	17–146–NG	Sierra Pacific Power Company d/b/a NV Energy	Order 4132 granting blanket authority to import natural gas from Canada.
4133	01/04/18	17–150–NG	Colonial Energy, Inc	Order 4133 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4134	01/04/18	17–147–NG	Consolidated Edison Energy, Inc	Order 4134 granting blanket authority to import/export natural gas from/to Canada.
4135	01/05/18	17–151–LNG	Houston Pipe Line Company LP	Order 4135 granting blanket authority to import/export natural gas from/to Mexico.
4136	01/05/18	17–42–NG	Rev LNG LLC	Order 4136 granting blanket authority to import/export LNG from/to Canada by truck.
4137	01/10/18	17–161–LNG	Sabine Pass Liquefaction, LLC	Order 4137 granting blanket authority to export LNG by vessel from the Sabine Pass LNG Terminal located in Cameron Parish, Louisiana, to Free Trade Agreement Nations.
4138	01/11/18	17–160–NG	Paso Norte Gas Export, LLC	Order 4138 granting blanket authority to export natural gas to Mexico.
4139	01/11/18	17–156–NG	EQT Energy, LLC	Order 4139 granting blanket authority to import/export natural gas from/to Canada.
4140	01/11/18	17–165–NG	Uniper Trading Canada Ltd	Order 4140 granting blanket authority to import/export natural gas from/to Canada.
4141	01/11/18	18–04–LNG	BG LNG Services, LLC	Order 4141 granting blanket authority to import LNG from various international sources by vessel.
4142	01/17/18	18–02–NG	Pemcorp, S.A.P.I. de C.V	Order 4142 granting blanket authority to export natural gas to Mexico.
4143	01/17/18	18–01–NG	Enstor Energy Services, LLC	Order 4143 granting blanket authority to import/export natural gas from/to Canada.
4144	01/26/18	18–05–NG	Enstor Energy Services, LLC	Order 4144 granting blanket authority to import/export natural gas from/to Mexico.
4145	01/26/18	18–09–NG	Irving Oil Commercial GP	Order 4145 granting blanket authority to export natural gas to Canada.
4146	01/26/18	18–06–LNG	Golden Pass LNG Terminal LLC	Order 4146 granting blanket authority to import LNG from various international sources by vessel.
4147	01/26/18	17–152–LNG	Macquarie Energy LLC	Order 4147 granting blanket authority to import/export natural gas from/to Canada/Mexico, to import/export LNG from/to Canada/Mexico by truck, and to import LNG from various international sources by vessel.
4148	01/26/18	18–07–NG	Phillips 66 Company	Order 4148 granting blanket authority to export natural gas to Canada.
4149	01/26/18	18–08–NG; 17–45–NG	Citadel Energy Marketing LLC	Order 4149 granting blanket authority to import/export natural gas from/to Canada/Mexico, and vacating prior authorization.
4150	01/26/18	17–161–NG	Sabine Pass Liquefaction, LLC	Order 4150 granting blanket authority to export LNG by vessel from the Sabine Pass LNG Terminal in Cameron Parish, Louisiana, to Non-free Trade Agreement Nations.

[FR Doc. 2018–04432 Filed 3–2–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[EERE 2017–VT–00XX]

Agency Information Collection Extension

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: The Department of Energy has submitted an information collection package to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The package requests a three-year extension of its ''Annual Alternative Fuel Vehicle

Acquisition Report for State and Alternative Fuel Provider Fleets,'' OMB Control Number 1910–5101. This information collection package covers information necessary to ensure the compliance of regulated fleets with the alternative fueled vehicle acquisition requirements imposed by the Energy Policy Act of 1992, as amended, (EPAct).

DATES: Comments regarding this collection must be received on or before April 4, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650 or contacted by email at *James.N.Tyree@omb.eop.gov*.

ADDRESSES: Written comments should be sent to the:

Desk Officer for the Department of Energy, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503

And to:

Mr. Dana O'Hara, Office of Energy Efficiency and Renewable Energy (EE–2G), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0121, or by fax at 202–586–1600, or by email at *dana.o'hara@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mr. Dana O'Hara at the contact information listed above or phone at (202)586–8063. The information collection instrument itself is available online at *http://www1.eere.energy.gov/vehiclesandfuels/epact/docs/reporting_spreadsheet.xls.*

SUPPLEMENTARY INFORMATION: This package contains: (1*) OMB No.:* 1910–5101; (2) *Information Collection Request Title:* Annual Alternative Fuel Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets; (3) *Type of Review:* renewal; (4) *Purpose:* The information is required so that DOE can determine whether alternative fuel provider and State government fleets are in compliance with the alternative fueled vehicle acquisition mandates of sections 501 and 507(o) of the EPAct, whether such fleets should be allocated credits under section 508 of EPAct, and whether fleets that opted into the alternative compliance program under section 514 of EPAct are in compliance with the applicable requirements; (5) *Annual Estimated Number of Respondents:* approximately 303; (6) *Annual Estimated Number of Responses:* 335; (7) *Annual Estimated Number of Burden Hours:* 1,970; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Beyond costs associated with undertaking the work, there are no additional costs to respondents of either information collection other than the burden hours for reporting and recordkeeping. Costs to undertake the work for the collection are approximated at $47.74/hr of effort (*http://www.bls.gov/oes/current/oes_nat.htm#11-0000*), for a total of $94,047.80 in labor to research, collect, and respond to the collection for all entities, or $310/respondent.

Statutory Authority: 42 U.S.C. 13251 *et seq.*

Issued in Washington, DC on: February 27, 2018.

David Howell,

Deputy Director, Vehicle Technologies Office, Energy Efficiency and Renewable Energy.

[FR Doc. 2018–04403 Filed 3–2–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–57–000]

Notice of Institution of Section 206 Proceeding and Refund Effective Date; Westwood Generation, LLC

On February 27, 2018, the Commission issued an order in Docket No. EL18–57–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the rates for Reactive Supply and Voltage Control Service (Reactive Service) of Westwood Generation, LLC may be unjust and unreasonable. *Westwood Generation, LLC,* 162 FERC ¶ 61,168 (2018).

The refund effective date in Docket No. EL18–57–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL18–57–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: February 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04380 Filed 3–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–82–000]

Southwest Gas Corporation; Notice of Application

Take notice that on February 8, 2018, Southwest Gas Corporation (Southwest), 5241 Spring Mountain Road, Las Vegas, Nevada 89150–0002, filed in Docket No. CP18–82–000 an application pursuant to section 7(f) of the Natural Gas Act (NGA) requesting an amendment to the service area determination previously approved by the Commission in Docket No. CP11–35–000. Southwest requests authorization to expand its service area crossing the California/Nevada state line in the Lake Tahoe region. Southwest anticipates load growth in Nevada and believes it will be undertaking system enhancements, necessitating construction outside the existing service area. Further, Southwest requests no change in the Commission's determination that Southwest is a local distribution company for purposes of section 311 of the National Gas Policy Act (NGPA) and a continued waiver of all reporting and accounting requirements, rules, and regulations that are normally applicable to natural gas companies under the NGA and NGPA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Jane Lewis-Raymond, Parker Poe Adams & Berstein LLP, 401 S Tryon Street, Charlotte, North Carolina 28202, by telephone at (704) 335–9882, or by email at *janelewisraymond@parkerpoe.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: March 14, 2018.

Dated: February 21, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–04354 Filed 3–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–718–001.
Applicants: Guzman Energy Partners LLC.
Description: Tariff Amendment: Market-Based Rate Tariff #1 Amendment to be effective 10/4/2017.
Filed Date: 2/27/18.
Accession Number: 20180227–5042.
Comments Due: 5 p.m. ET 3/20/18.

Docket Numbers: ER18–913–000.
Applicants: Northern States Power Company, a Minnesota corporation, a Wisconsin corporation.
Description: § 205(d) Rate Filing: Theoretical Reserve Amortization to be effective 1/1/2017.
Filed Date: 2/27/18.
Accession Number: 20180227–5031.
Comments Due: 5 p.m. ET 3/20/18.

Docket Numbers: ER18–914–000.
Applicants: Avista Corporation.
Description: Tariff Cancellation: Avista Corp Cancellation Chewelah Const Agrmt SA T1137 to be effective 2/27/2018.
Filed Date: 2/27/18.
Accession Number: 20180227–5059.
Comments Due: 5 p.m. ET 3/20/18.

Docket Numbers: ER18–915–000.
Applicants: Public Service Company of Colorado.
Description: Compliance filing: PSCo-TSGT—Boone-Huerfano-Stip & Offer Stlment 480 0.0.0 to be effective 12/31/9998.
Filed Date: 2/27/18.
Accession Number: 20180227–5062.
Comments Due: 5 p.m. ET 3/20/18.

Docket Numbers: ER18–916–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 160 NPC/Sun Valley Morgan Concurrence to be effective 4/11/2018.
Filed Date: 2/27/18.
Accession Number: 20180227–5108.
Comments Due: 5 p.m. ET 3/20/18.

Docket Numbers: ER18–917–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: OATT PSCo Rush Creek Gen TIE Rate Filing to be effective 5/1/2018.
Filed Date: 2/27/18.
Accession Number: 20180227–5109.
Comments Due: 5 p.m. ET 3/20/18.

Docket Numbers: ER18–918–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: SCE Revised WDAT Attachment J—Revised ITCC to be effective 1/1/2018.
Filed Date: 2/27/18.
Accession Number: 20180227–5125.
Comments Due: 5 p.m. ET 3/20/18.

Docket Numbers: ER18–919–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: SCE Revised TO Tariff Appendix X—Revised ITCC to be effective 1/1/2018.
Filed Date: 2/27/18.
Accession Number: 20180227–5137.
Comments Due: 5 p.m. ET 3/20/18.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR17–2–000.
Applicants: North American Electric Reliability Corporation.
Description: Amendment to December 9, 2016 Petition of the North American Electric Reliability Corporation for Approval of Proposed Revisions to the Rules of Procedure.

Filed Date: 2/27/18.
Accession Number: 20180227–5060.
Comments Due: 5 p.m. ET 3/20/18.

Docket Numbers: RR18–2–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Amendments to the SERC Reliability Corporation Regional Reliability Standard Development Procedure.
Filed Date: 2/12/18.
Accession Number: 20180212–5070.
Comments Due: 5 p.m. ET 3/5/18.

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 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04376 Filed 3–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD18–11–000]

Reliability Technical Conference; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will hold a Technical Conference on Tuesday, July 31, 2018, from 9:00 a.m. to 5:00 p.m. This Commissioner-led conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The purpose of the conference is to discuss policy issues related to the reliability of the Bulk-Power System. The Commission will issue an agenda at a later date in a supplemental notice.

The conference will be open for the public to attend. There is no fee for attendance. However, members of the public are encouraged to preregister online at: *https://www.ferc.gov/whats-new/registration/07-31-18-form.asp.*

Those wishing to be considered for participation in panel discussions should submit nominations no later than close of business on March 23, 2018 online at: *https://www.ferc.gov/whats-new/registration/07-31-18-speaker-form.asp.*

Information on this event will be posted on the Calendar of Events on the Commission's website, *http://www.ferc.gov,* prior to the event. The conference will also be webcast and transcribed. Anyone with internet access who desires to listen to this event can do so by navigating to the Calendar of Events at *http://www.ferc.gov* and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100. Transcripts of the technical conference will be available for a fee from Ace-Federal Reporters, Inc. at (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1 (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Lodie White (202) 502–8453, *Lodie.White@ferc.gov.* For information related to logistics, please contact Sarah McKinley at (202) 502–8368, *Sarah.Mckinley@ferc.gov.*

Dated: February 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04378 Filed 3–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP18–463–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—Shell Energy North America (US), L.P. to be effective 4/1/2018.
Filed Date: 2/26/18.
Accession Number: 20180226–5044.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–464–000.
Applicants: Nautilus Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Nautilus LINK Integration Filing to be effective 5/1/2018.
Filed Date: 2/26/18.
Accession Number: 20180226–5077.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–465–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Mar 2018 to be effective 3/1/2018.
Filed Date: 2/26/18.
Accession Number: 20180226–5164.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–466–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: 2017 Operational Transactions Report.
Filed Date: 2/26/18.
Accession Number: 20180226–5177.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–467–000.
Applicants: Columbia Gas Transmission, LLC.
Description: 2017 Operational Transactions Report.
Filed Date: 2/26/18.
Accession Number: 20180226–5178.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–468–000.
Applicants: Crossroads Pipeline Company.
Description: 2017 Operational Transactions Report.
Filed Date: 2/26/18.
Accession Number: 20180226–5179.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–469–000.
Applicants: Hardy Storage Company, LLC.
Description: 2017 Operational Transactions Report.
Filed Date: 2/26/18.
Accession Number: 20180226–5180.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–470–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Compliance filing Annual Report of Operational Purchases and Sales 2018.

Filed Date: 2/27/18.
Accession Number: 20180227–5023.
Comments Due: 5 p.m. ET 3/12/18.

Docket Numbers: RP18–471–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Chevron Release to ConocoPhillips to be effective 3/1/2018.
Filed Date: 2/27/18.
Accession Number: 20180227–5024.
Comments Due: 5 p.m. ET 3/12/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern Time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04377 Filed 3–2–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–51–000]

Notice of Institution of Section 206 Proceeding and Refund Effective Date; RockGen Energy, LLC

On February 26, 2018, the Commission issued an order in Docket No. EL18–51–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the Rate Schedule of RockGen Energy, LLC may be unjust and unreasonable. *RockGen Energy, LLC,* 162 FERC ¶ 61,166 (2018).

The refund effective date in Docket No. EL18–51–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register.**

Any interested person desiring to be heard in Docket No. EL18–51–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2017), within 21 days of the date of issuance of the order.

Dated: February 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–04379 Filed 3–2–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1196; FRL–9974–41–OAR]

Recent Postings of Broadly Applicable Alternative Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the broadly applicable alternative test method approval decisions that the Environmental Protection Agency (EPA) has made under and in support of New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) between January 1, 2017, and December 31, 2017.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each alternative test method approval document is available at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods.* For questions about this notice, contact Mrs. Lula H. Melton, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–2910; fax number: (919) 541–0516; email address: *melton.lula@epa.gov.* For technical questions about individual alternative test method decisions, refer to the contact person identified in the individual approval document(s).

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This notice will be of interest to entities regulated under 40 Code of Federal Regulations (CFR) parts 60, 61, and 63; state, local, and tribal agencies; and the EPA Regional offices responsible for implementation and enforcement of regulations under 40 CFR parts 60, 61, and 63.

B. How can I get copies of this information?

You may access copies of the broadly applicable alternative test method approval documents at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods.*

II. Background

This notice identifies broadly applicable alternative test method approval decisions made by the EPA in 2017 under the NSPS, 40 CFR part 60 and the NESHAP programs, and 40 CFR parts 61 and 63 (see Table 1). Source owners and operators may voluntarily use these broadly applicable alternative test methods in lieu of otherwise specified reference test methods. Use of these broadly applicable alternative test methods does not change the applicable emission standards.

The Administrator has the authority to approve the use of alternative test methods for compliance with requirements under 40 CFR parts 60, 61, and 63. This authority is found in sections 60.8(b)(3), 61.13(h)(1)(ii), and 63.7(e)(2)(ii). Additional and similar authority can be found in 40 CFR 65.158(a)(2). The criteria for approval and procedures for submission and review of broadly applicable alternative test methods are explained in a previous **Federal Register** notice published at 72 FR 4257 (January 30, 2007) and located at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods.* As explained in this notice, we will announce approvals for broadly applicable alternative test methods at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods* and publish an annual notice that summarizes approvals for broadly applicable alternative test methods during the preceding year.

As also explained in the January 30, 2007, notice, our approval decisions involve thorough technical reviews of numerous source-specific requests for alternatives and modifications to test methods and procedures. Based on these reviews, we have often found that these modifications or alternatives would be equally valid and appropriate to apply to other sources within a particular class, category, or subcategory. Consequently, we have concluded that where a method modification or an alternative method is clearly broadly applicable to a class, category, or subcategory of sources, it is both equitable and efficient to approve its use for all appropriate sources and situations at the same time.

Use of approved alternative test methods are not mandatory but rather

permissive. Sources are not required to employ such a method but may choose to do so in appropriate circumstances. As per section 63.7(f)(5), however, a source owner or operator electing to use an alternative method for 40 CFR part 63 standards must continue to use the alternative method until otherwise authorized. Source owners or operators should, therefore, review the specific broadly applicable alternative method approval decision at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods* before electing to employ any alternative method.

III. Approved Alternative Test Methods and Modifications to Test Methods

This notice specifies three broadly applicable alternative test methods that the EPA approved between January 1, 2017, and December 1, 2017. The alternative method decision letter/memo number, the reference method affected, sources allowed to use this alternative, and the modification or alternative method allowed are summarized in Table 1 of this notice. A summary of approval documents was previously made available on our Technology Transfer Network between January 1, 2017, and December 31, 2017. For more detailed information, please refer to the complete copies of these approval documents available at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods.*

As also explained in our January 30, 2007, notice, we will revisit approvals of alternative test methods in response to written requests or objections indicating that a particular approved alternative test method either should not be broadly applicable or that its use should in some way be limited. Any objection to a broadly applicable alternative test method, as well as the resolution of that objection, will be announced at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods* and in a subsequent **Federal Register** notice. If we decide to retract a broadly applicable test method, we will likely consider the need for an appropriate transition period for users either to request case-by-case approval or to transition to an approved method.

Dated: February 13, 2018.

Panagiotis E. Tsirigotis,

Director, Office of Air Quality Planning and Standards.

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 60, 61, AND 63 POSTED BETWEEN JANUARY 2017 AND DECEMBER 2017.

Alternative method decision letter/memo number	As an alternative or modification to . . .	For . . .	You may . . .
ALT–120	40 CFR 63.1350(k)(2)(ii) and (iii)	Sources subject to 40 CFR part 63, subpart LLL-National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry.	Use the alternative procedure for above span mercury calibrations through January 1, 2019, only as specified in the Agency's approval letter dated December 7, 2017.
ALT–121	Method 3-Gas Analysis for the Determination of Dry Molecular Weight.	Sources subject to 40 CFR part 60, subpart Ja-Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.	Use Method 3A-Determination of Oxygen and Carbon Dioxide Concentrations in Emissions From Stationary Sources (Instrumental Analyzer Procedures).
ALT–122	Method 325 A-Volatile Organic Compounds From Fugitive and Area Sources: Sampler Deployment and VOC Sample Collection and Method 325B-Volatile Organic Compounds From Fugitive and Area Sources: Sampler Preparation and Analysis.	Sources subject to 40 CFR part 63, subpart CC-National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries.	Use the alternative approaches for temperature and pressure corrections, sample collection timing, and duplicate and field blank samples as specified in the Agency's approval letter dated September 11, 2017.

Source owners or operators should review the specific broadly applicable alternative method approval letter at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods* before electing to employ it.

[FR Doc. 2018–04375 Filed 3–2–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0617; FRL–9971–35]

FIFRA Scientific Advisory Panel; Notice of Public Meeting and Request for Nomination of Ad Hoc Expert Members

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4-day, in-person meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review the Resistance of Lepidopteran Pests to *Bacillus thuringiensis* (Bt) Plant Incorporated Protectants in The United States: EPA's Analysis of Scientific Uncertainties Related to Resistance Management and Options to Enhance the Current Insect Resistance Management Program. Preceding the in-person meeting, there will be a half-day virtual preparatory meeting, conducted via webinar using Adobe Connect, to consider and review the clarity and scope of the meeting's draft charge questions. Registration is required to attend this virtual meeting. The date and registration instructions will be on the FIFRA SAP website *http://www.epa.gov/sap* by mid-March to early April.

DATES: The virtual preparatory meeting will be announced in a future **Federal Register** Notice and on *http://www.epa.gov/sap.* The 4-day, in-person meeting will be held July 17 to July 20, 2018, from approximately 9 a.m. to 5 p.m.

ADDRESSES: *Meeting:* The location of the 4-day, in-person meeting will be announced in a future **Federal Register** Notice and on *http://www.epa.gov/sap.* The virtual meeting will be webcast. Please refer to the following website for information on how to access the webcast: *http://www.epa.gov/sap.*

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0617, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

How to submit nominations, requests to present oral comments, and requests for special accommodations. Submit nominations of candidates to serve as ad hoc members of the FIFRA SAP Meeting, requests for special accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Tamue L. Gibson, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–7642; email address: *gibson.tamue@epa.gov.*

Comments. Written comments should be submitted for both the virtual preparatory meeting and the in-person meeting on or before May 10, 2018. FIFRA SAP may not be able to fully consider written comments submitted after May 10, 2018. Requests to make oral comments should be submitted on or before May 24, 2018 by contacting the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. You may also subscribe to the following listservs to be notified when notices regarding this and other SAP related activities are published. *https://public.govdelivery.com/accounts/USAEPAOPPT/subscriber/new?topic_id=USAEPAOPPT_101, https://public.govdelivery.com/accounts/USAEPAOPPT/subscribers/qualify.* For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this review should be provided on or before April 4, 2018. More information can be found under unit I.C.4., Request for nominations to serve as ad hoc expert members of FIFRA SAP for this meeting.

Webcast. The virtual preparatory meeting will be webcast only and registration is required. Please refer to the following website for information on how to access the webcast: *http://www.epa.gov/sap.* The 4-day, in-person SAP meeting may also be webcast. You may refer to the FIFRA SAP website at *http://www.epa.gov/sap* for information on how to access the webcast. Please note that the webcast for the in-person meeting is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the in-person meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation for a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to allow EPA time to process your request.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through *regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

C. How may I participate in both meetings?

You may participate in both meetings by following the instructions in this unit. To ensure proper receipt of comments, nominations or other requests by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2017–0617 in the subject line on the first page of your request.

1. *Written comments.* Written comments for both the in-person and virtual meetings should be submitted, using the instructions in **ADDRESSES** and Unit I.B., on or before May 10, 2018, to provide FIFRA SAP the time necessary to consider and review the written comments. FIFRA SAP may not be able to fully consider written comments submitted after May 10, 2018.

2. *Oral comments.* The Agency encourages each individual or group wishing to make brief oral comments to FIFRA SAP during the in-person or virtual meetings to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before May 24, 2018, to be included on the meeting agenda. Requests to present oral comments during the in-person meeting will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. Oral comments during the virtual meeting are limited to approximately 5 minutes due to the time constraints of this webcast. Oral comments during the 4-day, in-person meeting are limited to approximately 5 minutes unless arrangements have been made prior to May 24, 2018. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. In addition, each speaker should bring 15 copies of his or her oral remarks and presentation slides (if required) for distribution to FIFRA SAP at the meeting by the DFO.

3. *Seating at the meeting.* Seating at the in-person meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc expert members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may

nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Field entomologists with expertise in the southern United States (U.S.) corn and cotton systems who are either corn earworm/bollworm (both systems), fall armyworm, and/or western bean cutworm experts; pesticide resistance modelers with a strong background in entomology, ecology, and population biology; insect resistance management experts; population biologists understanding the life-history of corn earworm/bollworm, fall armyworm, and/or western bean cutworm; corn breeders, molecular biologists in the field of entomology with an understanding of the agricultural system in the southern U.S.; social scientists with expertise in resistance management issues and understanding of dynamics in the agricultural U.S. (*e.g.,* human and market factors); and economists with expertise in the U.S. agricultural system and Bt technology-related issues. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to provide expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, email address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before April 4, 2018. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before that date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the Panel and the expertise needed to address the Agency's charge to the Panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency, except EPA. Other factors considered during the selection process include availability of the potential Panel member to fully participate in the Panel's review, absence of any conflicts of interest or appearance of loss of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of loss of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each Panel; therefore, selection decisions involve carefully weighing a number of factors, including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the Panel. In order to have the collective breadth of experience needed to address the Agency's peer review charge for this meeting, the Agency anticipates selecting approximately 13 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634—Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture, as supplemented by EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. EPA will evaluate the candidate's financial disclosure form to assess whether there are financial conflicts of interest, appearance of a loss of impartiality, or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes and final report. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website at *http://www.epa.gov/scipoly/sap* or may be obtained from the OPP Docket at *http://www.regulations.gov.*

II. Background

A. Purpose of FIFRA SAP

The FIFRA SAP serves as one of the primary scientific peer review mechanisms of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide independent scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on human health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix). The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health (NIH) and the National Science Foundation (NSF). FIFRA established a Science Review Board (SRB) consisting of at least 60 scientists who are available to FIFRA SAP on an ad hoc basis to assist in reviews conducted by FIFRA SAP. As a scientific peer review mechanism, FIFRA SAP provides comments, evaluations, and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

The purpose of the July 2018 SAP is for the Agency to present major risk factors believed responsible for expediting lepidopteran adaptation to Bt toxins in the U.S. and associated scientific uncertainties. Furthermore, the Agency will discuss identified shortcomings of the current insect sampling methodologies, rearing and resistance testing of populations and the feasibility of successful mitigation when resistance is confirmed. In addition, the meeting serves to assess whether it is warranted scientifically to develop a resistance management plan for western bean cutworm. The overall goal of the meeting is to receive recommendations that reduce the resistance risks for lepidopteran pests, increase the longevity of currently functional Bt traits and future technologies, and improve the current insect resistance management program for lepidopteran pests of Bt corn and cotton.

Lepidopteran resistance to *Bacillus thuringiensis* (Bt) traits of corn and cotton were published by academic scientists for the continental U.S. in 2014 for the fall armyworm (*Spodoptera frugiperda*), in 2016 for the corn earworm (*Helicoverpa zea*), and in 2017 for the western bean cutworm (*Striacosta albicosta*). Likewise, industry reported resistance for the southwestern corn borer (*Diatraea grandiosella*) in their resistance monitoring reports to the U.S. EPA in 2016. The Agency identified several risk factors that may have had the greatest impact on these resistance

developments. Some of these are: (1) Lack of high dose traits; (2) use of single modes of action possible year-after-year; (3) corn seed blends in the southern U.S.; (4) poor refuge compliance for Bt corn in southern states; (5) continuous selection with same traits expressed in Bt corn and Bt cotton in a given year; (6) methodological approaches with monitoring for resistant field populations; and (7) challenges with identifying resistance using diet bioassays for non-high-dose pests. The Agency will discuss its analysis of identified risk factors underlying lepidopteran resistance development in the U.S. as well as associated scientific uncertainties. Furthermore, the Agency will discuss its analysis of methodological issues with collecting insects from the field, rearing and testing populations for resistance, and the feasibility of mitigating field resistance for Lepidopteran pests.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, charge/questions to FIFRA SAP, and related supporting materials will be available by mid to late March 2018. In addition, a list of candidates under consideration as prospective ad hoc panelists for this meeting will be available for a 15-day public comment period by late March to early April 2018. You may obtain electronic copies of most meeting documents, including FIFRA SAP composition (*i.e.,* members and ad hoc members for this meeting) and the meeting agenda, at *http://www.regulations.gov* and the FIFRA SAP website at *http://www.epa.gov/scipoly/sap.*

FIFRA SAP will prepare the meeting minutes and final report approximately 90 calendar days after the in-person meeting. The meeting minutes and final report will be posted on the FIFRA SAP website: *https://www.epa.gov/sap* and may be accessed in the docket at *https://www.regulations.gov.*

Authority: 7 U.S.C. 136 *et. seq.;* 21 U.S.C. 301 *et seq.*

Dated: February 21, 2018.

Stanley Barone Jr.,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 2018–04418 Filed 3–2–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2017–0650; FRL–9975–04–OAR]

Proposed Approval of the Transuranic Waste Characterization Program at Idaho National Laboratory's Advanced Mixed Waste Treatment Project

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency ((EPA) or the Agency) is announcing the availability of, and soliciting public comment on, this proposed action. On August 8–10, 2017, the Agency conducted a baseline inspection of the Advanced Mixed Waste Treatment Project (AMWTP)'s transuranic (TRU) waste characterization program at Idaho National Laboratory (INL), in accordance with the Waste Isolation Pilot Plant (WIPP) Compliance Criteria and Condition 3 of the EPA's initial May 13, 1998 WIPP certification, as amended. The inspection evaluated the technical adequacy of this program's characterization of contact-handled TRU debris and solid waste. The EPA is proposing to approve a new AMWTP baseline that includes the significant changes that have been implemented at INL since mid-2016. The TRU waste characterization program changes, particularly to the Acceptable Knowledge process, referred to as ''enhanced AK'', address deficiencies identified by the Department of Energy (DOE) as among the root causes of the February 2014 radiation release at the WIPP. The EPA's draft baseline inspection report is available for review in the public dockets listed in the **ADDRESSES** section of this document. Until the EPA finalizes its baseline approval decision, the DOE Carlsbad Field Office (CBFO) may not recertify the AMWTP's TRU waste characterization program and the AMWTP may not ship any TRU waste unless it meets the requirements of the June 2017 revisions to the DOE's WIPP Waste Acceptance Criteria to the WIPP for disposal.

DATES: Comments must be received on or before April 19, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2017–0650, to the *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit: *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Rajani Joglekar (202–343–9462) or Edward Feltcorn (202–343–9422), Radiation Protection Division, Center for Waste Management and Regulations, Mail Code 6608T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC, 20460; fax number: 202–343–2305; email address: *joglekar.rajani@epa.gov* or *feltcorn.ed@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

• Follow directions: The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

• Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

II. Background

The DOE operates the WIPP facility near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of defense-related TRU radioactive waste. TRU waste consists of any radioactive materials generated a part of the defense or non-defense activities having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste, which may be contaminated with hazardous chemicals, consists of items contaminated during the production of nuclear weapons, such as debris waste (rags, equipment, tools) and solid waste (sludges, soil).

Section 8(d)(2) of the WIPP Land Withdrawal Act (LWA) of 1992 provided that the EPA would certify whether the WIPP facility will comply with the Agency's final disposal regulations, later codified at 40 CFR part 191, subparts B and C. On May 13, 1998, the EPA announced its final compliance certification to the Secretary of Energy (published May 18, 1998; 63 FR 27354), certifying that the WIPP will comply with the disposal regulations. The EPA's certification of the WIPP was subject to various conditions, including conditions concerning quality assurance and waste characterization relating to EPA inspections, evaluations and approvals of the site-specific TRU waste characterization programs to ensure compliance with various EPA regulatory requirements, including those at 40 CFR 194.8, 194.22(a)(2)(i), 194.22(c)(4), 194.24(c)(3) and 194.24(c)(5). In addition, under the LWA, the initial WIPP certification was subject to quinquennial (every five years) recertification by EPA.

The EPA's inspection and approval processes for waste generator sites, including quality assurance and waste characterization programs, are described at 40 CFR 194.8. Between November 2005 and April 2012, the EPA inspected waste characterization programs of previously approved sites. EPA has discretion in establishing technical priorities; the ability to accommodate variation in the site's waste characterization capabilities; and flexibility in scheduling site waste characterization inspections.

In accordance with the conditions in the WIPP compliance certification and relevant regulatory provisions, including 40 CFR 194.8, the EPA conducts ''baseline'' inspections at waste generator sites, as well as subsequent inspections to confirm continued compliance. As part of a baseline inspection, the EPA evaluates each waste characterization process component (equipment, procedures and personnel training and experience) for adequacy and appropriateness in characterizing TRU waste intended for disposal at the WIPP. During the inspection, the site demonstrates its capabilities to characterize TRU waste(s) and its ability to comply with the regulatory limits and tracking requirements under § 194.24. The baseline inspection can result in approval with limitations and conditions or may require follow-up inspection(s) before approval. Within the approval documentation, the EPA specifies what subsequent program changes should be reported to the EPA, referred to as Tier 1 or Tier 2 changes, depending largely on the anticipated affect of the changes on data quality.

A Tier 1 designation requires that the CBFO provide to the EPA documentation on proposed changes to the approved components of an individual site-specific waste characterization process (such as radioassay equipment) which the Agency must approve before the change can be implemented. Tier 2 designated changes are minor changes to the approved components of individual waste characterization processes (such as visual examination procedures) which must also be reported to EPA, but the site may implement such changes without awaiting EPA approval. After receiving notification of Tier 1 changes, the Agency may choose to inspect the site to evaluate technical adequacy. The EPA inspections conducted to evaluate Tier 1 or Tier 2 changes are under the authority of the EPA's WIPP compliance certification conditions and regulations, including 40 CFR 194.8 and 194.24(h). In addition to follow-up inspections, the EPA may opt to conduct continued compliance inspections at TRU waste sites with a baseline approval under the authority of the WIPP compliance certification regulations, including § 194.24(h).

In accordance with 40 CFR 194.8, the EPA issues a **Federal Register** notice proposing a baseline compliance decision, dockets the inspection report for public review, and seeks public comment on the proposed decision for a minimum period of 45 days. The report describes the waste characterization processes the EPA inspected at the site, as well as their compliance with 40 CFR 194.8 and 194.24 requirements.

In October 2006, the EPA approved the AMWTP's contact-handled TRU waste characterization program. Between 2006 and 2015, the EPA conducted continued compliance inspections to verify that the AMWTP continued to characterize waste using the EPA-approved waste characterization program components. The EPA also approved Tier 1 changes that added new waste streams, equipment, processes and procedures or significantly revised the EPA-approved waste characterization activities. However, after the February 2014 WIPP incident resulting from an exothermic reaction in one of the emplaced waste containers, the DOE implemented changes to the WIPP Waste Acceptance Criteria. These changes required documentation of waste treatment related information which necessitated that the AMWTP make changes to one of the waste characterization program component, namely, Acceptable Knowledge. The EPA determined that these changes to the Waste Acceptance Criteria are significantly different from the processes which the EPA evaluated during previous site-specific baseline and continued compliance inspections. As a result, in the fall of 2016, the EPA informed the DOE that a new AMWTP baseline inspection and approval would be a necessary step to evaluate the technical adequacy of the newly-implemented Enhanced Acceptable Knowledge process at the AMWTP. At that time, the EPA also informed the DOE that the baseline inspection would occur during the latter part of the 2017 fiscal year. These include improvements in the following two technical areas:

• Collection, evaluation, documentation and verification of Acceptable Knowledge specific to the chemical contents of WIPP-bound TRU

waste (especially chemical incompatibility and reactivity);

• Evaluation and confirmation that waste treatment procedures completed to render containerized TRU waste chemically-inert (that is, the waste does not exhibit any of the three hazardous waste characteristics of ignitability, corrosiveness and reactivity defined in 40 CFR part 261, subpart C.

The purpose of EPA's baseline inspection at AMWTP was to:

(1) Verify that contact-handled TRU waste being characterized remains in compliance with regulatory requirements, including the conditions of the EPA's WIPP compliance certification and 40 CFR 194.8 and 194.24; and

(2) understand how the revised DOE WIPP Waste Acceptance Criteria are incorporated within the AMWTP's TRU waste characterization processes.

The scope of the baseline inspection for determining technical adequacy of the waste characterization program elements (*i.e.,* systems of controls) as implemented included:

• The Acceptable Knowledge process, focusing on the enhanced AK process for contact-handled TRU waste identified with the following Summary Category Groups:

○ S5000, heterogeneous debris
○ S4000, soils
○ S3000, homogeneous solids

• The four nondestructive assay processes evaluated include:

○ Canberra Integrated Waste Assay Systems (IWAS)
○ Retrieval Box Assay System (RBAS)
○ Waste Assay Gamma Spectrometer (WAGS)
○ Stored Waste Examination Pilot Plant (SWEPP) Gamma-Ray Spectrometer (SGRS)

• Visual examination and three real-time radiography units for characterizing the physical waste components of TRU waste containers belonging to all contact-handled waste types listed above.

III. Proposed Baseline Compliance Decision

The EPA conducted inspections at INL on August 8–10, 2017. The inspection team identified no concerns or findings as a result of this inspection. The EPA is concluding that the AMWTP-implemented waste characterization program meets the EPA regulatory requirements and is compliant with the WIPP waste acceptance criteria for an Enhanced Acceptable Knowledge determination for WIPP-destined TRU waste containers. As discussed in the draft AMWTP Baseline Inspection Report (contained in EDOCKET No. EPA–HQ–OAR–2017–0650), the EPA determines that the waste characterization program also complies with the Agency's regulatory requirements, including those conditions outlined in the WIPP compliance certification and 40 CFR 194.8 and 194.24. The EPA is proposing to approve the AMWTP waste characterization program in the configuration observed during this inspection, consistent with the limitations described in the draft inspection report. When approved, the AMWTP can continue using the approved program components to characterize contact-handled waste in accordance with the conditions and restrictions discussed in the final inspection report accompanying the EPA approval letter. The Agency is proposing to approve the following components of the AMWTP waste characterization program inspected in August 2017. Specifically, the proposed approval includes:

• The enhanced AK process.

• The four nondestructive assay systems (IWAS, RBAS, WAGS and SGRS) listed above.

• The visual examination and real time radiography processes to identify waste material parameters and the physical form of the waste.

The EPA is further proposing that, in the event of changes to the waste characterization program arising or occurring after the date of the baseline inspection, the DOE must report those changes and, if applicable, receive the Agency's approval of such changes according to Table 1, below. All Tier 1 changes must be submitted for approval before their implementation and will be evaluated by the EPA. If the EPA approves changes to the waste characterization program, the Agency will post the results of any evaluations relating to such changes through the EPA website and docket and the WIPP–NEWS email listserv. Also as indicated in Table 1, the AMWTP must report Tier 2 changes to the EPA on a quarterly basis. In addition to evaluations of Tier 1 and Tier 2 changes, the Agency will conduct periodic inspections to verify that TRU waste characterization activities continue to comply with regulatory requirements, including the conditions of the EPA's WIPP compliance certification and 40 CFR 194.8 and 194.24, and continue to implement the EPA-approved processes, procedures and equipment as required.

TABLE 1—TIERING OF CONTACT-HANDLED TRANSURANIC WASTE CHARACTERIZATION PROCESSES IMPLEMENTED BY THE AMWTP [1]

[Based on August 8–10, 2017 baseline inspection]

Process elements	AMWTP waste characterization process—Tier 1 changes	AMWTP waste characterization process—Tier 2 changes *
Acceptable Knowledge (AK), including Payload Management.	None	Submission of a list of active AMWTP CH AKEs and SPMs who performed work during the previous quarter. Notification to the EPA upon completion of or substantive modification ** to: • RPT–TRUW–05, RPT–TRUW–07 and RPT–TRUW–12. • AK accuracy reports (annually, at a minimum). • WSPFs and any associated change notices. • AKSRs and generator-site-specific AK documents. • Site procedures requiring DOE CBFO approval. • The payload management status of approved waste streams. • Enhanced AK documents such as IWMDL forms and AKA, CCE and BoK memoranda.
Nondestructive Assay (NDA)	New equipment or substantive physical modifications ** to approved equipment.	Submission of a list of AMWTP NDA operators, EAs and ITRs who performed work during the previous quarter.

TABLE 1—TIERING OF CONTACT-HANDLED TRANSURANIC WASTE CHARACTERIZATION PROCESSES IMPLEMENTED BY THE AMWTP [1]—Continued

[Based on August 8–10, 2017 baseline inspection]

Process elements	AMWTP waste characterization process—Tier 1 changes	AMWTP waste characterization process—Tier 2 changes *
	Extension of or changes to approved calibration ranges for approved equipment.	Notification to the EPA upon substantive modification ** to: • Software for approved equipment. • Operating ranges upon DOE CBFO approval. • Site procedures requiring DOE CBFO approval.
Real-Time Radiography (RTR)	New equipment or substantive physical modifications ** to approved equipment.	Submission of a list of AMWTP RTR operators and ITRs who performed work during the previous quarter.
	Implementation of any new real-time radiography process.	Notification to the EPA upon substantive modification ** to site procedures requiring DOE CBFO approval.
Visual Examination (VE)	Implementation of any new visual examination process.	Submission of a list of AMWTP VE operators, VE Experts and ITRs that performed work during the previous quarter. Notification to the EPA upon substantive modification ** to site procedures requiring DOE CBFO approval.

[1] For various acronyms, see the referenced AMWTP baseline inspection report in the EPA's Air Docket.
* The AMWTP will report all T2 changes to the EPA every three months.
** "Substantive modification" refers to a change with the potential to affect the AMWTP's CH waste characterization processes or documentation of them, excluding changes that are solely related to the environment, safety and health; nuclear safety; or the Resource Conservation and Recovery Act; or that are editorial in nature or are required to address administrative concerns. The EPA may request copies of new references that the DOE adds during a document revision.

The EPA's final approval decision regarding the contact-handled TRU waste characterization program at the AMWTP will be conveyed to the DOE separately by letter following review of public comments. This decision and accompanying report will be posted on the EPA's WIPP website and electronic docket.

IV. Availability of the Baseline Inspection Report for Public Comment

The EPA has placed the draft report discussing the results of the inspection of the waste characterization program at the AMWTP in the public docket as described in the **ADDRESSES** section of this document. In accordance with 40 CFR 194.8, the Agency is providing the public 45 days to comment on these documents and the EPA's proposed decision to accept the waste characterization program. The Agency requests comments particularly concerning the Enhanced Acceptable Knowledge process, a major significant change made by the AMWTP to their existing waste characterization program. The EPA will accept public comment on this notice and supplemental information as described in Section 1 of this document. At the end of the public comment period, the EPA will evaluate all relevant public comments and, as the Agency may deem appropriate and necessary, revise the inspection report and proposed decision or take other appropriate action. If the EPA concludes that there are no unresolved issues after the public comment period, the Agency will issue an approval letter and the final inspection report. The letter of approval will authorize the DOE to use the approved TRU waste characterization processes to characterize waste at the AMWTP.

Information on the approval decision will be filed in the official public docket opened for this action on *www.regulations.gov,* Docket ID No. EPA–HQ–OAR–2017–0650 (as listed in the **ADDRESSES** section of this document).

Dated: February 12, 2018.

Jonathan D. Edwards,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2018–04423 Filed 3–2–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9974–90–OAR]

Review of Existing VOC Emissions Factor for Flares at Natural Gas Production Sites and New Emissions Factors for Enclosed Ground Flares

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: On February 5, 2018, the Environmental Protection Agency (EPA) took final action on its review of the existing volatile organic compounds (VOC) emissions factor for flares at natural gas production sites pursuant to section 130 of the Clean Air Act (CAA). While the review did not result in a revision to this existing VOC emissions factor, the EPA issued new total hydrocarbon (THC) emissions factors for enclosed ground flares based on the available flare data.

DATES: Applicable on March 5, 2018.

ADDRESSES: You may view this final action and the supporting information electronically at: *https://www.epa.gov/air-emissions-factors-and-quantification/new-emissions-factors-enclosed-ground-flares.*

FOR FURTHER INFORMATION CONTACT: Ms. Gerri Garwood, Measurement Policy Group (MPG), Sector Policies and Programs Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2406; fax number: (919) 541–4991; and email address: *garwood.gerri@epa.gov.*

SUPPLEMENTARY INFORMATION: On February 5, 2018, the EPA finalized its review of the existing VOC emissions factor for flares at natural gas production sites pursuant to its obligation under CAA section 130 to review, and, if necessary, revise emissions factors for certain pollutants, including VOC, at least every 3 years.

We evaluated test data available to the Agency for flares at natural gas production sites, data from testing conducted by manufacturers under 40 CFR part 60, subparts OOOO and OOOOa and 40 CFR part 63, subpart HH and HHH, and information submitted during the public comment period. The available flare data pertained to THC emissions and did not provide sufficient information for estimating VOC emissions from the tested flares. As such, the available data gave no indication that the existing VOC

emissions factor for flares at natural gas production sites is somehow flawed or outdated and, thus, warrants revision. Therefore, our review did not result in a revision to this VOC emissions factor.

While we have not revised the existing VOC emissions factor, we did use the available THC emissions data for enclosed ground flares to develop six new THC emissions factors for enclosed ground flares. The six emissions factors are finalized as an update to Section 13.5 of AP–42, *Compilation of Air Pollutant Emission Factors.* AP–42 is the primary compilation of EPA's emissions factor information. We have also clarified the heating value basis for the emissions factors in AP–42 Tables 13.5–1 through 13.5–3 in order to allow users to generate more accurate emissions estimates and clarified that the emissions factors in the tables represent the emissions at the exit of a flare, not the uncontrolled VOC or THC emissions routed to the flare.

The final actions described above were issued on February 5, 2018. Our review and analysis of the data are documented in a report titled ''Review and Analysis of Emissions Test Reports for Purposes of Reviewing the Natural Gas Production Flares Volatile Organic Compounds Emissions Factor Under Clean Air Act Section 130.'' Prior to taking final action, the EPA issued a proposal on its AP–42 website on June 5, 2017, and solicited comment on the proposal. The EPA responded to the comments received during the public comment period in a memorandum titled ''Summary of EPA Responses to Public Comments Received on the Proposed Emissions Factors for Enclosed Ground Flares at Natural Gas Production Sites and Chemical Manufacturing Processes.'' These documents, along with a link to the updated section in AP–42, were posted on the website listed in the **ADDRESSES** section of this notice on February 5, 2018.

These actions constitute final agency action of national applicability for purposes of section 307(b)(1) of the CAA. Pursuant to CAA section 307(b)(1), judicial review of these final agency actions may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by May 4, 2018. Judicial review of these final agency actions may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). These actions are not a rulemaking and are not subject to the various statutory and other provisions applicable to a rulemaking.

Dated: February 26, 2018.

Panagiotis E. Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2018–04373 Filed 3–2–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2006–0037; FRL–9975–12–OEI]

Proposed Information Collection Request; Comment Request; Exchange Network Grants Progress Reports (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), Exchange Network Grants Progress Reports Renewal (EPA ICR No. 2207.06, OMB Control No. 2025–0006) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2018. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before May 4, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2006–0037 online using *www.regulations.gov* (our preferred method), by email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA. or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Edward Mixon, Information Exchange and Services Division, Office of Information Management, (2823T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–2142; fax number: 202–566–1684; email address: *mixon.edward@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This notice announces the collection of information related to the U.S. EPA National Environmental Information Exchange Network (NEIEN) Grant Program. EPA proposes to collect information from the NEIEN grantees on assistance agreements EPA has awarded. Specifically, for each project, EPA proposes to have grantees submit semi-annual reports on the progress and current status of each goal and output, completion dates for outputs, and any problems encountered. This information will help EPA ensure projects are on schedule to meet their goals and produce high quality environmental outputs. New award recipients will complete one Quality Assurance

Reporting Form for each award. This form provides a simple means for grant recipients to describe how quality will be addressed throughout their projects. Additionally, the Quality Assurance Reporting Form is derived from guidelines provided in the NEIEN 2018 Grant Solicitation Notice.

Form Numbers: EPA Form 5300–26 (Semi-Annual Progress Report Form) and EPA Form 5300–27 (Quality Assurance Reporting Form).

Respondents/affected entities: State, tribal, and territorial environmental government offices.

Respondent's obligation to respond: Mandatory (2 CFR part 200 and 2 CFR part 1500).

Estimated number of respondents: 172 (total).

Frequency of response: Twice per year for the Semi-Annual Progress Report Form; one time per grant for the Quality Assurance Reporting Form.

Total estimated burden: 340 hours (per year). Burden is defined at 5 CFR 1320.03(b) hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $11,215 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is decrease of 3 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a decrease in the number of grants that are awarded annually.

Dated: February 27, 2018.

Charles Freeman,

Acting Director, Information Exchange Services Division.

[FR Doc. 2018–04425 Filed 3–2–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Thursday, February 22, 2018

The Federal Communications Commission held an Open Meeting on the subjects listed below on Thursday, February 22, 2018, at 10:30 a.m. in Room TW–C305, 445 12th Street SW, Washington, DC.

Item No.	Bureau	Subject
1	OFFICE OF ENGINEERING & TECHNOLOGY.	Title: Spectrum Horizons (ET Docket No. 18–21); James Edwin Whedbee Petition for Rulemaking to Allow Unlicensed Operation in the 95–1,000 GHz Band (RM–11795). Summary: The Commission considered a Notice of Proposed Rulemaking that seeks comment on proposed rules that would apply to spectrum above 95 GHz for licensed services, unlicensed operations, and a new class of experimental licenses.
2	OFFICE OF ENGINEERING & TECHNOLOGY.	Title: Encouraging the Provision of New Technologies and Services to the Public (GN Docket No. 18–22). Summary: The Commission considered a Notice of Proposed Rulemaking to provide guidelines and procedures to implement section 7 of the Communications Act, as amended, to improve Commission processes to promote the provision of new technologies and services to the public.
3	WIRELESS TELECOMMUNICATIONS AND WIRELINE COMPETITION.	Title: Connect America Fund (WC Docket No. 10–90); Universal Service Reform—Mobility Fund (WT Docket No. 10–208). Summary: The Commission considered an Order addressing the remaining issues raised by parties in petitions for reconsideration of the Mobility Fund Phase II Report and Order and Further Notice of Proposed Rulemaking.
4	MEDIA	Title: Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(f)(2) (MB Docket No. 18–23); Modernization of Media Regulation Initiative (MB Docket No. 17–105). Summary: The Commission considered a Notice of Proposed Rulemaking that proposes to eliminate the requirement in Section 73.2080(f)(2) of the Commission's rules that certain broadcast television and radio stations file the Broadcast Mid-Term Report (Form 397).
5	MEDIA	Title: Amendment of Parts 74, 76 and 78 of the Commission's Rules Regarding Maintenance of Copies of FCC Rules (MB Docket No. 17–231); Modernization of Media Regulation Initiative (MB Docket No. 17–105). Summary: The Commission considered a Report and Order that would eliminate specific Part 74, 76, and 78 rules that require certain broadcast and cable entities to maintain paper copies of Commission rules, while retaining provisions that require the subject entities to be familiar with the rules governing their operations.
6	WIRELINE COMPETITION	Title: Modernization of Payphone Compensation Rules (WC Docket No. 17–141); Implementation of the Pay Telephone Reclassification and Compensation Provisions of The Telecommunications Act of 1996 (CC Docket No. 96–128); 2016 Biennial Review of Telecommunications Regulations (WC Docket No. 16–132). Summary: The Commission considered a Report and Order to (1) eliminate all payphone call tracking system audit and associated reporting requirements, (2) permit a company official, including but not limited to the chief financial officer, to certify that a completing carrier's quarterly compensation payments are accurate and complete, and (3) eliminate expired payphone compensation rules.
7	WIRELINE COMPETITION	Presentation: Demonstration of the New National Broadband Map. Summary: The Commission heard a presentation on a new National Broadband Map providing improved access to fixed-broadband deployment.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2018–04446 Filed 3–2–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, March 8, 2018 at 10:00 a.m.

PLACE: 999 E Street NW, Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes for December 7, 2017

Correction and Approval of Minutes for December 14, 2017

Correction and Approval of Minutes for January 11, 2018

REG 2011–02: Draft Notice of Proposed Rulemaking on internet Communication Disclaimers and Definition of ''Public Communication''

REG 2011–02: Draft Notice of Proposed Rulemaking on internet Communication Disclaimers

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dayna C. Brown, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

Dayna C. Brown,

Secretary and Clerk of the Commission.

[FR Doc. 2018–04555 Filed 3–1–18; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL TRADE COMMISSION

[File No. 162 3102]

PayPal, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''In the Matter of PayPal, Inc.'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/venmoconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''In the Matter of PayPal, Inc.'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ben Rossen (202–326–3679) and Lisa Rothfarb (202–326–2602), Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 27, 2018), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 29, 2018. Write ''In the Matter of PayPal, Inc.'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *https://www.ftc.gov/policy/public-comments.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/venmoconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you prefer to file your comment on paper, write ''In the Matter of PayPal, Inc.'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *https://www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,''

and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 29, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order from PayPal, Inc. (''PayPal'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves Venmo, a peer-to-peer payment service owned and operated by PayPal. Venmo has offered its peer-to-peer payment service to consumers since 2011, and was acquired by PayPal in 2013. Consumers can use Venmo to transfer money to one another using a mobile application or through a website at *www.venmo.com.* Venmo's payment service incorporates a social networking component through a social ''news feed'' that shares information about a consumer's Venmo transactions.

The Commission's proposed complaint alleges that PayPal, through its operation of Venmo, has violated Section 5 of the FTC Act and the Gramm-Leach-Bliley (''GLB'') Act's Privacy and Safeguards Rules.

First, the proposed complaint alleges that Venmo has represented to consumers that money is credited to their Venmo account and can be transferred to an external bank account after other Venmo users have sent funds to those consumers, but has failed to disclose, or failed to disclose adequately, that funds could be frozen or removed because Venmo has not yet approved the underlying transaction. As alleged in the proposed complaint, Venmo has made representations to consumers that they have been paid and they can transfer money from Venmo to an external bank account. For example, Venmo has sent users notifications that have stated ''Money credited to your Venmo balance. Transfer to your bank overnight.'' Despite these claims, the proposed complaint alleges that, in numerous instances, consumers have been unable to transfer funds to their bank accounts as promised. Venmo has waited until a consumer attempts to transfer funds to an external bank account to review the transaction for certain issues. This review has resulted in Venmo delaying the transfer or reversing the transaction in numerous instances.

Second, the proposed complaint alleges that Venmo has failed to disclose material information to consumers about the operation of Venmo's privacy settings. As alleged in the proposed complaint, by default, all Venmo transactions are shared on Venmo's social news feed, which displays the names of the payer and recipient, the date of the transaction, and a message written by the user that initiated the transaction. Venmo offers privacy settings that consumers can use to limit the visibility of their transactions. However, to ensure that all future payments remain private, a consumer must change two similarly labeled settings. The first setting, referred to in the proposed complaint as the ''Default Audience Setting,'' would lead a reasonable consumer to believe that they can restrict the visibility of their future transactions on the news feed to specific groups, such as ''Participants Only'' or ''Friends.'' In fact, however, a consumer must also change a second setting, referred to in the proposed complaint as the ''Transaction Sharing Setting,'' to ensure that all of her transactions are private. If a consumer fails to restrict this second setting, in some circumstances, transactions will still be published publicly even if the consumer has chosen a ''private'' default audience.

Venmo also offers a privacy setting to control the visibility of an individual transaction, referred to in the proposed complaint as the ''Individual Audience Setting.'' The proposed complaint alleges that Venmo failed to disclose, or failed to disclose adequately, that the Individual Audience Setting does not ensure that an individual transaction remains private unless a consumer also separately restricts the Transaction Sharing Setting described above. If a consumer has not changed both settings, there are circumstances where the other participant in the transaction can retroactively change a transaction from private to public.

Third, the proposed complaint alleges that Venmo represented until approximately March 2015 that it protected consumers' financial information with ''bank grade security systems'' but in fact failed to implement basic safeguards necessary to secure consumer accounts from unauthorized transactions and did not provide ''bank grade security.'' For example, Venmo failed to provide consumers with security notifications about changes to account settings from within the consumer's Venmo account, such as when a consumer's email address or password had been changed. The proposed complaint alleges that Venmo's representation that it provided ''bank grade security systems'' constitutes a deceptive act or practice under Section 5 of the FTC Act.

Fourth, the proposed complaint alleges that Venmo violated the GLB Act's Privacy Rule and Regulation P by failing to provide users with a clear and conspicuous initial privacy notice, disseminating an initial privacy notice that does not accurately reflect its policies and practices, and failing to deliver the initial privacy notice so that each customer could reasonably be expected to receive actual notice.

Finally, the proposed complaint alleges that Venmo violated the GLB Act's Safeguards Rule by failing to have a comprehensive written information security program before August 2014, failing to identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information, and assessing the sufficiency of any safeguards in place to control those risks before September 2014, and failing to design and implement information safeguards to control the known risks to the security,

confidentiality, and integrity of customer information.

The proposed order contains injunctive provisions addressing the alleged deceptive conduct and Rule violations in connection with PayPal's operation of a payment and social networking service. Part I of the proposed order prohibits PayPal from making misrepresentations regarding material restrictions, limitations, or conditions to use any payment and social networking service. It also prohibits misrepresentations about data security and privacy, including misrepresentations regarding the extent of control provided by any privacy settings and the extent to which PayPal implements or adheres to a particular level of security.

Part II of the proposed order requires PayPal, when making any representations through any payment and social networking service about the availability of funds to be transferred or withdrawn to a bank account, to provide clear and conspicuous disclosures that transactions are subject to review and, if true, that funds could be frozen or removed as a result of transaction reviews. Part II also requires PayPal to issue a one-time notice informing current Venmo users that when they attempt to transfer or withdraw funds to a bank account, Venmo will perform transaction reviews and based on such review, may block or delay the transfer or withdrawal, and/or reverse a payment transaction.

Part III of the proposed order requires PayPal to provide clear and conspicuous disclosures to users related to how any payment and social networking service shares transaction information with other users and how a consumer can limit the visibility or sharing of transaction information through privacy settings.

Part IV of the agreement prohibits violations of the GLB Privacy and Safeguards Rules.

Part V requires PayPal to obtain biennial data security assessments for ten years.

Parts VI through IX of the proposed order are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring PayPal to provide information or documents necessary for the Commission to monitor compliance. Part X states that the proposed order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2018–04331 Filed 3–2–18; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–18MY; Docket No. CDC–2018–0018]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, 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. This notice invites comment on ''Network Epidemiology of Syphilis Transmission (NEST)''. The purpose of the NEST study is to address knowledge gaps in the transmission of syphilis among men who have sex with men (MSM) in the United States by exploring the role of sexual and social networks. Specifically, the goal of NEST is to pilot the use of survey instruments to collect complex longitudinal sexual network data among MSM at high risk for syphilis in the United States.

DATES: Written comments must be received on or before May 4, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0018 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: Submit all Federal comments through the Federal eRulemaking portal (regulations.gov) *or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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.
5. Assess information collection costs.

Proposed Project

Network Epidemiology of Syphilis Transmission (NEST)—New—National

Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's Division of STD Prevention (DSTDP) requests a three-year approval for a new data collection entitled, Network Epidemiology of Syphilis Transmission (NEST). CDC intends to collect study participants' sociodemographic, risk behavior, and insurance coverage information as part of study enrollment.

A cooperative agreement between CDC and three study grantees, two universities (Ohio State University and University of Illinois at Chicago) and one local health department (Baltimore City Health Department) in collaboration with a university (Johns Hopkins School of Medicine), make this study possible. The recruitment of study participants as well as the data collection activities will be carried out at university-affiliated sites including local health departments, community lesbian, gay, bisexual, and transgender (LGBT) organizations, local STD clinics and HIV/AIDS care facilities.

The overall objective of NEST is to support the establishment of cohorts of MSM at high risk for syphilis, prospectively collect behavioral, social, and sexual network data, and biological specimens. Study participants will attend study visits every three months for a period of up to 24 months. NEST is a multi-site study, with a target enrollment of approximately 720 MSM aged 18 years and older from three geographic areas of the United States: (1) Chicago, Illinois, (2) Baltimore, Maryland, and (3) Columbus, Ohio.

At each study visit, researchers will interview participants and collect biological specimens (blood and urine) to facilitate testing for syphilis, gonorrhea, chlamydia, and HIV, which are part of the routine clinical care at participating sites. Researchers will collect data using Form 1—Questionnaire and Data Elements and directly submit the data electronically to the CDC NEST data manager. Researchers will not retain or collect individual patient personal identifying information (*e.g.,* name, address) on NEST data collection forms nor will they transmit personal identifying information to CDC.

The United States is currently experiencing an ongoing syphilis epidemic. MSM are disproportionately impacted by syphilis and the majority of incident syphilis cases in the United States occur among MSM. However, factors influencing syphilis transmission within this population, such as social and sexual network characteristics, sexual behaviors, and healthcare access and utilization, are poorly understood. In order to address these knowledge gaps, researchers must collect both individual-level and network-level data among this population. As such, we need to develop a better understanding of the feasibility of collecting complex sexual network data among this population. The collection of complex sexual network data and traditional individual-level data, such as demographics and individual-level sexual and social behaviors, will help to collectively address some of the knowledge gaps in the transmission dynamics and epidemiology of syphilis among MSM in the United States and point towards effective public health interventions to slow the spread of syphilis.

The goal of NEST is to pilot the use of survey instruments to collect complex longitudinal sexual network data among MSM at high risk for syphilis in the United States. The feasibility of data collection on basic information about recent partners of persons diagnosed with syphilis is clear and is routinely performed by public health officials. However, the feasibility and optimal approaches for serial collection of complex sexual network data among populations that may have dynamic networks are not at all clear. Specifically, it is not clear what the optimal recruitment strategies are to recruit and enroll MSM at high risk for syphilis. Researchers have yet to define the optimal approaches for retaining men as study participants for follow-up visits over a defined study period. Furthermore, our proposed data collection activities survey format has not been established. For example, it is not known whether study participants would prefer a survey that is completely self-administered and whether data collected using a self-administered survey will result in complete and valid data being collected or whether a survey administered by study staff would be a better format.

CDC is not involved in data collection activities. The grantees will implement the testing and collect data and specimens from the participants.

Before starting any data collection activities, researchers will administer a short eligibility screener to prospective study participants. If deemed eligible, researchers will obtain participant consent. Upon consent, researchers will begin data collection, which will include a baseline visit and follow-up visits every three months for a total follow-up period of 24 months. At each visit, participants will provide biological specimens (blood and urine) to facilitate testing for syphilis, gonorrhea, chlamydia, and HIV. In addition to providing biological specimens, participants will complete a standardized survey that researchers will deliver electronically on a tablet or computer and will collect information on the participants' sexual network, individual behaviors, healthcare access and demographics.

The survey consists of 13 questionnaire modules with a range of 5 to 15 questions per module. Researchers will deliver a small subset of sexual behavior questions to the participant closer to real time using an open survey format and a weekly format. The open survey format is a brief survey that participants can respond to at any to record a sexual encounter or other event. Researchers will send the weekly format on Sunday nights, with a reminder on Monday evening, to address sexual behavior in the last week. Researchers will deliver these brief surveys electronically to participants and each survey is expected to take two minutes or less. Study site investigators provided input (based on knowledge of relevant local communities) into development of the survey.

Researchers will store data collected on electronic devices on a secure web-accessible local server at each site, which will only be accessible with a user name and password.

The total estimated annualized hourly burden anticipated for this study is 6,828 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Potential participants	Screener	900	1	2/60	30

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Site data manager	Form 1—Questionnaire	3	5	10	150
Study participant	Form 1—Questionnaire	720	5	1.5	5,400
Study participant	Smartphone survey	720	52	2/60	1,248
Total					6,828

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–04329 Filed 3–2–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–0571; Docket No. CDC–2018–0017]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Minimum Data Elements (MDEs) for the National Breast and Cervical Cancer Early Detection Program (NBCCEDP).''

DATES: CDC must receive written comments on or before May 4, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0017 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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.

5. Assess information collection costs.

Proposed Project

Minimum Data Elements (MDEs) for the National Breast and Cervical Cancer Early Detection Program (NBCCEDP)—(OMB Control Number 0920–0571, exp. 12/31/2018)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

CDC seeks to request a three-year OMB approval to revise the information collection project approved under OMB Control number 0920–0571. Based on feedback from grantees and internal subject matter experts, CDC proposes use of revised minimum data elements (MDEs), which decrease the estimated annualized time burden.

Both breast and cervical cancers are prevalent among U.S. women. In 2014, more than 236,000 women were diagnosed with breast cancer, and more than 12,000 women were diagnosed with cervical cancer. Evidence shows that deaths from both breast and cervical cancers can be avoided by increasing women screening services (mammography and Pap tests). However, women who are under- or uninsured, have no regular source of healthcare, and/or have recently immigrated to the U.S. typically underutilize screening services.

Congress passed the *Breast and Cervical Cancer Mortality Prevention Act of 1990,* which directed CDC to establish the *National Breast and Cervical Cancer Early Detection Program (NBCCEDP).* The purpose of

the *NBCCEDP* is to increase breast and cervical cancer screening rates among priority populations by funding grantees to provide breast and cervical cancer screening services to eligible women. The *NBCCEDP* funds 70 grantees including state health departments and the District of Columbia, universities, and tribes or tribal organizations.

Priority populations for the *NBCCEDP* include women residing within defined geographical locations (as determined by the funded program) who are (1) at or below 250% of the federal poverty level, (2) aged 40–64 years for breast cancer services, and aged 21–64 years for cervical cancer services, and (3) under- or uninsured.

CDC issued a new funding opportunity announcement to support a 5-year cooperative agreement under CDC–RFA–DP17–1701. The number of grantees will increase from 67 grantees to 70 grantees. The current program includes a stronger focus on grantees partnering with health systems to increase breast and cervical cancer screening rates.

CDC proposes a revision to the MDEs to include removal of several data variables that are no longer relevant for CDC analyses, as well as collapsing/revising several data variables to reduce burden and increase clarity for respondents. The MDEs focus on the following areas: (1) Patient demographics; (2) breast cancer screening; (3) cervical cancer screening; (4) breast and cervical cancer diagnoses; (5) breast and cervical cancer treatment; (6) timeliness of services; and (7) patient navigation.

Redesigned data elements will enable CDC to better gauge progress in meeting clinical service delivery processes and patient-level outcomes. Findings will allow CDC to assess program progress in meeting goals and monitor implementation activities, evaluate outcomes, and identify grantee technical assistance needs. In addition, data collected will inform program improvement and help identify successful activities that need to be maintained, replicated, or expanded.

The total estimated annualized burden hours will decrease from 536 to 350 hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
NBCCEDP Grantees	MDEs	70	2	2.50	350
Total					350

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–04330 Filed 3–2–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Study of We Grow Together: The Q–CCIIT Professional Development System.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) seeks approval to conduct a field test of We Grow Together, a system of professional development supports including web-based resources and exercises to be used by caregivers/teachers, with the help of professional development providers, to improve the quality of infant and toddler care. The study team has developed We Grow Together: The Q–CCIIT Professional Development System based on the research literature to support caregiver-child interactions in care settings serving infants and toddlers. This field test is designed to (1) examine changes associated with use of the We Grow Together system and (2) examine implementation and participant experiences with the We Grow Together system. As a secondary goal, ACF will also further evaluate the properties of the Q–CCIIT observational measure. Ultimately, findings from the field test will provide information about the experiences of professional development providers (PD providers) and caregivers with the We Grow Together system so that ACF can improve the system to make the resources as accessible as possible for infant-toddler caregivers.

Prior to using the We Grow Together system, PD providers will complete a web-based training survey and all participants will complete a web-based background survey. Periodically during the field test, website users will be asked at log-on to respond to a series of web-based questions. After system implementation, participants will complete a web-based feedback survey. The study team will also collect classroom rosters from caregivers before and after the field test.

Respondents: Early care and education (ECE) setting representatives (*e.g.,* directors or owners), caregivers (center-based and family child care settings), and professional development providers (*e.g.,* coaches).

ANNUAL BURDEN ESTIMATES

Instrument	Total/annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
ECE setting eligibility screener	745	1	.25	186
Caregiver background survey	300	1	.75	225
PD provider background survey	175	1	.50	88
Caregiver We Grow Together website user data pop-up questions	300	6	.17	306
PD provider We Grow Together website user pop-up questions	175	5	.10	88
Caregiver feedback survey	300	1	1.0	300

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Total/annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
PD provider feedback survey	175	1	.75	131
Classroom roster	300	2	.08	48
PD provider training survey	175	1	.17	30

Estimated Total Annual Burden Hours: 1,402.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Mary Jones,

ACF/OPRE Certifying, Officer.

[FR Doc. 2018–04429 Filed 3–2–18; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Request for Specific Consent to Juvenile Court Jurisdiction.

OMB No.: 0970–0385.

Description: Section 235 (d) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008), Public Law 110–457 was enacted into law December 23, 2008. Section 235 (d) directs the Secretary of HHS to grant or deny requests for specific consent for unaccompanied children in HHS custody who seek to invoke the jurisdiction of a state court for a dependency order and who also seek to invoke the jurisdiction of a state court to determine or alter his or her custody status or release from ORR. These requests can be extremely time sensitive since a child must ask a state court for dependency before turning 18 years old.

In developing procedures for collecting the necessary information from unaccompanied alien children, their attorneys, or other representatives to allow HHS to approve or deny consent requests, ORR/DUCO devised a form. Specifically, the form asks the requestor for his/her identifying information, basic identifying information on the unaccompanied alien child, the name of the HHS-funded facility where the child is in HHS custody and care, the name of the court and its location, and the kind of request (*e.g.* for a change in custody, etc.). The form also asks that the unaccompanied alien child's attorney or authorized representative attach a Notice of Representation, which is an approved federal government agency form used for immigration procedures that authorizes the attorney to act on behalf of the child (*i.e.,* G–28, EOIR–28 or EOIR–29), or any other form of authorization to act on behalf of the unaccompanied alien child.

Respondents: Attorneys, accredited legal representatives, or others authorized to act on behalf of an unaccompanied alien child.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–0132	30	1	0.33	9.9

Estimated Total Annual Burden Hours: 9.9

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–04382 Filed 3–2–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: The Evaluation of Child Welfare Information Gateway.

OMB No.: New Collection.

Description: The Children's Bureau (CB), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is proposing new or expanded data collection activities as part of its Evaluation of Child Welfare Information Gateway.

Child Welfare Information Gateway (CWIG) is a national information clearinghouse and service of the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services. CWIG connects professionals and concerned citizens to resources and information on programs, research, legislation, and statistics regarding child maltreatment, child abuse prevention, and child welfare services designed to achieve the safety, permanency, and well-being of children and families. The Evaluation of Child Welfare Information Gateway gathers information to inform the Children's Bureau about the kind and quality of information services that customers want, how customers are using resources and services, as well as customers' level of satisfaction with existing services.

The Market Research Sub-Study complements information obtained from the larger Evaluation of Child Welfare Information Gateway. The Children's Bureau seeks to learn more about how child welfare professionals and students planning to enter the child welfare workforce access and consume work-related information. This national study will focus on understanding child welfare professionals' and students' characteristics, use of technology, and preferences for obtaining information that they use in their work. The goal of the sub-study is to provide federally-funded technical assistance providers and other stakeholder organizations with a better understanding of their target audiences so they can design more effective products, services, and dissemination strategies to reach these populations.

Data collection activities proposed for the Evaluation of Child Welfare Information Gateway include: six online targeted surveys designed to evaluate CWIG's special initiative websites and other targeted website sections; five online event surveys administered after CWIG-sponsored webinars, presentations, or other events; five focus groups (each with approximately 10 participants) with users and non-users of CWIG's special initiative websites and other CWIG products and services; and, a general customer survey delivered via multiple modes (*e.g.,* website, email, live chat, print, and phone). The sampling plan for the CWIG general customer survey is designed to reach the various types of customers using Child Welfare Information Gateway services such as professionals, students, and customers looking for assistance with a personal situation while reducing burden for respondents by only asking relevant questions for their backgrounds.

The market research sub-study seeks to deliver surveys and conduct focus groups to gauge online information habits and preferences. The proposed market research sub-study will consist of a national online survey of child welfare professionals and students, which will be administered through four different instruments tailored for four different populations. Ten focus groups (each with 8 to 10 participants) will be used to learn more about different audiences' habits and preferences related to child welfare information access and consumption.

Respondents: The Evaluation of Child Welfare Information Gateway will target all types of possible CWIG users including: State and local governments, the territories, service providers, Tribes and tribal organizations, grantees, researchers, and the general public seeking information and resources from Child Welfare Information Gateway via the website, mail, telephone, Live Chat, and email. The Market Research Sub-Study will target child welfare professionals in state, county, tribal, and private agencies; Court Improvement Program coordinators and directors; judges and attorneys involved in child welfare-related work; and students in Bachelor's and Master's degree programs in social work that receive Title IV–E or IV–B stipends.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Welfare Information Gateway's Targeted Survey	2,355	1	0.084	197.82
Child Welfare Information Gateway's Event Survey	500	1	0.05	25
Child Welfare Information Gateway's Focus Group Guide	50	1	1	50
Child Welfare Information Gateway's General Customer Survey: Questions for Professionals	960	1	0.084	80.64
Child Welfare Information Gateway's General Customer Survey: Questions for Students	480	1	0.05	24
Child Welfare Information Gateway's General Customer Survey: Questions for Personal Customers	960	1	0.05	48
Market Research Sub-Study: Online Information Habits and Preferences Survey (for child welfare professionals in state, county, and private agencies)	1,400	1	0.5	700
Market Research Sub-Study: Online Information Habits and Preferences Survey (for child welfare professionals working with tribes)	1,000	1	0.5	500
Market Research Sub-Study: Online Information Habits and Preferences Survey (for legal professionals working in child welfare)	1,400	1	0.5	700
Market Research Sub-Study: Online Information Habits and Preferences Survey (for students planning to enter the child welfare workforce)	900	1	0.5	450
Market Research Sub-Study: Focus Groups on Information Habits and Preferences	100	1	1.5	150

Estimated Total Annual Burden Hours: 2,925 hours.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–04384 Filed 3–2–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–7022]

Post-Marketing Pediatric-Focused Product Safety Reviews; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice, establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is establishing a public docket to collect comments related to the post-marketing pediatric-focused safety reviews of products posted between October 23, 2017, and March 16, 2018, on FDA's website but not presented at the March 23, 2018, Pediatric Advisory Committee (PAC) meeting. These reviews are intended to be available for review and comment by members of the PAC, interested parties (such as academic researchers, regulated industries, consortia, and patient groups), and the general public.

DATES: Submit either electronic or written comments by March 30, 2018.

ADDRESSES: FDA is establishing a docket for public comment on this document. The docket number is FDA–2017–N–7022. The docket will close on March 30, 2018. Submit either electronic or written comments by that date. Please note that late, untimely comments will not be considered. Electronic comments must be submitted on or before March 30, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of March 30, 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.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to make available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–7022 for ''Post-Marketing Pediatric-Focused Product Safety Reviews; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA 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: Kenneth Quinto, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5145, Silver Spring, MD 20993, 240–402–2221, *kenneth.quinto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, our Nation's food supply, cosmetics, and products that emit radiation.

FDA is establishing a public docket, Docket No. FDA–2017–N–7022, to receive input on post-marketing pediatric-focused safety reviews of products posted between October 23, 2017, and March 16, 2018, available on FDA's website at *https://www.fda.gov/AdvisoryCommittees/Committees MeetingMaterials/PediatricAdvisory Committee/ucm510701.htm* but not presented at the March 23, 2018, PAC meeting. FDA welcomes comments by members of the PAC, as mandated by the Best Pharmaceuticals for Children Act (Pub. L. 107–109) and the Pediatric Research Equity Act of 2003 (Pub. L. 108–155), interested parties (such as academic researchers, regulated industries, consortia, and patient groups), and the general public. The docket number is FDA–2017–N–7022. The docket will open on March 19, 2018, and remain open until March 30, 2018. The post-marketing pediatric-focused safety reviews are for the following products from the following centers at FDA:

Center for Biologics Evaluation and Research

1. EPICEL (cultured epidermal autographs) (humanitarian device exemption (HDE))
2. GARDASIL 9 (Human Papillomavirus 9-valent Vaccine, Recombinant)
3. TRUMENBA (Meningococcal Group B Vaccine)

Center for Drug Evaluation and Research

1. ATROPINE SULFATE OPHTHALMIC SOLUTION, USP 1%
2. DYMISTA (azelastine hydrochloride/fluticasone propionate)
3. EDURANT (rilpivirine); COMPLERA (emtricitabine, rilpivirine, tenofovir disoproxil fumarate); ODEFSEY (emtricitabine, rilpivirine, tenofovir alafenamide)
4. EMEND (aprepitant) capsule and oral suspension
5. EPIDUO FORTE (adapalene/benzoyl peroxide, 0.3%/2.5%) gel
6. GADAVIST (gadobutrol); EOVIST (Primovist; gadoxetate disodium)
7. GENVOYA (elvitegravir, cobicistat, emtricitabine, and tenofovir alafenamide) oral tablets
8. KAPVAY (clonidine extended-release) tablets
9. MERREM IV (meropenem for injection)
10. NAFTIN (naftifine hydrochloride)
11. NUCALA (mepolizumab)
12. OTIPRIO (6% ciprofloxacin otic suspension)
13. PAZEO (olopatadine hydrochloride ophthalmic solution) 0.7%
14. QNASL (beclomethasone dipropionate) nasal aerosol
15. SAPHRIS (asenapine)
16. TIVICAY (dolutegravir)
17. TREXIMET (naproxen sodium; sumatriptan succinate)
18. VALCYTE (valganciclovir)

Center for Devices and Radiological Health

1. FLOURISH PEDIATRIC ESOPHAGEAL ATRESIA DEVICE (HDE)

Dated: February 28, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–04400 Filed 3–2–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before May 4, 2018.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling 202–795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference to *Sherrette.funn@hhs.gov* or call the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Trafficking Victim Assistance Program Social Network Analysis—Network Survey.

Type of Collection: New.

OMB No. 0990–NEW-Office of the Assistant Secretary for Planning and Evaluation–Administration for Children and Families' Trafficking Victim Assistance Program

Abstract

The Office of the Assistant Secretary for Planning and Evaluation (ASPE), in partnership with the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is requesting Office of Management and Budget (OMB) approval for a new information collection request, ''Trafficking Victim Assistance Program (TVAP) Network Survey.'' ICF has been contracted to carry out this project under the guidance of ASPE and ACF.

TVAP, as authorized by the Trafficking Victims Protection Act of 2000, provides comprehensive case management services to foreign-born victims of human trafficking residing in the United States. Since its inception, TVAP funding and infrastructure have remained relatively unchanged: Services are paid on a per capita basis, and funds are managed through three primary grantees that enter into cooperative agreements with service providers (subrecipients). Given the changing landscape and the greater understanding of the nature and extent of trafficking, HHS is undertaking a program assessment to understand whether any efficiencies can be gained in the program administration and structure. Building on an earlier fiscal year 2018 assessment to solicit qualitative feedback from a range of program stakeholders, the information collected for this program survey aims to help HHS determine if efficiencies can be

gained through improved coordination among TVAP grantees, TVAP subrecipients, and other service providers.

The data collected and analyzed under this submission will help HHS better understand the type and extent of the relationships between the TVAP grantees, TVAP subrecipients, and other service providers operating in TVAP subrecipient areas. This information will enable HHS to understand the structure of the grantee/subrecipient network and inform recommendations for more efficient network management and distribution of support.

Data will be collected through an electronic survey of fiscal year 2016 TVAP grantees and subrecipients. Key staff at grantee sites and subrecipient organizations will complete a self-administered online survey that will include questions for each respondent about services for which referrals are made, estimated costs of services, service coordination between grantees or subrecipients, and type and strength of relationships between grantees and subrecipients. With this data, ICFwill build a social/organizational network for HHS to depict how grantee and subrecipient organizations collaborate with one another through TVAP to better understand the existing network and identify potential opportunities for improving the efficiency of the network. ASPE anticipates completion of all data collection activities by October 2018.

ANNUALIZED BURDEN HOUR TABLE

Forms	Respondents	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
TVAP Network Survey	TVAP grantees	3	1	45/60	2.25
TVAP Network Survey	TVAP subrecipients	253	1	45/60	189.75
Total		256			192

Terry S. Clark,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2018–04386 Filed 3–2–18; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel; COI/Career Award.

Date: March 23, 2018.

Time: 12:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine/Center for Scientific Review, 6701 Rockledge Drive, Room 2141, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 27, 2018.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04346 Filed 3–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office Of The Director, National Institutes Of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: March 27, 2018.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: OAR Director's Report; Review of the DHHS HIV/AIDS Treatment and Prevention Guidelines; and, updates on the NIH AIDS Study Sections, the OAR Task Force on Cost-Sharing, the FY2020 Trans-NIH Plan for HIV-Related Research, and on HIV/AIDS research activities from NIH Institutes.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892.

Contact Person: Elizabeth S Church, Ph.D., Executive Secretary, Office of AIDS Research, DPCPSI, Office of the Director, 5601 Fishers Lane, Room 2E–60, Rockville, MD, 20852–9830, 240–627–3201, *elizabeth.church@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Information is also available on the Institute's/Center's home page: *www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 27, 2018.

Natasha Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04348 Filed 3–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–17–006: NIH Director's New Innovator Award.

Date: March 26–27, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Srikanth Ranganathan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7802, Bethesda, MD 20892, 301–435–1787, *srikanth.ranganathan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Non-HIV Anti-Infective Therapeutics.

Date: March 26–27, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301)435–2306, *kaushikbasun@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Biotherapeutics Development.

Date: March 26, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Nicholas J Donato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040, Bethesda, MD 20892, 301–827–4810, *nick.donato@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Infectious Diseases and Microbiology.

Date: March 26, 2018.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tamara Lyn McNealy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, Bethesda, md 20747, 301–827–2372, *tamara.mcnealy@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cognition and Perception.

Date: March 26, 2018.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Unja Hayes, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–6830, *unja.hayes@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 27, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04343 Filed 3–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, And Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the NHLBI Heart, Lung, and Blood Program Project Review 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: Heart, Lung, and Blood Institute Initial Review Group; Heart, Lung, and Blood Program Project Review Committee.

Date: March 23, 2018.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey H. Hurst, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Suite 7208, Bethesda, MD 20892, 301–435–0303, *hurstj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 27, 2018.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04345 Filed 3–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Center Core Grants for Vision Research (P30).

Date: March 23, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Anne E Schaffner, Ph.D., Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300,

Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 27, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04344 Filed 3–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 21–22, 2018.

Open: June 21, 2018, 8:30 a.m. to 10:45 a.m.

Agenda: Administrative.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: June 21, 2018, 10:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: June 22, 2018, 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Joyce Backus, M.S.L.S., Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04A, Bethesda, MD 20894, 301–827–4281, *joyce.backus@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: February 27, 2018.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–04347 Filed 3–2–18; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Advisory Council on Historic Preservation Quarterly Business Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Advisory Council on Historic Preservation Quarterly Business Meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will hold its next quarterly meeting on Thursday, March 22, 2018. The meeting will be held in Room SR325 at the Russell Senate Office Building at Constitution and Delaware Avenues NE, Washington, DC, starting at 8:30 a.m.

DATES: The quarterly meeting will take place on Thursday, March 22, 2018 starting at 8:30 a.m.

ADDRESSES: The meeting will be held in Room SR325 at the Russell Senate Office Building at Constitution and Delaware Avenues NE, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Bienvenue, 202–517–0202, *cbienvenue@achp.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advises the President and the Congress on national historic preservation policy. The goal of the National Historic Preservation Act (NHPA), which established the ACHP in 1966, is to have federal agencies act as responsible stewards of our nation's resources when their actions affect historic properties. The ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into their decision making. For more information on the ACHP, please visit our website at *www.achp.gov.*

The agenda for the upcoming quarterly meeting of the ACHP is the following:

I. Chairman's Welcome
II. Transition to Full-Time ACHP Chairman
III. Section 106 Issues
  A. Administration Infrastructure Initiatives
  B. Proposed Exemption Regarding Railroad and Rail Transit Rights of Way
  C. Federal Communications Commission and ''Twilight Towers''
  D. Department of Veterans Affairs Program Comment on Underutilized Properties
  E. ACHP Report to the President Pursuant to Executive Order 13287
IV. Historic Preservation Policy and Programs
  A. Commemorative Works Policy and Principles
  B. Historic Preservation Legislation in the 115th Congress
  C. Cultural Resources Fund: Ideas for the Future
  D. Building a More Inclusive Preservation Program: Preservation Crafts Training
V. New Business
VI. Adjourn

The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact Cindy Bienvenue, 202–517–0202 or *cbienvenue@achp.gov,* at least seven (7) days prior to the meeting.

Authority: 54 U.S.C. 304102.

Dated: February 27, 2018.

Javier E. Marques,

General Counsel.

[FR Doc. 2018–04369 Filed 3–2–18; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Request for applicants for appointment to the Board of Visitors for the National Fire Academy.

SUMMARY: The National Fire Academy (Academy) is requesting an individual who are interested in serving on the Board of Visitors for the National Fire Academy (Board) to apply for appointment as identified in this notice. Pursuant to the Federal Fire Prevention and Control Act of 1974, the Board shall review annually the programs of the Academy and shall make recommendations to the Federal Emergency Management Agency (FEMA) Administrator, through the United States Fire Administrator, regarding the operation of the Academy and any improvements that the Board deems appropriate. The Board is composed of eight members, all of whom have national or regional leadership experience in the fields of fire safety, fire prevention (such as community risk reduction to include wildland urban interface), fire control, research and development in fire protection, treatment and rehabilitation of fire victims, or local government services management, which includes emergency medical services. The Academy seeks to appoint an individual to a position on the Board that will be open due to term expiration. If other positions are vacated during the application process, candidates may be selected from the pool of applicants to fill the vacated positions.

DATES: Résumés will be accepted until 11:59 p.m. EST April 4, 2018.

ADDRESSES: The preferred method of submission is via email. However, résumés may also be submitted by mail. Please only submit by ONE of the following methods:

- *Email: FEMA-NFABOV@fema.dhs.gov.*
- *Mail:* National Fire Academy, U.S. Fire Administration, Attention: Ellen Newlin, 16825 South Seton Avenue, Emmitsburg, Maryland 21727–8998.

FOR FURTHER INFORMATION CONTACT: *Alternate Designated Federal Officer,* Terry Gladhill, telephone (301) 447–1239, email *Terry.Gladhill@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Board is an advisory committee established in accordance with the provision of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix. The purpose of the Board is to review annually the programs of the Academy and advise the FEMA Administrator on the operation of the Academy and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines Academy programs to determine whether these programs further the basic missions that are approved by the FEMA Administrator, examines the physical plant of the Academy to determine the adequacy of the Academy's facilities, and examines the funding levels for Academy programs. The Board submits a written annual report through the United States Fire Administrator to the FEMA Administrator. The report provides detailed comments and recommendations regarding the operation of the Academy.

Individuals who are interested in serving on the Board are invited to apply for consideration for appointment. There is no application form; however, a current résumé and statement of interest will be required. The appointment shall be for a term of up to three years. Individual selected for the appointment shall serve as Special Government Employees (SGEs), defined in section 202(a) of title 18, United States Code. The candidate selected for the appointment will be required to complete a Confidential Financial Disclosure Form (U.S. Office of Government Ethics (OGE) Form 450).

The Board shall meet as often as needed to fulfill its mission, but not less than twice each fiscal year to address its objectives and duties. The Board will meet in person at least once each fiscal year with additional meetings held via teleconference. Board members may be reimbursed for travel and per diem incurred in the performance of their duties as members of the Board. All travel for Board business must be approved in advance by the Designated Federal Officer. To the extent practical, Board members shall serve on any subcommittee that is established.

FEMA does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. FEMA strives to achieve a diverse candidate pool for all its recruitment actions.

Current DHS employees, contractors, and potential contractors will not be considered for membership. Federally registered lobbyists will not be considered for SGE appointments.

Dated: February 21, 2018.

Tonya L. Hoover,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2018–04352 Filed 3–2–18; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2618–18; DHS Docket No. USCIS–2013–0001]

RIN 1615–ZB72

Extension of the Designation of Syria for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Syria for Temporary Protected Status (TPS) for 18 months, from April 1, 2018, through September 30, 2019. The extension allows currently eligible TPS beneficiaries to retain TPS through September 30, 2019, so long as they otherwise continue to meet the eligibility requirements for TPS. This Notice also sets forth procedures necessary for nationals of Syria (or aliens having no nationality who last habitually resided in Syria) to re-register for TPS and to apply for Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). USCIS will issue new EADs with a September 30, 2019 expiration date to eligible Syria TPS beneficiaries who timely re-register and apply for EADs under this extension.

DATES: *Extension of Designation of Syria for TPS:* The 18-month extension of the TPS designation of Syria is effective April 1, 2018, and will remain in effect through September 30, 2019. The 60-day re-registration period runs from March 5, 2018 through May 4, 2018. (**Note:** It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

FOR FURTHER INFORMATION CONTACT:

• You may contact Samantha Deshommes, Branch Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529–2060; or by phone at 800–375–5283.

• If you have additional questions about Temporary Protected Status, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also reach out to our USCIS contact center at 800–375–5283.

• Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). Service is available in English and Spanish.

• Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
IER—U.S. Department of Justice Civil Rights Division, Immigrant and Employee Rights Section (IER)
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services

Through this Notice, DHS sets forth procedures necessary for eligible nationals of Syria (or aliens having no nationality who last habitually resided in Syria) to re-register for TPS and to apply for renewal of their EADs with USCIS. Re-registration is limited to persons who have previously registered for TPS under the designation of Syria and whose applications have been granted. Certain individuals may be eligible to file a late initial application for TPS if they meet the conditions described in 8 CFR 244.2(f)(2). In addition to meeting other eligibility criteria, initial applicants for TPS under this extension must demonstrate that they have been continuously residing in the United States since August 1, 2016, and continuously physically present in the United States since October 1, 2016. Information on late initial filing is also available on the USCIS TPS website link at *www.uscis.gov/tps.*

For individuals who have already been granted TPS under Syria's designation, the 60-day re-registration period runs from March 5, 2018 through May 4, 2018. USCIS will issue new EADs with a September 30, 2019 expiration date to eligible Syrian TPS beneficiaries who timely re-register and apply for EADs. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on March 31, 2018. Accordingly, through this **Federal Register** notice, DHS automatically extends the validity of EADs issued under the TPS designation of Syria for 180 days, through September 27, 2018. This Notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I–9, Employment Eligibility Verification, and E-Verify processes.

Individuals who have a pending Syria TPS application will not need to file a new Application for Temporary Protected Status (Form I–821). DHS provides additional instructions in this Notice for individuals whose TPS applications remain pending and who would like to obtain an EAD valid through September 30, 2019. There are approximately 7,000 current beneficiaries under Syria's TPS designation

What is Temporary Protected Status (TPS)?

• TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.

• During the TPS designation period and so long as a TPS beneficiary continues to meet the requirements of TPS, he or she is eligible to remain in the United States, may not be removed, and is authorized to work and obtain an EAD.

• TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.

• The granting of TPS does not result in or lead to lawful permanent resident status.

• To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).

• When the Secretary terminates a country's TPS designation, beneficiaries return to either:

○ The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or been terminated); or

○ Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid on the date TPS terminates.

When was Syria designated for TPS?

Former Secretary of Homeland Security Napolitano initially designated Syria for TPS on March 29, 2012, based on extraordinary and temporary conditions resulting from the Syrian military's violent suppression of opposition to President Bashar al-Assad's regime that prevented Syrian nationals from safely returning to Syria. *See Designation of Syrian Arab Republic for Temporary Protected Status,* 77 FR 19026 (Mar. 29, 2012). Following the initial designation, former Secretaries Napolitano and Johnson extended and redesignated Syria for TPS three times. Most recently, in 2016, former Secretary Johnson both extended Syria's designation and redesignated Syria for TPS for 18 months through March 31, 2018. *See Extension and Redesignation of Syria for Temporary Protected Status,* 81 FR 50533 (Aug. 1, 2016).

What authority does the Secretary have to extend the designation of Syria for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary does not determine that a foreign state no longer meets the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Syria through September 30, 2019?

DHS has reviewed conditions in Syria. Based on the review, including input received from other U.S. Government agencies, the Secretary has determined that an 18-month extension is warranted because the ongoing armed conflict and extraordinary and temporary conditions that prompted Syria's 2016 redesignation for TPS persist.

Syria is engulfed in an ongoing civil war marked by brutal violence against civilians, egregious human rights violations and abuses, and a humanitarian disaster on a devastating scale across the country. Beginning in March 2011, the Syrian Arab Republic Government (SARG) mobilized the military to violently suppress citizens advocating for greater political freedoms, initiating a brutal crackdown, and employing excessive force against civilians, including arbitrary executions, killing and persecution of protestors and members of the media, arbitrary detentions, disappearances, torture, and ill-treatment in an effort to retain control of the country. Since the beginning of the conflict, as many as 500,000 Syrians are dead or missing. The SARG and its allies continue to wage a brutal war resulting in significant civilian casualties. On April 4, 2017, the Syrian military used chemical weapons on the village of Khan Sheikhoun.

The SARG's use of barrel bombs against civilians is an ongoing occurrence in major population centers, with thousands of bombs dropped in 2016 and 2017. Syrian regime forces dropped 613 barrel bombs in November 2017 alone, according to monthly reporting statistics from the Syrian Network for Human Rights.

After nearly seven years of armed conflict, over half of Syria's pre-war population has been forced to flee from their homes. There are 11.5 million displaced Syrians in the region, both inside Syria and in neighboring countries. The United Nations High Commissioner for Refugees has reported over 1,240,000 civilian displacements in the last 12 months alone. Every year of the conflict has seen a massive growth in refugees. In July 2012, there were 100,000 refugees. One year later, there were 1.5 million. As of January 2018, there were over 5.4 million Syrian refugees in the region.

Syria is experiencing a humanitarian crisis, with over 73% of the Syrian population in need of assistance. The humanitarian situation is particularly severe in areas besieged by the SARG. For example, an estimated 400,000 civilians in Eastern Ghouta have been pushed to the brink of famine since March 2017, when the government tightened its siege of the Damascus suburb. The Syrian regime adds to this suffering by regularly bombing and firing artillery and rockets into Eastern Ghouta. Malnutrition rates there are the highest seen so far in Syria since the beginning of the crisis. In a December 10, 2017 statement, the United Nations Children's Fund called for the immediate evacuation of scores of sick children from Eastern Ghouta. The U.S. Mission to the United Nations has decried the situation in Eastern Ghouta as ''the latest version of the Assad regime's despicable 'starve and surrender' strategy.'' Although 29 critically-ill civilians were evacuated in late December 2017, the Department of State condemned the SARG for its ongoing blockade of humanitarian aid to the besieged area, where as of February 2018 hundreds still awaited medical evacuation, and many had died as they waited. Since early 2018, a new campaign of SARG airstrikes targeting major roads and hospitals has killed hundreds of civilians in Eastern Ghouta.

In northwestern Idlib province, a SARG offensive initiated in late December 2017 further threatens the safety and security of up to one million internally displaced civilians. As frequent airstrikes have forced civilians to evacuate the southern areas of Idlib, tens of thousands of newly displaced Syrians have amassed along the Turkish border seeking assistance.

Over 9 million Syrians are in need of emergency food assistance. As of September 2017, the United Nations World Food Program assessed that food production in Syria was at an all-time low and that the situation was showing no sign of improving. Due to an 800 percent increase in the consumer food price index between 2010 and 2016, 90 percent of Syrian households now spend over half of their income on food, compared with 25 percent before the crisis.

As of March 2017, 51 percent of Syrians lacked regular access to the public water system, relying instead on unregulated systems not tested for water purity. Schools and hospitals are significantly impacted by the lack of basic levels of sanitation, as well as the destruction of many facilities. Water shortages, particularly in Damascus, have exacerbated children's vulnerability to communicable diseases. In 2016, nearly half of Syria's current population suffered from the use of water as a weapon of war due to deliberate water cuts by warring factions.

Syria's medical system is in crisis. More than half of public hospitals and primary health centers have closed or are only partially functioning, and 11.5 million Syrians, including nearly 5 million children, do not have access to health care. SARG forces target Syrian medical personnel and facilities as part of their military strategy. Physicians for Human Rights has estimated that 98 percent of doctors have been killed or displaced in Aleppo. Outbreaks of preventable diseases are on the rise, including polio, which had been eradicated in Syria prior to the ongoing conflict.

Facing troop shortages after years of conflict, the Syrian military is increasingly relying on forced conscription to fill its ranks, launching large-scale arrests of military-age men through raids and checkpoints. In December 2016, SARG forces arrested and conscripted civilians fleeing rebel-held areas of Aleppo. In September 2017, the Syrian Network for Human Rights reported ''almost daily raiding and arrest campaigns'' focusing on males aged 18–42 years old for the purpose of military conscription. Numerous factions fighting the Syrian regime also forcibly recruit civilians, including children, to serve in combat roles. The self-described Islamic State of Iraq and Syria (ISIS) has the greatest reliance on child soldiers in Syria. Former ISIS child soldiers have described children as young as twelve being used as suicide bombers and children as young as six assisting in Islamic State executions.

Despite these circumstances, there have been incremental improvements in stability in Syria. In a January 17, 2018 speech, Secretary of State Tillerson noted that ISIS is substantially, but not completely defeated, although it

continues to wage an insurgency that poses a threat to the Syrian people. He highlighted significant gains made in combatting the terrorist organization, including the liberation of Raqqa (ISIS's self-declared capital) and the vast majority of Syrian territory once held by ISIS. Secretary Tillerson highlighted the ''catastrophic state of affairs . . . related to the continued lack of security and legitimate governance in Syria,'' and acknowledged the essential role of a continued U.S. military presence in Syria to cement gains and help bring an end to the civil war.

Secretary Tillerson related that U.S. efforts have helped tens of thousands of Syrian refugees and hundreds of thousands of internally-displaced persons return to their homes. According to the United Nations Office for the Coordination of Humanitarian Affairs, the number of Syrians returning to their homes in 2017 increased from 2016, with 721,000 Syrians returning home in 2017 (655,000 of whom were internally-displaced persons and approximately 66,000 of whom were refugees), compared to 560,000 returning in 2016. However, new displacement and attempts to flee Syria outstripped returns by 3 to 1 in 2017, and the UN has stated that large-scale returns now could have a catastrophic effect given the lack of safe conditions and the availability of basic infrastructure.

Based upon this review and after consultation with appropriate Government agencies, the Secretary has determined that:

- The conditions supporting the 2016 redesignation of Syria for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be an ongoing armed conflict in Syria and, due to such conflict, requiring the return of Syrian nationals (or aliens having no nationality who last habitually resided in Syria) to Syria would pose a serious threat to their personal safety. *See* INA section 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- There continue to be extraordinary and temporary conditions in Syria that prevent Syrian nationals (or aliens having no nationality who last habitually resided in Syria) from returning to Syria in safety, and it is not contrary to the national interest of the United States to permit Syrian TPS beneficiaries to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Syria for TPS should be extended for an 18-month period, from April 1, 2018 through September 30, 2019. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

Notice of Extension of the TPS Designation of Syria

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, the conditions that supported Syria's 2016 redesignation for TPS continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing designation of TPS for Syria for 18 months, from April 1, 2018, through September 30, 2019. *See* INA section 244(b)(1)(A), (b)(1)(C); 8 U.S.C. 1254a(b)(1)(A), (b)(1)(C).

Kirstjen M. Nielsen,

Secretary.

Required Application Forms and Application Fees To Register or Re-register for TPS

To re-register for TPS based on the designation of Syria, you *must* submit an Application for Temporary Protected Status (Form I–821). You do not need to pay the filing fee for the Form I–821. *See* 8 CFR 244.17. You may be required to pay the biometric services fee. Please see additional information under the ''Biometric Services Fee'' section of this Notice.

Through operation of this **Federal Register** notice, your existing EAD issued under the TPS designation of Syria with the expiration date of March 31, 2018, is automatically extended for 180 days, through September 27, 2018. You do not need to apply for a new EAD in order to benefit from this 180-day automatic extension. However, if you want to obtain a new EAD valid through September 30, 2019, you must file an Application for Employment Authorization (Form I–765) and pay the Form I–765 fee (or request a fee waiver). Note, if you do not want a new EAD, you do not have to file Form I–765 or pay the Form I–765 fee. If you do not want to request a new EAD now, you may also file Form I–765 at a later date and pay the fee (or request a fee waiver), provided that you still have TPS or a pending TPS application. But unless you timely re-register and properly file an EAD application in accordance with this Notice, the validity of your current EAD will end on September 27, 2018. You may file the application for a new EAD either prior to or after your current EAD has expired. However, you are strongly encouraged to file your application for a new EAD as early as possible to avoid gaps in the validity of your employment authorization documentation and to ensure that you receive your new EAD by September 27, 2018.

If you are seeking an EAD with your re-registration for TPS, please submit both the Form I–821 and Form I–765 together. If you are unable to pay the application fee and/or biometric services fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *http://www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Note: If you have a Form I–821 and/or Form I–765 that was still pending as of March 5, 2018, then you do *not* need to file either application again. If your pending TPS application is approved, you will be granted TPS through September 30, 2019. Similarly, if you have a pending TPS-related application for an EAD that is approved, it will be valid through the same date.

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may apply for a fee waiver by completing a Form I–912 or by submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please see the instructions to Form I–821 or visit the USCIS website at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center (ASC) to have your biometrics captured. In such a case, USCIS will send you an ASC scheduling notice. For additional information on the USCIS biometrics screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *www.dhs.gov/privacy.*

Re-filing a Re-registration TPS Application After Receiving a Denial of a Fee Waiver Request

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue any EAD promptly. Properly filing early will also allow you to have time to refile your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive

a denial of your fee waiver request and are unable to refile by the re-registration deadline, you may still refile your Form I–821 with the biometrics fee. This situation will be reviewed to determine whether you established good cause for late TPS re-registration. However, you are urged to refile within 45 days of the date on any USCIS fee waiver denial notice, if possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(b). For more information on good cause for late re-registration, visit the USCIS TPS web page at *http://www.uscis.gov/tps.* Following denial of your fee waiver request, you may also refile your Form I–765 with fee either with your Form I–821 or at a later time, if you choose.

Note: Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the Form I–821 fee) when filing a TPS re-registration application, you may decide to wait to request an EAD. Therefore, you do not have to file the Form I–765 or pay the associated Form I–765 fee (or request a fee waiver) at the time of re-registration, and could wait to seek an EAD until after USCIS has approved your TPS re-registration application. If you choose to do this, to re-register for TPS you would only need to file the Form I–821 with the biometrics services fee, if applicable, (or request a fee waiver).

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If you . . .	Mail to . . .
Are sending through the U.S. Postal Service.	USCIS, Attn: TPS Syria, P.O. Box 6943, Chicago, IL 60680–6943.
Are sending by FedEx, UPS, or DHL.	USCIS, Attn: TPS Syria, 131 S. Dearborn Street, 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. When re-registering and/or requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us verify your grant of TPS and process your application.

Supporting Documents

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS website at *www.uscis.gov/tps* under ''Syria.''

Employment Authorization Document (EAD)

How can I get information on the status of my EAD request?

To get case status information about your TPS application, including the status of a request for an EAD, you can check Case Status Online, available at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at *https://infopass.uscis.gov.* However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

Am I eligible to receive an automatic 180-day extension of my current EAD through September 27, 2018, using this ***Federal Register*** *notice?*

Yes. Provided that you currently have a Syria TPS-based EAD, this **Federal Register** notice automatically extends your EAD by 180 days (through September 27, 2018) if you:

- Are a national of Syria (or an alien having no nationality who last habitually resided in Syria); and
- Have an EAD with a marked expiration date of March 31, 2018, bearing the notation A–12 or C–19 on the face of the card under Category.

Although this **Federal Register** notice automatically extends your EAD through September 27, 2018, you must re-register timely for TPS in accordance with the procedures described in this **Federal Register** notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the ''Lists of Acceptable Documents'' for Form I–9. Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization), or one document from List B (which provides evidence of your identity) together with one document from List C (which is evidence of employment authorization), or you may present an acceptable receipt for List A, List B, or List C documents as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional detailed information about Form I–9 on USCIS' I–9 Central web page at *http://www.uscis.gov/I-9Central.*

An EAD is an acceptable document under List A. If your EAD has an expiration date of March 31, 2018, and states A–12 or C–19 under Category, it has been extended automatically for 180 days by virtue of this **Federal Register** notice and you may choose to present this Notice along with your EAD to your employer as proof of identity and employment eligibility for Form I–9 through September 27, 2018, unless your TPS has been withdrawn or your request for TPS has been denied. If you properly filed for a new EAD in accordance with this Notice, you will also receive Form I–797C, Notice of Action that will state your current A–12 or C–19 coded EAD is automatically extended for 180 days. You may choose to present your EAD to your employer together with this Form I–797C as a List A document that provides evidence of your identity and employment authorization for Form I–9 through September 27, 2018, unless your TPS has been withdrawn or your request for TPS has been denied. See the subsection titled, ''How do my employer and I complete the Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?'' for further information.

To reduce confusion over this extension at the time of hire, you should explain to your employer that your EAD has been automatically extended through September 27, 2018. You may also provide your employer with a copy of this **Federal Register** notice, which explains that your EAD has been automatically extended. As an alternative to presenting evidence of your automatically extended EAD, you may choose to present any other acceptable document from List A, a combination of one selection from List B and one selection from List C, or a valid receipt.

What documentation may I present to my employer for Employment Eligibility Verification (Form I–9) if I am already employed but my current TPS-related EAD is set to expire?

Even though your EAD has been automatically extended, your employer will need to ask you about your continued employment authorization no later than before you start work on April 1, 2018. You will need to present your employer with evidence that you are still authorized to work. Once presented, you may correct your employment authorization expiration date in Section 1 and your employer should correct the EAD expiration date in Section 2 of Form I–9. See the subsection titled, ''What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my employment authorization has been automatically extended?'' for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that your EAD has been automatically extended through September 27, 2018. Your employer may need to re-inspect your automatically extended EAD to check the expiration date and Category code to record the updated expiration date on your Form I–9 if your employer did not keep a copy of this EAD when you initially presented it. In addition, if you properly filed your Form I–765 to obtain a new EAD, you will receive a Form I–797C, Notice of Action. Form I–797C will state that your current A–12 or C–19 coded EAD is automatically extended for 180 days. You may present Form I–797C to your employer along with your EAD to confirm that the validity of your EAD has been automatically extended through September 27, 2018, unless your TPS has been withdrawn or your request for TPS has been denied. To reduce the possibility of gaps in your employment authorization documentation, you should file your Form I–765 to request a new EAD as early as possible during the re-registration period.

The last day of the automatic EAD extension is September 27, 2018. Before you start work on September 28, 2018, your employer must reverify your employment authorization. At that time, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 instructions to reverify employment authorization.

By September 28, 2018, your employer must complete Section 3 of the current version of the form, Form I–9 (version 07/17/17 N), and attach it to the previously completed Form I–9, if your original Form I–9 was a previous version. Your employer can check the USCIS' I–9 Central web page at *http://www.uscis.gov/I-9Central* for the most current version of Form I–9.

Note that your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

Can my employer require that I provide any other documentation to prove my status, such as proof of my Syrian citizenship?

No. When completing Form I–9, including reverifying employment authorization, employers must accept any documentation that appears on the Form I–9 ''Lists of Acceptable Documents'' that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request documentation that does not appear on the ''Lists of Acceptable Documents.'' Therefore, employers may not request proof of Syrian citizenship or proof of re-registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If presented with EADs that have been automatically extended, employers should accept such documents as a valid List A document so long as the EAD reasonably appears to be genuine and relates to the employee. Refer to the Note to Employees section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

How do my employer and I complete Employment Eligibility Verification (Form I–9) using my automatically extended employment authorization for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job before September 28, 2018, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work until'' and enter September 27, 2018, the automatically extended EAD expiration date as the ''expiration date, if applicable, mm/dd/yyyy''; and

b. Enter your Alien Number/USCIS number or A-Number where indicated (your EAD and other documents from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix).

2. For Section 2, employers should:

a. Determine if the EAD is auto-extended for 180 days by ensuring it is in category A–12 or C–19 and has a March 31, 2018 expiration date;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Insert September 27, 2018, the date that is 180 days from the date the current EAD expires.

If you also filed for a new EAD, as proof of the automatic extension of your employment authorization, you may present your expired or expiring EAD with category A–12 or C–19 in combination with the Form I–797C Notice of Action showing that the EAD renewal application was filed and that the qualifying eligibility category is either A–12 or C–19. Unless your TPS has been withdrawn or your request for TPS has been denied, this document combination is considered an unexpired EAD under List A. In these situations, to complete Section 2, employers should:

a. Determine if the EAD is auto-extended for 180 days by ensuring:

- It is in category A–12 or C–19; and
- The category code on the EAD is the same category code on Form I–797C, noting that employers should consider category codes A–12 and C–19 to be the same category code.

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Insert September 27, 2018, the date that is 180 days from the date the current EAD expires. Before the start of work on September 28, 2018, employers must reverify the employee's employment authorization in Section 3 of Form I–9.

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my employment authorization has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and your EAD has now been automatically extended, your employer may need to re-inspect your current EAD if they do not have a copy of the EAD on file. You may, and your employer should, correct your previously completed Form I–9 as follows:

1. For Section 1, you may:

a. Draw a line through the expiration date in Section 1;

b. Write September 27, 2018, the date that is 180 days from the date your current EAD expires above the previous date (March 31, 2018); and

c. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Determine if the EAD is auto-extended for 180 days by ensuring:

- It is in category A–12 or C–19; and
- Has an expiration date of March 31, 2018.

b. Draw a line through the expiration date written in Section 2;

c. Write September 27, 2018, the date that is 180 days from the date the employee's current EAD expires above the previous date (March 31, 2018); and

d. Initial and date the correction in the Additional Information field in Section 2.

In the alternative, if you properly applied for a new EAD, you may present your expired EAD with category A–12 or C–19 in combination with the Form I–797C Notice of Action. The Form I–797C should show that the EAD renewal application was filed and that the qualifying eligibility category is either A–12 or C–19. To avoid confusion, you may also provide your employer a copy of this Notice. Your employer should correct your previously completed Form I–9 as follows:

For Section 2, employers should:

a. Determine if the EAD is auto-extended for 180 days by ensuring:

- It is in category A–12 or C–19; and
- The category code on the EAD is the same category code on Form I–797C, noting that employers should consider category codes A–12 and C–19 to be the same category code.

b. Draw a line through the expiration date written in Section 2;

c. Write September 27, 2018, the date that is 180 days from the date the employee's current EAD expires above the previous date (March 31, 2018); and

d. Initial and date the correction in the Additional Information field in Section 2.

Note: This is not considered a reverification. Employers do not need to complete Section 3 until either the 180-day extension has ended or the employee presents a new document to show continued employment authorization, whichever is sooner. By September 28, 2018, when the employee's automatically extended EAD has expired, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee using the EAD bearing the expiration date March 31, 2018, or the Form I–797C receipt information provided on Form I–9. In either case, the receipt number entered as the document number on Form I–9 should be entered into the document number field in E-Verify.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

E-Verify automated the verification process for employees whose TPS-related EAD was automatically extended. If you have employees who are TPS beneficiaries who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. This indicates that you should update Form I–9 in accordance with the instructions above. Before such an employee starts to work on September 28, 2018, employment authorization must be reverified in Section 3. Employers should not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER) (formerly the Office of Special Counsel for Immigration-Related Unfair Employment Practices) Employer Hotline at 800–255–8155 (TTY 800–237–2515). The IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I–9Central@dhs.gov.* Calls are accepted in English and Spanish. Translation services in other languages including Arabic are also available upon request. Employees or applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from an employee's Form I–9 differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against an employee because of the TNC while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper

nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/ier* and the USCIS website at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples of such documents are:

(1) Your current EAD;

(2) A copy of your Notice of Action (Form I–797C), the notice of receipt, for your application to renew your current EAD providing an automatic extension of your currently expired or expiring EAD;

(3) A copy of your Notice of Action (Form I–797C), the notice of receipt, for your Application for Temporary Protected Status for this re-registration; and

(4) A copy of your Notice of Action (Form I–797), the notice of approval, for a past or current Application for Temporary Protected Status, if you received one from USCIS.

Check with the government agency regarding which document(s) the agency will accept. Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements (SAVE) program to confirm the current immigration status of applicants for public benefits. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at the following link: *https://save.uscis.gov/casecheck/,* then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found on the SAVE website at *http://www.uscis.gov/save.*

[FR Doc. 2018–04454 Filed 3–1–18; 11:15 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX18DK20GUV0300; OMB Control Number 1028–0114]

Agency Information Collection Activities; National Ground-Water Monitoring Network Cooperative Funding Application

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Geological Survey (USGS) is proposing to renew an information collection (IC).

DATES: Interested persons are invited to submit comments on or before May 4, 2018.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the USGS, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0114 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Daryll Pope by email at *dpope@usgs.gov,* or by telephone at (609) 771–3933.

SUPPLEMENTARY INFORMATION: We, the USGS, in accordance with the Paperwork Reduction Act of 1995, provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The USGS is working with the Federal Advisory Committee on Water Information (ACWI) and its Subcommittee on Ground Water (SOGW) to develop and administer a National Ground-Water Monitoring Network (NGWMN). This network is required as part of Public Law 111–11, Subtitle F—Secure Water: Section 9507, 42 U.S.C. 10367, ''Water Data Enhancement by United States Geological Survey.'' The NGWMN will consist of an aggregation of wells from existing Federal, State, Tribal, and local groundwater monitoring networks. To support data providers for the NGWMN, the USGS will be providing funding through cooperative agreements to water-resource agencies that collect groundwater data. The USGS will be soliciting applications for funding that will request information from the Agency collecting the data. Elements will include contact information (phone number and email address), and a proposal describing their proposed work in support of the NGWMN. The proposal will describe the groundwater networks to be included in the NGWMN, the purpose of the networks, and the Principal aquifers that are monitored. Proposals may include work to become a new data provider to the NGWMN, support for maintaining connections to agency databases, and work to enhance NGWMN sites

(updating metadata, performing well maintenance, and well drilling). The proposal would also require estimates of costs to complete the above tasks and a timeline for planned completion. The proposal will be reviewed by the USGS and the NGWMN Program Board who will make funding recommendations.

Title of Collection: National Ground-Water Monitoring Network Cooperative Funding Application.

OMB Control Number: 1028–0114.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Multi-state, state, or local water-resources agencies who operate groundwater monitoring networks.

Total Estimated Number of Annual Respondents: 30.

Total Estimated Number of Annual Responses: 30.

Estimated Completion Time per Response: 40 hours.

Total Estimated Number of Annual Burden Hours: 1200 hours.

Respondent's Obligation: Mandatory to be considered for funding.

Frequency of Collection: Annually.

Total Estimated Annual Non-hour Burden Cost: None.

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 authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Janice M. Fulford,

Director Observing Systems Division.

[FR Doc. 2018–04396 Filed 3–2–18; 8:45 am]

BILLING CODE 4338–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–895 (Third Review)]

Pure Granular Magnesium From China; Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on pure granular magnesium from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on September 1, 2017 (82 FR 41651) and determined on December 5, 2017 that it would conduct an expedited review (83 FR 4269, January 30, 2018).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on February 27, 2017. The views of the Commission are contained in USITC Publication 4761 (February 2018), entitled *Pure Granular Magnesium from China: Investigation No. 731–TA–895 (Third Review).*

By order of the Commission.

Issued: February 27, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–04332 Filed 3–2–18; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Stepan Company

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 4, 2018. Such persons may also file a written request for a hearing on the application on or before April 4, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on January 17, 2018, Stepan Company, Natural Products Department, 100 W Hunter Avenue, Maywood, NJ 07607 applied to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

The company plans to import the listed controlled substance in bulk for the manufacture of controlled substances for distribution to its customers.

Dated: February 26, 2018.

Susan A. Gibson,

Deputy Assistant Administrator.

[FR Doc. 2018–04406 Filed 3–2–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: PerkinElmer, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 4, 2018. Such persons may also file a written request for a hearing on the application on or before April 4, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement

Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on November 15, 2017, PerkinElmer, Inc., 549 Albany Street, Boston, MA 02118 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Thebaine	9333	II
Lysergic acid diethylamide.	7315	I

The company plans to import the listed controlled substances in bulk for manufacturing wherein the controlled substances will be labeled with a radioactive tracer compound and sold for research purposes to its customers. Thebaine (9333) will be used to manufacture the derivative Diprenorphine.

Dated: February 26, 2018.

Susan A. Gibson,

Deputy Assistant Administrator.

[FR Doc. 2018–04407 Filed 3–2–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment to Consent Decree Under the Clean Water Act

On February 26, 2018, the Department of Justice lodged a proposed second amendment to a consent decree with the United States District Court for the Eastern District of Missouri in the lawsuit entitled in *United States, et al.* v. *Metropolitan St. Louis Sewer District,* Civil Action No. 4:07–CV–01120.

Under the original 2012 consent decree, the Metropolitan St. Louis Sewer District (''MSD'') agreed to undertake numerous measures to come into compliance with the Clean Water Act, including constructing three CSO storage tunnels and a CSO treatment unit. MSD still is in the process of complying with the 2012 decree. The proposed amendment would extend the deadlines for completing the three CSO storage tunnels and treatment unit by an additional three to seven years. The final compliance deadline for all CSO control measures will be extended by five years from June 30, 2034 to June 30, 2039.

The publication of this notice opens a period of public comment on the proposed amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *Metropolitan St. Louis Sewer District,* D.J. Ref. No. 90–5–1–1–08111. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed amendment may be examined and downloaded at this Department of Justice website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed amendment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check in the amount of $3.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–04362 Filed 3–2–18; 8:45 am]

BILLING CODE 4410–15–P

OFFICE OF MANAGEMENT AND BUDGET

[Docket ID OMB–OMB–2018–0001]

Draft 2017 Report to Congress on the Benefits and Costs of Federal Regulation and Agency Compliance With the Unfunded Mandates Reform Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of availability and request for comments.

SUMMARY: The Office of Management and Budget (OMB) requests comments on its Draft 2017 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act, available at: *https://www.whitehouse.gov/omb/information-regulatory-affairs/reports/.* The Draft Report is divided into two parts. Part I contains three chapters. Chapter I examines the benefits and costs of major Federal regulations issued in fiscal year 2016. Chapter II discusses regulatory impacts on State, Local, and tribal governments, small business, wages and employment, and economic growth. Chapter III offers recommendations for regulatory reform. Part II summarizes agency compliance with the Unfunded Mandates Reform Act. OMB requests that comments be submitted electronically to OMB by 4/06/18 through *www.regulations.gov* using Docket ID OMB–OMB–2018–0001.

DATES: To ensure consideration of comments as OMB prepares this Draft Report for submission to Congress, comments must be in writing and received by 4/06/18.

ADDRESSES: Submit comments by one of the following methods:

- *www.regulations.go:* Direct comments to Docket ID OMB–OMB–2018–0001.
- *Fax:* (202) 395–7285.
- *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 9235, 725 17th Street NW, Washington, DC 20503. To ensure that your comments

are received, we recommend that comments on this draft report be electronically submitted.

All comments submitted in response to this notice will be made available to the public, including by posting them on OMB's website. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. The *www.regulations.gov* website is an ''anonymous access'' system, which means OMB will not know your identity or contact information unless you provide it in the body of your comment.

FOR FURTHER INFORMATION CONTACT: Mabel Echols, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 9235, 725 17th Street NW, Washington, DC 20503. Telephone: (202) 395–3741.

SUPPLEMENTARY INFORMATION: Congress directed the Office of Management and Budget (OMB) to prepare an annual Report to Congress on the Benefits and Costs of Federal Regulations. Specifically, Section 624 of the FY 2001 Treasury and General Government Appropriations Act, also known as the ''Regulatory Right-to-Know Act,'' (the Act) requires OMB to submit a report on the benefits and costs of Federal regulations together with recommendations for reform. The Act states that the report should contain estimates of the costs and benefits of regulations in the aggregate, by agency and agency program, and by major rule, as well as an analysis of impacts of Federal regulation on State, local, and tribal governments, small businesses, wages, and economic growth. The Act also states that the report should be subject to notice and comment and peer review.

Neomi Rao,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2018–04383 Filed 3–2–18; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (18–018)]

NASA Advisory Council; Technology, Innovation and Engineering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Technology, Innovation and Engineering Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Monday, March 26, 2018, 9:00 a.m.–5:00 p.m., Eastern Time.

ADDRESSES: NASA Goddard Space Flight Center (GSFC), Building 34, Conference Room 120A, 8800 Greenbelt Road, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Designated Federal Officer, Space Technology Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4710, or *g.m.green@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll free access number 1–844–467–6272, and then the numeric participant passcode 102421 followed by the # sign. The WebEx link is *https://nasa.webex.com/,* the meeting number is 998 825 779, and the password is Technology18* (case sensitive). *Note:* If dialing in, please ''mute'' your telephone. The agenda for the meeting includes the following topics:

—Welcome to NASA Goddard Space Flight Center
—NASA Space Technology Mission Directorate Update and FY 2019 President's Budget Proposal

Attendees will be requested to sign a register and to comply with NASA security requirements. Visitors must show a valid state or federal issued picture ID, green card or passport before receiving an access badge to enter GSFC and must state that they are attending the NAC's Technology, Innovation and Engineering Committee meeting in Building 34. All U.S. citizens and Permanent Residents (green card holders) seeking to attend must provide their full name, company affiliation (if applicable) and citizenship to Ms. Anyah Dembling via email at *anyah.dembling@nasa.gov* or by telephone at (202) 358–5195 no later than close of business on March 15, 2018. Foreign Nationals must provide the following information: Full name, gender, date/place of birth, citizenship, home address, visa information (number, type, expiration date), passport information (number, country of issue, expiration date), employer/affiliation information (name of institution, title/position, address, country of employer, telephone, email address), and an electronically scanned or faxed copy of their passport and visa to Anyah Dembling via email at *anyah.dembling@nasa.gov* or by fax at (202) 358–4078 no later than close of business on March 7, 2018. If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will report to the GSFC Main Gate where they will be processed through security prior to entering GSFC. For security questions on the day of the meeting, please contact Shawn Watts at (301) 286–5282 or *shawn.g.watts@nasa.gov.* It is imperative that this meeting be held on this day to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2018–04428 Filed 3–2–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (18–015)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, (202) 358–1351.

SUPPLEMENTARY INFORMATION:

I. Abstract

Supersonic flight over land is currently restricted in the U.S. and many countries because sonic boom

noise disturbs people on the ground and can potentially damage private property. NASA has developed a method for generating low level sonic boom noise similar to that anticipated for quiet supersonic flight. As sufficient research is assembled, there is potential for a change in federal and international policy.

The Waveforms Sonic Boom Perception and Response Risk Reduction (WSPRRR) test will utilize a specialized maneuver developed by NASA using an existing F–18 research aircraft to correlate human annoyance response with low level sonic boom noise in a community setting. This effort is designed to evaluate remote aircraft basing and operations, community engagement, sonic boom measurements, and community annoyance surveys. The effort will improve research methods for future community-scale response testing using a purpose-built, low boom flight demonstration aircraft (LBFD).

NASA supported two prior risk reduction field tests to evaluate data collection methods for low boom community response at Edwards Air Force Base (EAFB) in November 2011 (see ref. 1&2). The findings from both studies are not readily generalizable to a larger population, as the residents at EAFB are accustomed to hearing full level sonic booms on a routine basis.

II. Methods of Collection

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

The collections are voluntary;

The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;

The collections are non-controversial and do not raise issues of concern to other Federal agencies;

Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;

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.

III. Data

Title: Waveforms Sonic Boom Perception and Response Risk Reduction (WSPRRR) Program.

OMB Number: 2700-xxxx.

Type of Review: New Clearance.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local, or Tribal Government.

Average Expected Annual Number of Activities: 50.

Average Number of Respondents per Activity: Variable.

Annual Responses: Variable.

Frequency of Responses: Variable.

Average Minutes per Response: Variable.

Burden Hours: 2,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2018–04412 Filed 3–2–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (18–016)]

NASA Advisory Council; Human Exploration and Operations Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Human Exploration and Operations Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Monday, March 26, 2018, 11:00 a.m. to 5:30 p.m.; Tuesday, March 27, 2018, 8:00 a.m. to 2:30 p.m., Eastern Time.

ADDRESSES: NASA Headquarters, Glennan Conference Center (1Q39), 300 E Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Designated Federal Officer, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2245, or *bette.siegel@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may dial the toll free access number 1–888–324–9238 or toll access number 1–517–308–9132, and then the numeric participant passcode: 3403297 followed by the # sign, to participate in this meeting by

telephone. The WebEx link is *https://nasa.webex.com/,* the meeting number is 996 584 153, and the password is Exploration@2018 (case sensitive). *Note:* If dialing in, please ''mute'' your telephone.

The agenda for the meeting includes the following topics:

—Status of the NASA Human Exploration and Operations Mission Directorate

—International Space Station Updates

—Space Life and Physical Sciences Research and Applications

—Commercial Crew and Launch Readiness Process

—Exploration Systems Development Status

—Power Propulsion Element Status

—Future Human Exploration Planning

—Global Exploration Roadmap

Attendees will be required to sign a register and comply with NASA security requirements, including the presentation of a valid picture ID before receiving access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; home address; gender; citizenship; date/city/country of birth; title, position or duties; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone) of the position of attendee; and home address to Dr. Bette Siegel via email at *bette.siegel@nasa.gov.* To expedite admittance, U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days in advance. Information should be sent to Dr. Bette Siegel via email at *bette.siegel@nasa.gov.* It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2018–04426 Filed 3–2–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (18–017)]

NASA Advisory Council; Ad Hoc Task Force on STEM Education; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration announces a meeting of the Ad Hoc Task Force on Science, Technology, Engineering and Mathematics (STEM) Education of the NASA Advisory Council (NAC). This Task Force reports to the NAC.

DATES: Tuesday, March 20, 2018, 12:00 p.m.–3:30 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Dr. Beverly Girten, Designated Federal Officer, Office of Education, NASA Headquarters, Washington, DC 20546, (202) 358–0212, or *beverly.e.girten@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll free access number 844–467–6272 or toll access number 720–259–6462, and then the numeric participant passcode: 329152 followed by the # sign. To join via WebEx, the link is *https://nasa.webex.com/,* the meeting number is 997 409 583 and the password is Education2018$ (Password is case sensitive.) *Note:* If dialing in, please ''mute'' your telephone. The agenda for the meeting will include the following:

—Opening Remarks by Chair

—Transition Update

—Business Service Assessment Update

—Update on STEM Education Advisory Panel

—Formulation of Recommendations and Findings

—Other Related Topics

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2018–04427 Filed 3–2–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–022]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that it has submitted to OMB for approval the information collection described in this notice. We invite you to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: OMB must receive written comments at the address below on or before April 4, 2018.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, desk officer for NARA, by mail to Office of Management and Budget; New Executive Office Building; Washington, DC 20503; fax to 202–395–5167; or by email to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the proposed information collection and supporting statement to Tamee Fechhelm by phone at 301–837–1694 or by fax at 301–837–0319.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on December 29, 2017 (82 FR 61799); and we received no comments. We have therefore submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) NARA's estimate of the burden of the proposed information collection and its accuracy; (c) ways NARA could enhance the quality, utility, and clarity of the information it collects; (d) ways NARA could minimize the burden on respondents of collecting the information, including the through information technology; and (e) whether the collection affects small businesses. In this notice, NARA solicits comments concerning the following information collection:

Title: Request Pertaining to Military Records.

OMB number: 3095–0029.

Agency form number: SF 180 & NA Form 13176.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 1,028,769.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel record).

Estimated total annual burden hours: 85,731 hours.

Abstract: The authority for this information collection is contained in 36 CFR 1233.18(d). In accordance with rules issued by the Department of Defense (DOD) and Department of Homeland Security (DHS, US Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military service records of veterans after discharge, retirement, and death. When veterans and other authorized individuals request information from or copies of documents in military service records, they must provide in forms or in letters certain information about the veteran and the nature of the request. Federal agencies, military departments, veterans, veterans' organizations, and the general public use Standard Forms (SF) 180, Request Pertaining to Military Records, in order to obtain information from military service records stored at NPRC. Veterans and next-of-kin of deceased veterans can also use eVetRecs (*http://www.archives.gov/research_room/vetrecs/*) to order copies. A new form, NA Form 13176, Status Update to Request for Military Service Records, was added to allow the veteran or other authorized individuals to follow-up on their request.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2018–04387 Filed 3–2–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Reporting Requirements Regarding Findings of Sexual Harassment, Other Forms of Harassment, or Sexual Assault

AGENCY: National Science Foundation (NSF).

ACTION: Request for public comment on new reporting requirement for sexual harassment, other forms of harassment, or sexual assault.

SUMMARY: The National Science Foundation (NSF) is soliciting public comment on the agency's proposed implementation of the new reporting requirements specified in NSF Important Notice No. 144, dated February 8, 2018.

The National Science Foundation (NSF) does not tolerate sexual harassment, or any kind of harassment, within the agency, at awardee organizations, field sites, or anywhere NSF-funded science and education are conducted. The 2,000 U.S. institutions of higher education and other organizations that receive NSF funds are responsible for fully investigating complaints and for complying with federal non-discrimination law. NSF has taken steps to help ensure research environments are free from sexual harassment. Additionally, NSF is bolstering our policies, guidelines and communications so that organizations funded by NSF clearly understand expectations and requirements.

NSF is working to make certain that recipients of grants and cooperative agreements respond promptly and appropriately to instances of sexual harassment, other forms of harassment, or sexual assault. A community effort is essential to eliminate sexual and other forms of harassment in science and to build scientific workspaces where people can learn, grow and thrive.

DATES: Comments must be received by May 4, 2018.

ADDRESSES: Comments should be addressed to Suzanne H. Plimpton, Reports Clearance Officer, Office of the General Counsel, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, email *splimpto@nsf.gov;* telephone: (703) 292–7556; FAX (703) 292–9240. We encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Please include ''*Reporting Requirement Regarding Findings of Sexual Harassment, other Forms of Harassment, or Sexual Assault*'' in the subject line of the email message; please also include the full body of your comments in the text of the message and as an attachment. Include your name, title, organization, postal address, telephone number, and email address in your message.

FOR FURTHER INFORMATION CONTACT: For any questions, comments or concerns regarding sexual or other forms of harassment, please contact the Office of Diversity and Inclusion (ODI), National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, email: *harassmentnotifications@nsf.gov;* telephone (703) 292–8020; FAX: (703) 292–9482.

SUPPLEMENTARY INFORMATION: As the primary funding agency of fundamental science and engineering research in the United States, NSF is committed to promoting safe, productive research and education environments for current and future scientists and engineers. We consider the Principal investigator (PI) and any co-PI(s) identified on an NSF award to be in positions of trust. The PI, any co-PI(s) and all personnel supported by an NSF award must comport themselves in a responsible and accountable manner during the performance of award activities whether at the awardee institution, online, or conducted outside the organization, such as at field sites or facilities, or during conferences and workshops.

NSF has developed a new proposed term and condition that will require awardee organizations to report findings/determinations of sexual harassment, other forms of harassment, or sexual assault, regarding an NSF funded PI, or any co-PI. The term and condition also will require the awardee to notify NSF if it places the PI or any co-PI on administrative leave relating to a harassment finding or investigation. This term and condition also will make it clear that NSF may take unilateral action as necessary to protect the safety of all awardee personnel, to include requiring the substitution or removal of a PI, or any co-PI, suspension or termination of an award, or a reduction in the funding amount. NSF is soliciting public comment on this new proposed term and condition, including the information required to be reported by the awardee, the full text of which is provided below:

Proposed Article X

The Principal investigator (PI), and any co-PI(s) identified on an NSF award are in a position of trust. These individuals must comport themselves in a responsible and accountable manner during the performance of award activities whether at the awardee institution, on-line, or conducted outside the organization, such as at field sites, facilities, or conferences/workshops. The awardee is required to notify NSF: (1) of any findings/determinations regarding the PI or any co-PI [1] that demonstrate a violation of

[1] If a co-PI is affiliated with a sub-awardee organization, the sub-awardee must provide the

awardee codes of conduct, policies, regulations or statutes relating to sexual harassment, other forms of harassment, or sexual assault; and (2) if the awardee places the PI, or any co-PI on administrative leave [2] relating to a finding or investigation of a violation of awardee codes of conduct, policies, regulations or statutes relating to sexual harassment, other forms of harassment, or sexual assault.[3] Such notification must be submitted by the Authorized Organization Representative via email to NSF's Office of Diversity and Inclusion at: *harassmentnotifications@nsf.gov* within seven business days from the date of the finding/determination or the awardee's placement of the PI or co-PI on administrative leave. Each notification must include the following information:

- NSF Award Number
- Name of PI/or co-PI being reported:
- Type of Report: Select
  - Finding/Determination that the reported individual has been found to have violated awardee codes of conduct, policies, regulations or statutes relating to sexual harassment, or other form of harassment, or sexual assault; or
  - Placement by the awardee of the reported individual on administrative leave relating to a finding or investigation of a violation of awardee codes of conduct, policies, regulations or statutes relating to sexual harassment, or other form of harassment, or sexual assault.
- Description of the finding/determination and action taken, if any.
- Reason(s)for, and conditions of, placement of the PI or any co-PI on administrative leave.
- Plan for continued oversight and implementation of the project during the administrative leave period of the reported PI or co-PI.

The awardee may at any time propose a substitute investigator if it determines the PI or any co-PI may not be able to carry out the project or activity and/or abide by award terms and conditions.

Other personnel supported by an NSF award must likewise remain in full compliance with awardee codes of conduct, policies, regulations and statutes relating to sexual harassment, other forms of harassment, or sexual assault. With regard to any personnel not in compliance, the awardee must make appropriate arrangements to ensure the safety of other award personnel and the continued progress of the funded project.

Taking into account the seriousness of the violation(s) and the importance of maintaining the safety of personnel supported by an NSF award, the Foundation may take unilateral action, as appropriate, to require the substitution or removal of the PI or any co-PI, suspension or termination of the award, or a reduction in the award funding amount.

End of Proposed Article X

Implementation: Upon receipt and resolution of all comments, it is NSF's intention to implement the new term through revision of the NSF Agency Specific Requirements to the Research Terms and Conditions, the Grant General Conditions, and the Cooperative Agreement—Financial and Administrative Terms and Conditions. The new term and condition will be applied to all new NSF awards and funding amendments to existing awards made on or after the effective date. This new reporting requirement will apply to all findings/determinations that occur on or after the effective date of the terms and conditions. With regard to notification of placement on administrative leave, the awardee must notify NSF within seven business days from the date the awardee determines that placement on administrative leave is necessary.

NSF also plans to incorporate the new award term into the next issuance of the *NSF Proposal and Award Policies and Procedures Guide,* as well as to implement an electronic notification capability in *Research.gov.*

Dated: February 28, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–04374 Filed 3–2–18; 8:45 am]

BILLING CODE 7555–01–P

requisite information to the awardee, which will then transmit it to NSF as instructed above.

[2] For purposes of this term and condition, ''administrative leave'' includes any administrative action by the awardee that could impact the PI's or any co-PI's ability to fulfill their responsibilities on the award.

[3] Awardee findings/determinations and placement on administrative leave during investigation must have been conducted in accordance with organizational processes and policies that are consistent with federal law and regulation. *See, e.g.,* NSF *Research Terms and Conditions, Appendix C.*

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meeting Notice

DATE: Weeks of March 5, 12, 19, 26, April 2, 9, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 5, 2018

Thursday, March 8, 2018

10:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting); (Contact: Sophie Holiday: 301–415–7865).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of March 12, 2018—Tentative

There are no meetings scheduled for the week of March 12, 2018.

Week of March 19, 2018—Tentative

There are no meetings scheduled for the week of March 19, 2018.

Week of March 26, 2018—Tentative

There are no meetings scheduled for the week of March 26, 2018.

Week of April 2, 2018—Tentative

Wednesday, April 4, 2018

10:30 a.m. Discussion of Management and Personnel Issues (Closed Ex. 2, 6, & 9).

Thursday, April 5, 2018

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public); (Contact: Mark Banks: 301–415–3718).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of April 9, 2018—Tentative

Tuesday, April 10, 2018

10:00 a.m. Briefing on the Annual Threat Environment (Closed Ex. 1).

Thursday, April 12, 2018

9:00 a.m. Briefing on Accident Tolerant Fuel (Public); (Contact: Andrew Proffitt: 301–415–1418).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you

need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated: March 1, 2018.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–04561 Filed 3–1–18; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0040]

Aluminum High Energy Arc Fault (HEAF) Particle Size Characterization

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed draft test plan; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making the proposed draft test plan, ''Aluminum High Energy Arc Fault (HEAF) Particle Size Characterization Test Plan—Draft Test Plan,'' available for public comment.

DATES: Submit comments by April 4, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0040. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gabriel Taylor, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0781; email: *Gabriel.Taylor@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0040 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–2018–0040.
- *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 proposed draft test plan, ''Aluminum High Energy Arc Fault (HEAF) Particle Size Characterization Test Plan—Draft Test Plan'' is available electronically under ADAMS Accession No. ML18036A448.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0040 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The NRC has identified a potential generic issue associated with electrical equipment containing component made of aluminum. If the identified equipment were to experience a HEAF the presence of aluminum may cause greater damage to structures, systems, and components than previous analyses indicated. This generic issue has met all seven screening criteria of the generic issues program and is currently in the assessment phase (ADAMS Accession No. ML16349A027). To better understand the impact of aluminum, the NRC is sponsoring large- and small-scale testing. The large-scale testing will be undertaken as part of an international effort and the draft test plan for that program is publicly available (ADAMS Accession No. ML17201Q551).

The purpose of this draft test program is characterize aluminum particle size distribution, rates of production and morphology (agglomeration) of HEAFs involving aluminum conductors. The measurements from these experiments will be used to support development of a HEAF/Aluminum combustion energy balance model to better characterize the aluminum HEAF hazard. This modeling effort will support advancements to quantify hazards HEAF pose to nuclear power plant risk. The small-scale testing is expected to be performed prior to any full-scale testing. The results from the small-scale work is expected to help inform to the large-scale test results and to support evaluation of the numerical method predictive capability. Model development is outside the scope of this test plan and is expected to be completed by a third party. This draft test plan has been developed by Sandia National Laboratories.

The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to

developing this document is available to the NRC staff. This document is issued for comment only and is not intended for interim use. The NRC will review public comments received on the documents, incorporate suggested changes as necessary, and make the final test plan available.

Dated at Rockville, Maryland, this 26th day of February, 2018.

For the Nuclear Regulatory Commission.

Mark Henry Salley,

Chief, Fire and External Hazard Analysis Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2018–04341 Filed 3–2–18; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82786; File No. SR–ICEEU–2017–016]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Concerning the ICE Clear Europe Recovery Plan

February 27, 2018.

On December 29, 2017, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–ICEEU–2017–016 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] concerning the ICE Clear Europe Recovery Plan. The Proposed Rule Change was published for comment in the **Federal Register** on January 19, 2018.[3] To date, the Commission has not received any comment letters to the Proposed Rule Change.

Section 19(b)(2) of the Exchange Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notice for this Proposed Rule Change is March 5, 2018. The Commission is extending this 45-day time period. In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[5] designates April 19, 2018 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–ICEEU–2017–016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04339 Filed 3–2–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 82496 (Jan. 12, 2018), 83 FR 2855 (Jan. 19, 2018) (SR–ICEEU–2017–016) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82785; File No. SR–OCC–2017–011]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Related to The Options Clearing Corporation's Model Risk Management Policy

February 27, 2018.

I. Introduction

On December 28, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–OCC–2017–011) to formalize and update OCC's Model Risk Management Policy (''MRM Policy''). The proposed rule change was published for comment in the **Federal Register** on January 16, 2018.[3] The Commission did not receive any comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change[4]

OCC uses quantitative methods to make estimates, forecasts, and projections.[5] Specifically, OCC employs such methods in the context of its credit risk models, margin system and related models, and liquidity risk models.[6] OCC refers to the use of such quantitative methods in this context as Risk Models.[7] OCC's use of models inherently exposes OCC to model risk.[8] Such risk includes the consequences of decisions based on incorrect or misused model outputs.[9] The proposed MRM Policy will apply to all Risk Models that OCC uses to determine, quantify, or measure actual or potential risk exposures or risk mitigating actions.[10]

The MRM Policy details the general framework for OCC's model risk management practices, including describing and outlining the roles and responsibilities of OCC's Quantitative Risk Management department (''QRM''), Model Validation Group (''MVG''), and Model Risk Working Group (''MRWG'').[11] The MRM Policy also addresses the roles of OCC's Legal department, Management Committee (''MC'') and Board Risk Committee (''RC'') in the review and approval of OCC's Risk Models.[12] The proposed rule change would formalize and update OCC's MRM Policy.

Under the MRM Policy, QRM will be responsible for developing, implementing, and monitoring OCC's Risk Models.[13] Regarding model development, QRM will maintain documentation of the design, theory, and logic of each Risk Model, including a description of the model, its intended purpose, assumptions, supporting data, limitations, and other details.[14] As part of model implementation, QRM will review, evaluate, and propose model changes, including model decommissioning, make recommendations to the MRWG for approval of changes, and seek review by the Legal department regarding the regulatory filing requirements related to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 82473 (Jan. 9, 2018), 83 FR 2271 (Jan. 16, 2018) (SR–OCC–2017–011) (''Notice'').

[4] All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.

[5] Notice, 83 FR at 2271, n. 6.

[6] *Id.*

[7] *Id.*

[8] Notice, 83 FR at 2271.

[9] Notice, 83 FR at 2271, n. 5.

[10] Notice, 83 FR at 2271.

[11] *Id.*

[12] Notice, 83 FR at 2272.

[13] Notice, 83 FR at 2272–73.

[14] Notice, 83 FR at 2272.

proposed model changes.[15] The MC will review, and as appropriate, recommend model change proposals to the RC for review and, if appropriate, to OCC's Board for final approval.[16] Finally, QRM will monitor the use and performance of Risk Models, and will report its findings to the MRWG for potential escalation to the MC or RC as necessary.[17]

Under the MRM Policy, MVG will be responsible for maintaining an inventory of OCC's Risk Models, and validating such models no less than annually.[18] Each model validation must include a review of the model's performance, parameters, and assumptions.[19] Such validations must be independent, which is defined by the MRM Policy as an evaluation performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated.[20] Under the proposed MRM Policy, the MRWG is responsible for assisting the MC to oversee and govern OCC's model-related risk issues.[21] Specifically, the MRM Policy requires MRWG to provide, among other things, adequate support and legal expertise as it relates to model risk.[22]

Additionally, the MRM Policy provides arrangements governing updates and exceptions to, as well as violations of, the MRM Policy.[23] Specifically, updates to the MRM Policy may be approved by the RC upon recommendation from the MC. Exceptions to the MRM Policy require written approval from OCC's Office of the Executive Chairman.[24] Finally, all violations of the MRM Policy must be reported to OCC's Chief Compliance Officer.[25]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[26] After carefully considering the proposed rule change, the Commission finds the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act[27] and Rules 17Ad–22(e)(2)[28] 17Ad–22(e)(4)(vii),[29] 17Ad–22(e)(6)(vii),[30] and 17Ad–22(e)(7)(vii)[31] thereunder.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires that the rules of a registered clearing agency be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[32]

As described above, the MRM Policy is designed to reduce the model risk inherent in OCC's use of credit risk models, margin models, and liquidity risk models. Such model risk includes the consequences of decisions based on incorrect or misused model outputs. The Commission believes that decisions based on incorrect or misused model outputs could lead OCC to suffer credit losses or liquidity shortfalls arising out of the default of a clearing member, and that such losses or shortfalls could negatively affect the securities and funds that have been posted by non-defaulting clearing members and are within OCC's custody or control. For example, if an OCC risk model were to underestimate the risks posed by a clearing member's positions, the default of such a clearing member could cause OCC to face losses in excess of the collateral collected from the defaulting clearing member. Where OCC faces losses in excess of a defaulter's collateral, it may be forced to cover such losses with the securities and funds posted as collateral by non-defaulting clearing members.

The Commission believes that measures that reduce model risk may allow OCC to better manage its credit and liquidity risk exposures by more accurately estimating the collateral OCC must collect from its clearing members to cover those risks. Such increased accuracy may, in turn, help OCC avoid credit losses or liquidity shortfalls in excess of collateral posted by a clearing member in the event of a default, and, thus, avoid the need to use non-defaulting clearing members' collateral to cover such losses or shortfalls. Therefore, because the formalization of the MRM Policy would incorporate into OCC's rules measures intended to reduce the likelihood that OCC would have to use non-defaulting clearing members' collateral to manage a clearing member default, the Commission finds that proposal is consistent with Section 17A(b)(3)(F) of the Act.[33]

B. Consistency With Rule 17Ad–22(e)(2)

Rule 17Ad–22(e)(2) under the Act requires, among other things, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.[34]

As described above, the MRM Policy provides for arrangements governing updates and exceptions to, as well as violations of, the MRM Policy. Such arrangements provide clarity to OCC staff regarding the operation of the MRM Policy generally, and provide for unforeseen circumstances requiring changes to OCC's practices. Because formalization of the MRM Policy would incorporate into OCC's rules a policy intended to provide such clarity, the Commission finds that the proposal is consistent with Rule 17Ad–22(e)(2)(i).[35]

As described above, the MRM Policy outlines the roles and responsibilities of departments, a working group, and management and board committees within the framework of OCC's model risk management practices. The MRM Policy states that the Board has final authority to approve changes to OCC's Risk Models. The MRM Policy also describes the escalation path for issues arising out of routine performance monitoring. The Commission believes that this aspect of the MRM Policy, which defines approval authority and escalation processes within OCC's governance structure, supports the specification of clear and direct lines of responsibility, and, therefore, is consistent with Rule 17Ad–22(e)(2)(v).[36]

C. Consistency With Rules 17Ad–22(e)(4)(vii), (e)(6)(vii) and 17Ad–22(e)(7)(vii)

Rules 17Ad–22(e)(4)(vii), (e)(6)(vii) and (e)(7)(vii) under the Act require a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures

[15] *Id.*
[16] Notice, 83 FR at 2273.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] Notice, 83 FR at 2273, n. 15.
[21] Notice, 83 FR at 2273.
[22] *Id.*
[23] Notice, 83 FR at 2273–74.
[24] Notice, 83 FR at 2274.
[25] *Id.* Violations involving the Chief Compliance Officer must be reported to the head of Internal Audit or a member of the Office of the Executive Chairman.
[26] 15 U.S.C. 78s(b)(2)(C).
[27] 15 U.S.C. 78q–1(b)(3)(F).
[28] 17 CFR 240.17Ad–22(e)(2).
[29] 17 CFR 240.17Ad–22(e)(4)(vii).
[30] 17 CFR 240.17Ad–22(e)(6)(vii).
[31] 17 CFR 240.17Ad–22(e)(7)(vii).
[32] 15 U.S.C. 78q–1(b)(3)(F).
[33] *Id.*
[34] 17 CFR 240.17Ad–22(e)(2)(i) and (v).
[35] 17 CFR 240.17Ad–22(e)(2)(i).
[36] 17 CFR 240.17Ad–22(e)(2)(v).

reasonably designed to, among other things, require the performance of a model validation for its credit risk models, margin system and related models, and liquidity risk models not less than annually, or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to Rule 17Ad–22(e)(3) under the Act.[37]

As described above, the MRM Policy provides for the annual validation of OCC's Risk Models, which include credit risk, margin, and liquidity risk models. Under the MRM Policy, a model validation must include a review of the model's performance, parameters, and assumptions. Further, the MRM Policy clarifies that each model validation must be performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated. Therefore, because the Commission believes that the MRM Policy requires the annual validations of the performance, parameters, and assumptions of OCC's credit risk, margin, and liquidity risk models, the Commission finds that the proposed rule change is consistent with Rules 17Ad–22(e)(4)(vii), (e)(6)(vii), and (e)(7)(vii).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A of the Act[38] and the rules and regulations thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act[39] that the proposed rule change (SR–OCC–2017–011) be, and hereby is, approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[40]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04338 Filed 3–2–18; 8:45 am]

BILLING CODE 8011–01–P

[37] 17 CFR 240.17Ad–22(e)(4)(vii), (e)(6)(vii) and (e)(7)(vii). The requirements of Rule 17Ad–22(e)(4) pertain to the effective identification, measurement, monitoring, and management of credit exposures. 17 CFR 240.17Ad–22(e)(4). The requirements of Rule 17Ad–22(e)(6), which apply to a covered clearing agency that performs central counterparty services, pertain to the covering of a covered clearing agency's credit exposures to its participants. 17 CFR 240.17Ad–22(e)(6). The requirements of Rule 17Ad–22(e)(7) pertain to the effective measurement, monitoring, and management of liquidity risk. 17 CFR 240.17Ad–22(e)(7).

Rule 17Ad–22 defines model validation to mean an evaluation of the performance of each material risk management model used by a covered clearing agency (and the related parameters and assumptions associated with such models), including initial margin models, liquidity risk models, and models used to generate clearing or guaranty fund requirements, performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models or policies being validated. 17 CFR 240.17Ad–22(a)(9).

[38] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82788; File No. SR–NYSEArca–2018–13]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Wilshire Micro-Cap ETF

February 27, 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 February 13, 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 reflect changes to certain representations made in the proposed rule change previously filed with the Commission pursuant to Rule 19b–4 relating to the Wilshire Micro-Cap ETF (the ''Fund''). Shares of the Fund are currently listed and traded on the Exchange under NYSE Arca Rule 5.2(j)(3)–E. 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 Commission has approved the listing and trading on the Exchange of shares (''Shares'') of the Fund, under NYSE Arca Rule 5.2–E(j)(3) (formerly NYSE Arca Equities Rule 5.2(j)(3)), which governs the listing and trading of Investment Company Units.[4] The Fund's Shares are currently listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3).[5] The Fund is a series of the Claymore Exchange-Traded Fund Trust (''Trust'').[6]

PowerShares Exchange-Traded Fund Trust has filed a combined prospectus and proxy statement (the ''Proxy Statement'') with the Commission on Form N–14 describing a ''Plan of Reorganization'' pursuant to which, following approval of the Fund's shareholders, all or substantially all of the assets and all of the stated liabilities included in the financial statements of the Fund would be transferred to a corresponding, newly-formed fund of the PowerShares Exchange-Traded Fund

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). *See* NYSE Arca Rule 5.2–E(j)(3)(A).

[5] The Commission previously approved the listing and trading of the Shares of the Fund. The Exchange filed a proposed rule change relating to the Fund because Fund's underlying index—the Wilshire US Micro-Cap IndexSM (the ''Index'')—did not meet the criteria set forth in Commentaries .01(a)(A)(1) and .01(a)(A)(5) of NYSE Arca Rule 5.2–E(j)(3) applicable to Units based on U.S. indexes or portfolios. *See* Securities Exchange Act Release Nos. 62737 (August 17, 2010), 75 FR 51863 (August 23, 2010) (SR–NYSEArca–2010–64) (Order Approving Proposed Rule Change Relating to Listing of the Wilshire Micro-Cap ETF) (''Approval Order''); 62471 (July 8, 2010) (SR–NYSEArca–2010–64) (Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Relating to Listing of the Wilshire Micro-Cap ETF) (the ''Notice'' and, together with the Approval Order, the ''Releases'').

[6] *See* Claymore Exchange-Traded Fund Trust's registration statement on Form N–1A, dated December 29, 2017 (File Nos. 333–134551; 811–21906).

Trust, described below. According to the Proxy Statement, the investment objective of the Fund will be the same following implementation of the Plan of Reorganization (''Reorganization'').[7] Following shareholder approval and closing of the Reorganization, investors will receive shares of beneficial interest of the PowerShares Wilshire Micro-Cap Portfolio (and cash with respect to any fractional shares held, if any) with an aggregate net asset value equal to the aggregate net asset value of the Shares of the Fund of the Trust calculated as of the close of business on the business day before the closing of the Reorganization.

In this proposed rule change, the Exchange proposes to reflect a change to certain representations made in the proposed rule change previously filed with the Commission pursuant to Rule 19b–4 relating to the Fund, as described above,[8] which changes would be implemented as a result of the Plan of Reorganization.[9]

Wilshire Micro-Cap ETF [10]

The Notice stated the name of the Fund as Wilshire MicroCap ETF. Following the Reorganization, the name of the Fund will be PowerShares Wilshire Micro-Cap Portfolio.

The Notice stated that the Fund is a series of the Claymore Exchange-Traded Fund Trust. Following the Reorganization, the Fund's trust will be PowerShares Exchange-Traded Fund Trust. The Fund's investment adviser is Guggenheim Funds Investment Advisors, LLC. Following the Reorganization, the Fund's investment adviser will be Invesco PowerShares Capital Management LLC.[11]

The Fund's current distributor is Guggenheim Funds Distributors, LLC. Following the Reorganization, the Fund's distributor will be Invesco Distributors, Inc.

The investment objective of the Fund will remain unchanged. In addition, the Index underlying the Fund meets and will continue to meet the representations regarding the Index as described in the Releases.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [12] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest.

PowerShares Exchange-Traded Fund Trust has filed the Proxy Statement describing the Reorganization pursuant to which, following approval of the Fund's shareholders, all assets of the Fund would be transferred to a corresponding fund of the PowerShares Exchange-Traded Fund Trust. This filing proposes to reflect organizational and administrative changes that would be implemented as a result of the Reorganization, including changes to the Fund's names, the trust entity issuing shares of the Fund, the adviser to the Fund and the distributor for the Fund. As noted above, Invesco PowerShares Capital Management LLC is not registered as a broker-dealer but is affiliated with a broker-dealer. Invesco PowerShares Capital Management LLC has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In the event (a) Invesco PowerShares Capital Management LLC becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. According to the Proxy Statement, the investment objective of the Fund will be the same following implementation of the Reorganization. The Exchange believes these changes will not adversely impact investors or Exchange trading. In addition, the Index underlying the Fund meets and will continue to meet the representations regarding the Index as described in the Releases.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[7] *See* registration statement on Form N–14 under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act''), dated November 21, 2017 (File No. 333–221699). The definitive, final version of the Proxy Statement was filed with the Commission pursuant to Rule 497 under the 1933 Act on January 5, 2018.

[8] *See* note 5, *supra.*

[9] The Fund's investment adviser, Guggenheim Funds Investment Advisors, LLC, represents that it will manage the Fund in the manner described in the proposed rule change for the Fund as referenced in note 4, *supra,* and the changes described herein will not be implemented until this proposed rule change is operative.

[10] On October 20, 2017 the PowerShares Exchange-Traded Fund Trust filed with the Commission a pre-effective amendment to its registration statement on Form N–1A under the 1933 Act and under the 1940 Act relating to the Fund (File Nos. 333–147622 and 811–22148). The October 20, 2017 filing is intended to create a new entity to serve as the vehicle into which the Fund will be reorganized through the Plan of Reorganization contained in the Proxy Statement. In addition, the Commission has issued an order granting certain exemptive relief to the PowerShares Exchange-Traded Fund Trust under the 1940 Act. *See* Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812–13386, as amended by Investment Company Release No. 28467) (October 27, 2008) (File No. 812–13491).

[11] Invesco PowerShares Capital Management LLC is not registered as a broker-dealer but is affiliated with a broker-dealer. Invesco PowerShares Capital Management LLC has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In the event (a) Invesco PowerShares Capital Management LLC becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In addition, personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio.

An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, with respect to PowerShares Wilshire Micro-Cap Portfolio, Invesco PowerShares Capital Management LLC, as adviser, and its related personnel, are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[12] 15 U.S.C. 78f (b)(5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will enhance competition and benefit of investors and the marketplace by permitting continued listing and trading of Shares of the Fund following implementation of the changes described above that would follow the Reorganization, which changes would not impact the investment objective of the Fund.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposal would allow the Exchange to reflect organizational and administrative changes to the Fund that would be implemented as a result of the Reorganization, including changes to the Fund's name, the trust entity issuing shares of the Fund, the adviser to the Fund, and the distributor for the Fund. The Exchange represents that the investment objective of the Fund will remain the same, and the Index underlying the Fund meets and will continue to meet the representations regarding the Index as described in the Releases. The Commission believes that the proposal raises no new or novel regulatory issues and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–2018–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2018–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet 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–2018–13 and should be submitted on or before March 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04340 Filed 3–2–18; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82784; File No. SR–IEX–2018–04]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 5.170 To Reflect an Update to a FINRA Rule

February 27, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 21, 2018, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''), [4] and Rule 19b-4 thereunder,[5] Investors Exchange LLC (''IEX'' or ''Exchange'') is filing with the Commission a proposed rule change to amend Rule 5.170 to reflect an update to a rule of the Financial Industry Regulatory Authority (''FINRA'')

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

incorporated by reference therein. The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [6] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[7]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.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 the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.170 to reflect an update to a FINRA rule incorporated by reference therein. On April 7, 2016, the Commission approved a FINRA proposed rule change to adopt new FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook, which addresses accounts opened or established by associated persons of FINRA members at firms other than the firm with which they are associated (the ''FINRA Rule Filing''). As part of the FINRA Rule Filing, FINRA also deleted NASD Rule 3050 and Incorporated New York Stock Exchange (''NYSE'') Rules 407, 407A, and Incorporated NYSE Rule Interpretation 407, each of which governed the obligations of FINRA member firms and their associated persons with respect to transactions effected by such associated persons in accounts established outside of the member firm.[8] Thus FINRA Rule 3210 updated and consolidated into the FINRA Rulebook NASD Rule 3050 and certain Incorporated NYSE rules.[9]

NASD Rule 3050 is incorporated by reference in Exchange Rule 5.170 (Transactions for or by Associated Persons), which provides that ''Members and persons associated with a Member shall comply with NASD Rule 3050 as if such Rule were part of IEX's Rules.''

Accordingly, in view of the FINRA rule change whereby NASD Rule 3050 was consolidated into FINRA Rule 3210, the Exchange proposes to update the reference to NASD Rule 3050 with a reference to FINRA Rule 3210. As proposed, IEX Members would be subject to the requirements of FINRA Rule 3210 rather than NASD Rule 3050. A description of the requirements of FINRA Rule 3210, and the differences between FINRA Rule 3210 and former NASD Rule 3050, are described in the FINRA Rule Filing.[10]

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) [11] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange notes that in approving the FINRA Rule Filing, the Commission stated that it ''believes that the proposal would help protect investors and the public interest by establishing a framework through which a member can adequately supervise securities-related activities of their associated persons at firms other than the one with which they are associated . . . [and that the] rule makes the core supervisory obligation more operationally workable for employer firms.'' The Exchange agrees with the Commission and believes the proposed rule change is also consistent with the Act because it will provide greater clarity to Members regarding IEX's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will result in a burden on intra-market competition since it will apply equally to all Members. Further, as described in the FINRA Rule Filing and the SEC approval order thereof, FINRA Rule 3210 enables FINRA members to design a supervisory system that suits their respective business model and risk profiles. Further, FINRA noted in the FINRA Rule Filing, because FINRA Rule 3210 is consistent with prior NASD Rule 3050, current requirements and longstanding practice, it will not impose additional burdens on FINRA members. The Exchange believes that these factors mitigate against any disparate burden on IEX Members. The Exchange also does not believe that the proposed rule change will result in a burden on inter-market competition, since it is designed to address regulatory requirements rather than competitive considerations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

[8] *See* Exchange Act Release No. 77550 (April 7, 2016), 81 FR 21924 (April 13, 2016) (Order Approving File No. SR–FINRA–2015–029).

[9] *Id.*

[10] *Id.*

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

filing. According to the Exchange, waiver of the operative delay will help to avoid any potential confusion that may otherwise occur on the part of IEX Members as to the requirements of IEX Rule 5.170. The Commission believes that the proposed rule change raises no new or novel issues and that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[18] 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–IEX–2018–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2018–04. This file number should be included in 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 Section, 100 F Street NE, Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its internet website at *www.iextrading.com.* 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–IEX–2018–04 and should be submitted on or before March 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04337 Filed 3–2–18; 8:45 am]

BILLING CODE 8011–01–P

[17] 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).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82782; File No. SR–ICEEU–2017–017]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Concerning the ICE Clear Europe Wind-Down Plan

February 27, 2018.

On December 29, 2017, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–ICEEU–2017–017 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] concerning the ICE Clear Europe Wind-Down Plan. The Proposed Rule Change was published for comment in the **Federal Register** on January 19, 2018.[3] To date, the Commission has not received any comment letters to the Proposed Rule Change.

Section 19(b)(2) of the Exchange Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notice for this Proposed Rule Change is March 5, 2018. The Commission is extending this 45-day time period. In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[5] designates April 19, 2018 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–ICEEU–2017–017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04336 Filed 3–2–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 82497 (Jan. 12, 2018), 83 FR 2847 (Jan. 19, 2018) (SR–ICEEU–2017–017) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82790; File No. SR–NASDAQ–2018–013]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7018(a)

February 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees to modify the credits provided for displayed Designated Retail Orders under Rules 7018(a)(1)–(3).

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on February 1, 2018.[3]

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the credits provided for displayed Designated Retail Orders[4] under Rules 7018(a)(1)–(3) by: (1) Reducing the $0.0034 per share executed credit to $0.0033 per share executed; (2) requiring members to have a ratio of at least 85% liquidity provided through one or more of its [sic] Nasdaq Market Center MPIDs to all volume (adding and removing liquidity) through one or more of its [sic] Nasdaq Market Center MPIDs during the month to qualify for the proposed $0.0033 per share executed credit; and (3) adding a new $0.00325 per share executed credit tier.

Rule 7018 sets forth the fees and credits for use of the order execution and routing services of Nasdaq for securities priced at $1 or more. Rule 7018(a)(1) sets forth the fees and credits for the execution and routing of orders in Nasdaq-listed securities (''Tape C Securities''); Rule 7018(a)(2) sets forth the fees and credits for the execution and routing of securities listed on the New York Stock Exchange LLC (''NYSE'')(''Tape A Securities''), and Rule 7018(a)(3) sets forth the fees and credits for the execution and routing of securities listed on exchanges other than Nasdaq and NYSE (''Tape B Securities'').

A Designated Retail Order is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it as such, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a ''natural person'' can include orders on behalf of accounts that are held in a corporate legal form—such as an Individual Retirement Account, Corporation, or a Limited Liability Company—that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as Designated Retail Orders comply with these requirements. Orders may be designated on an order-by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders.

Currently, under Rules 7018(a)(1)–(3) the Exchange provides a $0.0034 per share executed credit to members for displayed Designated Retail Orders in securities of all three Tapes. There is no qualification criteria that must be met to receive the credit under Rules 7018(a)(1)–(3). The Exchange is proposing to lower the $0.0034 per share executed credit to $0.0033 per share executed for displayed Designated Retail Orders under Rules 7018(a)(1)–(3). The Exchange is also proposing to adopt new qualification criteria for each of the proposed $0.0033 per share executed credits under Rules 7018(a)(1)–(3). Specifically, the Exchange is proposing to require a member to have a ratio of at least 85% liquidity provided through one or more of its Nasdaq Market Center MPIDs to all volume (adding and removing liquidity) through one or more of its Nasdaq Market Center MPIDs during the month to qualify for the $0.0033 per share executed credit under Rules 7018(a)(1)–(3). Last, the Exchange is proposing to add a new credit of $0.00325 per share executed for displayed Designated Retail Orders in securities of all three Tapes under Rules 7018(a)(1)–(3). Like the current $0.0034 per share executed credit, the Exchange is not proposing any qualification criteria that must be met to receive the proposed $0.00325 per share executed credit under Rules 7018(a)(1)–(3).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed $0.0033 per share executed credit is reasonable because it is competitive with the credits of other exchanges. For example, NYSE Arca provides a $0.0033 per share credit for Retail Orders that provide liquidity to the NYSE Arca book.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed fees were initially filed with the Commission as an immediately effective and operative rule change on February 1, 2018. *See* SR–NASDAQ–2018–009. The Exchange is withdrawing SR–NASDAQ–2018–009 and replacing it with this filing, which makes a technical correction and descriptive changes to the proposal.

[4] As defined by Rule 7018.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] The credit is available to ETP Holders, including Market Makers that execute an Average Daily Volume of Retail Orders that provide liquidity during the month that is 0.15% or more of the US CADV. US CADV is defined as ''US CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV.'' *See https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.*

Currently, members are provided a credit of $0.0034 per share executed; under the proposal, the credit will be $0.0033 per share executed.

The Exchange believes that the proposed $0.0033 per share executed credit and the proposed qualification criteria required to receive the credit is [sic] an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members that meet the qualification criteria. The proposed $0.0033 per share executed credit and the proposed qualification criteria will reduce the cost of the incentive to the Exchange while also improving market quality by applying a qualification requirement that a member provide a significant share of its volume in providing liquidity on the Exchange, namely, a ratio of at least 85% liquidity provided through one or more of its Nasdaq Market Center MPIDs to all volume (adding and removing liquidity) through one or more of its Nasdaq Market Center MPIDs. The Exchange has limited funds to apply in the form of incentives, and thus must deploy those limited funds to incentives that it believes will be the most effective at improving market quality in areas that the Exchange determines are in need of improvement. In this instance, reducing the amount of credit provided and applying new qualification criteria, which not all members that currently qualify for the $0.0034 per share executed credit will likely satisfy, should reduce the cost of providing credits for Designated Retail Orders. In turn, the Exchange would be able to apply any funds realized by the proposed changes to other incentives that may improve market quality.

The Exchange believes that the proposed $0.00325 per share executed credit is reasonable because it is competitive with the credits of other exchanges. As noted above, NYSE Arca provides a $0.0033 per share credit for Retail Orders that provide liquidity to the NYSE Arca book.[8] Like the Exchange's proposed $0.0033 per share executed credit, NYSE Arca has qualification criteria required of its participants to receive its Retail Order credit. The proposed $0.00325 per share executed credit will not have any such requirements. Thus, the lower credit reflects the absence of additional market-improving behavior required to receive the credit.

The Exchange believes that $0.00325 per share executed credit is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit and criteria to all similarly situated members. Like the current credit, the Exchange will not require a member to meet any qualification criteria to receive the credit. As a consequence, members will continue to have the opportunity to receive a significant credit for such orders, which the Exchange believes will also continue to provide incentive to members to enter such beneficial orders. In this regard, the Exchange notes that displayed liquidity promotes price discovery and retail orders often represent investors with long-term investment horizons.

Last, the Exchange notes that the proposed credits, like the current credits provided for Designated Retail Orders, are available for orders that have originated from natural persons only. The Exchange believes that limiting the credit to Designated Retail Orders is an equitable allocation and is not unfairly discriminatory because the credit is designed to attract retail order flow to the Exchange, which also benefits other market participants (including non-natural persons) by providing additional liquidity to the Exchange with which such other market participants may interact. As noted above, displayed liquidity promotes price discovery and retail orders often represent investors with long-term investment horizons, both of which benefit all market participants by providing more liquid markets and a more diverse group of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or credit opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the credits available to members for execution of securities in securities of all three Tapes do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed credits are reflective of the Exchange's desire to allocate credits and rebates to their most efficient use. The Exchange does not believe that proposed changes will reduce the level of Designated Retail Orders provided to the Exchange, but may reduce costs incurred by the Exchange in supporting the incentive. Thus, the proposed changes reflect a balance of targeting the correct level of incentive for the behavior sought. As discussed above, the proposed credits are consistent [sic] the credits provided by other exchanges for retail orders. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9]

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,

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2018–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2018–013. 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–NASDAQ–2018–013, and should be submitted on or before March 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04420 Filed 3–2–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82791; File No. SR–NASDAQ–2018–015]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify IM–5900–7 To Update the Values of, and Permit a Third-Party Provider Selected by Nasdaq to Offer, Certain Complimentary Services Provided to Certain Newly Listing Companies Pursuant to the Rule

February 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 15, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify IM–5900–7, which describes the package of complimentary services provided to certain new listings, to update the value of the services and allow services to be provided either by Nasdaq Corporate Solutions or a third-party service provider selected by Nasdaq.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq offers complimentary services under IM–5900–7 to companies listing on the Nasdaq Global and Global Select Markets in connection with an initial public offering (other than a company listed under IM–5101–2), upon emerging from bankruptcy, in connection with a spin-off or carve-out from another company, or in conjunction with a business combination that satisfies the conditions in Nasdaq IM–5101–2(b) (''Eligible New Listings'') and to companies (other than a company listed under IM–5101–2) switching their listing from the New York Stock Exchange (''NYSE'') to the Global or Global Select Markets (''Eligible Switches'').[3] Nasdaq believes that the complimentary service program offers valuable services to newly listing companies, designed to help ease the transition of becoming a public company or switching markets, makes listing on Nasdaq more attractive to these companies, and also provides Nasdaq Corporate Solutions the opportunity to demonstrate the value of its services and forge a relationship with the company. The services offered include a whistleblower hotline, investor relations website, disclosure services for earnings or other press releases, webcasting, market analytic tools, and may include market advisory tools such as stock surveillance.[4]

Nasdaq proposes to update the values of the services contained in IM–5900–7 to their current values. Depending on a company's market capitalization and whether it is an Eligible New Listing or an Eligible Switch, the total revised value of the services provided ranges from $150,000 to $824,000, and one-time development fees of approximately $5,000 are waived.[5]

[3] *See* Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (SR–NASDAQ–2011–122) (adopting IM–5900–7); Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR–NASDAQ–2014–058) (adopting changes to IM–5900–7); Exchange Act Release No. 78806 (September 9, 2016), 81 FR 63523 (September 15, 2016) (SR–NASDAQ–2016–098); Exchange Act Release No. 79366 (November 21, 2016), 81 FR 85663 (November 28, 2016) (SR–NASDAQ–2016–106).

[4] In addition, all companies listed on Nasdaq receive services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk.

[5] The exact values are set forth in proposed IM–5900–7. Under the current rule the stated value of the services provided ranges from $141,000 to $754,000, and one-time development fees of approximately $3,500 are waived. In describing the total value of the services for companies that can

In addition, on January 29, 2018, Nasdaq, Inc., the parent of Nasdaq, announced that it had entered into a definitive agreement to sell the Public Relations Solutions and Digital Media Services units within its Corporate Solutions business.[6] Given that these units include the investor relations website, disclosure services, audio webcasting and whistleblower hotline services offered under Nasdaq Rule IM–5900–7, Nasdaq proposes to modify IM–5900–7 to state that the services will be provided either by Nasdaq Corporate Solutions or a third-party service provider selected by Nasdaq. In the event that Nasdaq Corporate Solutions no longer offers the services, this change will allow Nasdaq to arrange for an alternate provider, such as the purchaser of these units.[7]

Finally, Nasdaq proposes to: (i) Update the preamble of IM–5900–7 to reflect the expiration of a transitional period that previously allowed companies listed at the time of changes to the complimentary services package in 2016 to choose to receive the package in effect at the time of their listing or the revised package; and (ii) clarify that the services described in IM–5900–7(a) are the only corporate solutions services offered to companies, to the extent they qualify pursuant to the rule. All companies will continue to receive additional services, such as Nasdaq Online and the Market Intelligence Desk, on an equal basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Sections 6(b)(4),[9] 6(b)(5),[10] and 6(b)(8),[11] in particular, in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between issuers, and that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nasdaq faces competition in the market for listing services,[12] and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition. All similarly situated companies are eligible for the same package of services and the eligibility of companies for services is not changing under this proposed rule change. The Commission has previously indicated pursuant to Section 19(b) of the Act [13] that updating the values of the services within the rule is necessary,[14] and Nasdaq does not believe this update has an effect on the allocation of fees nor does it permit unfair discrimination, as issuers will continue to receive the same services. Further, this update will enhance the transparency of Nasdaq's rules and the value of the services it offers companies, thus promoting just and equitable principles of trade. As such, the proposed rule change is consistent with the requirements of Section 6(b)(4) and (5) of the Act.

Nasdaq believes that the proposed change to allow services to be provided by third-party providers, instead of an affiliated service provider, reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) in furtherance of the purposes of the Act. Specifically, Nasdaq believes that the current competitive environment for listings necessitates that it continue to offer services described in IM–5900–7 through a third-party service provider if its affiliate no longer offers those services. Further, Nasdaq believes that the ability to select the third-party providers of these services will enable it to select partners Nasdaq believes will provide quality service to listed companies and make adjustments if that quality is not maintained.[15] While this may disadvantage third-party providers that are not selected, the impact on competition among service providers is expected to remain small, as it is today where Nasdaq Corporate Solutions provides the services directly,[16] and does not impose an inappropriate burden on competition because issuers are not forced or required to utilize the complimentary products and services and other service providers can choose to offer their own complimentary services to issuers.

Nasdaq notes that the proposed change to allow third-party service providers does not affect the Commission's prior conclusion that offering these services is an equitable allocation of reasonable dues, fees, and other charges among exchange members and issuers and other persons using its facilities and that the rule is designed to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between issuers, consistent with Sections 6(b)(4) and 6(b)(5) of the Act because the underlying services will not change and all eligible companies will be given the identical choice of service providers.

Nasdaq believes that clarifying that the services described in IM–5900–7(a) are the only corporate solutions services offered to companies to the extent they qualify pursuant to the rule [17] is

select more than one market advisory tool, Nasdaq presumes that a company would use stock surveillance, which has an approximate retail value of $56,000 as revised ($51,000 previously), and global targeting, which has an approximate retail value of $44,000 as revised ($40,000 previously). A company using the stock surveillance tool would be unlikely also to use the monthly ownership analytics and event driven targeting because there is considerable overlap between these services. Companies could, of course, select different combinations of the four offered services that do not overlap, but these other combinations would have lower total approximate retail values. *See* Exchange Act Release No. 78392 (July 22, 2016), 81 FR 49705, 49706 n.10 (July 28, 2016) (Notice of Filing for SR–NASDAQ–2016–098).

[6] See *http://www.globenewswire.com/news-release/2018/01/29/1313528/0/en/West-Corporation-Agrees-to-Acquire-Nasdaq-s-Public-Relations-Solutions-and-Digital-Media-Services-Businesses.html*. This transaction is expected to close in the second quarter of 2018.

[7] Upon completion of the announced transaction, the purchaser of the whistleblower hotline, investor relations website, disclosure and audio webcasting services will be expected to provide those services under IM–5900–7 pursuant to an exclusive agreement, subject to meeting specific service level commitments. Nasdaq Corporate Solutions is expected to continue to provide the market analytic and market advisory tools, although under the proposed rule change Nasdaq could instead select a third party provider for these services in the future.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(4).

[10] 15 U.S.C. 78f(5).

[11] 15 U.S.C. 78f(8).

[12] The Justice Department has noted the intense competitive environment for exchange listings. *See* "NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit" (May 16, 2011), available at *http://www.justice.gov/atr/public/press_releases/2011/271214.htm*.

[13] 15 U.S.C. 78s(b).

[14] *See* Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR–NASDAQ–2014–058) (footnote 39 and accompanying text: "We would expect Nasdaq, consistent with Section 19(b) of the Act, to periodically update the retail values of services offered should they change. This will help to provide transparency to listed companies on the value of the free services they receive and the actual costs associated with listing on Nasdaq.")

[15] Nasdaq expects that following the announced transaction it will initially rely on the purchaser of the whistleblower hotline, investor relations website, disclosure and audio webcasting services as its selected third-party provider, subject to that provider meeting specific service level commitments.

[16] *See* Exchange Act Release No. 65963, 76 FR at 79266–67.

[17] All companies listed on Nasdaq receive certain services from Nasdaq on an equal basis, including Nasdaq Online and the Market Intelligence Desk.

consistent with Section 6(b)(5) of the Act. Nasdaq represents, and this proposed rule change will help ensure, that individual listed companies are not given specially negotiated packages of products or services to list, or remain listed, which the Commission has previously stated would raise unfair discrimination issues under the Act.[18]

Finally, Nasdaq notes that the proposed update to the preamble of IM–5900–7 to reflect the expiration of old transitional periods is consistent with Section 6(b)(5) of the Act because it will clarify the rule without making any substantive change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As noted above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. The proposed rule changes reflect that competition, but do not impose any burden on the competition with other exchanges.

Nasdaq also does not believe that allowing a third-party selected by Nasdaq to provide certain services will impose any burden on competition not necessary or appropriate in furtherance of the Act. Such selection will allow Nasdaq to select third-party service providers that it believes will provide quality service to listed companies and make adjustments if that quality is not maintained. Multiple third-party vendors offer similar services and listed companies are not required to accept any discounted products and services as a condition to listing. Nasdaq-listed companies are free to purchase similar products and services from other vendors, or not to use any such products and services, instead of accepting the products and services offered by the Exchange. Other vendors can also choose to offer their own complimentary packages to compete with Nasdaq's offering. Further, complimentary services are only available to a company for either two or four years. Thus, Nasdaq does not believe that the proposed rule change will adversely impact competition for such products and services in a manner not necessary or appropriate in furtherance of the purposes of the Act.

[18] *See* Exchange Act Release No. 79366, 81 FR 85663 at 85665 (citing Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE–2011–20)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [21] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [22] 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 accurate values of the complimentary services can immediately be reflected in Nasdaq's rules and so that Nasdaq can rely upon a third-party service provider if it chooses to do so. Because waiver of the operative delay would increase transparency in the Exchange's rules by allowing the Exchange to immediately update the current market values of the complimentary services it provides to certain newly listing companies, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] 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).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2018–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2018–015. 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 such 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–NASDAQ–2018–015, and should be submitted on or before March 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04419 Filed 3–2–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33037; File No. 812–14773]

TriplePoint Venture Growth BDC Corp., et al.

February 28, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and under rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a business development company (''BDC'') and certain closed end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds and accounts.

APPLICANTS: TriplePoint Venture Growth BDC Corp. (the ''Company''); TPVG Variable Funding Company LLC and TPVG Investment LLC (collectively, the ''Existing Company Subsidiaries''); TPVG Advisers LLC (the ''BDC Adviser''), on behalf of itself and its successors;[1] and TriplePoint Capital LLC (''TriplePoint''), TriplePoint Financial LLC, TPF Funding 1 LLC, TriplePoint Ventures 5 LLC, and TPC Credit Partners 3 LLC (collectively, with TriplePoint, the ''TPC Companies'').

FILING DATES: The application was filed on May 10, 2017, and amended on November 8, 2017.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 26, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549–1090. Applicants, 2755 Sand Hill Road, Suite 150, Menlo Park, CA 94025.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Robert H. Shapiro, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company, a Maryland corporation, is organized as a closed-end management investment company that has elected to be regulated as a BDC under section 54(a) of the Act.[2] The Company's Objectives and Strategies[3] are to maximize total return to shareholders primarily in the form of current income and, to a lesser extent, capital appreciation, by primarily lending to venture growth stage companies focused in technology, life sciences and other high growth industries. The Company has a five-member board of directors (the ''Board''), three of whom are not ''interested persons'' as defined in section 2(a)(19) of the Act (the ''Non-Interested Directors'').

2. TPVG Variable Funding Company LLC, Delaware limited liability company, is a wholly-owned subsidiary of the Company established for utilizing the Company's revolving credit facility.

3. TPVG Investment LLC, a Delaware limited liability company, is a wholly-owned subsidiary of the Company established for holding certain of the Company's investments.

4. TriplePoint, a Delaware limited liability company, is a global financing provider. TriplePoint is exempt from registration under the Act pursuant to section 3(c)(7) of the Act.

5. Each of TriplePoint Financial LLC, TPF Funding 1 LLC, and TriplePoint Ventures 5 LLC is a Delaware limited liability company, a wholly-owned subsidiary of TriplePoint and exempt from registration under the Act pursuant to section 3(c)(7) of the 1940 Act.

6. TPC Credit Partners 3 LLC, a Delaware limited liability company, is a majority-owned subsidiary of TriplePoint and is exempt from registration under the Act pursuant to section 3(c)(7) of the 1940 Act.

7. The BDC Adviser, a Delaware limited liability company, is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The BDC Adviser is a wholly-owned subsidiary of TriplePoint. The BDC Adviser serves as investment adviser to the Company.

8. The TPC Companies, from time to time, may hold various financial assets in a principal capacity (together, in such capacity, ''Existing TPC Proprietary Accounts'' and together with any Future TPC Proprietary Account (as defined below), the ''TPC Proprietary Accounts'').

9. Applicants seek an order (''Order'') to permit a Regulated Fund[4] and one or more other Regulated Funds and/or one or more Affiliated Funds[5] to participate

[24] 17 CFR 200.30–3(a)(12).

[1] The term ''successor,'' as applied to each Adviser, is limited to an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

[2] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[3] ''Objectives and Strategies'' means a Regulated Fund's (defined below) investment objectives and strategies, as described in the Regulated Fund's registration statement on Form N–2, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the ''Securities Act'') or under the Securities Exchange Act of 1934, and the Regulated Fund's reports to shareholders.

[4] ''Regulated Fund'' means the Company and any Future Regulated Fund. ''Future Regulated Fund'' means any closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the Co-Investment Program. The term ''Adviser'' means (a) the BDC Adviser and (b) any future investment adviser that controls, is controlled by or is under common control with TriplePoint and is registered as an investment adviser under the Advisers Act.

[5] ''Affiliated Fund'' means the Existing TPC Proprietary Accounts, any Future TPC Proprietary Accounts and any Future Affiliated Funds. ''Future TPC Proprietary Account'' means any direct or indirect, wholly- or majority-owned subsidiary of TriplePoint that is formed in the future and, from time to time, may hold various financial assets in a principal capacity. ''Future Affiliated Fund'' means any entity (a) whose investment adviser is an Adviser, (b) that would be an investment

Continued

in the same investment opportunities through a proposed co-investment program (the ''Co-Investment Program'') where such participation would otherwise be prohibited under either or both of sections 17(d) and 57(a)(4) and rule 17d–1 by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser negotiates terms in addition to price; [6] and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (''Follow-On Investments''). ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub, defined below) participated together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[7]

10. Applicants state that any of the Regulated Funds may, from time to time, form one or more Wholly-Owned Investment Subs.[8] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d-1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Regulated Fund's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

11. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment (''Available Capital''), and other pertinent factors applicable to that Regulated Fund. Before relying on the requested Order, the Board of each Regulated Fund, including the Non-Interested Directors, will have determined that it is in the best interests of the Regulated Fund to participate in the Co-Investment Transactions.[9]

12. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act (''Eligible Directors''), and the ''required majority,'' as defined in section 57(o) of the Act (''Required Majority'') [10] will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

13. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

14. Applicants acknowledge that some of the Affiliated Funds may not be funds advised by an Adviser because they are TPC Proprietary Accounts. Applicants do not believe these TPC Proprietary Accounts should raise issues under the conditions of this Application because the allocation policies and procedures of the Advisers provide that investment opportunities are offered to client accounts (including the Regulated Funds) before they are offered to TPC Proprietary Accounts.

15. In accordance with each Adviser's allocation policies and procedures, Potential Co-Investment Transactions will be offered to, and allocated among, the Affiliated Funds and Regulated Funds based on each client's particular Objectives and Strategies and in accordance with the conditions. If the aggregate amount recommended by the Advisers to be invested by the Affiliated Funds (not including the TPC Proprietary Accounts) and the Regulated Funds in a Potential Co-Investment Transaction were equal to or more than the amount of the investment opportunity, a TPC Proprietary Account would not participate in the investment

company but for section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

[6] The term ''private placement transactions'' means transactions in which the offer and sale of securities by the issuer are exempt from registration under the Securities Act.

[7] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[8] The term ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Fund (and, in the case of an SBIC Subsidiary (defined below), maintain a license under the SBA Act (defined below) and issue debentures guaranteed by the SBA (defined below)); (iii) with respect to which the Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. Each of the Existing Company Subsidiaries is a Wholly-Owned Investment Sub. ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the ''SBA'') to operate under the Small Business Investment Act of 1958, as amended, (the ''SBA Act'') as a small business investment company.

[9] The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

[10] In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

opportunity. If the aggregate amount recommended by the Advisers to be invested by the Affiliated Funds (not including the TPC Proprietary Accounts) and the Regulated Funds in a Potential Co-Investment Transaction were less than the amount of the investment opportunity, a TPC Proprietary Account would then have the opportunity to participate in the Potential Co-Investment Transaction in a principal capacity.

16. Currently, there are no existing Regulated Funds other than the Company or Affiliated Funds other than TPC Proprietary Accounts. As a result, the Company and the TPC Proprietary Accounts will be able to comply with the conditions, including condition 1, because the conditions require that the TPC Proprietary Accounts will only be permitted to invest in a Potential Co-Investment Transaction to the extent that the aggregate demand from the Regulated Funds and the other Affiliated Funds is less than the total investment opportunity. Once another Regulated Fund or Affiliated Fund (other than a TPC Proprietary Account) exists, the Company will no longer have a right of first refusal and the applicants will continue to comply with the conditions, including condition 1.

17. No Non-Interested Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than through share ownership in one of the Regulated Funds.

18. Applicants also represent that if an Adviser or its principals, or any person controlling, controlled by, or under common control with an Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25% of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as required under condition 14.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the Regulated Funds and Affiliated Funds could be deemed to be a person related to each Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time an Adviser or an Affiliated Fund considers a Potential Co-Investment Transaction for an Affiliated Fund or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for such Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) The Potential Co-Investment Transaction is consistent with:

(A) The interests of the shareholders of the Regulated Fund; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of other Regulated Funds or Affiliated Funds; *provided that,* if any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for

election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of the Affiliated Fund or a Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, the Affiliated Funds or the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[11] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Fund, or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8. (a) If any Affiliated Fund or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding

[11] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which the Regulated Fund already holds investments.

investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Adviser to be invested by the Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the other participating Regulated Funds and the Affiliated Funds in the same transaction, exceeds the amount of the opportunity;

then the amount invested by each such party will be allocated among them pro rata based on each participant's Available Capital for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee [12] (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the agreement between the Adviser and the Regulated Fund or Affiliated Fund.

14. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable state law affecting the Board's composition, size or manner of election.

15. The TPC Proprietary Accounts will not be permitted to invest in a Potential Co-Investment Transaction except to the extent the demand from the Regulated Funds and the other Affiliated Funds is less than the total investment opportunity.

16. Each Adviser will maintain written policies and procedures reasonably designed to ensure compliance with the foregoing conditions. These policies and procedures will require, among other things, that each Adviser will be notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies of any Regulated Fund it advises and will be given sufficient information to make its independent determination and recommendations under conditions 1, 2(a), 7 and 8.

17. Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–04370 Filed 3–2–18; 8:45 am]

BILLING CODE 8011–01–P

[12] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

DEPARTMENT OF STATE

[Public Notice: 10342]

Notice of Determinations; Additional Culturally Significant Object Imported for Exhibition Determinations: ''Like Life: Sculpture, Color, and the Body'' Exhibition

SUMMARY: On January 19, 2018, notice was published on page 2864 of the **Federal Register** (volume 83, number 13) of determinations pertaining to certain objects to be included in an exhibition entitled ''Like Life: Sculpture, Color, and the Body.'' Notice is hereby given of the following determinations: I hereby determine that a certain additional object to be included in the exhibition ''Like Life: Sculpture, Color, and the Body,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The additional object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the additional exhibit object at The Metropolitan Museum of Art, New York, New York, from on or about March 20, 2018, until on or about July 22, 2018, and at possible additional exhibitions or

venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–04372 Filed 3–2–18; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10339]

International Joint Commission To Make Recommendations on Nutrient Loading and Impacts in Lakes Champlain and Memphremagog

AGENCY: Department of State.

ACTION: Notice.

The International Joint Commission (IJC) has released *initial work plans* relating to the reduction of nutrient loading and the causes of harmful algal blooms (HABs) in the Lake Champlain-Missisquoi Bay and Lake Memphremagog basins. The Governments of Canada and the United States requested that the IJC undertake this work in a *reference* dated October 19, 2017.

The governments have asked the IJC to examine current programs and measures to address high nutrient levels and algal blooms, and make recommendations on how to strengthen these efforts in both lakes. Algal blooms can foul shorelines, degrade water quality, and produce toxins that make people, wildlife and pets sick. As a result, recreational activities and local economies can be impacted.

Though both lakes eventually empty into the St. Lawrence River, they are in separate watersheds. Because of this and other differences between the two systems, the IJC will carry out the work as two distinct projects. The IJC will present its findings and recommendations to governments in fall 2019.

This work will complement existing activities regarding flooding in the Lake Champlain-Richelieu River basin, which are being conducted under a separate *reference* received from governments in September 2016.

To learn more about the review of nutrient loading and impacts in lakes Champlain and Memphremagog, visit *ijc.org/en_/lclm.* Information on the International Lake Champlain-Richelieu River Flooding Study can be found on *ijc.org/en_lcrr.*

If you wish to receive updates regarding the IJC's work on nutrient loadings and impacts in the Lake Champlain-Missisquoi Bay and Lake Memphremagog basins, including notice of opportunities for public comment, please send your contact information by email or regular mail to either secretary of the IJC:

Secretary, Canadian Section, 234 Laurier Avenue West, 22nd Floor, Ottawa, Ontario K1P 6K6, *Commission@ottawa.ijc.org*

Secretary, United States Section, 1717 H Street NW, Suite 835, Washington, DC 20440, *Commission@washington.ijc.org*

The International Joint Commission was established under the Boundary Waters Treaty of 1909 to help the United States and Canada prevent and resolve disputes over the use of the waters the two countries share. Its responsibilities include investigating and reporting on issues of concern when asked by the governments of the two countries.

Charles A. Lawson,

Secretary, U.S. Section, International Joint Commission, Department of State.

[FR Doc. 2018–04319 Filed 3–2–18; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF STATE

[Public Notice 10341]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Visitors to Versailles, 1682–1789'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Visitors to Versailles, 1682–1789,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about April 9, 2018, until on or about July 29, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–04371 Filed 3–2–18; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10340]

Bureau of International Security and Nonproliferation; Determinations Regarding Use of Chemical Weapons by North Korea Under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that the Government of North Korea has used chemical weapons in violation of international law or lethal chemical weapons against its own nationals. The following is notice of sanctions to be imposed as required by law.

DATES: Upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Pamela K. Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 306(a), 307(a), and 307(d) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, as amended (22 U.S.C. 5604(a) and Sec 5605(a)), on February 22, 2018 the Secretary of State determined that the Government of North Korea has used chemical weapons in violation of international law or lethal chemical weapons against its own nationals. As a result, the following sanctions are hereby imposed:

1. *Foreign Assistance:* Termination of assistance to North Korea under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance and food or other agricultural commodities or products.

2. *Arms Sales:* Termination of (a) sales to North Korea under the Arms Export Control Act of any defense articles, defense services, or design and construction services, and (b) licenses for the export to North Korea of any item on the United States Munitions List.

3. *Arms Sales Financing:* Termination of all foreign military financing for North Korea under the Arms Export Control Act.

4. *Denial of United States Government Credit or Other Financial Assistance:* Denial to North Korea of any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the United States Government, including the Export-Import Bank of the United States.

5. *Exports of National Security-Sensitive Goods and Technology:* Prohibition on the export to North Korea of any goods or technology on that part of the control list established under section 2404(c)(1) of the Appendix to Title 50.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for at least one year and until further notice.

Christopher A. Ford,

Assistant Secretary of State for International Security and Nonproliferation.

[FR Doc. 2018–04320 Filed 3–2–18; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0029]

Request for Comments on the Renewal of a Previously Approved Information Collection: Quarterly Readiness of Strategic Seaport Facilities Reporting

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected will be used by MARAD and Department of Defense (DoD) personnel to evaluate strategic commercial seaport readiness to meet contingency military deployment needs and make plans for the use of this capability to meet national emergency requirements. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before May 4, 2018.

ADDRESSES: You may submit comments [identified by Docket No. DOT–MARAD–2018–0029] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Nuns Jain, (757) 322–5801, Maritime Administration, U.S. Department of Transportation, 7737 Hampton Boulevard, Building 19, Suite 300, Norfolk, VA 23505 or Email: *nuns.jain@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Quarterly Readiness of Strategic Seaport Facilities Reporting.

OMB Control Number: 2133–0548.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: Pursuant to the Defense Production Act of 1950, as amended (Pub. L. 111–67), E.O. 13603, E.O. 12656 and 46 CFR part 340, MARAD works with the DoD to ensure national defense preparedness. Accordingly, MARAD issues Port Planning Orders (PPOs) to Department of Defense-designated Strategic Commercial Seaports in order to provide the Department of Defense (DoD) port facilities in support of military deployments during national emergencies. The collection of quarterly information is necessary to validate the port's ability to provide the PPO delineated facilities to the DoD within the PPO delineated time frame.

Quarterly reports will seek information related to berthing capability, staging and general availability of the port by readiness hours.

Respondents: Strategic Commercial Seaports who have been designated by the Commander, Military Surface Deployment and Distribution Command (SDDC) and who have been issued a PPO by MARAD.

Estimated Number of Respondents: 16.

Estimated Number of Responses: 4.

Estimated Hours per Response: 1 hour.

Annual Estimated Total Annual Burden Hours: 64.

Frequency of Response: Quarterly.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.) * * *

By order of the Maritime Administrator.

Dated: February 27, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–04356 Filed 3–2–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0028]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LOLAL OCEAN EXPLORER; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 4, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0028. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LOLAL OCEAN EXPLORER is:

— INTENDED COMMERCIAL USE OF VESSEL: ''Sightseeing cruises''
— GEOGRAPHIC REGION: ''Florida''

The complete application is given in DOT docket MARAD–2018–0028 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121) * * *

By Order of the Maritime Administrator.

Dated: February 27, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–04355 Filed 3–2–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Advisory Committee on Homeless Veterans will be held April 11–12, 2018. The meeting sessions will take place at the Department of Veterans Affairs Central Office at 810 Vermont Avenue NW, Sonny Montgomery Conference Room 230, Washington, DC 20420. The meeting sessions are open to the public.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of VA in assisting Veterans at-risk and experiencing homelessness. The Committee shall assemble and review information related to the needs of homeless Veterans and provide advice on the most appropriate means of providing assistance to that subset of the Veteran population. The Committee will make recommendations to the Secretary regarding such activities.

On Wednesday, April 11 and Thursday, April 12, the Committee will convene an open session at the Department of Veterans Affairs Central Office at 810 Vermont Avenue NW, Sonny Montgomery Conference Room 230, Washington, DC 20420 from 8:00 a.m. to 5:00 p.m. The agenda will include briefings from officials at VA and other agencies regarding services for homeless Veterans. The Committee will also receive a briefing on the annual report that was developed after the last meeting of the Advisory Committee on Homeless Veterans and will then discuss topics for its upcoming annual report and recommendations to the Secretary of Veterans Affairs.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments on issues affecting homeless Veterans for review by the Committee to Mr. Anthony Love, Designated Federal Officer, VHA Homeless Programs Office (10NC1), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC, or via email at *Anthony.Love@va.gov.*

Members of the public who wish to attend should contact Alexandra Logsdon and/or Anthony Love of the Veterans Health Administration, Homeless Programs Office no later than March 30, 2018, at *Alexandra.Logsdon@va.gov* (202)–632–7146 or *Anthony.Love@va.gov* (202) 461–1902 to provide their name, professional affiliation, address, and phone number. There will also be a call-in number at 1–800–767–1750; Access Code: 53308#. Attendees who require reasonable accommodation should state so in their requests. Please arrive to VA Central Office at least 20 minutes before the meeting start time to clear the building security checkpoint.

Dated: February 28, 2018.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–04399 Filed 3–2–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 83 Monday,

No. 43 March 5, 2018

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Marine Structure Maintenance and Pile Replacement in Washington; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 170919913–8186–01]

RIN 0648–BH27

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Marine Structure Maintenance and Pile Replacement in Washington

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to conducting construction activities related to marine structure maintenance and pile replacement at facilities in Washington, over the course of five years (2018–2023). As required by the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than April 4, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0032, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0032,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the Navy's construction activities related to marine structure maintenance and pile replacement at facilities in Washington.

We received an application from the Navy requesting five-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level A and Level B harassment incidental to impact and vibratory pile driving. Please see ''Background'' below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the ''Proposed Mitigation'' section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations, and for any subsequent LOAs. As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule regarding Navy construction activities. These measures include:

- Required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities.
- Shutdown of construction activities under certain circumstances to avoid injury of marine mammals.
- Soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are issued, and notice is provided to the public.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of

pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the proposed action qualifies to be categorically excluded from further NEPA review.

Information in the Navy's application and this notice collectively provide the environmental information related to proposed issuance of these regulations and subsequent incidental take authorization for public review and comment. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the request for incidental take authorization.

Summary of Request

On July 24, 2017, we received an adequate and complete request from the Navy requesting authorization for take of marine mammals incidental to construction activities related to marine structure maintenance and pile replacement at six Naval installations in Washington inland waters. On August 4, 2017 (82 FR 36359), we published a notice of receipt of the Navy's application in the **Federal Register**, requesting comments and information related to the request for thirty days. We received comments from Whale and Dolphin Conservation (WDC). The comments received from WDC were considered in development of this proposed rule and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

The Navy proposes to conduct construction necessary for maintenance of existing in-water structures at the following facilities: Naval Base Kitsap (NBK) Bangor, NBK Bremerton, NBK Keyport, NBK Manchester, Zelatched Point, and Naval Station Everett (NS Everett). These repairs would include use of impact and vibratory pile driving, including installation and removal of steel, concrete, plastic, and timber piles. Hereafter (unless otherwise specified or detailed) we use the term ''pile driving'' to refer to both pile installation and pile removal. The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in harassment of marine mammals.

The Navy requests authorization to take individuals of 10 species by Level B harassment. Take by Level A harassment was requested only for the harbor seal. The proposed regulations would be valid for five years (2018–2023).

Description of the Specified Activity

Overview

Maintaining existing wharfs and piers is vital to sustaining the Navy's mission and ensuring readiness. To ensure continuance of necessary missions at the six installations, the Navy must conduct annual maintenance and repair activities at existing marine waterfront structures, including removal and replacement of piles of various types and sizes. The Navy refers to this program as the Marine Structure Maintenance and Pile Replacement (MPR) program. Exact timing and amount of necessary in-water work is unknown, but the Navy estimates replacing up to 822 structurally unsound piles over the 5-year period, including individual actions currently planned and estimates for future marine structure repairs. Construction will include use of impact and vibratory pile driving, including removal and installation of steel, concrete, plastic, and timber piles. Aspects of construction activities other than pile driving are not anticipated to have the potential to result in incidental take of marine mammals because they are either above water or do not produce levels of underwater sound with likely potential to result in marine mammal disturbance.

The Navy's waterfront inspection program prioritizes deficiencies in marine structures and plans those maintenance and repairs for design and construction. The Navy's proposed activities include individual projects (where an existing need has been identified and funds have been requested) and estimates for emergent or emergency repairs. The latter are also referred to as contingency repairs. Estimates of activity levels for contingency repairs are based on Navy surveys of existing structures, which provide assessments of structure condition and estimates of numbers of particular pile types that may require replacement (at an assumed 1:1 ratio) over the 5-year duration of these proposed regulations. Additional allowance is made for the likelihood that future waterfront inspections will reveal unexpected damage, or that damage caused by severe weather events and/or incidents caused by vessels will result in need for additional contingency repairs. This regional programmatic approach to MMPA compliance is expected to result in significantly increased efficiency for both the Navy and NMFS, while satisfying the requirements of the MMPA. The regulations proposed here (and any issued LOAs) would replace multiple project-specific incidental take authorization requests for actions that are small in scale, similar in nature, and located within a similar geographic area. The detailed discussion of planned or anticipated projects provided here and in the Navy's application allow for more comprehensive analysis, while providing a reduction in the time and effort necessary to obtain individual incidental take authorizations. LOAs could be issued for projects conducted at any of the six facilities if they fit within the structure of the programmatic analysis provided herein and are able to meet the requirements described in the regulations.

The Navy would meet with NMFS on an annual basis prior to the start of in-water work windows to review upcoming projects, required monitoring plans, and the results of relevant projects conducted in the preceding in-water work window. The intent is to utilize lessons learned to better inform potential effects of future MPR activities and in any follow-up consultations.

Dates and Duration

The proposed regulations would be valid for a period of five years (2018–2023). The specified activities may occur at any time during the five-year period of validity of the proposed regulations, subject to existing timing restrictions. These timing restrictions, or in-water work windows, are typically

designed to protect fish species listed under the Endangered Species Act (ESA). For NBK Bangor and Zelatched Point (located in Hood Canal), in-water work may occur from July 16 through January 15. At the remaining four facilities (located in Puget Sound), in-water work may occur from July 16 through February 15.

For many projects the design details are not known; thus, it is not possible to state the number of pile driving days that will be required. Days of pile driving at each site were based on the estimated work days using a slow production rate, *i.e.,* one pile removed per day and one pile installed per day for contingency pile driving and an average production rate of six piles per day for fender pile replacement. These conservative rates give the following estimates of total days at each facility over the 5-year duration: NBK Bangor, 119 days; Zelatched Point, 20 days; NBK Bremerton, 168 days; NBK Keyport, 20 days; NBK Manchester, 50 days; and NS Everett, 78 days. These totals include both extraction and installation of piles, and represent a conservative estimate of pile driving days at each facility. In a real construction situation, pile driving production rates would be maximized when possible and actual daily production rates may be higher, resulting in fewer actual pile driving days.

Specified Geographical Region

The six installations are located within the inland waters of Washington State. Two facilities are located within Hood Canal, while the remainder are located within Puget Sound. Please see Figure 1–1 of the Navy's application for a regional map. For full details regarding the specified geographical region, please see section 2 of the Navy's application. The region is affected by high amounts of runoff from the Fraser River, which stimulates primary productivity, carrying nutrients northwards past Vancouver Island year-round. Puget Sound is one of the largest estuaries in the United States and is a place of great physical and ecological complexity and productivity. The average surface water temperature is 12.8 °C in summer and 7.2 °C in winter (Staubitz *et al.,* 1997), but surface waters frequently exceed 20°C in the summer and fall. With nearly six million people (doubled since the 1960s), Puget Sound is also heavily influenced by human activity.

NBK Bangor is located on the Hood Canal, a long, narrow, fjord-like basin of western Puget Sound. Please see Figure 1–2 of the Navy's application. Oriented northeast to southwest, the portion of the canal from Admiralty Inlet to a large bend, called the Great Bend, at Skokomish, Washington, is 84 kilometers (km) long. East of the Great Bend, the canal extends an additional 15 mi to Belfair. Throughout its 108-km length, the width of the canal varies from 1.6 to 3.2 km and exhibits strong depth/elevation gradients. Hood Canal is characterized by relatively steep sides and irregular seafloor topography. In northern Hood Canal, water depths in the center of the waterway near Admiralty Inlet vary between 91 and 128 meters (m). As the canal extends southwestward toward the Olympic Mountain Range and Thorndyke Bay, water depth decreases to approximately 49 m over a moraine deposit. This deposit forms a sill across the canal in the vicinity of Thorndyke Bay, which limits seawater exchange with the rest of Puget Sound. The NBK Bangor waterfront occupies approximately 8 km of the shoreline within northern Hood Canal (1.7 percent of the entire Hood Canal coastline) and lies just south of the sill feature. Zelatched Point is located on the southwestern end of the Toandos Peninsula on Dabob Bay within Hood Canal. Please see Figure 1–6 of the Navy's application. It is approximately 6.4 km west of the NBK Bangor waterfront on the western facing portion of Toandos Peninsula. Dabob Bay is a 183-m deep fjord-like basin with a 101-m sill at its entrance. It runs north 19 km from its junction with Hood Canal. The width of the Dabob Bay is approximately 4.5 km at the Zelatched Point pier.

NBK Bremerton is located on the north side of Sinclair Inlet in southern Puget Sound. Please see Figure 1–3 of the Navy's application. Sinclair Inlet is located off the main basin of Puget Sound and is about 6.9 long and 1.9 km wide. The inlet is connected to the main basin through Port Orchard Narrows and Rich Passage. Another relatively narrow waterway, Port Washington Narrows, connects Sinclair Inlet to Dyes Inlet. In-water structures, shoreline fill, and erosion protection at NBK Bremerton have resulted in a shoreline geometry and character that is quite different from undisturbed shorelines in Puget Sound. Bathymetry near existing piers and in turning basins immediately offshore has been altered by significant dredging to accommodate aircraft carriers and other Navy vessels. Water depths range from 12 to 14 m, increasing to 14 to 15 m in dredged berthing areas. West of the project sites, further into the inlet, depths gradually decrease to less than 9 m.

NBK Keyport is located on the eastern shore of the Kitsap Peninsula, approximately 24 km due west of Seattle and 16 km north of the city of Bremerton. Please see Figure 1–4 of the Navy's application. Keyport Pier is located along the shores of Liberty Bay, which flows into Port Orchard Bay and then through the narrow Agate Passage to the northeast and Port Orchard Narrows to the south. Liberty Bay and waters adjacent to Keyport are relatively shallow with water depths no greater than 30 m. Water depths increase from the northwest to south/southeast and are greatest in the southern portion of the Port Orchard Narrows.

NBK Manchester is located on Orchard Point, approximately 6.4 km due east of Bremerton. Please see Figure 1–5 of the Navy's application. The installation is bounded by Clam Bay to the northwest, Rich Passage to the northeast, and Puget Sound to the east. NBK Manchester piers are located on the north side of Orchard Point and in a small embayment open on the south side of Orchard Point. In Clam Bay, the bathymetry is gently sloping with depths in the outer portions of the bay of approximately 5.5 m below mean lower low water (MLLW). Depths off Orchard Point drop off dramatically to 18 m below MLLW approximately 150 m from shore and 90 m below MLLW 1.6 km offshore. Rich Passage is a shallow sill, less than 21 m deep.

NS Everett is located in Port Gardner Bay in Puget Sound's Whidbey Basin. Please see Figure 1–7 of the Navy's application. To the west of the installation is the channelized mouth of the Snohomish River bounded by Jetty Island, which is composed of sediment from maintenance dredging and acts as a breakwater for the northwest area along the installation's waterfront. Jetty Island separates Port Gardner Bay and Possession Sound from the Snohomish River channel. The mouth of the Snohomish River channel is a historically industrialized area of highly modified shorelines and dredged waterways that forms a protected harbor within Port Gardner Bay. East of Jetty Island lies the Snohomish River estuary, consisting of a series of interconnected sloughs that flow through the lowlands east and north of the river's main channel. Water depths in Possession Sound range from about 9 m near the industrialized shoreline in Port Gardner to 180 m in mid-channel.

Detailed Description of Activities

As described above, the Navy has requested incidental take regulations for its MPR program, which includes maintenance and repair activities at marine waterfront structures at six installations within Washington inland

waters. In order to address identified deficiencies in existing marine structures at the six facilities, the Navy proposes to replace up to 822 structurally unsound piles over the 5-year period using both impact and vibratory pile driving. Existing marine structures at the six facilities are identified in Table 1–2 of the Navy's application. The MPR program includes pile repair, extraction, and installation, all of which may be accomplished through a variety of methods. However, only pile extraction and installation using vibratory and impact pile drivers is expected to have the potential to result in incidental take of marine mammals. Pile repair methods include stubbing, wrapping, pile encapsulation, welding, or coating. These processes do not involve pile driving and are not expected to have the potential to result in elevated noise levels or incidental take of marine mammals. Pile removal may be accomplished via mechanical methods such as cutting/chipping, clamshell removal, or direct pull. Water jetting may also be used to aid in pile installation. Noise levels produced through these activities are not expected to exceed baseline levels produced by other routine activities and operations at the six facilities, and any elevated noise levels produced through these activities are expected to be intermittent, of short duration, and with low peak values. Therefore, only vibratory and impact pile driving are carried forward for further analysis. To minimize underwater noise impacts on marine species, vibratory pile driving will be the primary method used to install new steel piles.

Vibratory hammers, which can be used to either install or extract a pile, contain a system of counter-rotating eccentric weights powered by hydraulic motors, and are designed in such a way that horizontal vibrations cancel out, while vertical vibrations are transmitted into the pile. The pile driving machine is lifted and positioned over the pile by means of an excavator or crane, and is fastened to the pile by a clamp and/or bolts. The vibrations produced cause liquefaction of the substrate surrounding the pile, enabling the pile to be extracted or driven into the ground using the weight of the pile plus the hammer. Impact hammers use a rising and falling piston to repeatedly strike a pile and drive it into the ground. Impact or vibratory driving could occur on any work day within in-water work windows during the period of validity of these proposed regulations.

Steel piles are typically vibratory-driven for their initial embedment depths or to refusal and finished with an impact hammer for proofing or until the pile meets structural requirements, as necessary. Proofing involves striking a driven pile with an impact hammer to verify that it provides the required load-bearing capacity, as indicated by the number of hammer blows per foot of pile advancement. Non-steel piles (concrete, timber, or plastic) are typically impact-driven for their entire embedment depth, in part because non-steel piles are often displacement piles (as opposed to pipe piles) and require some impact to allow substrate penetration. Pile installation can typically take a minute or less to 60 minutes depending on pile type, pile size, and conditions (*i.e.,* bedrock, loose soils, etc.) to reach the required tip elevation.

The most effective and efficient method of pile installation and removal available would be implemented. The method fitting these criteria may vary based on specific project requirements and local conditions. Impact driving, while generally producing higher levels of sound, also minimizes the net amount of active driving time, thus reducing the amount of time during which marine mammals may be exposed to noise. Impact or vibratory pile driving could occur on any day, but would not occur simultaneously. Location-specific pile totals are given in Table 1 and described below. These totals assume a 1:1 replacement ratio; however, the actual number installed may result in a replacement ratio of less than 1:1. Please see Table A–1 of the Navy's application for additional detail regarding expectations for both planned work and possible contingency work.

TABLE 1—PILE TYPES AND MAXIMUM ANTICIPATED NUMBER TO BE REPLACED AT EACH INSTALLATION

Installation	Existing piles to be replaced	Anticipated piles to be installed
NBK Bangor	44 concrete; 75 steel and/or timber	119 steel or concrete.
NBK Bremerton	75 steel and/or timber; 460 timber	100 steel (14-in diameter and sheet piles); 435 concrete.
NBK Keyport	20 steel and/or concrete	20 steel.
NBK Manchester	50 timber and/or plastic	50 concrete, timber, and/or plastic.
Zelatched Point	20 timber	20 steel, concrete, and/or timber.
NS Everett	1 steel, 2 concrete, and 75 timber	1 steel and 77 concrete and/or timber.

Steel piles would be a maximum size of 36-inch (in) diameter except at NBK Bremerton where they would be 14-in diameter. Concrete piles will be a maximum of 24-in diameter and timber/plastic piles will be a maximum of 18-in diameter. For purposes of analysis, it is assumed that any unknown pile type would be steel, since this would give a worst-case scenario in terms of noise levels produced. All concrete, timber, and plastic piles are assumed to be installed entirely by impact pile driver, and all steel piles are assumed to require some use of an impact driver. This is a conservative assumption, as all steel piles would be initially driven with a vibratory driver until they reach a point of refusal (where substrate conditions make use of a vibratory hammer ineffective) or engineering specifications require impact driving to verify load-bearing capacity. Therefore, some steel piles may not in fact require use of the impact driver during installation.

At this time, of 822 piles expected to be installed as replacement piles, 121 have been identified as steel piles. These piles would be installed over the 5-year duration at NBK Bremerton, NBK Keyport, and NS Everett. In addition, another 139 piles that would be installed at NBK Bangor (119) and Zelatched Point (20) have not been identified as to pile type and could be steel, concrete, timber or plastic. For this analysis, it is assumed all 139 of these would be steel piles. Therefore, 260 piles are assumed to be steel, with 100 of these 14-in and the remainder assumed to be 36-in diameter. A total of 435 replacement piles have been identified as concrete (NBK Bremerton). The remaining 127 replacement piles (NBK Manchester and NS Everett) could ultimately be concrete, timber, or plastic, but are assumed for purposes of analysis to be concrete, which is a more conservative noise scenario.

NBK Bangor is the Pacific homeport for the Navy's TRIDENT submarine fleet with the mission to support and maintain a TRIDENT submarine squadron and other ships home-ported or moored at the installation and to maintain and operate administrative and personnel support facilities including security, berthing, messing, and recreational services. NBK Bangor is the only naval installation on the west coast with the specialized infrastructure able to support the TRIDENT program. The specialized infrastructure includes buildings, utilities, and systems used to support missile production shops, missile maintenance, missile component storage, and missile handling cranes, in addition to providing security and operational port facilities.

Pile-supported structures at the NBK Bangor waterfront include: Carderock Pier, Service Pier, Keyport-Bangor (K/B) Dock, Delta Pier, Marginal Wharf, Explosives Handling Wharf #1 (EHW–1), and the Magnetic Silencing Facility (see Figure 1–2 of the Navy's application). Over the 5-year duration, up to 44 piles are anticipated to be replaced at EHW–1 and up to 75 piles could be installed at any of the structures for emergent projects.

Zelatched Point supports test and evaluation operations conducted by the Naval Undersea Warfare Center Keyport within Dabob Bay, and contains a single pier historically used for mooring small craft and float planes during Navy range operations in Dabob Bay (see Figure 1–6 of the Navy's application). Two dolphins are located at the outboard end of the facility, each consisting of three timber piles. Up to 20 piles of any type are anticipated for emergent/emergency repairs during the course of the 5-year duration.

Puget Sound Naval Shipyard and Intermediate Maintenance Facility is the major tenant command of NBK Bremerton. NBK Bremerton contains multiple dry docks, piers, and wharfs and is capable of overhauling and repairing, constructing, deactivating, and dry-docking all types and sizes of ships. It also serves as the homeport for a nuclear aircraft carrier and other Navy vessels.

There are 13 pile-supported structures located at NBK Bremerton (see Figure 1–3 of the Navy's application). Two pile repair and replacement projects are planned for Piers 4 and 5. The project at Pier 4 would involve replacing missing or broken timber fender piles with 80 steel fender piles. Steel piles would be up to 14-in diameter and installed with a vibratory driver and only impact driven if they cannot be advanced to tip elevation using a vibratory driver. Prior projects at Piers 4 and 5 indicate steel piles will be able to be vibratory driven. However, some impact driving may be necessary. The project at Pier 5 would replace an existing primarily timber fendering system, with 360 concrete piles ranging in size up to 24-in diameter. All concrete piles are anticipated to be impact driven. Work on Piers 5, 6, 7, Mooring A, and Dry Dock 5 will involve replacement of up to 20 timber piles with 20 sheet steel piles. In addition, 75 concrete piles are anticipated for emergent/emergency repairs over the 5-year duration. Naval Undersea Warfare Center Keyport is the major tenant command at NBK Keyport and is the Navy's premier provider of cold-water testing and evaluation for undersea warfare systems. In this capacity, NBK Keyport provides depot maintenance and repair, in-service engineering, and fleet industrial support for torpedoes and other undersea warfare systems including mobile mines, unmanned underwater vehicles, and countermeasures.

There is one pier, Keyport Pier, in the northern portion of the NBK Keyport installation (see Figure 1–4 of the Navy's application). There are no planned pile repair and replacement projects at NBK Keyport; however, up to 20 piles are anticipated for emergent/emergency repairs or replacement at the Keyport Pier during the course of the 5-year duration.

NBK Manchester provides bulk fuel and lubricant support to area Navy afloat and shore activities. The primary pile-supported structures at NBK Manchester are the fuel pier and the finger pier with a barge mooring platform and a small boat float (see Figure 1–5 of the Navy's application). There are no planned projects at NBK Manchester. A contingency estimate of 50 concrete, timber, or plastic piles for emergent/emergency repairs at the fuel pier or finger pier is proposed for the 5-year duration.

NS Everett provides homeport ship berthing, industrial support, and a Navy administrative center. Pile-supported structures at NS Everett include Piers A, B, C, D, and E; North Wharf and South Wharf; a recreational marina; and the small boat launch (see Figure 1–7 of the Navy's application). Additionally, there are fender piles along the waterfront areas. Repairs to the North Wharf could require replacement of up to two concrete piles. Additionally, contingency planning estimated up to 75 concrete or timber piles and one steel pile could be repaired or replaced over the 5-year duration.

Description of Marine Mammals in the Area of the Specified Activity

We have reviewed the Navy's species descriptions—which summarize available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for accuracy and completeness and refer the reader to Sections 3 and 4 of the Navy's application, instead of reprinting the information here. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*www.fisheries.noaa.gov/find-species*).

Table 2 lists all species with expected potential for occurrence in the specified geographical region where the Navy proposes to conduct the specified activities and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2017). PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is considered in concert with known sources of ongoing anthropogenic mortality (as described in NMFS's SARs).

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. All managed stocks in the specified geographical regions are assessed in either NMFS's U.S. Alaska SARs or U.S. Pacific SARs. All values presented in Table 2 are the most recent available at the time of writing and are available in the draft 2017 SARs (available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

Ten species (with 13 managed stocks) are considered to have the potential to

co-occur with Navy activities. There are several species or stocks that occur in Washington inland waters, but which are not expected to occur in the vicinity of the six Naval installations. These species may occur in waters of the Strait of Juan de Fuca or in more northerly waters in the vicinity of the San Juan Islands and areas north to the Canadian border, and include the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*) and the northern resident stock of killer whales. In addition, the sea otter is found in coastal waters, with the northern (or eastern) sea otter (*Enhydra lutris kenyoni*) found in Washington. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Two populations of gray whales are recognized, eastern and western North Pacific (ENP and WNP). WNP whales are known to feed in the Okhotsk Sea and off of Kamchatka before migrating south to poorly known wintering grounds, possibly in the South China Sea. The two populations have historically been considered geographically isolated from each other; however, data from satellite-tracked whales indicate that there is some overlap between the stocks. Two WNP whales were tracked from Russian foraging areas along the Pacific rim to Baja California (Mate *et al.,* 2011), and, in one case where the satellite tag remained attached to the whale for a longer period, a WNP whale was tracked from Russia to Mexico and back again (IWC, 2012). Between 22–24 WNP whales are known to have occurred in the eastern Pacific through comparisons of ENP and WNP photo-identification catalogs (IWC, 2012; Weller *et al.,* 2011; Burdin *et al.,* 2011). Urban *et al.* (2013) compared catalogs of photo-identified individuals from Mexico with photographs of whales off Russia and reported a total of 21 matches. Therefore, a portion of the WNP population is assumed to migrate, at least in some years, to the eastern Pacific during the winter breeding season.

However, there is no indication that WNP whales occur in waters of Hood Canal or southern Puget Sound, and it is extremely unlikely that a gray whale in close proximity to Navy construction activity would be one of the few WNP whales that have been documented in the eastern Pacific. The likelihood that a WNP whale would be present in the vicinity of Navy construction activities is insignificant and discountable, and WNP gray whales are omitted from further analysis.

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NAVY CONSTRUCTION ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-; N	20,990 (0.05; 20,125; 2011).	624	132
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae kuzira*	California/Oregon/Washington (CA/OR/WA).	E/D; Y	1,918 (0.03; 1,876; 2014)	[7] 11	≥9.2
Minke whale	*Balaenoptera acutorostrata scammoni.*	CA/OR/WA	-; N	636 (0.72; 369; 2014)	3.5	≥1.3
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca* [4]	West Coast Transient [5]	-; N	243 (n/a; 2009)	2.4	0
		Eastern North Pacific Southern Resident.	E/D; Y	83 (n/a; 2016)	0.14	0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena vomerina*	Washington Inland Waters	-; N	11,233 (0.37; 8,308; 2015).	66	≥7.2

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For two stocks of killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species' (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2017 SARs.

[4] Transient and resident killer whales are considered unnamed subspecies (Committee on Taxonomy, 2017).

[5] The abundance estimate for this stock includes only animals from the ''inner coast'' population occurring in inside waters of southeastern Alaska, British Columbia, and Washington—excluding animals from the ''outer coast'' subpopulation, including animals from California—and therefore should be considered a minimum count. For comparison, the previous abundance estimate for this stock, including counts of animals from California that are now considered outdated, was 354.

[6] Abundance estimates for these stocks are not considered current. PBR is therefore considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

[7] This stock is known to spend a portion of time outside the U.S. EEZ. Therefore, the PBR presented here is the allocation for U.S. waters only and is a portion of the total. The total PBR for humpback whales is 22 (one half allocation for U.S. waters). Annual M/SI presented for these species is for U.S. waters only.

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NAVY CONSTRUCTION ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Dall's porpoise	*Phocoenoides dalli dalli*	CA/OR/WA	-; N	25,750 (0.45; 17,954; 2014).	172	0.3
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	United States	-; N	296,750 (n/a; 153,337; 2011).	9,200	389
Steller sea lion	*Eumetopias jubatus monteriensis.*	Eastern U.S.	D; Y	41,638 (n/a; 2015)	2,498	108
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	Washington Northern Inland Waters.[6]	-; N	11,036 (0.15; 7,213; 1999).	Undet.	9.8
		Southern Puget Sound [6]	-; N	1,568 (0.15; 1,025; 1999)	Undet.	3.4
		Hood Canal [6]	-; N	1,088 (0.15; 711; 1999)	Undet.	0.2
Northern elephant seal	*Mirounga angustirostris*	California Breeding	-; N	179,000 (n/a; 81,368; 2010).	4,882	8.8

Gray Whale

Gray whales are observed in Washington inland waters in all months of the year, with peak numbers from March through June (Calambokidis *et al.,* 2010). Most whales sighted are part of a small regularly occurring group of 6 to 10 whales that use mudflats in the Whidbey Island and Camano Island area as a springtime feeding area (Calambokidis *et al.,* 2010). Observed feeding areas are located in Saratoga Passage between Whidbey and Camano Islands including Crescent Harbor, and in Port Susan Bay located between Camano Island and the mainland north of Everett. Gray whales that are not identified with the regularly occurring feeding group are occasionally sighted in Puget Sound. These whales are not associated with feeding areas and are often emaciated (WDFW, 2012). There are typically from 2 to 10 stranded gray whales per year in Washington (Cascadia Research, 2012).

In the waterways near NBK Bremerton and Keyport (Rich Passage/Sinclair Inlet/Dyes Inlet/Agate Passage), 11 opportunistic sightings of gray whales were reported to Orca Network (a public marine mammal sightings database) between 2003 and 2012. One stranding occurred at NBK Bremerton in 2013. Gray whales have been sighted in Hood Canal south of the Hood Canal Bridge on six occasions since 1999, including a stranded whale. The most recent report was in 2010.

Gray whales are expected to occur in the waters surrounding all of the installations considered here other than those in Hood Canal (*i.e.,* NBK Bangor and Zelatched Point), due to rarity of occurrence. Gray whales are expected to occur primarily from March through June when in-water construction will not occur. Therefore, although some exposure to individual gray whales could occur at four facilities, project timing will help to minimize potential exposures.

Humpback Whale

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS established 14 distinct population segments (DPS) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 2. Because MMPA stocks cannot be portioned, *i.e.,* parts managed as ESA-listed while other parts managed as not ESA-listed, until such time as the MMPA stock delineations are reviewed in light of the DPS designations, NMFS considers the existing humpback whale stocks under the MMPA to be endangered and depleted for MMPA management purposes (*e.g.,* selection of a recovery factor, stock status).

Within U.S. west coast waters, three current DPSs may occur: The Hawaii DPS (not listed), Mexico DPS (threatened), and Central America DPS (endangered). According to Wade *et al.* (2016), the probability that whales encountered in Washington waters are from a given DPS are as follows: Hawaii, 52.9% (CV = 0.15); Mexico, 41.9% (0.14); Central America, 5.2% (0.91).

Most humpback whale sightings reported since 2003 were in the main basin of Puget Sound with numerous sightings in the waters between Point No Point and Whidbey Island, Possession Sound, and southern Puget Sound in the vicinity of Point Defiance. Some of the reported sightings were in the vicinity of NS Everett and NBK Manchester. A few sightings of possible humpback whales were reported by Orca Network in the waters near NBK Bremerton and Keyport (Rich Passage to Agate Passage area including Sinclair and Dyes Inlet) between 2003 and 2015. Humpback whales were sighted in the vicinity of Manette Bridge in Bremerton in 2016 and 2017, and a carcass was found under a dock at NBK Bremerton in 2016 (Cascadia Research, 2016).

In Hood Canal, single humpback whales were observed for several weeks in 2012 and 2015. One sighting was reported in 2016. Review of the 2012 sightings information indicated they were of one individual. Prior to the 2012 sightings, there were no confirmed reports of humpback whales entering Hood Canal. The number of humpback whales potentially present near any of the six installations is expected to be very low in any month.

Minke Whale

Sightings of minke whales in Puget Sound are infrequent, with approximately 14 opportunistic sightings recorded between 2005 and 2012, from March through October. No sightings were reported in the vicinity of NBK Bremerton and Keyport (Rich Passage through the Agate Passage including Sinclair Inlet and Dyes Inlet) or in Hood Canal. The number of minke whales potentially present near any of the six installations is expected to be very low in any month and even lower in winter months.

Killer Whale (Transient)

Groups of transient killer whales were observed for lengthy periods in Hood Canal in 2003 (59 days) and 2005 (172 days) (London, 2006), but were not observed again until 2016, when they were seen on a handful of days between March and May (including in Dabob Bay). Transient killer whales have been seen infrequently near NBK Bremerton, including in Dyes Inlet and Sinclair Inlet (*e.g.,* sightings in 2010, 2013, and 2015). Sightings in the vicinity of NBK Keyport have also been infrequent, and no records were found for Rich Passage in the vicinity of NBK Manchester. Transient killer whales have been observed in Possession Sound near NS Everett.

West Coast transient killer whales most often travel in small pods averaging four individuals (Baird and Dill, 1996); however, the most commonly observed group size in Puget Sound (waters east of Admiralty Inlet, including Hood Canal, through South Puget Sound and north to Skagit Bay) from 2004 to 2010 was 6 whales (Houghton *et al.,* 2015).

Killer Whales (Resident)

Critical habitat for southern resident killer whales, designated pursuant to the ESA, includes three specific areas: (1) Summer core area in Haro Strait and waters around the San Juan Islands; (2) Puget Sound; and (3) Strait of Juan de Fuca (71 FR 69054; November 29, 2006). The primary constituent elements essential for conservation of the habitat are: (1) Water quality to support growth and development; (2) Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and (3) Passage conditions to allow for migration, resting, and foraging. However, the six naval installations are specifically excluded from the critical habitat designation. A revision to the critical habitat designation is currently under consideration (80 FR 9682; February 24, 2015).

Southern resident killer whales are expected to occur occasionally in the waters surrounding all of the installations except those in Hood Canal, where they have not been reported since 1995 (NMFS, 2006). Southern resident killer whales are rare near NBK Bremerton and Keyport, with the last confirmed sighting in Dyes Inlet in 1997. Southern residents have been observed in Saratoga Passage and Possession Sound near NS Everett.

The stock contains three pods (J, K, and L pods), with pod sizes ranging from approximately 20 (in J pod) to 40 (in L pod) individuals. Group sizes encountered can be smaller or larger if pods temporarily separate or join together. Therefore, some exposure to groups of up to 20 individuals or more could occur over the 5-year duration.

Harbor Porpoise

Sightings in Hood Canal have increased in recent years, and an average of six harbor porpoises were sighted per day in deeper waters during line transect vessel surveys conducted in 2011 near NBK Bangor and Dabob Bay (HDR, 2012). Mean group size of harbor porpoises for each survey season in the 2013–2016 aerial surveys was 1.7 (Smultea *et al.,* 2017). Site-specific information is not available for NBK Bremerton, Keyport, or Manchester, but harbor porpoises have been seen infrequently at NS Everett.

Dall's Porpoise

Dall's porpoise are known to occur in Puget Sound, and have been sighted as far south as Carr Inlet in southern Puget Sound and as far north as Saratoga Passage, north of NS Everett (Nysewander *et al.,* 2005; WDFW, 2008). Dall's porpoise could also occasionally occur in Hood Canal. with the last observation in deeper water near NBK Bangor in 2008 (Tannenbaum *et al.,* 2009). However, Dall's porpoise were not observed during vessel line-transect surveys and other monitoring efforts completed in Hood Canal (including Dabob Bay) in 2011 (HDR, 2012). Dall's porpoises have not been documented in the Rich Passage to Agate Passage area in the vicinity of NBK Bremerton or Keyport, but have been observed in Possession Sound near NS Everett (primarily during winter) (Nysewander *et al.,* 2005; WDFW, 2008). Dall's porpoises could be present in waters in the vicinity of any of the installations considered here, and are considered more likely to occur during winter months than summer months in groups of up to 25 individuals.

The Navy conducts surveys at installations with known pinniped haul-outs, which are located at NBK Bangor, NBK Bremerton, NBK Manchester, and NS Everett (see Figures 4–2, 4–3, 4–4, and 4–5 of the Navy's application). More detail regarding these surveys may be found in Appendix C of the Navy's application.

Steller Sea Lion

Steller sea lions have been seasonally documented during shore-based surveys at NBK Bangor in Hood Canal since 2008, with up to 13 individuals observed hauled out on submarines at Delta Pier. Steller sea lions begin arriving at NBK Bangor in September and depart by the end of May.

Shore-based surveys at NBK Bremerton have not detected Steller sea lions since the surveys were initiated in 2010. A Steller sea lion was sighted on the floating security barrier in 2012 and others were detected during aerial surveys conducted by the Washington Department of Fish and Wildlife (WDFW) in 2013 (Jeffries, 2013).

Steller sea lions haul out on floating platforms in Clam Bay approximately 800 m offshore from the Manchester Fuel Depot's finger pier, approximately 13 km from NBK Bremerton. The Navy conducted surveys of sea lions on the floats from 2012 through 2016; Steller sea lions were seen in all surveyed months except for June, July, and August with as many as 42 individuals present in November 2014. Aerial surveys were conducted by WDFW from March–April 2013, July–August 2013, November 2013, and February 2014. These surveys detected Steller sea lions on the floating platforms during all survey months except July and August, with up to 37 individuals present on one survey in November 2013.

No haul-outs are known in the vicinity of NBK Keyport or Zelatched Point; therefore, no shore-based surveys have been conducted at these installations. No opportunistic sightings have been reported at these installations. The nearest Steller sea lion haul-outs to NBK Keyport are navigation buoys that can support at most two individuals, located over 15 km away in Puget Sound. Therefore, Steller sea lions are not expected to frequent waters off this installation. The only Steller sea lion haul-out in Hood Canal is at NBK Bangor, as described above, which is over 14 km from Zelatched Point.

Shore-based surveys conducted from July 2012 through June 2014 at NS Everett did not detect Steller sea lions. However, occasional observations have been reported from the port security barrier (PSB). Other than these detections on the installation's PSBs, the nearest known Steller sea lion haul-out is 22.5 km away; therefore, Steller sea lions are not expected to occur in waters off this installation.

California Sea Lion

California sea lion haul-outs occur at NBK Bangor, NBK Bremerton, and NS Everett. California sea lions are typically present most of the year except for mid-June through July in Washington inland waters, with peak abundance numbers between October and May (NMFS, 1997; Jeffries *et al.,* 2000). During summer months and associated breeding

periods, the inland waters would not be considered a high-use area by California sea lions, as they would be returning to rookeries in California waters. However, as described below, surveys at Bangor indicate that a few individuals are present through mid-June and have arrived as early as August with at least one individual remaining in July 2014. Surveys at NS Everett from 2012 to 2016 indicate a few individuals may remain year-round.

California sea lions have been documented during shore-based surveys at NBK Bangor in Hood Canal since 2008 in all survey months, with as many as 122 individuals observed at one time (November 2013) hauled out on submarines at Delta Pier and on PSB floats.

California sea lions have been documented during shore- and boat-based surveys at NBK Bremerton since 2010, with as many as 315 individuals hauled out at one time (November 2015) on PSB floats.

California sea lions haul out on floating platforms in Clam Bay approximately 800 m offshore from the Manchester Fuel Depot's finger pier, approximately 13 km from NBK Bremerton. The Navy conducted surveys of sea lions on the floats incidental to other surveys from 2012 through 2016. California sea lions were seen in every survey month except July and August, with as many as 130 individuals present in one survey in October 2014. Aerial surveys were conducted by WDFW from March–April 2013, July–August 2013, November 2013, and February 2014. These surveys detected California sea lions on the floating platforms during all survey months except July, with up to 54 individuals present on one survey in November 2013.

California sea lions have been documented during shore-based surveys at NS Everett from 2012 to 2016 in all survey months, with as many as 215 individuals hauled out at one time (April 2016) on PSB floats.

No shore-based surveys have been conducted at NBK Keyport or Zelatched Point and no opportunistic sightings have been reported at these installations. No haul-outs are known in the vicinity of these installations. The nearest California sea lion haul-outs to NBK Keyport are navigation buoys that can support at most two individuals, located over 15 km away in Puget Sound. Therefore, California sea lions are not expected to frequent waters off this installation. The only California sea lion haul-out in Hood Canal is at NBK Bangor, as described above, which is over 14 km from Zelatched Point.

California sea lions are expected to be exposed to noise from project activities at NBK Bangor, Bremerton, Manchester, and NS Everett because haul-outs are at these installations or nearby. Exposure is estimated to occur primarily from August through the end of the in-water work window in mid-January or early March.

Harbor Seal

Harbor seals in Washington inland waters have been divided into three stocks: Hood Canal, Northern Inland Waters, and Southern Puget Sound. The range of the northern inland waters stock includes Puget Sound north of the Tacoma Narrows Bridge, the San Juan Islands, and the Strait of Juan de Fuca, while the southern Puget Sound stock range includes waters south of the Tacoma Narrows Bridge. Therefore, animals present at NBK Bremerton, NBK Keyport, NBK Manchester, and NS Everett are most likely to be from the northern inland waters stock, while those present at NBK Bangor and Zelatched Point are expected to be from the Hood Canal stock.

Harbor seals are expected to occur year-round at all installations, with the greatest numbers expected at installations with nearby haul-out sites. In Hood Canal, known haul-outs occur on the west side of Hood Canal at the mouth of the Dosewallips River and on the western and northern shorelines in Dabob Bay located approximately 13 and 3.7 km away from NBK Bangor and Zelatched Point, respectively. Site-specific surveys have not been conducted at Zelatched Point because no haul-outs are documented in this part of Dabob Bay. Vessel-based surveys conducted from 2007 to 2010 at NBK Bangor observed harbor seals in every month of surveys (Agness and Tannenbaum, 2009; Tannenbaum *et al.,* 2009, 2011). Harbor seals were routinely seen during marine mammal monitoring for two construction projects (HDR, 2012; Hart Crowser, 2013, 2014, 2015). Small numbers of harbor seals have been documented hauling out opportunistically at NBK Bangor (*e.g.,* on the PSB floats, wave screen at Carderock Pier, buoys, barges, marine vessels, and logs) and on man-made floating structures near K/B Dock and Delta Pier. Surveys conducted in August and September 2016 recorded as many as 28 harbor seals hauled out under Marginal Wharf or swimming in adjacent waters. On two occasions, four to six individuals were observed hauled out near Delta Pier. Known harbor seal births include one on the Carderock wave screen in August 2011 and at least one on a small floating dock in fall 2013, and afterbirth reported on a float at Magnetic Silencing Facility. In addition, harbor seal pupping has occurred on a section of the Service Pier since approximately 2001. Harbor seal mother and pup sets were observed in 2014 hauled out on the Carderock wave screen and swimming in nearby waters, and swimming in the vicinity of Delta Pier.

At NS Everett, Navy surveys conducted regularly from 2012 to 2016 have documented up to 491 harbor seals hauling out adjacent to the installation on log rafts in Notch Basin in the East Waterway. Harbor seals occupy the waters and haul-out sites near NS Everett year-round. Based on the survey data, the number of individuals peaks from August to October, with an average maximum number of 343 seals in October. The log rafts are privately owned and their location can vary within the East Waterway, which ranges from approximately 200–300 m wide. Only harbor seals on logs rafts that are within sight distance from NS Everett are counted, and if visible, numbers on floats outside the Notch Basin are noted, but not counted. Therefore, Navy counts of harbor seals hauled out do not necessarily represent the number of hauled out seals in the East Waterway. Pupping is documented on the log rafts; however, no pup counts have been conducted.

No haul-outs have been identified at NBK Bremerton, Keyport, or Manchester. The nearest documented haul-outs to NBK Bremerton are across Sinclair Inlet, approximately 1.1 km away. The nearest documented haul-out to NBK Keyport is in Liberty Bay at the Poulsbo Marina approximately 3.2 km from the Keyport Pier. The nearest documented haul-out to NBK Manchester is Blakely Rocks approximately 5.6 km away on the east side of Bainbridge Island. All haul-outs listed here near the three installations are estimated to have less than 100 individuals.

Northern Elephant Seal

No haul-outs occur in Puget Sound with the exception of individual elephant seals occasionally hauling out for two to four weeks to molt, usually during the spring and summer and typically on sandy beaches (Calambokidis and Baird, 1994). These animals are usually yearlings or subadults and their haul-out locations are unpredictable. One male subadult elephant seal was observed hauled out to molt at Manchester Fuel Depot in 2004. Although regular haul-outs occur in the Strait of Juan de Fuca, the

occurrence of elephant seals in Puget Sound is unpredictable and rare.

Unusual Mortality Events (UME)

A UME is defined under the MMPA as ''a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response.'' The only currently ongoing UME investigation involves California sea lions along the west coast. Beginning in January 2013, elevated strandings of California sea lion pups were observed in southern California, with live sea lion strandings nearly three times higher than the historical average. Findings to date indicate that a likely contributor to the large number of stranded, malnourished pups was a change in the availability of sea lion prey for nursing mothers, especially sardines. The causes and mechanisms of this remain under investigation (*www.nmfs.noaa.gov/pr/health/mmume/california sealions2013.htm;* accessed November 24, 2017).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with an exception for lower limits for low-frequency cetaceans where the result was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 Hz and 35 kHz;
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus;* including two members of the genus *Lagenorhynchus,* on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz;
- Pinnipeds in water; Phocidae (true seals): Functional hearing is estimated to occur between approximately 50 Hz to 86 kHz;
- Pinnipeds in water; Otariidae (eared seals): Functional hearing is estimated to occur between 60 Hz and 39 kHz for Otariidae.

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Ten marine mammal species (six cetacean and four pinniped (two otariid and two phocid) species) have the potential to co-occur with Navy construction activities. Please refer to Table 2. Of the six cetacean species that may be present, three are classified as low-frequency cetaceans (*i.e.,* all mysticete species), one is classified as a mid-frequency cetacean (*i.e.,* killer whales), and two are classified as high-frequency cetaceans (*i.e.,* porpoises).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The ''Estimated Take'' section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis and Determination'' section considers the content of this section and the material it references, the ''Estimated Take'' section, and the ''Proposed Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks. In the following discussion, we provide general background information on sound before considering potential effects to marine mammals from sound produced by pile driving.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral

effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa²-s) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for sound produced by the pile driving activity considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 hertz (Hz) and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Underwater ambient sound in Puget Sound is comprised of sounds produced by a number of natural and anthropogenic sources and varies both geographically and temporally. Human-generated sound is a significant contributor to the ambient acoustic environment at the installations considered here. The underwater acoustic environment at each installation will vary depending on the amount of anthropogenic activity, weather conditions, and tidal currents. In high-use installations, such as NBK Bremerton, anthropogenic noise may dominate the ambient soundscape. In areas with less anthropogenic activity (*e.g.,* Zelatched Point), ambient sound is likely to be dominated by sound from natural sources. Under normal weather and traffic conditions, average ambient sound at all installations is assumed to be below 120 dB rms. More detail regarding specific installations is available in section 2.3.1.5 of the Navy's application. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

The impulsive sound generated by impact hammers is characterized by rapid rise times and high peak levels. Vibratory hammers produce non-impulsive, continuous noise at levels significantly lower than those produced by impact hammers. Rise time is slower,

reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (*e.g.,* Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

Acoustic Effects

We previously provided general background information on marine mammal hearing (see ''Description of Marine Mammals in the Area of the Specified Activity''). Here, we discuss the potential effects of sound on marine mammals.

Potential Effects of Underwater Sound—Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.,* Finneran, 2015). For study-specific citations, please see that work. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to pile driving.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.,* certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that pile driving may result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The construction activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for

successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2016).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.;* 2004; Goldbogen *et al.,* 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001,

2005, 2006; Gailey *et al.,* 2007; Gailey *et al.,* 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that

some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Potential Effects of Navy Activity—As described previously (see ''Description of Active Acoustic Sound Sources''), the Navy proposes to conduct pile driving, including impact and vibratory driving. The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavioral patterns and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could lead to effects on growth, survival, or reproduction, such as drastic changes in diving/surfacing patterns or significant habitat abandonment are extremely unlikely in this area (*i.e.,* shallow waters in modified industrial areas).

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

Whether impact or vibratory driving, sound sources would be active for relatively short durations, with relation to potential for masking. The frequencies output by pile driving activity are lower than those used by most species expected to be regularly present for communication or foraging. We expect insignificant impacts from masking, and any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Anticipated Effects on Marine Mammal Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish. The proposed activities could also affect acoustic habitat (see masking discussion above), but meaningful impacts are unlikely. There are no known foraging hotspots, or other ocean bottom structures of significant biological importance to marine mammals present in the marine waters in the vicinity of the project areas. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this preamble. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal

prey (*i.e.,* fish) near the six installations. Impacts to the immediate substrate during installation and removal of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals. Impacts to substrate are therefore not discussed further.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected. It is also not expected that the industrial environment of the Naval installations provides important fish habitat or harbors significant amounts of forage fish.

The area likely impacted by the activities is relatively small compared to the available habitat in inland waters in the region. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for Navy construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant. Effects to habitat will not be discussed further in this document.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization, which will inform both NMFS's consideration of whether the number of takes is ''small'' and the negligible impact determination.

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Take of marine mammals incidental to Navy construction activities could occur as a result of Level A or Level B harassment. Below we describe how the potential take is estimated.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to exhibit behavioral disruptions (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Although available data are consistent with the basic concept that louder sounds evoke more significant behavioral responses than softer sounds, defining sound levels that disrupt behavioral patterns is difficult because responses depend on the context in which the animal receives the sound, including an animal's behavioral mode when it hears sounds (*e.g.,* feeding, resting, or migrating), prior experience, and biological factors (*e.g.,* age and sex). Some species, such as beaked whales, are known to be more highly sensitive to certain anthropogenic sounds than other species. Other contextual factors, such as signal characteristics, distance from the source, and signal to noise ratio, may also help determine response to a given received level of sound. Therefore, levels at which responses occur are not necessarily consistent and can be difficult to predict (Southall *et al.,* 2007; Ellison *et al.,* 2012; Bain and Williams, 2006).

However, based on the practical need to use a relatively simple threshold based on available information that is both predictable and measurable for most activities, NMFS has historically used a generalized acoustic threshold

based on received level to estimate the onset of Level B harassment. These thresholds are 160 dB rms (impulsive sources) and 120 dB rms (continuous sources).

Level A Harassment—NMFS's *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* (NMFS, 2016) identifies dual criteria to assess the potential for auditory injury (Level A harassment) to occur for different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise. The technical guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, and reflects the best available science on the potential for noise to affect auditory sensitivity by:

- Dividing sound sources into two groups (*i.e.,* impulsive and non-impulsive) based on their potential to affect hearing sensitivity;
- Choosing metrics that best address the impacts of noise on hearing sensitivity, *i.e.,* peak sound pressure level (peak SPL) (reflects the physical properties of impulsive sound sources to affect hearing sensitivity) and cumulative sound exposure level (cSEL) (accounts for not only level of exposure but also duration of exposure); and
- Dividing marine mammals into hearing groups and developing auditory weighting functions based on the science supporting that not all marine mammals hear and use sound in the same manner.

The premise of the dual criteria approach is that, while there is no definitive answer to the question of which acoustic metric is most appropriate for assessing the potential for injury, both the received level and duration of received signals are important to an understanding of the potential for auditory injury. Therefore, peak SPL is used to define a pressure criterion above which auditory injury is predicted to occur, regardless of exposure duration (*i.e.,* any single exposure at or above this level is considered to cause auditory injury), and cSEL is used to account for the total energy received over the duration of sound exposure (*i.e.,* both received level and duration of exposure) (Southall *et al.,* 2007; NMFS, 2016). As a general principle, whichever criterion is exceeded first (*i.e.,* results in the largest isopleth) would be used as the effective injury criterion (*i.e.,* the more precautionary of the criteria). Note that cSEL acoustic threshold levels incorporate marine mammal auditory weighting functions, while peak pressure thresholds do not (*i.e.,* flat or unweighted). Weighting functions for each hearing group (*e.g.,* low-, mid-, and high-frequency cetaceans) are described in NMFS (2016).

NMFS (2016) recommends 24 hours as a maximum accumulation period relative to cSEL thresholds. These thresholds were developed by compiling and synthesizing the best available science, and are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS (2016), which is available online at: *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 3—EXPOSURE CRITERIA FOR AUDITORY INJURY

Hearing group	Peak pressure [1] (dB)	Cumulative sound exposure level [2]	
		Impulsive (dB)	Non-impulsive (dB)
Low-frequency cetaceans	219	183	199
Mid-frequency cetaceans	230	185	198
High-frequency cetaceans	202	155	173
Phocid pinnipeds	218	185	201
Otariid pinnipeds	232	203	219

[1] Referenced to 1 μPa; unweighted within generalized hearing range.
[2] Referenced to 1 μPa^2-s; weighted according to appropriate auditory weighting function.

Zones of Ensonification

Sound Propagation—Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10}(R_1/R_2)$$

Where:

B = transmission loss coefficient (assumed to be 15)

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20 * log(range)). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10 * log(range)). As is common practice in coastal waters, here we assume practical spreading loss (4.5 dB reduction in sound level for each doubling of distance). Practical spreading is a compromise that is often used under conditions where water depth increases as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

Sound Source Levels—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. There are source level measurements available for certain pile types and sizes from the specific environment of several of the installations considered here (*i.e.,* NBK Bangor and NBK Bremerton), but not from all. Numerous studies have examined sound pressure levels (SPLs)

recorded from underwater pile driving projects in California (*e.g.,* Caltrans, 2015) and elsewhere in Washington. In order to determine reasonable SPLs and their associated effects on marine mammals that are likely to result from pile driving at the six installations, studies with similar properties to the specified activity were evaluated. Full details are available in Appendix B of the Navy's application, which evaluates available data sources for each pile size and type in order to develop reasonable proxy values.

TABLE 4—ASSUMED SOURCE LEVELS

Method	Type	Size (in)	SPL (rms) [1]	SPL (peak) [1 2]	SEL [1 3]
Impact	Plastic	13	156	Not available	Not available.
	Timber	12/14	170	Not available	Not available.
	Concrete	18	170	184	159.
		24	178	189	166.
	Steel pipe	12/13	177	192	167.
		14	184	200	174.
		24	193	210	181.
		30	195	216	186.
		36	194 (Bangor)	211	181 (Bangor).
			192 (others)		184 (others).
Vibratory	Timber	12	153	n/a	n/a.
		13/14	155	n/a	n/a.
	Steel pipe	13/14	155	n/a	n/a.
		16/24	161	n/a	n/a.
		30/36	166 (Bangor)	n/a	n/a.
			167 (others)		
	Steel sheet	n/a	163	n/a	n/a.

[1] Source levels presented at standard distance of 10 m from the driven pile. Peak source levels are not typically evaluated for vibratory pile driving, as they are lower than the relevant thresholds for auditory injury. SEL source levels for vibratory driving are equivalent to SPL (rms) source levels.

Acoustic measurements were conducted during impact driving of 24- and 36-in steel piles in 2011 at NBK Bangor (Navy, 2012). However, for the 24-in piles only seven strikes from a single pile were measured, and the reported values are lower than those from other projects reviewed. Therefore, these data were not considered in the selection of the most appropriate proxy value. For 36-in piles, the reported values from this study are directly used in evaluating similar pile driving at NBK Bangor. For 24-in piles, data from projects conducted by the Washington State Department of Transportation (WSDOT) at Bainbridge Island and Friday Harbor, as well as data from several projects conducted in California and Oregon were considered. The two Washington projects were used in developing the proxy value, as these locations were considered to be representative of substrate conditions likely encountered in other locations in Puget Sound (WSDOT, 2005a, 2005b). For 30-in piles, data from projects conducted by WSDOT at three locations—Bainbridge Island, Friday Harbor, and Vashon Island (WSDOT, 2005b, 2008, 2010b; Jasco, 2005)—as well as from one project in California were considered. The three Washington projects were again used in developing the proxy value, for the same reasons. For impact driving of 36-in piles, data from the Navy project at NBK Bangor (Navy, 2012), from two WSDOT projects (at Mukilteo and Anacortes) (WSDOT, 2007a, 2007b), and from one project in California were considered. The three projects conducted in Washington inland waters were used in developing the proxy value. Values for impact driving of small diameter steel pipe piles were taken from the summary value tables provided by Caltrans (2015) (see Table I.2–1 in that publication). No values are provided for 13-in steel piles; therefore, we assume that source levels for 12-in piles would apply to 13-in piles. While values for both 12-in and 14-in piles are provided, we believe that the 12-in values are more appropriate as the water depth for these measurements is closer to what would be encountered at the Navy project sites. No SEL source level is provided; therefore, we assume that the SEL source level is 10 dB less than the SPL (rms) source level. This is a conservative assumption, as the average difference between SPL (rms) and SEL source levels given in the Caltrans (2015) summary table is 11.5 dB.

The 2011 Navy study described above provided data from measurements of vibratory driving of 36-in steel piles (Navy, 2012), while a separate 2011 project at NBK Bangor provided measurements from vibratory driving of 30-in piles (Miner, 2012). These projects together provide directly applicable data for use in evaluating vibratory driving of 30- and 36-in steel piles at NBK Bangor. For vibratory driving of 30- and 36-in steel piles at other locations, data from a variety of additional studies from other locations in Washington (Coupeville, Edmonds, Vashon Island, Port Townsend, and Anacortes) (WSDOT 2010c, 2010d, 2010e, 2011b, 2012) were considered and, with the two Navy studies, used in developing a proxy value for 30- and 36-in piles. The same 2011 NBK Bangor study provided limited data for vibratory driving of 24-in piles, while the separate 2012 NBK Bangor provided data from vibratory driving of 16-in piles. These were considered together with a WSDOT study from Friday Harbor (WSDOT, 2010a) and with data from a project at the Trinidad Bay in Humboldt County, CA (Caltrans, 2015) to develop a generally applicable proxy value for 16- and 24-in piles. The proxy source level for vibratory driving of 13-in steel piles is taken from a study at the Mad River Slough in Arcata, CA, and is assumed to be applicable to 14-in piles as well (Caltrans, 2015). Caltrans (2015) also provides a summary value of 155 dB rms for vibratory driving of 12-in steel piles. For vibratory driving of sheet piles, data from multiple projects conducted in Oakland, CA (Berth 23, Berth 30, and Berth 35/37 at Port of Oakland; Caltrans, 2015) were considered in developing an appropriate proxy value. Values for vibratory installation are conservatively assumed to apply to vibratory extraction of same-sized piles.

Acoustic measurements were conducted during impact driving of 24-in concrete piles in 2015 at NBK Bremerton (Navy, 2016). These measurements provide a proxy value for use during impact driving of 24-in concrete piles at all facilities. For impact driving of smaller concrete piles, data from three projects conducted at Concord, CA and Berkeley, CA and involving impact driving of 16- and 18-in piles (Caltrans, 2015) were evaluated and used in developing a proxy value.

Relatively few data are available for timber and plastic piles. The proxy value for impact driving of plastic piles is from a project conducted in Solano County, CA (Illingworth and Rodkin, 2008). For impact driving of timber piles, data from one study in Alameda, CA, provides the proxy source level (Caltrans, 2015). However, we assume that the assumed source level for impact driving of 14-in steel piles is a suitable proxy for impact driving of larger diameter timber piles (18-in). For vibratory extraction of timber piles, the Navy considered measured values from NBK Bremerton (Navy, 2016) as well as data from a WSDOT project at Port Townsend involving removal of 12-in timber piles (WSDOT, 2011a). Source levels for vibratory driving of 13/14-in timber piles is assumed as a reasonable proxy for vibratory removal of timber and plastic piles up to 18-in diameter.

The Navy proposes to use bubble curtains when impact driving steel piles of 24-in diameter and greater, except at NBK Bremerton and NBK Keyport (see Proposed Mitigation for further discussion). For the reasons described in the next paragraph, we assume here that use of the bubble curtain would result in a reduction of 8 dB from the assumed SPL (rms) and SPL (peak) source levels for these pile sizes, and reduce the applied source levels accordingly. For determining distances to the cumulative SEL injury thresholds, auditory weighting functions were applied to the attenuated one-second SEL spectra for steel pipe piles (see Appendix E of the Navy's application).

During the 2011 study at NBK Bangor, the Navy conducted comparative measurements of source levels when impact driving steel piles with and without a bubble curtain. Across all piles (36- and 48-in) and all metrics (rms, peak, SEL), the weighted average effective attenuation was 9 dB. The Navy also reviewed unconfined bubble curtain attenuation rates from available reports from projects in Washington, California, and Oregon that impact drove steel pipe piles of up to 48-in diameter. These results are summarized in Table 3–2 of Appendix A in the Navy's application. Of the studies reviewed, significant variability in attenuation occurred; however, an average of at least 8 dB of peak SPL attenuation was achieved on ten of the twelve projects. Some of the lower attenuation levels reported were attributed to failures in setting up or operating the bubble curtain system (*e.g.,* bottom ring not seated on the substrate, poor airflow). While proper set-up and operation of the system is critical, and variability in performance should be expected, we believe that in the circumstances evaluated here an effective attenuation performance of 8 dB is a reasonable assumption.

Level A Harassment—In order to assess the potential for injury on the basis of the cumulative SEL metric, one must estimate the total strikes per day (impact driving) or the total driving duration per day (vibratory driving). To provide a general estimate of pile driving daily durations/strikes, the Navy reviewed information from past projects (Table 5). Navy geotechnical and engineering staff used data from a large wharf construction project at NBK Bangor to estimate pile driving time and strikes needed to install steel piles using impact hammers. Vibratory installation was estimated to take a median time of 10 minutes per pile with 45 minutes estimated as a maximum.

For steel piles that are ''proofed,'' a median of approximately 600 strikes per pile was estimated. However, not all projects will require proofing every pile. Some projects will require only a subset of piles be proofed and some projects, such as those installing fender piles, may not require any proofing because the structure is not load-bearing. Other piles may encounter difficult substrate and need to be advanced further with an impact driver. For piles that cannot be advanced with a vibratory driver, less than approximately 1,300 strikes was conservatively estimated to complete installation. Based on these estimates, no more than 4,000 strikes are estimated to occur on any one day. This estimate would account for approximately six steel piles installed with a median time of 14 minutes per pile (~1.5 hours of drive time) or three steel piles needing extended driving. Estimates of concrete pile impact driving durations are based on data for the installation of fender piles at NBK Bremerton. For purposes of analysis, impact pile driving of concrete piles is estimated to take a maximum of 4 hours or an average of 1.5 hours in a day.

Actual driving duration at any of the project sites will vary due to substrate conditions and the type and energy of impact hammers. For example, during a past project at NBK Bangor (where most of the steel pile work will occur), four piles were installed with a vibratory driver and impact proofed in 61 minutes total (vibratory and impact driving) with an average of 172 strikes/pile. Additionally, some of the anticipated pile driving is contingent on emergent needs or emergencies that could potentially never occur. Therefore, estimates of marine mammal exposure based on the maximum strike numbers would be too conservative for this programmatic analysis of all potential project sites. Table 5 presents an estimate of average strikes per day; average strikes per day and average daily duration values are used in the exposure analyses. For vibratory driving of piles less than 16-in, a daily duration of 0.5 hours was assumed; for vibratory driving of larger piles a daily duration of 2.25 hours was assumed.

TABLE 5—ESTIMATED DAILY STRIKES AND DRIVING DURATION

Pile type and method	Installation rate per day	Estimated duration	
		Average strikes/day	Average daily duration
14-in steel; impact	No data	[1] <<1,000	No data.
24- to 30-in steel; impact	1–6	1,000	4.5 minutes to 1.5 hours.
18- to 24-in concrete; impact	1–11	[2] 4,000	3 minutes to 4 hours.
13-in steel; vibratory	2–17	n/a	0–31 minutes. [3]
24- to 30-in steel; vibratory	1–6	n/a	10 minutes to 4.5 hours. [4]

[1] All 14-in piles are expected to be vibratory driven for full embedment depth. In the event that conditions requiring impact driving are encountered, very few strikes are expected to be necessary.
[2] Estimate based on data from 272 piles installed at NBK Bremerton.
[3] Estimate based on data from 70 piles installed at NBK Bremerton.
[4] Estimate based on data from 809 piles installed at NBK Bangor. Maximum assumes six piles advanced at a rate of 45 minutes per pile.

Delineation of potential injury zones on the basis of the peak pressure metric was performed using the SPL(peak) values provided in Table 4 above. As described previously, source levels for peak pressure are unweighted within the generalized hearing range, while SEL source levels are weighted according to the appropriate auditory weighting function. Delineation of potential injury zones on the basis of the cumulative SEL metric for vibratory driving was performed using a single-frequency weighting factor adjustment (WFA) of 2.5 kHz, as recommended by the NMFS User Spreadsheet, described in Appendix D of NMFS's Technical Guidance (NMFS, 2016). In order to assist in simple application of the auditory weighting functions, NMFS recommends WFAs for use with specific types of activities that produce broadband or narrowband noise. WFAs consider marine mammal auditory weighting functions by focusing on a single frequency. This will typically result in higher predicted exposures for broadband sounds, since only one frequency is being considered, compared to exposures associated with the ability to fully incorporate the Technical Guidance's weighting functions.

Because use of the WFA typically results in an overestimate of zone size, the Navy took an alternative approach to delineating potential injury zones for impact driving of 24- and 36-in steel piles and 24-in concrete piles. Note that, because data is not available for all pile sizes and types, we conservatively assume the following in using the available data for 24- and 36-in steel piles and 24-in concrete piles: (1) Injury zones for impact driving 14-in piles are equivalent to the zones for 24-in piles with no bubble curtain; (2) injury zones for impact driving plastic and timber piles and for 18-in concrete piles are equivalent to the zones for 24-in concrete piles; and (3) injury zones for impact driving 30-in steel piles are equivalent to the zones calculated for 36-in piles (both with and without bubble curtain).

This approach, described in detail in Appendix E of the Navy's application, incorporated frequency weighting adjustments by applying the auditory weighting function over the entire one-second SEL spectral data sets from impact pile driving. If this information for a particular pile size was not available, the next highest source level was used to produce a conservative estimate of areas above threshold values. Sound level measurements from construction activities during the 2011 Test Pile Program at NBK Bangor were used for evaluation of impact-driven steel piles, and sound level measurements from construction activities during the 2015 Intermediate Maintenance Facility Pier 6 Fender Pile Replacement Project at NBK Bremerton were used for evaluation of impact-driven concrete piles.

In consideration of the assumptions relating to propagation, sound source levels, and the methodology applied by the Navy towards incorporating frequency weighting adjustments for delineation of cumulative SEL injury zones for impact driving of steel and concrete piles, notional radial distances to relevant thresholds were calculated (Table 6). However, these distances are sometimes constrained by topography. Actual notional ensonified zones at each facility are shown in Tables 6–1 to 6–6b of the Navy's application. These zones are modeled on the basis of a notional pile located at the seaward end of a given structure in order to provide a conservative estimate of ensonified area.

TABLE 6—CALCULATED DISTANCES TO LEVEL A HARASSMENT ZONES

Pile	Driver	PW		OW		LF		MF		HF	
		pk	cSEL	pk	cSEL	pk	cSEL	pk	cSEL	pk	cSEL
24-in concrete [1]	Impact	0	34	0	2	0	216	0	3	1	136
24-in steel [2]	Impact; BC	1	25	0	1.4	1	136	0	3	10	185
24-in steel [2]	Impact; no BC	3	86	0	5	3	159	0	6	34	342
36-in steel [2]	Impact; BC	1	158	0	9	1	736	0	10	12	541
36-in steel [2]	Impact; no BC	3	736	0	46	3	2,512	1	63	40	2,512
12- to 14-in timber [3]	Vibratory	n/a	1	n/a	<1	n/a	2	n/a	<1	n/a	3
16- and 24-in steel [4]	Vibratory	n/a	7	n/a	1	n/a	12	n/a	1	n/a	17
30- and 36-in steel (Bangor) [4]	Vibratory	n/a	15	n/a	11	n/a	25	n/a	2	n/a	37
30- and 36-in steel (others) [4]	Vibratory	n/a	18	n/a	1	n/a	30	n/a	3	n/a	43
Sheet steel [4]	Vibratory	n/a	10	n/a	1	n/a	16	n/a	1	n/a	24

PW=Phocid; OW=Otariid; LF=low frequency; MF=mid frequency; HF=high frequency; pk=peak pressure; cSEL=cumulative SEL; BC=bubble curtain.
[1] Assumes 4,000 strikes per day.
[2] Assumes 1,000 strikes per day. Bubble curtain will be used for 24-, 30-, and 36-in steel piles except at NBK Bremerton and NBK Keyport. Steel piles will not be installed at NBK Manchester.
[3] Assumes 30 minute daily driving duration.
[4] Assumes 2.25 hour daily driving duration.

Airborne Noise—Although pinnipeds are known to haul-out regularly on man-made objects in the vicinity of some of the potential project sites, we believe that incidents of take resulting solely from airborne sound are unlikely. There is a possibility that an animal could surface in-water, but with head out, within the area in which airborne sound exceeds relevant thresholds and thereby be exposed to levels of airborne sound that we associate with harassment, but any such occurrence would likely be accounted for in our estimation of incidental take from underwater sound.

Certain locations where pinnipeds may haul-out may be within an airborne noise harassment zone. We generally recognize that pinnipeds occurring within an estimated airborne harassment zone, whether in the water or hauled out, could be exposed to airborne sound that may result in behavioral harassment. However, any animal exposed to airborne sound above the behavioral harassment threshold is likely to also be exposed to underwater sound above relevant thresholds (which are typically in all cases larger zones than those associated with airborne sound). Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple incidents of exposure to sound above NMFS's thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here. Further information regarding anticipated airborne noise from pile driving may be found in section 6.8 of the Navy's application.

Summary—Here, we summarize facility-specific information about piles to be removed and installed. In general, it is likely that pile removals may be accomplished via a combination of methods (*e.g.,* vibratory driver, cut at mudline, direct pull). However, for purposes of analysis we assume that all removals would be via vibratory driver. In addition, we assume that installation of all steel piles larger than 14-in would require use of both impact and vibratory drivers, although it is likely that some of these piles would be installed solely via use of the vibratory driver. All concrete, timber, and plastic piles would be installed solely via impact driver. Steel sheet piles and steel pipe piles of 14-in diameter and smaller would be installed solely via vibratory driver. All piles removed are assumed to be replaced at a 1:1 ratio, although it is likely that a lesser number of replacement piles would be required. For full details, please see Appendix A of the Navy's application.

- NBK Bangor: The Navy anticipates ongoing maintenance work at the older Explosives Handling Wharf (EHW–1), including removal and replacement of up to 44 piles. Replacement of up to 75 piles is anticipated for contingency repairs at any existing structure. Piles to be removed would be steel, timber, and/or concrete, and replacement piles would be steel and/or concrete. As a conservative scenario, all piles are assumed to be 36-in steel for purposes of analysis.
- Zelatched Point: Replacement of up to 20 piles is anticipated for contingency repairs. Piles to be removed would be 12-in timber piles, while replacement piles could be steel, timber, and/or concrete. As a conservative scenario, all replacement piles are assumed to be 36-in steel for purposes of analysis.
- NBK Bremerton: The Navy anticipates ongoing maintenance work at multiple existing structures. At Pier 5, 360 timber fender piles would be removed and replaced with concrete piles. Timber piles are assumed to be 14-in diameter, and concrete piles are assumed to be 24-in. At Pier 4, 80 timber fender piles would be replaced with steel piles—timber and steel piles are assumed to be 14-in diameter. Anticipated repairs to other piers would require removal of up to 20 timber piles, followed by installation of steel sheet piles. Replacement of up to 75 piles is anticipated for contingency repairs at any existing structure. Piles to be removed would be steel and/or timber, and replacement piles would be 24-in concrete. The largest estimated Level B ZOI results from vibratory driving of sheet piles, which is expected to occur for only twenty of the estimated total of 168 activity days. The Navy has elected to assume this largest estimated ZOI for all 168 activity days as a conservative scenario.
- NBK Keyport: Replacement of up to 20 piles is anticipated for contingency repairs. Piles to be removed would be steel and/or concrete (up to 18-in), while replacement piles would be steel. As a conservative scenario, all replacement piles are assumed to be 36-in steel for purposes of analysis.
- NBK Manchester: Replacement of up to 50 piles is anticipated for contingency repairs. Piles to be removed would be timber and/or plastic (up to 18-in), while replacement piles could be timber, plastic, and/or concrete. As a conservative scenario, all replacement piles are assumed to be 24-in concrete for purposes of analysis.
- NS Everett: The Navy anticipates minor repairs at the North Wharf, requiring replacement of two concrete piles (assumed to be 24-in). Replacement of up to 76 piles is anticipated for contingency repairs. Piles to be removed would include one steel pile and 75 timber piles. The one steel pile would be replaced by a 36-in steel pile, while the timber piles could be replaced by concrete and/or timber piles. As a conservative scenario, these replacement piles are assumed to be 24-in concrete for purposes of analysis.

Behavioral harassment zones and associated areas of ensonification are identified in Table 7 below. Although not all zones are applied to the exposure analysis, these may be effected as part of the required monitoring. Ensonified areas vary based on topography in the vicinity of the facility and are provided for each relevant facility.

TABLE 7—RADIAL DISTANCES TO RELEVANT BEHAVIORAL ISOPLETHS AND ASSOCIATED ENSONIFIED AREAS

Pile size and type	Impact (160-dB rms) [1]	Ensonified area [2]	Vibratory (120-dB) [3]	Ensonified area [2]
Plastic (13-in)	5	0.001	n/a	n/a.
Timber (12-in)	46	0.01	1.6	3.8 (Manchester Finger Pier); 4.6 (Manchester Fuel Pier).
Timber (13/14-in) [4]	46	0.01	2.2	6.8 (Bremerton); 5.9 (Manchester Finger Pier); 7.8 (Manchester Fuel Pier); [6] 9.4 (Everett)
Concrete (24-in) [4]	159	0.08	n/a	n/a.
Steel (14-in)	398	0.5 (Bremerton)	2.2	6.8 (Bremerton).

TABLE 7—RADIAL DISTANCES TO RELEVANT BEHAVIORAL ISOPLETHS AND ASSOCIATED ENSONIFIED AREAS—Continued

Pile size and type	Impact (160-dB rms) [1]	Ensonified area [2]	Vibratory (120-dB) [3]	Ensonified area [2]
Steel (24-in; BC)	464	0.54 (Bangor) 0.48 (Zelatched Point)	n/a	n/a.
Steel (24-in; no BC) [5]	1,585	2.09 (Keyport)	5.4	26.8 (Bangor); 4.9 (Keyport); 37.9 (Zelatched Point).
Steel (30-in; BC)	631	0.91 (Bangor); 0.85 (Zelatched Point); 1.2 (Everett).	n/a	n/a.
Steel (30-in; no BC)	2,154	1.94 (Keyport)	Same as 36-in	Same as 36-in.
Steel (36-in; BC)	541 (Bangor); 398 (others)	0.7 (Bangor); 0.36 (Zelatched Point); 0.5 (Everett).	n/a	n/a.
Steel (36-in; no BC)	1,359	0.42 (Keyport)	11.7 (Bangor); 13.6 (others)	4.9 (Keyport); 75.24 (Zelatched Point); 117.8 (Everett); 40.9 (Bangor).
Sheet steel	n/a	n/a	7.4	15.0 (Bremerton).

BC=bubble curtain.
[1] Radial distance to threshold in meters.
[2] Ensonified area in square kilometers.
[3] Radial distance to threshold in kilometers.
[4] Zones for impact driving of 18-in concrete piles are equivalent to those for impact driving of timber piles. Zones for vibratory removal of up to 18-in diameter plastic/timber piles are assumed to be equivalent to those for 13/14-in timber piles.
[5] Zones for vibratory driving of 16-in steel piles assumed equivalent to those for 24-in steel piles.
[6] Worst-case values for vibratory extraction of timber/plastic piles at NBK Manchester, where piles to be removed are a maximum 18-in diameter.

Marine Mammal Occurrence

Available information regarding marine mammal occurrence in the vicinity of the six installations includes density information aggregated in the Navy's Marine Mammal Species Density Database (NMSDD; Navy, 2015) or site-specific survey information from particular installations (*e.g.,* local pinniped counts). More recent density estimates for harbor porpoise are available in Smultea *et al.* (2017). The latter of these is described in Appendix C of the Navy's application. First, for each installation we describe anticipated frequency of occurrence and the information deemed most appropriate for the exposure estimates. For all facilities, large whales (humpback whale, minke whale, and gray whale), killer whales (transient and resident), and the elephant seal are considered as occurring only rarely and unpredictably, on the basis of past sighting records. For these species, average group size is considered in concert with expected frequency of occurrence to develop the most realistic exposure estimate. Although certain species are not expected to occur at all at some facilities—for example, resident killer whales are not expected to occur in Hood Canal—the Navy has developed an overall take estimate and request for these species that would apply to activities occurring over the 5-year duration at all six installations.

- NBK Bangor: In addition to the species described above, the Dall's porpoise is considered as a rare, unpredictably occurring species. A density-based analysis is used for the harbor porpoise, while data from site-specific abundance surveys is used for the California sea lion, Steller sea lion, and harbor seal.
- Zelatched Point: In addition to the species described above, the Dall's porpoise is considered as a rare, unpredictably occurring species. A density-based analysis is used for the harbor porpoise, California sea lion, Steller sea lion, and harbor seal.
- NBK Bremerton: A density-based analysis is used for the harbor porpoise, Dall's porpoise, and Steller sea lion, while data from site-specific abundance surveys is used for the California sea lion and harbor seal.
- NBK Keyport: A density-based analysis is used for the harbor porpoise, Dall's porpoise, California sea lion, Steller sea lion, and harbor seal.
- NBK Manchester: A density-based analysis is used for the harbor porpoise, Dall's porpoise, and harbor seal, while data from site-specific abundance surveys is used for the California sea lion and Steller sea lion.
- NS Everett: A density-based analysis is used for the harbor porpoise, Dall's porpoise, and Steller sea lion, while data from site-specific abundance surveys is used for the California sea lion and harbor seal.

TABLE 8—MARINE MAMMAL DENSITIES

Species	Region	Density (June–February)
Harbor porpoise	Hood Canal (Bangor, Zelatched Point)	0.44
	East Whidbey (Everett)	0.75
	Bainbridge (Bremerton, Keyport)	0.53
	Vashon (Manchester)	0.25
Dall's porpoise	Puget Sound	0.039
Steller sea lion	Puget Sound	0.0368
	Dabob Bay	0.0251
California sea lion	Puget Sound	0.1266
	Dabob Bay	0.279
Harbor seal	Everett	2.2062
	Keyport/Manchester	1.219

TABLE 8—MARINE MAMMAL DENSITIES—Continued

Species	Region	Density (June–February)
	Dabob Bay	9.918

Sources: Navy, 2015; Smultea *et al.,* 2017 (harbor porpoise).

Exposure Estimates

To quantitatively assess exposure of marine mammals to noise from pile driving activities, the Navy proposed three methods, to be used depending on the species' spatial and temporal occurrence. For species with rare or infrequent occurrence at a given installation during the in-water work window, the likelihood of interaction was reviewed on the basis of past records of occurrence (described in Description of Marine Mammals in the Area of the Specified Activity) and the potential maximum duration of work days at each installation, as well as total work days for all installations. Occurrence of the species in this category (*i.e.,* large whales, killer whales, elephant seal (all installations), and Dall's porpoise (Hood Canal)) would not be anticipated to extend for multiple days. For the large whales and killer whales, the duration of occurrence was set to two days, expected to be roughly equivalent to one transit in the vicinity of a project site. The calculation for species with rare or infrequent occurrence is:

Exposure estimate = expected group size × probable duration

For species that occur regularly but for which site-specific abundance information is not available, density estimates (Table 8) were used to determine the number of animals potentially exposed on any one day of pile driving or extraction. The calculation for density-based analysis of species with regular occurrence is:

Exposure estimate = N (density) × ZOI (area) × maximum days of pile driving

For remaining species, site-specific abundance information (*i.e.,* average monthly maximum over the time period when pile driving will occur) was used:

Exposure estimate = Abundance × maximum days of pile driving

Large Whales—For each species of large whale (*i.e.,* humpback whale, minke whale, and gray whale), we assume rare and infrequent occurrence at all installations. For all three species, if observed, they typically occur singly or in pairs. Therefore, for all three species, we assume that a pair of whales may occur in the vicinity of an installation for a total of two days. We do not expect that this would happen multiple times, and cannot predict where such an occurrence may happen, so propose to authorize a total of four takes of each species in total for the 5-year duration (across all installations).

It is important to note that the Navy proposes to implement a shutdown of pile driving activity if any large whale is observed within any defined harassment zone (see Proposed Mitigation). Therefore, the proposed take authorization is intended to provide insurance against the event that whales occur within Level B harassment zones that cannot be fully observed by monitors. As a result of this proposed mitigation, we do not believe that Level A harassment is a likely outcome upon occurrence of any large whale. While the calculated Level A harassment zone is as large as 2.5 km for impact driving of 36-in steel piles without a bubble curtain (ranging from 136–736 m for other impact driving scenarios), this requires that a whale be present at that range for the full assumed duration of 1,000 pile strikes (expected to require 1.5 hours). Given the Navy's commitment to shut down upon observation of a large whale, and the likelihood that the presence of a large whale in the vicinity of any Navy installation would be known due to reporting via Orca Network, we do not expect that any whale would be present within a Level A harassment zone for sufficient duration to actually experience PTS.

Killer Whales—For killer whales, the proposed take authorization is derived via the same thought process described above for large whales. For transient killer whales, we assume an average group size of six whales occurring for a period of two days. The resulting total proposed take authorization of 12 would also account for the low probability that a larger group occurred once. For resident killer whales, we assume an average group size of 20 whales occurring for two days. This is equivalent to the expected pod size for J pod, which is most likely to occur in the vicinity of Navy installations, but would also account for the unlikely occurrence of L pod (with a size of approximately 40 whales) once in the vicinity of any Navy installation.

Similar to large whales, the Navy proposes to implement shutdown of pile driving activity at any time that any killer whale is observed within any calculated harassment zone. We expect this to minimize the extent and duration of any behavioral harassment. Given the small size of calculated Level A harassment zones—maximum of 63 m for the worst-case scenario of impact-driven 36-in steel piles with no bubble curtain, other scenarios range from 1–10 m—we do not anticipate any potential for Level A harassment of killer whales.

Dall's Porpoise—Using the density given in Table 8, the largest appropriate ZOI for each of the four installations in Puget Sound, and the number of days associated with each of these installations (as indicated in harbor porpoise section below), the total estimated exposure of Dall's porpoises above Level B harassment thresholds is 146. Dall's porpoises are not expected to occur in Hood Canal. Dall's porpoises are not expected to occur frequently in the vicinity of Navy installations and have not been reported in recent years. This total proposed take authorization (146) is applied to all installations over the 5-year duration.

The Navy proposes to implement shutdown of pile driving activity at any time if a Dall's porpoise is observed in any harassment zone. Therefore, the take estimate is precautionary in accounting for potential occurrence in areas that cannot be visually observed or in the event that porpoises appear within behavioral harassment zones before shutdown can be implemented. As was described for large whales, as a result of this proposed mitigation, we do not believe that Level A harassment is a likely outcome. While the calculated Level A harassment zone is as large as 2.5 km for impact driving of 36-in steel piles without a bubble curtain (ranging from 136–541 m for other impact driving scenarios), this requires that a porpoise be present at that range for the full assumed duration of 1,000 pile strikes (expected to require 1.5 hours). Given the Navy's commitment to shut down upon observation of a porpoise, and the likelihood that a porpoise would engage in aversive behavior prior to experiencing PTS, we do not expect that any porpoise would be present within a Level A harassment zone for

sufficient duration to actually experience PTS.

Harbor Porpoise—Level B exposure estimates for harbor porpoise were calculated for each installation using the appropriate density given in Table 8, the largest appropriate ZOI for each installation, and the appropriate number of days.

• NBK Bangor: Using the Hood Canal sub-region density, 119 days of pile driving, and the largest ZOI calculated for pile driving at this location (40.9 km² for vibratory installation of 30- or 36-in steel piles) produces an estimate of 2,142 incidents of Level B exposure for harbor porpoise.

• Zelatched Point: Using the Hood Canal sub-region density, 20 days of pile driving, and the largest ZOI calculated for pile driving at this location (75.24 km² for vibratory installation of 30- or 36-in steel piles) produces an estimate of 662 incidents of Level B exposure for harbor porpoise.

• NBK Bremerton: Using the Bainbridge sub-region density, 168 days of pile driving, and the largest ZOI calculated for pile driving at this location (15 km² for vibratory installation of sheet steel piles) produces an estimate of 1,336 incidents of Level B exposure for harbor porpoise.

• NBK Keyport: Using the Bainbridge sub-region density, 20 days of pile driving, and the largest ZOI calculated for pile driving at this location (4.9 km² for vibratory installation of 30- or 36-in steel piles) produces an estimate of 52 incidents of Level B exposure for harbor porpoise.

• NBK Manchester: Using the Vashon sub-region density, 50 days of pile driving, and the largest ZOI calculated for vibratory removal of timber piles (7.8 km² for vibratory extraction of timber piles) produces an estimate of 98 incidents of Level B exposure for harbor porpoise.

• NS Everett: Using the East Whidbey sub-region density, 78 days of pile driving, and the largest ZOI calculated for vibratory extraction of timber piles (9.4 km²) produces an estimate of 552 incidents of Level B exposure for harbor porpoise. Although some vibratory installation is anticipated for a single steel pile, we anticipate this would occur for only a brief period. Therefore, use of the assumed zone for vibratory extraction of timber piles is appropriate in accounting for reasonably expected marine mammal exposure at this location.

The Navy proposes to implement shutdown of pile driving activity at any time if a harbor porpoise is observed in any harassment zone. Therefore, the take estimate is precautionary in accounting for potential occurrence in areas that cannot be visually observed or in the event that porpoises appear within behavioral harassment zones before shutdown can be implemented. As was described for large whales, as a result of this proposed mitigation, we do not believe that Level A harassment is a likely outcome. While the calculated Level A harassment zone is as large as 2.5 km for impact driving of 36-in steel piles without a bubble curtain (ranging from 136–541 m for other impact driving scenarios), this requires that a porpoise be present at that range for the full assumed duration of 1,000 pile strikes (expected to require 1.5 hours). Given the Navy's commitment to shut down upon observation of a porpoise, and the likelihood that a porpoise would engage in aversive behavior prior to experiencing PTS, we do not expect that any porpoise would be present within a Level A harassment zone for sufficient duration to actually experience PTS.

Steller Sea Lion—Level B exposure estimates for Steller sea lions were calculated for each installation using the appropriate density given in Table 8 or site-specific abundance, the largest appropriate ZOI for each installation, and the appropriate number of days. Please see Appendix C of the Navy's application for details of site-specific abundance information.

• NBK Bangor: Steller sea lions are routinely seen hauled out from mid-September through May, with a maximum daily haul-out count of 13 individuals in November 2014. Because the daily average number of Steller sea lions hauled out at Bangor has increased since 2013 compared to prior years, the Navy relied on 2013–2016 monitoring data to determine the average of the maximum count of hauled out Steller sea lions for each month in the in-water work window. The average of the monthly maximum counts during the in-water work window provides an estimate of three sea lions present per day. Using this value for 119 days results in an estimate of 357 incidents of Level B exposure.

• Zelatched Point: Using the Dabob Bay density value, 20 days of pile driving, and the largest ZOI calculated for pile driving at this location (75.24 km² for vibratory installation of 30- or 36-in steel piles) produces an estimate of 38 incidents of Level B exposure for Steller sea lions.

• NBK Bremerton: Using the Puget Sound density value, 168 days of pile driving, and the largest ZOI calculated for pile driving at this location (15 km² for vibratory installation of sheet steel piles) produces an estimate of 93 incidents of Level B exposure for Steller sea lions.

• NBK Keyport: Using the Puget Sound density value, 20 days of pile driving, and the largest ZOI calculated for pile driving at this location (4.9 km² for vibratory installation of 30- or 36-in steel piles) produces an estimate of four incidents of Level B exposure for Steller sea lions.

• NBK Manchester: Sea lions haul out on floats approximately 800 m offshore. Based on shore-based observations conducted intermittently in 2012–2013 and more frequently in 2014–2016, in addition to aerial surveys conducted by WDFW in selected months in 2013–2014, the Navy estimates that 10 Steller sea lions may be present on any given day. Using this average value for 50 days results in an estimate of 500 incidents of Level B exposure.

• NS Everett: Using the Puget Sound density value, 78 days of pile driving, and the largest ZOI calculated for this location (9.4 km²) produces an estimate of 27 incidents of Level B exposure for harbor porpoise.

Given the small size of calculated Level A harassment zones—maximum of 43 m for the worst-case scenario of impact-driven 36-in steel piles with no bubble curtain, other scenarios range from 1–11 m—we do not anticipate any potential for Level A harassment of Steller sea lions.

California Sea Lions—Level B exposure estimates for California sea lions were calculated for each installation using the appropriate density given in Table 8 or site-specific abundance, the largest appropriate ZOI for each installation, and the appropriate number of days. Please see Appendix C of the Navy's application for details of site-specific abundance information.

• NBK Bangor: California sea lions are routinely seen hauled out in all months other than July. Because the daily average number of California sea lions hauled out at Bangor has increased since 2013 compared to prior years, the Navy relied on 2013–2016 monitoring data to determine the average of the maximum count of hauled out California sea lions for each month in the in-water work window. The average of the monthly maximum counts during the in-water work window provides an estimate of 49 sea lions per day. Using this value for 119 days results in an estimate of 5,831 incidents of Level B exposure.

• Zelatched Point: Using the Dabob Bay density value, 20 days of pile driving, and the largest ZOI calculated for pile driving at this location (75.24 km² for vibratory installation of 30- or

36-in steel piles) produces an estimate of 420 incidents of Level B exposure for California sea lions.

• NBK Bremerton: California sea lions are routinely seen hauled out on floats at NBK Bremerton. Survey data from 2012–2016 indicate as many as 144 animals hauled out each day during this time period, with the majority of animals observed August through May and the greatest numbers observed in November. The average of the monthly maximum counts during the in-water work window provides an estimate of 69 sea lions per day. Using this value for 168 days results in an estimate of 11,592 incidents of Level B exposure.

• NBK Keyport: Using the Puget Sound density value, 20 days of pile driving, and the largest ZOI calculated for pile driving at this location (4.9 km^2 for vibratory installation of 30- or 36-in steel piles) produces an estimate of 12 incidents of Level B exposure for California sea lions.

• NBK Manchester: Sea lions haul out on floats approximately 800 m offshore. Based on shore-based observations conducted intermittently in 2012–2013 and more frequently in 2014–2016, in addition to aerial surveys conducted by WDFW in selected months in 2013–2014, the Navy estimates that 43 California sea lions may be present on any given day. Using this average value for 50 days results in a Level B exposure estimate of 2,150 incidents of Level B exposure.

• NS Everett: California sea lions are routinely seen hauled out on floats at NS Everett. Survey data from 2012–2016 indicate as many as 130 animals hauled out each day during this time period, with the majority of animals observed July through February and the greatest numbers observed in November. The average of the monthly maximum counts during the in-water work window provides an estimate of 67 sea lions per day. Using this value for 78 days results in an estimate of 5,148 incidents of Level B exposure.

Given the small size of calculated Level A harassment zones—maximum of 43 m for the worst-case scenario of impact-driven 36-in steel piles with no bubble curtain, other scenarios range from 1–11 m—we do not anticipate any potential for Level A harassment of California sea lions.

Harbor Seal—Harbor seals are expected to occur year-round at all installations, with the greatest numbers expected at installations with nearby haul-out sites. Level B exposure estimates for harbor seals were calculated for each installation using the appropriate density given in Table 8 or site-specific abundance, the largest appropriate ZOI for each installation, and the appropriate number of days. Please see Appendix C of the Navy's application for details of site-specific abundance information.

Harbor seals are expected to be the most abundant marine mammal at all installations, often occurring in and around existing in-water structures in a way that may restrict observers' ability to adequately observe seals and subsequently implement shutdowns. In addition, the calculated Level A harassment zones are significantly larger than those for sea lions, which may also be abundant at various installations at certain times of year. For harbor seals, the largest calculated Level A harassment zone is 736 m (compared with a maximum zone of 43 m for sea lions), calculated for the worst-case scenario of impact-driven 36-in steel piles without use of the bubble curtain. Other scenarios range from 25–158 m. Therefore, we assume that some Level A harassment is likely to occur for harbor seals and provide installation-specific estimates below.

• NBK Bangor: The closest major haul-outs to NBK Bangor that are regularly used by harbor seals are located approximately 13.2 km away. However, a small haul-out occurs under Marginal Wharf and small numbers of harbor seals are known to routinely haul out around the Carderock pier. Boat-based surveys and monitoring indicate that harbor seals regularly swim in the waters at NBK Bangor. Surveys conducted in August and September 2016 recorded as many as 28 harbor seals hauled out per day under Marginal Wharf or swimming in adjacent waters. Assuming a few other individuals may be present elsewhere on the Bangor waterfront, the Navy estimates that 35 harbor seals may be present per day near the installation during summer and early fall, which are expected to be months with greatest abundance of seals. Using this value for 119 days results in an estimate of 4,165 incidents of Level B exposure.

Considering the largest Level A harassment zone expected to typically occur at NBK Bangor (158 m), and assuming as a precaution that one seal per day could remain within the calculated zone for a sufficient period to accumulate enough energy to result in PTS, we propose to authorize 119 incidents of take by Level A harassment. It is important to note that the estimate of potential Level A harassment for NBK Bangor is expected to be an overestimate, as planned projects are not expected to occur near Marginal Wharf—the location where most harbor seal activity occurs.

• Zelatched Point: Using the Dabob Bay density value, 20 days of pile driving, and the largest ZOI calculated for pile driving at this location (75.24 km^2 for vibratory installation of 30- or 36-in steel piles) produces an estimate of 14,925 incidents of Level B exposure for harbor seals. The largest calculated Level A harassment zone at Zelatched Point would be 158 m. However, because harbor seals are not known to haul-out or congregate in the vicinity of in-water structures, as is the case at NBK Bangor, we do not anticipate that Level A harassment will occur at Zelatched Point and do not propose to authorize such take.

• NBK Bremerton: Harbor seals do not typically haul out at NBK Bremerton, but are commonly present in the nearby vicinity within Sinclair Inlet. Marine mammal surveys conducted nearby during the construction of the Manette Bridge (WSDOT, 2011, 2012) indicate that approximately 11 animals may be present per day. Using this value for 168 days results in an estimate of 1,848 incidents of Level B exposure. The largest Level A harassment zone at NBK Bremerton would be 86 m and, given the lack of regular presence of harbor seals in close proximity to existing in-water structures, we do not anticipate that Level A harassment will occur at NBK Bremerton and do not propose to authorize such take.

• NBK Keyport: No harbor seal haul-outs have been identified at this installation. Using the Puget Sound density value, 20 days of pile driving, and the largest ZOI calculated for pile driving at this location (4.9 km^2 for vibratory installation of 30- or 36-in steel piles) produces an estimate of 119 incidents of Level B exposure for harbor seals. Given the lack of haul-outs and of regular harbor seal presence at this installation, we do not anticipate that Level A harassment will occur at NBK Keyport and do not propose to authorize such take.

• NBK Manchester: No harbor seal haul-outs have been identified at this installation. Using the appropriate density value, 50 days of pile driving, and the largest ZOI calculated for vibratory extraction of timber piles (7.8 km^2) produces an estimate of 477 incidents of Level B exposure for harbor seals. Given the lack of haul-outs and of regular harbor seal presence at this installation, we do not anticipate that Level A harassment will occur at NBK Manchester and do not propose to authorize such take.

• NS Everett: Harbor seals haul out year-round on log rafts adjacent to NS Everett. Surveys from 2012–2016 indicate as many as 491 animals hauled

out each day during the in-water work period from July through January with the maximum number observed in September and October. The average of the monthly maximum counts during the in-water work window provides an estimate of 212 seals per day. Using this value for 78 days results in an estimate of 16,536 incidents of Level B exposure.

The largest Level A harassment zone calculated for NS Everett (158 m) would occur for only one day during impact driving of the single 36-in steel pile. During the remainder of pile driving at this installation, the largest Level A zone would be 34 m (impact driving of 24-in concrete piles). Given the abundant seal population at this site, we assume that some portion of the seal population may be present and unobserved within these zones for a sufficient period to accumulate enough energy to result in PTS. For the larger zone, the Navy assumes that five percent of animals present (11) may occur within the Level A zone for such a duration, while for the smaller zone associated with concrete piles, the Navy assumes that one percent (2) of the population may occur within the zone for such a duration. Therefore, we propose to authorize 165 incidents of take by Level A harassment (*i.e.,* two seals on each of the 77 concrete pile driving days in addition to 11 seals on the one day on which a steel pile would be installed).

Northern Elephant Seal—Northern elephant seals are considered rare visitors to Puget Sound. However, solitary juvenile elephant seals have been known to sporadically haul out to molt in Puget Sound during spring and summer months. Because there are occasional sightings in Puget Sound, the Navy reasons that exposure of up to one seal to noise above Level B harassment thresholds could occur for a two-day duration. This event could occur at any installation over the 5-year duration.

The total proposed take authorization for all species and installations is summarized in Table 9 below. No authorization of take by Level A harassment is proposed for authorization, except a total of 286 such incidents for harbor seals (anticipated to occur at NBK Bangor and NS Everett only).

TABLE 9—PROPOSED TAKE AUTHORIZATION BY LEVEL B HARASSMENT

Species	Bangor	Zelatched Point	Bremerton	Keyport	Manchester	Everett	Total	Percent [1]
Humpback whale	Applies across all installations						4	0.2
Minke whale	Applies across all installations						4	0.02
Gray whale	Applies across all installations						4	0.6
Killer whale (transient)	Applies across all installations						12	4.9
Killer whale (resident)	Applies across all installations						40	48.2
Dall's porpoise	Applies across all installations						146	0.6
Harbor porpoise	2,142	662	1,336	52	98	552	4,842	43.1
Steller sea lion	357	38	93	4	500	27	1,019	2.4
California sea lion	5,831	420	11,592	12	2,150	5,148	25,153	8.5
Harbor seal	4,680	14,925	1,848	119	477	16,536	38,585	n/a
Elephant seal	Applies across all installations						2	0.001

[1] Please see Small Numbers Analysis for more details about these percentages.

Proposed Mitigation

Under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (''least practicable adverse impact''). NMFS does not have a regulatory definition for ''least practicable adverse impact.'' However, NMFS's implementing regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, implementation of the measure(s) is expected to reduce impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses. This analysis will consider such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation.

(2) The practicability of the measure for applicant implementation. Practicability of implementation may consider such things as cost, impact on operations, personnel safety, and practicality of implementation.

The mitigation strategies described below largely follow those required and successfully implemented under previous incidental take authorizations issued in association with similar construction activities. Measurements from similar pile driving events were coupled with practical spreading loss and other relevant information to estimate zones of influence (ZOI; see ''Estimated Take''); these ZOI values were used to develop mitigation measures for pile driving activities at the six installations. Background discussion related to underwater sound concepts and terminology is provided in the section on ''Description of Sound Sources,'' earlier in this preamble. The ZOIs were used to inform the mitigation zones that would be established to prevent Level A harassment and to minimize Level B harassment for all cetacean species, while providing estimates of the areas within which Level B harassment might occur.

During installation of steel piles, the Navy would use vibratory driving to the maximum extent practicable. In addition to the specific measures described later in this section, the Navy would conduct briefings for construction supervisors and crews, the marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures. Other mitigation requirements committed to by the Navy but not relating to marine mammals (*e.g.,* construction best management practices) are described in section 11 of the Navy's application.

Timing

As described previously, the Navy would adhere to in-water work windows designed for the protection of fish. These timing windows would also benefit marine mammals by limiting the annual duration of construction activities. At NBK Bangor and Zelatched Point, the Navy would adhere to a July 16 through January 15 window, while at the remaining facilities this window is extended to February 15.

On a daily basis, in-water construction activities will occur only during daylight hours (sunrise to sunset) except from July 16 to September 15 when impact pile driving will only occur starting two hours after sunrise and ending two hours before sunset in order to protect marbled murrelets (*Brachyramphus marmoratus*) during the nesting season.

Monitoring and Shutdown for Pile Driving

The following measures would apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing some undesirable outcome, such as auditory injury or behavioral disturbance of sensitive species (serious injury or death are unlikely outcomes even in the absence of mitigation measures). For all pile driving activities, the Navy would establish a minimum shutdown zone with a radial distance of 10 m. This minimum zone is intended to prevent the already unlikely possibility of physical interaction with construction equipment and to establish a precautionary minimum zone with regard to acoustic effects.

Using NMFS's user spreadsheet, an optional companion spreadsheet associated with the alternative implementation methodology provided in Appendix D of NMFS's acoustic guidance (NMFS, 2016), pile type, size, and pile driving methodology-specific zones within which auditory injury (*i.e.,* Level A harassment) could occur were calculated. For larger steel piles and concrete piles, an alternative methodology (described in greater detail in ''Estimated Take'' and in Appendix E of the Navy's application) was used. The user spreadsheet is publicly available online at *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.* In using the spreadsheet, practical spreading loss was used in addition to information regarding assumed number of pile strikes per day (for impact pile driving) and daily duration of pile driving (for vibratory pile driving). Relevant information was provided in Tables 3–5 and calculated zones were provided in Table 6.

In many cases, especially for vibratory driving, the minimum shutdown zone of 10 m is expected to contain the area in which auditory injury could occur. In all circumstances where the predicted Level A harassment zone exceeds the minimum zone, the Navy proposes to implement a shutdown zone equal to the predicted Level A harassment zone (see Table 6). In all cases, predicted injury zones are calculated on the basis of cumulative sound exposure, as peak pressure source levels produce smaller predicted zones. In addition, the Navy proposes to implement shutdown upon observation of any cetacean within a calculated Level B harassment zone (see Table 7).

Injury zone predictions generated using the optional user spreadsheet are precautionary due to a number of simplifying assumptions. For example, the spreadsheet tool assumes that marine mammals remain stationary during the activity and does not account for potential recovery between intermittent sounds. In addition, the tool incorporates the acoustic guidance's weighting functions through use of a single-frequency weighting factor adjustment intended to represent the signal's 95 percent frequency contour percentile (*i.e.,* upper frequency below which 95 percent of total cumulative energy is contained; Charif *et al.,* 2010). This will typically result in higher predicted exposures for broadband sounds, since only one frequency is being considered, compared to exposures associated with the ability to fully incorporate the guidance's weighting functions. Note that the caveats related to WFA do not apply to the alternative method used by the Navy and applied to impact driving of 24- and 36-in steel piles and 24-in concrete piles.

Disturbance Zone—Disturbance zones are the areas in which sound pressure levels equal or exceed 160 and 120 dB rms (for impact and vibratory pile driving, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones and, as noted above, the disturbance zones act as de facto shutdown zones for cetaceans. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone, and thus prepare for potential shutdowns of activity. For cetaceans, the Navy would implement shutdowns upon observation of any cetacean within a disturbance zone (while acknowledging that some disturbance zones are too large to practicably monitor)—these would also be recorded as incidents of harassment. For pinnipeds, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see ''Proposed Monitoring and Reporting''). Nominal radial distances for disturbance zones are shown in Table 7.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location and the location of the pile being driven are known, and the location of the animal may be estimated as a distance from the observer and then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational data, and a precise accounting of observed incidents of harassment created. This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes, in cases where the entire zone was not monitored.

Monitoring Protocols—Monitoring would be conducted before, during, and after pile driving activities. In addition, observers will record all incidents of marine mammal occurrence, regardless of distance from activity, and monitors will document any behavioral reactions in concert with distance from piles being driven. Observations made

outside the shutdown zone will not result in shutdown; that pile segment will be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from 15 minutes prior to initiation through 30 minutes post-completion of pile driving activities. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified, trained protected species observers, who will be placed at the best vantage point(s) practicable (*i.e.,* from a small boat, construction barges, on shore, or any other suitable location) to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Observers would have no other construction-related tasks while conducting monitoring. Observers should have the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to document observations including, but not limited to: The number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury of marine mammals from construction noise within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Observer teams employed by the Navy in satisfaction of the mitigation and monitoring requirements described herein must meet the following additional requirements:

- Independent observers (*i.e.,* not construction personnel) are required.
- At least one observer must have prior experience working as an observer.
- Other observers may substitute education (degree in biological science or related field) or training for experience.
- Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer.
- We will require submission and approval of observer CVs.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for 15 minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition), and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile and for thirty minutes following the conclusion of pile driving.

Soft Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning marine mammals or providing them with a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes.'' The Navy will utilize soft start techniques for impact pile driving. We require an initial set of three strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then 2 subsequent 3-strike sets. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer; the requirement to implement soft start for impact driving is independent of whether vibratory driving has occurred within the prior 30 minutes.

Bubble Curtain

Sound levels can be greatly reduced during impact pile driving using sound attenuation devices, including bubble curtains, which create a column of air bubbles rising around a pile from the substrate to the water surface. The air bubbles absorb and scatter sound waves emanating from the pile, thereby reducing the sound energy. Bubble curtains may be confined or unconfined. Cushion blocks are also commonly used by construction contractors in order to protect equipment and the driven pile; use of cushion blocks typically reduces emitted sound pressure levels to some extent.

The literature presents a wide array of observed attenuation results for bubble curtains (see Appendix B of the Navy's application). The variability in attenuation levels is due to variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. As a general rule, reductions of greater than 10 dB cannot be reliably predicted. Prior monitoring by the Navy during a project at NBK Bangor reported a range of measured values for realized attenuation mostly within 6 to 12 dB, but with an overall average of 9 dB in effective attenuation (Illingworth and Rodkin, 2012).

The Navy would use a bubble curtain during impact driving of all steel piles greater than 14-in diameter in water depths greater than 2 ft (0.67 m), except at NBK Bremerton and Keyport. Bubble curtains are not proposed for use during impact driving of smaller steel piles or other pile types due to the relatively low source levels, as the requirement to deploy the curtain system at each driven pile results in a significantly lower production rate. Where a bubble curtain is used, the contractor would be required to turn it on prior to the soft start in order to flush fish from the area closest to the driven pile.

Bubble curtains cannot be used at NBK Bremerton and Keyport due to the

risk of disturbing contaminated sediments at these sites. Sediment contamination within Sinclair Inlet, including the project areas at NBK Bremerton, includes a variety of metals and organic chemicals originating from human sources. The marine sediments have been affected by past shipyard operations, leaching from creosote-treated piles, and other activities in Sinclair Inlet. Sediments at the project sites and adjacent to the piers at Bremerton have a pollution control plan for various metals, polycyclic aromatic hydrocarbons, polychlorinated biphenyls, and other semivolatile organic compounds (SVOC), and active cleanup is occurring pursuant to the terms of an agreement developed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in cooperation with the U.S. Environmental Protection Agency and the Washington Department of Ecology. The sediment at and near Keyport in Liberty Bay also has a pollution control plan, for multiple heavy metals, polychlorinated aromatic hydrocarbons, phthalates, and various other SVOCs.

To avoid loss of attenuation from design and implementation errors, the Navy will require specific bubble curtain design specifications, including testing requirements for air pressure and flow at each manifold ring prior to initial impact hammer use, and a requirement for placement on the substrate. The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact. The contractor shall also train personnel in the proper balancing of air flow to the bubblers, and must submit an inspection/performance report to the Navy for approval within 72 hours following the performance test. Corrections to the noise attenuation device to meet the performance standards shall occur prior to use for impact driving.

We have carefully evaluated the Navy's proposed mitigation measures and considered a range of other measures in the context of ensuring that we prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of these measures, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an LOA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of the authorized taking. NMFS's MMPA implementing regulations further describe the information that an applicant should provide when requesting an authorization (50 CFR 216.104(a)(13)), including the means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of significant interactions with marine mammal species in action area (*e.g.,* animals that came close to the vessel, contacted the gear, or are otherwise rare or displaying unusual behavior).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Coordination and Plan Development

An installation-specific marine mammal monitoring plan for each year's anticipated work will be developed by the Navy and presented in March of each year for approval by NMFS prior to the start of construction. Final monitoring plans will be prepared and submitted to NMFS within 30 days following receipt of comments on the draft plans from NMFS. Please see Appendix D of the Navy's application for a marine mammal monitoring plan template. During each in-water work period covered by an LOA, the Navy would update NMFS every two months on the progress of ongoing projects (September 15, November 15, and January 15).

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to pile driving activity for marine mammal species observed in the region of activity during the period of activity. The number and location of required observers would be determined specific to each installation on an annual basis, depending on the nature of work anticipated (including the size of zones to be monitored). All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy would monitor all shutdown zones at all times, and would monitor disturbance zones to the extent practicable (some zones are too large to fully observe (Table 7)). The Navy would conduct monitoring before, during, and after pile driving, with observers located at the best practicable vantage points.

As described in ''Proposed Mitigation'' and based on our requirements, the Navy would implement the following procedures for pile driving:

- Marine mammal observers would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted.
- The shutdown zone around the pile would be monitored for the presence of marine mammals before, during, and

after all pile driving activity, while disturbance zone monitoring would be implemented according to the schedule proposed here.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to the protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use standardized data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and a description of specific actions that ensued and resulting behavior of the animal, if any. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* wind speed, percent cloud cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Description of implementation of mitigation measures (*e.g.,* shutdown or delay).
- Locations of all marine mammal observations; and
- Other human activity in the area.

The Navy will note in behavioral observations, to the extent practicable, if an animal has remained in the area during construction activities. Therefore, it may be possible to identify if the same animal or different individuals are being exposed.

Acoustic Monitoring

The Navy will conduct hydroacoustic monitoring for a subset of impact-driven steel piles for projects including more than three piles where a bubble curtain is used. The USFWS has imposed requirements relating to impact driving of steel piles, including restrictions on unattenuated driving of such piles, as a result of concern regarding impacts to the ESA-listed marbled murrelet. If USFWS allows the Navy to conduct minimal driving of steel piles without the use of the bubble curtain, baseline sound measurements of steel pile driving will occur prior to the implementation of noise attenuation to evaluate the performance of the device. Impact pile driving without noise attenuation would be limited to the number of piles necessary to obtain an adequate sample size for each project.

Marine Mammal Surveys

Subject to funding availability, the Navy would continue pinniped haul-out survey counts at specific installations. Biologists conduct counts of seals and sea lions at NBK Bremerton, Bangor, Manchester, and NS Everett. Counts are conducted several times per month, depending on the installation. All animals are identified to species where possible. This information aids in determination of seasonal use of each site and trends in the number of animals.

Reporting

A draft report would be submitted to NMFS within 90 days of the completion of monitoring for each installation's in-water work window. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report. The Navy would also submit a comprehensive annual summary report covering all activities conducted under the incidental take regulations.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, and specific consideration of take by M/SI previously authorized for other NMFS research activities).

Pile driving activities associated with the maintenance projects, as described previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only (for all species other than the harbor seal) from underwater sounds generated from pile driving. Potential takes could occur if individual marine mammals are present in the ensonified zone when pile driving is happening.

No serious injury or mortality would be expected even in the absence of the proposed mitigation measures. For all species other than the harbor seal, no Level A harassment is anticipated given the nature of the activities, *i.e.,* much of the anticipated activity would involve vibratory driving and/or installation of small-diameter, non-steel piles, and measures designed to minimize the possibility of injury. The potential for injury is small for cetaceans and sea lions, and is expected to be essentially eliminated through implementation of the planned mitigation measures—use of the bubble curtain for larger steel piles at most installations, soft start (for impact driving), and shutdown zones. Impact driving, as compared with vibratory driving, has source characteristics (short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks) that are potentially injurious or more likely to produce severe behavioral reactions. Given sufficient notice through use of soft start, marine mammals are expected

to move away from a sound source that is annoying prior to its becoming potentially injurious or resulting in more severe behavioral reactions. Environmental conditions in inland waters are expected to generally be good, with calm sea states, and we expect conditions would allow a high marine mammal detection capability, enabling a high rate of success in implementation of shutdowns to avoid injury.

As described previously, there are multiple species that should be considered rare in the proposed project areas and for which we propose to authorize only nominal and precautionary take of a single group for a minimal period of time (two days). Therefore, we do not expect meaningful impacts to these species (*i.e.,* humpback whale, gray whale, minke whale, transient and resident killer whales, and northern elephant seal) and preliminarily find that the total marine mammal take from each of the specified activities will have a negligible impact on these marine mammal species.

For remaining species, we discuss the likely effects of the specified activities in greater detail. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in San Francisco Bay and in the Puget Sound region, which have taken place with no known long-term adverse consequences from behavioral harassment.

The Navy has conducted multi-year activities potentially affecting marine mammals, and typically involving greater levels of activity than is contemplated here in various locations such as San Diego Bay and some of the installations considered herein (NBK Bangor and NBK Bremerton). Reporting from these activities has similarly reported no apparently consequential behavioral reactions or long-term effects on marine mammal populations (Lerma, 2014; Navy, 2016). Repeated exposures of individuals to relatively low levels of sound outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving associated with some project components may produce sound at distances of many kilometers from the pile driving site, thus intruding on higher-quality habitat, the project sites themselves and the majority of sound fields produced by the specified activities are within industrialized areas. Therefore, we expect that animals annoyed by project sound would simply avoid the area and use more-preferred habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that harbor seals may sustain some limited Level A harassment in the form of auditory injury at two locations (NBK Bangor and NS Everett), assuming they remain within a given distance of the pile driving activity for the full number of pile strikes. However, seals in these locations that experience PTS would likely only receive slight PTS, *i.e.* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving, *i.e.* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of serious injury or mortality may reasonably be considered discountable; (2) as a result of the nature of the activity in concert with the planned mitigation requirements, injury is not anticipated for any species other than the harbor seal; (3) the anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; (4) the additional impact of PTS of a slight degree to few individual harbor seals at two locations is not anticipated to increase individual impacts to a point where any population-level impacts might be expected; (5) the absence of any significant habitat within the industrialized project areas, including known areas or features of special significance for foraging or reproduction; and (6) the presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

In addition, although affected humpback whales may be from DPSs that are listed under the ESA, and southern resident killer whales are depleted under the MMPA as well as listed as endangered under the ESA, it is unlikely that minor noise effects in a small, localized area of sub-optimal habitat would have any effect on the stocks' ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we preliminarily find that the total marine mammal take from the Navy's maintenance construction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(A) of the MMPA for specified activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such

as the temporal or spatial scale of the activities.

Please see Table 9 for information relating to this small numbers analysis. We propose to authorize incidental take of 12 marine mammal stocks. The total amount of taking proposed for authorization is less than one percent for five of these, less than five percent for an additional two stocks, and less than ten percent for another stock, all of which we consider relatively small percentages and we preliminarily find are small numbers of marine mammals relative to the estimated overall population abundances for those stocks.

For the southern resident killer whale (in addition to the humpback whale, gray whale, minke whale, transient killer whale, and northern elephant seal), we propose to authorize take resulting from a brief exposure of one group of the stock. We believe that a single incident of take of one group of any of these species represents take of small numbers for that species.

For the two affected stocks of harbor seal (Hood Canal and Northern Inland Waters), no valid abundance estimate is available. The most recent abundance estimates for harbor seals in Washington inland waters are from 1999, and it is generally believed that harbor seal populations have increased significantly during the intervening years (*e.g.,* Mapes, 2013). However, we anticipate that takes estimated to occur for harbor seals are likely to occur only within some portion of the relevant populations, rather than to animals from the stock as a whole. For example, takes anticipated to occur at NBK Bangor or at NS Everett would be expected to accrue to the same individual seals that routinely occur on haul-outs at these locations, rather than occurring to new seals on each construction day. Similarly, at Zelatched Point in Hood Canal many known haul-outs are at locations elsewhere in Hood Canal and, although a density estimate rather than haul-out count is used to inform the exposure estimate for Zelatched Point, we expect that exposed individuals would comprise some limited portion of the overall stock abundance. In summary, harbor seals taken as a result of the specified activities at each of the six installations are expected to comprise only a limited portion of individuals comprising the overall relevant stock abundance. Therefore, we preliminarily find that small numbers of marine mammals will be taken relative to the population size of both the Hood Canal and Northern Inland Waters stocks of harbor seal.

The estimated taking for harbor porpoise comprises greater than one-third of the best available stock abundance. However, due to the nature of the specified activity—construction activities occurring at six specific locations, rather than a mobile activity occurring throughout the stock range—the available information shows that only a portion of the stock would likely be impacted. Recent aerial surveys (2013–2016) that inform the current abundance estimate for harbor porpoise involved effort broken down by region and subregion. According to the data available as a result of these surveys, the vast majority of harbor porpoise abundance occurs in the ''northern waters'' region, including the San Juan Islands and Strait of Juan de Fuca, where no Navy construction activity is proposed to occur. The six installations considered here occur within the Hood Canal, North Puget Sound, and South Puget Sound regions, which contain approximately 24 percent of stock-wide harbor porpoise abundance (Jefferson *et al.,* 2016). Therefore, we assume that affected individuals would most likely be from the 24 percent of the stock expected to occur in these regions. This figure itself may be an overestimate, as Navy facilities are located within only three of seven subregions within the North and South Puget Sound regions (*i.e.,* East Whidbey, Bainbridge, and Vashon). However, at this finer scale, it is possible that harbor porpoise individuals transit across subregions. In consideration of this conservative scenario, *i.e.,* that 24 percent of the stock abundance is taken, we preliminarily find that small numbers of marine mammals will be taken relative to the population size of the Washington inland waters stock of harbor porpoise.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population sizes of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by these actions. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Adaptive Management

The regulations governing the take of marine mammals incidental to Navy maintenance construction activities would contain an adaptive management component.

The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Endangered Species Act (ESA)

The southern resident killer whale, as well as multiple DPSs of humpback whale, are listed under the ESA (see Table 3). The proposed authorization of incidental take pursuant to the Navy's specified activity would not affect any designated critical habitat. OPR has initiated consultation with NMFS's West Coast Regional Office under section 7 of the ESA on the promulgation of five-year regulations and the subsequent issuance of LOAs to the Navy under section 101(a)(5)(A) of the MMPA. This consultation will be concluded prior to issuing any final rule.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the Navy request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive

Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant. Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The U.S. Navy is the sole entity that would be subject to the requirements in these proposed regulations, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a federal agency. 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 collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: February 23, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart C to part 218 to read as follows:

Subpart C—Taking Marine Mammals Incidental to U.S. Navy Marine Structure Maintenance and Pile Replacement in Washington

Sec.

218.20 Specified activity and specified geographical region.
218.21 Effective dates.
218.22 Permissible methods of taking.
218.23 Prohibitions.
218.24 Mitigation requirements.
218.25 Requirements for monitoring and reporting.
218.26 Letters of Authorization.
218.27 Renewals and modifications of Letters of Authorization.
218.28 [Reserved]
218.29 [Reserved]

§ 218.20 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy (Navy) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to maintenance construction activities.

(b) The taking of marine mammals by the Navy may be authorized in a Letter of Authorization (LOA) only if it occurs within Washington inland waters in the vicinity of one of the following six naval installations: Naval Base Kitsap Bangor, Zelatched Point, Naval Base Kitsap Bremerton, Naval Base Kitsap Keyport, Naval Base Kitsap Manchester, and Naval Station Everett.

§ 218.21 Effective dates.

Regulations in this subpart are effective from [EFFECTIVE DATE OF FINAL RULE] through [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

§ 218.22 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 218.26, the Holder of the LOA (hereinafter ''Navy'') may incidentally, but not intentionally, take marine mammals within the area described in § 218.20(b) by Level A or Level B harassment associated with maintenance construction activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 218.23 Prohibitions.

Notwithstanding takings contemplated in § 218.22 and authorized by a LOA issued under § 216.106 of this chapter and § 218.26, no person in connection with the activities described in § 218.20 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 218.26;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 218.24 Mitigation requirements.

When conducting the activities identified in § 218.20(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 218.26 must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions:

(1) A copy of any issued LOA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of the issued LOA.

(2) The Navy shall conduct briefings for construction supervisors and crews, the monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

(b) Shutdown zones:

(1) For all pile driving activity, the Navy shall implement a minimum shutdown zone of a 10 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(2) For all pile driving activity, the Navy shall implement shutdown zones with radial distances as identified in any LOA issued under § 216.106 of this chapter and § 218.26. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(3) For all pile driving activity, the Navy shall designate monitoring zones with radial distances as identified in any LOA issued under § 216.106 of this chapter and § 218.26. Anticipated observable zones within the designated monitoring zones shall be identified in annual Marine Mammal Monitoring Plans, subject to approval by NMFS. If

any cetacean is observed outside the shutdown zone identified pursuant to § 218.24(b)(1)–(2) of this subpart, but within the designated monitoring zone, such operations shall cease.

(c) Shutdown protocols:

(1) The Navy shall deploy marine mammal observers as indicated in annual Marine Mammal Monitoring Plans, which shall be subject to approval by NMFS, and as described in § 218.25.

(2) For all pile driving activities, a minimum of one observer shall be stationed at the active pile driving rig or in reasonable proximity in order to monitor the shutdown zone.

(3) Monitoring shall take place from 15 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for 15 minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

(4) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal.

(5) Monitoring shall be conducted by trained observers, who shall have no other assigned tasks during monitoring periods. Trained observers shall be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. The Navy shall adhere to the following additional observer qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience.

(iv) Where a team of three or more observers are required, one observer shall be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer.

(v) The Navy shall submit observer CVs for approval by NMFS.

(d) The Navy shall use soft start techniques for impact pile driving. Soft start for impact drivers requires contractors to provide an initial set of three strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy three-strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(e) The Navy shall employ a bubble curtain (or other sound attenuation device with proven typical performance of at least 8 decibels effective attenuation) during impact pile driving of steel piles greater than 14 inches diameter in water depths greater than 2 feet, except at Naval Base Kitsap Bremerton and Naval Base Kitsap Keyport. In addition, the Navy shall implement the following performance standards:

(1) The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column.

(2) The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact.

(3) The Navy shall require that construction contractors train personnel in the proper balancing of air flow to the bubblers, and shall require that construction contractors submit an inspection/performance report for approval by the Navy within 72 hours following the performance test. Corrections to the attenuation device to meet the performance standards shall occur prior to impact driving.

§ 218.25 Requirements for monitoring and reporting.

(a) Not later than March 1 of each year, the Navy shall develop and submit for NMFS's approval an installation-specific Marine Mammal Monitoring Plan for each year's anticipated work. Final monitoring plans shall be prepared and submitted to NMFS within 30 days following receipt of comments on the draft plans from NMFS.

(b) During each in-water work period, the Navy shall update NMFS every two months on the progress of ongoing projects.

(c) Trained observers shall receive a general environmental awareness briefing conducted by Navy staff. At minimum, training shall include identification of marine mammals that may occur in the project vicinity and relevant mitigation and monitoring requirements. All observers shall have no other construction-related tasks while conducting monitoring.

(d) For shutdown zone monitoring, the Navy shall report on implementation of shutdown or delay procedures, including whether the procedures were not implemented and why (when relevant).

(e) The Navy shall deploy additional observers to monitor disturbance zones according to the minimum requirements defined in annual Marine Mammal Monitoring Plans, subject to approval by NMFS. These observers shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity, and shall communicate with the shutdown zone observer as appropriate with regard to the presence of marine mammals. All observers shall be trained in identification and reporting of marine mammal behaviors.

(f) Reporting:

(1) Annual reporting:

(i) Navy shall submit an annual summary report to NMFS not later than 90 days following the end of construction during each in-water work period. Navy shall provide a final report within 30 days following resolution of comments on the draft report.

(ii) These reports shall contain, at minimum, the following:

(A) Date and time that monitored activity begins or ends;

(B) Construction activities occurring during each observation period;

(C) Weather parameters (*e.g.,* wind speed, percent cloud cover, visibility);

(D) Water conditions (*e.g.,* sea state, tide state);

(E) Species, numbers, and, if possible, sex and age class of marine mammals;

(F) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

(G) Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(H) Description of implementation of mitigation measures (*e.g.,* shutdown or delay);

(I) Locations of all marine mammal observations; and

(J) Other human activity in the area.

(2) Navy shall submit a comprehensive summary report to NMFS not later than ninety days following the conclusion of marine mammal monitoring efforts described in this subpart.

(g) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the activity defined in § 218.20 clearly causes the take of a marine mammal in a prohibited manner, Navy shall immediately cease such activity and report the incident to the Office of Protected Resources (OPR), NMFS, and to the West Coast Regional Stranding Coordinator, NMFS. Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Navy may not resume their activities until notified by NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Fate of the animal(s); and

(vii) Photographs or video footage of the animal(s). Photographs may be taken once the animal has been moved from the waterfront area.

(2) In the event that Navy discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Navy shall immediately report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (g)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that Navy discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 218.20 (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Navy shall report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. Photographs may be taken once the animal has been moved from the waterfront area.

§ 218.26 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the Navy must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, the Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the Navy must apply for and obtain a modification of the LOA as described in § 218.27.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 218.27 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 218.26 for the activity identified in § 218.20(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 218.26 for the activity identified in § 218.20(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the Navy's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 218.26, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ 218.28 [Reserved]

§ 218.29 [Reserved]

[FR Doc. 2018–04148 Filed 3–2–18; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 83 Monday,
No. 43 March 5, 2018

Part III

The President

Proclamation 9700—American Red Cross Month, 2018
Proclamation 9701—Irish-American Heritage Month, 2018
Proclamation 9702—Women's History Month, 2018

Federal Register
Vol. 83, No. 43
Monday, March 5, 2018

Presidential Documents

Title 3—

The President

Proclamation 9700 of February 28, 2018

American Red Cross Month, 2018

By the President of the United States of America

A Proclamation

Since Clara Barton founded the American Red Cross in 1881, the organization has provided domestic disaster relief, assisted in international disaster relief, and supported the United States military in countless ways. Today, it is a renowned, life-saving force, supported by hundreds of thousands of volunteers and responsible for ensuring our Nation's blood supply is always at safe and sufficient levels. The American Red Cross also provides training and preparedness programs for Americans in safety-related fields and helps to connect our Nation's military service members with their families. During American Red Cross Month, we honor the organization's humanitarian mission, as well as its hard-working staff, dedicated volunteers, and generous supporters, whose donations are vital to sustaining the organization's operations.

The American Red Cross plays an indispensable role in our Nation's healthcare system, including as the single largest supplier of blood and blood products in the United States. These blood products are vital for accident and burn victims, patients with conditions that require repeated transfusions, and patients undergoing advanced treatments like heart surgery and cancer therapy. On average, the American Red Cross collects nearly 4.9 million units of blood each year from more than 2.8 million donors. These donations help meet the needs of patients at approximately 2,600 hospitals and transfusion centers across the country.

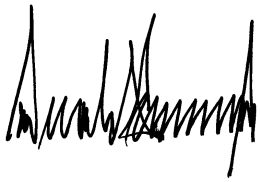
In addition to its healthcare mission, last year, the American Red Cross assisted millions of people affected by disasters in the United States and around the world. During a 45-day span, the organization responded to six of our Nation's largest and most complex disasters of 2017, including back-to-back hurricanes, the deadliest wildfires in California history, and the mass shooting in Las Vegas, Nevada. Globally, the American Red Cross provided aid to 26 countries in the aftermath of multiple natural disasters, including a drought and food crisis in Africa, the floods and migration crisis in Bangladesh, two earthquakes that shook Mexico just weeks apart, and floods and landslides in Nepal. The American Red Cross helped nearly 9,400 people search for loved ones separated from their families during these and other international calamities.

Since its founding, the American Red Cross has also served as a vital conduit between our great men and women of the military and their families and support networks back home. To help caregivers meet the daily challenge of providing for our wounded, ill, and injured service members and veterans, the Military and Veteran Caregiver Network provides peer support through online resources and community-based groups. And last year alone, through its Hero Care Network, the American Red Cross relayed more than 304,000 urgent messages to more than 79,000 service members and their families.

The dedicated staff members and volunteers of the American Red Cross make tremendous, positive contributions to both our Nation and the world. Their tireless endeavors truly deserve our unwavering respect, support, and gratitude.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2018 as American Red Cross Month. I encourage all Americans to observe this month with appropriate programs, ceremonies, and activities, and to support the work of the American Red Cross and their local chapters.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



[FR Doc. 2018–04620
Filed 3–2–18; 11:15 am]
Billing code 3295–F8–P

Presidential Documents

Proclamation 9701 of February 28, 2018

Irish-American Heritage Month, 2018

By the President of the United States of America

A Proclamation

During the month of St. Patrick's Day, we celebrate Irish-American Heritage Month and the tremendous role Irish immigrants and their descendants have played in the development of our great Nation. Irish-American Heritage Month is a great opportunity to celebrate the nearly 33 million Americans with Irish ancestry and their tremendous contributions to the betterment of our country. This month, and every month, we appreciate their efforts in helping usher in a new era of American prosperity.

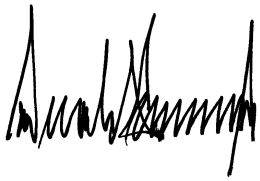
Irish Americans have distinguished themselves in every sector of American life. Many have been among the key architects of our country's greatness. Nine of the men who signed our Declaration of Independence were of Irish origin. Presidents Andrew Jackson, John F. Kennedy, Ronald Reagan, and many others have traced their roots to the Emerald Isle. Businessman Henry Ford, founder of one of America's most iconic companies, was the son of an Irish immigrant.

For centuries, the tenacious Irish spirit, paired with American self-reliance, has helped Irish immigrants and their descendants realize incredible dreams. With religious devotion, strength rooted in the love of family, and confidence in the promise of America, Irish Americans have engaged in the American experience in robust and meaningful ways. Their neighborhoods, schools, churches, and workplaces have affirmed the importance of faith, industry, and learning. It is, therefore, no wonder that American art, business, and public life are marked by Irish names and symbols.

This month, Americans across the country will don the traditional green garb as we celebrate the patron saint of Ireland in an annual tribute to our shared and cherished heritage with that great country. As we spend this month honoring Irish Americans, we also pledge to further strengthen our relationship with the Emerald Isle itself, as we look forward to a bright future of greater friendship, cooperation, and commerce for centuries to come.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2018 as Irish-American Heritage Month. I call upon all Americans to celebrate the achievements and contributions of Irish Americans to our Nation with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



[FR Doc. 2018–04621
Filed 3–2–18; 11:15 am]
Billing code 3295–F8–P

Presidential Documents

Proclamation 9702 of February 28, 2018

Women's History Month, 2018

By the President of the United States of America

A Proclamation

Our history is rich with amazing stories of strong, courageous, and brilliant women. Since America's founding, women have played an integral part in American innovation and productivity, while simultaneously raising generations of lively children and providing leadership in their local communities.

Time and time again, women have demonstrated resilience in the face of unprecedented challenges. America's women have readily tackled the disruptive forces and demands of wartime and embraced the technological and industrial advancements of the past 250 years. We have seen the incredible fortitude of women like Mary Katherine Goddard, who, in 1775, served as postmaster of the Baltimore post office and printed the second copy of the then-treasonous Declaration of Independence. We have followed the exceptional leadership of women like Olive Ann Beech, the first female head of a major aircraft company, which produced thousands of aircraft for the Allied effort during World War II. And, we have been transformed by women like Marva Collins, who was working as a full-time substitute teacher in Chicago when she founded a low-cost private school for low-income children being left behind by public schools.

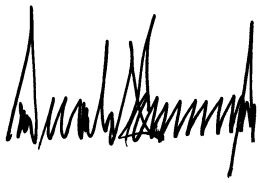
We can find similar stories throughout women's endeavors today. Women are leaders in a range of fields, from business and medicine to government and the arts. And, my Administration is committed to creating conditions that empower women to achieve even more. Access to paid family leave and affordable, high-quality childcare can help enhance women's ability to participate in the labor force and improve the economic security of their families. The recently enacted Tax Cuts and Jobs Act provides new tax credits to businesses that offer paid family and medical leave to their employees. This landmark legislation also gives qualifying American families with children a significantly larger child tax credit and ensures that more families will be eligible to take advantage of this credit. When we support family-friendly policies, women have more freedom to explore opportunities and to thrive at work and at home.

My Administration is also supporting policies that promote women's economic empowerment. This is critical, as women now make up 40 percent of the entrepreneurs in the United States. Women business owners employ more than 8 million workers and provide them with more than $264 billion in wages and salaries. Just in the first year of my Administration, the Small Business Administration has increased lending to women-owned businesses by $128 million. We will also continue promoting the next generation of women leaders through mentoring, training, and education initiatives.

Through these and other efforts, we will support women throughout our society, recognizing that the successes of women strengthen our families, our economy, and our Nation. As we reflect on the role of women throughout American history, we remember that women must always have access to all the opportunities that our Nation has to offer. Indeed, ensuring access to these opportunities is vital to our Nation's prosperity.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2018 as Women's History Month. I call upon all Americans to observe this month and to celebrate International Women's Day on March 8, 2018, with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



[FR Doc. 2018–04622
Filed 3–2–18; 11:15 am]
Billing code 3295–F8–P

FEDERAL REGISTER

Vol. 83 Monday,

No. 43 March 5, 2018

Part IV

The President

Notice of March 2, 2018—Continuation of the National Emergency With Respect to Ukraine

Notice of March 2, 2018—Continuation of the National Emergency With Respect to Venezuela

Notice of March 2, 2018—Continuation of the National Emergency With Respect to Zimbabwe

Federal Register
Vol. 83, No. 43
Monday, March 5, 2018

Presidential Documents

Title 3—

The President

Notice of March 2, 2018

Continuation of the National Emergency With Respect to Ukraine

On March 6, 2014, by Executive Order 13660, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of persons that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

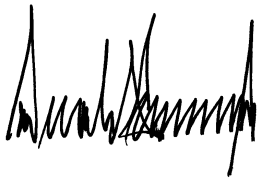
On March 16, 2014, the President issued Executive Order 13661, which expanded the scope of the national emergency declared in Executive Order 13660, and found that the actions and policies of the Government of the Russian Federation with respect to Ukraine undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

On March 20, 2014, the President issued Executive Order 13662, which further expanded the scope of the national emergency declared in Executive Order 13660, as expanded in scope in Executive Order 13661, and found that the actions and policies of the Government of the Russian Federation, including its purported annexation of Crimea and its use of force in Ukraine, continue to undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

On December 19, 2014, the President issued Executive Order 13685, to take additional steps to address the Russian occupation of the Crimea region of Ukraine.

The actions and policies addressed in these Executive Orders continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on March 6, 2014, and the measures adopted on that date, on March 16, 2014, on March 20, 2014, and on December 19, 2014, to deal with that emergency, must continue in effect beyond March 6, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13660.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 2, 2018.

[FR Doc. 2018–04626
Filed 3–2–18; 2:00 pm]
Billing code 3295–F8–P

Presidential Documents

Notice of March 2, 2018

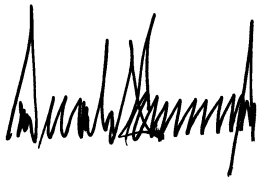
Continuation of the National Emergency With Respect to Venezuela

On March 8, 2015, the President issued Executive Order 13692, declaring a national emergency with respect to the situation in Venezuela based on the Government of Venezuela's erosion of human rights guarantees, persecution of political opponents, curtailment of press freedoms, use of violence and human rights violations and abuses in response to antigovernment protests, and arbitrary arrest and detention of antigovernment protestors, as well as the exacerbating presence of significant government corruption.

On August 24, 2017, I issued Executive Order 13808 to take additional steps with respect to the national emergency declared in Executive Order 13692, particularly in light of recent actions and policies of the Government of Venezuela, including serious abuses of human rights and fundamental freedoms; responsibility for the deepening humanitarian crisis in Venezuela; establishment of an illegitimate Constituent Assembly, which usurped the power of the democratically elected National Assembly and other branches of the Government of Venezuela; rampant public corruption; and ongoing repression and persecution of, and violence toward, the political opposition.

The circumstances described in Executive Order 13692 and Executive Order 13808 have not improved, and they continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13692.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 2, 2018.

[FR Doc. 2018–04627
Filed 3–2–18; 2:00 pm]
Billing code 3295–F8–P

Presidential Documents

Notice of March 2, 2018

Continuation of the National Emergency With Respect to Zimbabwe

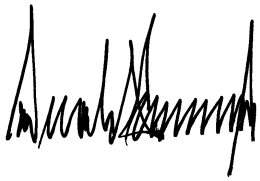
On March 6, 2003, by Executive Order 13288, the President declared a national emergency and blocked the property of certain persons, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions. These actions and policies had contributed to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation in that country, and to political and economic instability in the southern African region.

On November 22, 2005, the President issued Executive Order 13391 to take additional steps with respect to the national emergency declared in Executive Order 13288 by ordering the blocking of the property of additional persons undermining democratic processes or institutions in Zimbabwe.

On July 25, 2008, the President issued Executive Order 13469, which expanded the scope of the national emergency declared in Executive Order 13288 and authorized the blocking of the property of additional persons undermining democratic processes or institutions in Zimbabwe.

The actions and policies of these persons continue to pose an unusual and extraordinary threat to the foreign policy of the United States. For this reason, the national emergency declared on March 6, 2003, and the measures adopted on that date, on November 22, 2005, and on July 25, 2008, to deal with that emergency must continue in effect beyond March 6, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13288.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 2, 2018.

[FR Doc. 2018–04628
Filed 3–2–18; 2:00 pm]
Billing code 3295–F8–P

Reader Aids

Federal Register

Vol. 83, No. 43

Monday, March 5, 2018

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, MARCH

8743–8922 1
8923–9134 2
9135–9418 5

CFR PARTS AFFECTED DURING MARCH

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:
9700 9405
9701 9407
9702 9409

Executive Orders:
10830 (Amended by EO 13824) 8923
13265 (Amended by EO 13824) 8923
13545 (Revoked by EO 13824) 8923
13824 8923

Administrative Orders:
Notices:
Notice of March 2, 2018 9413
Notice of March 2, 2018 9415
Notice of March 2, 2018 9417

7 CFR

Proposed Rules:
925 8802
959 8804

12 CFR

Ch. XI 9135
347 9135

14 CFR

1 9162
21 9162
23 9176
25 9162
26 9162
27 9162
34 9162
39 .....8743, 8745, 8927, 9178
43 9162
45 9162
60 9162
61 9162
63 9162
65 9162
71 9181
91 9162
97 9162
107 9162
110 9162
119 9162
121 9162
125 9162
129 9162
133 9162
135 9162
137 9162
141 9162
142 9162
145 9162
183 9162

Proposed Rules:
39 .....8807, 8810, 8951, 9238
71 .....9242, 9243

15 CFR

Proposed Rules:
922 8812

21 CFR

573 8929

Proposed Rules:
101 8953

30 CFR

550 8930
553 8930

31 CFR

510 9182

33 CFR

117 .....8747, 8748, 8933, 8936, 8937, 9204
165 .....8748, 8938, 9205

Proposed Rules:
100 .....8955, 8957
165 .....9245, 9247, 9249, 9252

34 CFR

230 9207

36 CFR

7 8940

Proposed Rules:
2 8959

38 CFR

17 9208
36 8945
42 8945

40 CFR

52 .....8750, 8752, 8756, 9213
63 9215
81 8756
180 8758

Proposed Rules:
52 .....8814, 8818, 8822, 8961
63 9254
174 8827

47 CFR

Proposed Rules:
54 8962
73 8828

49 CFR

225 9219
1102 9222

50 CFR

635 .....8946, 9232

648 8764
679 ....8768, 9235, 9236

Proposed Rules:
218 9366
635 9255
679 9257

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 28, 2018

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.